

Overview

As one of the cornerstones of American environmental law, the National Environmental Policy Act (NEPA) was designed to protect the environment by requiring federal agencies and federally funded programs to conduct assessments of their environmental impact. Depending on the anticipated impact, a Categorical Exclusion may be issued, or an agency may need to compile an Environmental Assessment or an Environmental Impact Statement. While NEPA aims to protect the environment, these reviews can sometimes have the adverse effect of delaying projects and programs that help domestic businesses remain competitive in the global market. This basic will explore NEPA's provisions, review process, and discuss its implications for American competitiveness and innovation.

What is NEPA?

The National Environmental Policy Act, or NEPA, was signed into law by President Nixon on January 1, 1970, and thus became the first major environmental law in the United States. NEPA is acknowledged as the “Magna Carta” of environmental laws and became a model for environmental regulations around the world.

Under NEPA, federal agencies are required to assess the environmental effects of their proposed actions. NEPA and its regulations apply to actions such as making permit applications, adopting federal land management actions, and constructing highways and other publicly-owned facilities.

Title I of NEPA contains a Declaration of National Environmental Policy. This policy requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Within Title I, Section 102 requires federal agencies to make considerations for environmental concerns throughout their planning and decision-making processes, in addition to preparing statements assessing their actions' environmental impact and laying out alternatives if an action would have a significant negative impact. These statements are referred to as Environmental Impact Statements (EISs) and Environmental Assessments (EAs).

Title II created the President's Council on Environmental Quality (CEQ) to oversee NEPA implementation, and in 1978, CEQ issued regulations to implement NEPA. These regulations are binding on federal agencies, and many took a further step to implement their own NEPA procedures to supplement the Act and CEQ.

Center Forward Basics

Center Forward brings together members of Congress, not-for-profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit www.center-forward.org

Definitions

- **Council on Environmental Quality (CEQ):** oversees NEPA implementation, principally through issuing guidance and interpreting regulations that implement NEPA's procedural requirements.
- **Categorical Exclusion (CATEX):** a class of actions that a federal agency has determined, after review by CEQ, do not have a significant effect on the human environment, and therefore, neither an EA nor an EIS is normally required.

NEPA Review Process

NEPA's review process begins when a federal agency proposes taking an action that falls within the Act's definition of a major federal action, which means NEPA requires review of all effects of all federal, federally assisted, and federally licensed actions. The process goes through three levels of analysis: a Categorical Exclusion determination (CATEX), an Environmental Assessment/Finding of No Significant Impact (EA/FONSI), or an Environmental Impact Statement (EIS).

First, a Categorical Exclusion determination (CATEX) is the lowest level of analysis and allows federal agencies to exclude select actions from a detailed review. To be considered for a CATEX, these actions cannot "individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations." Because no large environmental impact is expected from actions in this category, neither an environmental assessment nor an environmental impact statement is required. For example, many agencies have CATEX for activities related to research within their jurisdiction. The full list of CATEX for each agency can be found [here](#).

Second, an Environmental Assessment (EA) occurs when a federal agency determines an action does not qualify for a CATEX. The agency can then prepare an EA to determine if a proposed action has the potential to cause significant environmental effects. Once an agency completes an EA and determines the action under review will not have significant environmental impacts, a Finding of No Significant Impact (FONSI) can be issued. On the other hand, if an agency determines through an EA there is a potential for significant impact on the environment, NEPA requires an Environmental Impact Statement.

Lastly, at the highest level of analysis, is an Environmental Impact Statement (EIS). Federal agencies are required to issue an EIS if an EA determines the actions under review would have an impact on the environment. Because an EIS has the highest level of analysis, the regulatory requirements are more detailed and rigorous than the requirements for an EA. An EIS includes a summary of major conclusions, area of disputed issues, and the issues to be resolved as well as detailed descriptions of the environmental effects and their significance, a range of alternative actions, the environment of the area to be affected by the alternatives, and information submitted by state, tribal, and local governments, and other public commenters for consideration. The draft EIS then goes through a period of public review for at least 45 days before publishing the final EIS. The process ends with the issuance of a Record of Decision (ROD) to summarize the agency's decision, alternatives the agency considered, and the agency's plan for mitigation and monitoring.

NEPA and US Competitiveness

NEPA has been in the news because of the potential impact it has on American innovation and competitiveness. Given the scope of the NEPA review process, infrastructure projects across many different sectors of the economy can be subject to a NEPA review. Manufacturers, contractors, and projects that receive federal funding and are not deemed a CATEX are required to complete the environmental review process as laid out by NEPA, sometimes leading to delays in the disbursement of federal funding and the construction of projects and operation of facilities.

This is especially relevant for domestic manufacturers of semiconductor chips, who argue the delay in production caused by the NEPA review process could put the U.S. at a competitive disadvantage with international chip manufacturers. As potential recipients of federal funding through the CHIPS Act, semiconductor facilities will be required to review their proposed actions

- **Environmental Assessment (EA):** an assessment done to determine whether an action is a "major federal action significantly affecting the quality of the human environment."
- **Finding of No Significant Impact (FONSI):** a document that presents the reasons why an agency has concluded after an EA that there are no significant environmental impacts projected to occur upon implementation of a proposed action.
- **Environmental Impact Statement (EIS):** a statement prepared by federal agencies if a proposed major federal action is determined to significantly affect the quality of the human environment. The regulatory requirements for an EIS are more detailed and rigorous than the requirements for an EA.

under NEPA's process. These projects may not qualify for a CATEX, meaning companies would have to conduct an EA and then possibly an EIS.

Similarly, decades-long complications with the infrastructure permitting process have possibly hampered the development of the critical energy infrastructure projects. Developers leading these projects argue that the lack of transparency in the current permitting process and bureaucratic red tape has created uncertainty and delays for energy infrastructure, affecting the development of projects from pipelines and low-carbon infrastructure to wind farms and transmission lines.

There is a concern that without substantively modernizing NEPA and other relevant statutes and regulations, review and permitting processes will not be shortened but instead potentially be burdened by additional and conflicting process requirements and timelines. Federal agency actions in the energy space are often challenged on the grounds of alleged NEPA violations. In some instances, legal challenges were brought forward years after a project had been funded or broken ground. These challenges introduce project uncertainty for companies that rely on federal decision making.

According to the CEQ, EISs between 2013 and 2018 took an average of four and a half years to complete, which could mean long delays for any company looking to use federal funding to initiate manufacturing, infrastructure projects, etc. The Trump Administration implemented a six-month timeline for these reviews which the Biden Administration has since rolled back. However, the current Administration has promised to make the permitting process easier for the implementation of infrastructure funds included in laws such as the Inflation Reduction Act and the Bipartisan Infrastructure Law with plans to announce new NEPA guidelines to accelerate the review process. While environmental activists have raised concerns about the possible negative effects of speeding up the review process, supporters of this plan argue their aim is to correct bureaucratic inefficiency without putting the environment at risk. Supporters also note that delays inhibit climate-friendly construction projects.

Links to Other Resources

- Center for Strategic & International Studies – [What Environmental Regulations Mean for Fab Construction](#)
- Council on Environmental Quality – [Categorical Exclusions](#)
- Council on Environmental Quality – [NEPA](#)
- Environmental Protection Agency – [National Environmental Policy Act Review Process](#)
- Environmental Protection Agency – [What is the National Environmental Policy Act?](#)
- National Preservation Institute – [The NEPA Review Process](#)
- Politico – [Lobbyists to Biden: Unless you want to cede to China, relax microchip rules](#)