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## Environmental Reviews and the 118th Congress

### Overview of the Review Process Under the National Environmental Policy Act

The National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 *et seq.*) mandates environmental review of many agency actions. NEPA requires that federal agencies consider potential impacts of their actions that may affect the human environment. If a major federal action could result in significant impacts, NEPA requires the preparation of an *Environmental Impact Statement* (EIS) that analyzes effects of the proposed action and alternatives to that action. An agency may prepare an *Environmental Assessment* (EA) to decide whether to prepare an EIS or instead issue a *Finding of No Significant Impact*. An agency need not prepare either document if a proposed action is unlikely to have a significant impact and falls under a *categorical exclusion*—a type of activity that an agency has already determined does not usually result in a significant impact—or one that Congress has excluded by statute. Categorical exclusions apply to the vast majority of agency decisions. Agencies typically issue regulations and guidance under both NEPA and their specific statutory authorities to address environmental review requirements.

### NEPA and Permitting Decisions

NEPA reviews often contemplate a wide range of potential impacts early in the decisionmaking process. A draft EIS, for example, must include a list of all federal permits, licenses, and other authorizations (generally described here as “permitting decisions”) that must be obtained to implement the proposal. Examples of laws that impose such requirements are the Clean Water Act, Endangered Species Act, and National Historic Preservation Act.

Several laws address agency coordination of environmental reviews and permitting, although requirements, time frames, and processes can vary across agencies and authorities. NEPA itself establishes lead agencies, while Title 41 of Fixing America’s Surface Transportation Act (FAST-41) contains permitting coordination requirements for “covered projects.” Those projects include federal infrastructure projects with costs over \$200 million likely to require multiple federal permits and/or EISs. FAST-41 establishes two-year completion goals and a unified schedule for environmental reviews of such projects.

### NEPA in the 118th Congress

The 118th Congress has seen more than 100 bills referencing NEPA since January 2023. Among these is the Fiscal Responsibility Act of 2023 (P.L. 118-5), which amended NEPA. **Table 1** provides a summary of select

NEPA provisions affected by P.L. 118-5. While proposed environmental review provisions under consideration for the 118th Congress are too varied to offer a comprehensive summary, the following matters appear in multiple bills:

**Single document:** As amended by P.L. 118-5, NEPA requires a single document “to the extent practicable” if multiple agencies are involved in an environmental review. Some proposals would require more coordination, such as a default single document incorporating multiple agencies’ analysis and/or permitting decisions for a given project.

**Time limits:** P.L. 118-5 created judicially reviewable time limits for environmental reviews, including two years for a full EIS and one year for an EA. Some bills would impose other time limits such as allowing two years for overall permitting decisions or requiring agencies that miss a deadline to pay a project sponsor.

**Inter-agency collaboration and cooperative federalism:** Many permitting decisions involve states, tribes, or local authorities. While some proposals would preempt existing state authority for specific decisions (e.g., transmission line siting), others encourage states, tribes, and local authorities to jointly undertake reviews and permitting decisions with federal agencies. P.L. 118-5 expressly authorizes state, tribal, or local agencies to serve as joint lead agencies for coordinating on environmental documents and permitting review schedules.

**Community engagement and public comments:** Many environmental reviews require an opportunity for public comment. Some proposals would extend public comment periods or require a new community impact assessment. Others would set time limits that could affect agencies’ abilities to solicit, consider, and respond to comments before a final decision.

**Judicial review:** Typically, the Administrative Procedure Act (APA, 5 U.S.C. § 551 *et seq.*) governs judicial review of agency decisions. The applicable statute of limitations provides six years to file a claim. Some proposals would provide shorter time limits to file a challenge to NEPA analysis, would exempt decisions from suit if they rely on categorical exclusions, would require a plaintiff to have first raised the matter with the agency, and would direct courts to expedite decisions. P.L. 118-5 also added a right of review under NEPA itself for a project sponsor to enforce an EA or EIS deadline.

**Table I. Summary of Select National Environmental Policy Act (NEPA) Requirements**

	<b>NEPA as originally enacted</b>	<b>Council on Environmental Quality (CEQ) regulations</b>	<b>P.L. 118-5 amendments to NEPA</b>
<b>Scope of analysis</b>	For a “major Federal action significantly affecting the quality of the human environment” (not defined), agencies must prepare a detailed statement on impacts, unavoidable adverse effects, and alternatives to a proposed action. Environmental Assessment (EA) requirements are not detailed in statute.	Agencies must consider direct, indirect, and cumulative effects and alternatives. <i>Major federal action</i> is defined. More details are established on standard federal requirements for preparing an EA or Environmental Impact Statement (EIS).	Agencies must clarify the purpose and need for an action. For a “major Federal action” (new definition) significantly affecting the quality of the human environment, agencies must prepare a detailed statement on reasonably foreseeable effects and a reasonable range of feasible alternatives. More EIS and EA requirements are detailed in statute.
<b>Categorical exclusions</b>	Not addressed in original statute.	Agency-specific categorical exclusions require case-specific determinations of applicability.	No environmental documentation is required if a decision is subject to an agency’s categorical exclusion. An agency may apply another agency’s categorical exclusion.
<b>One document</b>	Not addressed in original statute.	Agencies are directed to combine environmental documents “to the fullest extent practicable.”	One document is required for NEPA “to the extent practicable.” CEQ is directed to pilot “E-NEPA,” a unified permitting portal.
<b>Page and time limits</b>	Not addressed in original statute.	EAs must be completed in one year and are limited to 75 pages. EISs must be completed in two years and are limited to 150 pages if “standard” and 300 pages if complex. A senior official can extend length or timeline as necessary.	EAs must be completed in one year and are limited to 75 pages. EISs must be completed in two years and are limited to 150 pages if “standard” and 300 pages if complex. Timelines may be extended for cause. Supplementation of a programmatic EIS or EA is required after five years or if new circumstances arise.
<b>Inter-agency collaboration and cooperative federalism</b>	An agency preparing an EIS must consult with and obtain the comments of any federal agency that has special expertise or jurisdiction by law. In some cases, consultation extends to state agencies. Under certain conditions, a federal agency may use analysis prepared at the state level.	Federal agencies internally agree on which is the lead agency. CEQ resolves disputes. Federal, state, tribal, and local agencies can participate as cooperating agencies based on specialized expertise or jurisdiction by law. Federal agencies cooperate with nonfederal agencies to reduce duplication. Nonfederal agency can be a joint lead agency.	New criteria guide which agency serves as lead agency designations, and CEQ resolves disputes. Lead agencies supervise environmental reviews and develop permitting decision schedules. A nonfederal agency can serve as a joint lead agency. Federal, state, tribal, and local authorities may participate as cooperating agencies.
<b>Community engagement and comment period</b>	Agencies must share advice and information. Inter-agency consultation and comments must be available to the public in accordance with 5 U.S.C. § 552.	Comments are invited for a notice of intent to draft an EIS and again for a draft EIS. Some agencies also receive comments on a draft EA. Agencies respond to comments.	A notice of intent to prepare an EIS must include a request for public comment on alternatives, impacts, and information.
<b>Judicial review</b>	Not expressly addressed by NEPA. The Administrative Procedure Act (APA) provides for judicial review with an applicable statute of limitations of six years.	Regulations express CEQ’s intention that judicial review of agency compliance with NEPA regulations not occur before an action is final.	NEPA contains an explicit judicial review provision allowing for judicial enforcement of deadlines to complete an EA or EIS. Judicial review remains available under the APA for other matters.

**Source:** NEPA, 42 U.S.C. § 4321 et seq.; FAST-41, 42 U.S.C. §§ 4370m–4370m12; Fiscal Responsibility Act of 2023, P.L. 118-5; CEQ NEPA implementing regulations, 40 C.F.R. §§ 1500–1508. CEQ and agency-specific NEPA regulations are subject to change by the executive branch and are generally reviewable in the courts under the APA.

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