August 20, 2018

Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW, Washington, DC 20503
Attn: Docket No. CEQ-2018-0001


Dear Mr. Boling,

The Bipartisan Policy Center’s Executive Council on Infrastructure appreciates the opportunity to respond to the Council on Environmental Quality’s (CEQ) advanced notice of proposed rulemaking, “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.” In our May 2016 report, Bridging the Gap Together: A New Model to Modernize U.S. Infrastructure, the council outlined how permitting risk (i.e., the risk that a project will be delayed during the permitting and environmental review process) was a significant barrier to the entry of private capital into U.S. infrastructure and offered a number of solutions to accelerate the process.¹

In recent years, finding ways to fast-track federal permitting and environmental reviews, while upholding longstanding environmental protections, has been a key bipartisan objective. Given CEQ’s critical role in helping federal agencies fulfill their obligations under the National Environmental Policy Act or NEPA, and the many recent reforms made to the process, we applaud CEQ for taking a holistic review of its implementing regulations. Where possible, CEQ should focus on opportunities to reduce regulatory burdens while empowering state and local partners to attract private capital, improve environmental outcomes, and ensure that limited federal resources are used to extract their greatest value. In particular, BPC’s executive council has found a need to:

Empower key decision-makers: In recent actions, the administration has emphasized the roles of CEQ and the White House Office of Management and Budget (OMB) in permitting modernization, and, in particular, solving disputes that arise in multiagency reviews. Importantly, Executive Order 13807 provided federal decision-makers with a new tool to hold agencies accountable: OMB, in consultation with the Federal Permitting Improvement Steering Council (FPISC), must establish a performance accountability system and score each agency on its implementation of the executive order. Poor performance could result in the imposition of penalties, and will additionally be considered in formulating agency budgets. CEQ should continue to elevate the importance of lead agencies in shepherding projects through the permitting process.

Continue expanding the Permitting Dashboard: Executive Order 13807 requires all projects subject to 23 U.S.C. 139 and “covered projects” under 42 U.S.C. 4370m to be tracked on the Permitting Dashboard, with monthly updates of project milestones, and gives the FPISC Executive Director the authority to add others. This commitment to using and expanding the dashboard is a step in the right direction and should be continued; it transparently tracks permitting requirements, timelines, and participating agencies’ responsibilities.

¹ For more information, see Bridging the Gap Together: A New Model to Modernize U.S. Infrastructure.
Institutionalize and expand the use of FAST Act Permitting Dashboard authorities: Executive Order 13807 and CEQ’s initial list of implementation actions showed a commitment to using and aligning the One Federal Decision initiative with existing FPISC authorities and the Permitting Dashboard. This review of CEQ’s NEPA-implementing regulations should similarly focus on advancing several key, bipartisan FAST Act priorities: greater permitting schedule adherence; transparent tracking of permitting requirements, timelines, and responsibilities; and enhanced predictability.

Increase data collection and transparency: While Executive Order 13807 included a federal commitment to transparency and accountability in environmental reviews and agency decisions—including new cost estimates, continued Permitting Dashboard tracking, a new performance scoring system, mandatory explanations for agency delays, and government-wide assessments of process inefficiencies—these efforts are not all in place and are not fully reflected in CEQ’s regulations. If the administration can successfully implement these measures, they would go a long way in increasing the broader understanding of what can hold up a project and informing any future reform efforts.

Make simultaneous reviews the norm: Executive Order 13807 laid out a general federal commitment to providing environmental review and permit approvals in a “coordinated, consistent, predictable, and timely manner,” setting a goal of completing approvals in two years or less. Meeting such a goal will certainly require simultaneous multiagency reviews. However, there is little evidence thus far that this has yet become the “norm.”

The Bipartisan Policy Center has previously noted that the Trump administration can make significant progress if it:

• Judiciously aligns new procedures with previous permitting initiatives, guidance, and regulatory rulemakings;
• Prioritizes full transparency in tracking adherence to permitting timetables and the costs of environmental reviews and their delays so that both federal agencies and project sponsors may be held accountable;
• Provides the training, support, and resources to agency staff needed to modernize the permitting process and ensure new procedures can be successfully implemented; and
• Ensures, in all actions, that key environmental protections and opportunities for public engagement are not jeopardized or overlooked.

We appreciate your attention to this issue and the opportunity to share our recommendations. Feel free to contact Andy Winkler at infrastructure@bipartisanpolicy.org for additional information or assistance.

Sincerely,

Michele Nellenbach
Director of Strategic Initiatives
Bipartisan Policy Center