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National Environmental Policy Act: An Overview

Introduction and Background

Since 1970, the National Environmental Policy Act (NEPA) has set forth a national policy with respect to environmental quality. For decades, NEPA has required agencies to integrate environmental considerations into planning and decisionmaking. NEPA's "continuing policy" has been that the federal government use "all practicable means and measures" to support humans and nature coexisting and to fulfill the "social, economic, and other requirements" of present and future generations. NEPA declares a continuing responsibility for the federal government to treat each generation as a "trustee of the environment," preserve historical and cultural heritage, and allow for pleasing surroundings and high standards of living.

Although NEPA articulates broad environmental goals, it is often described as a "purely procedural" law that generally obligates federal agencies to consider the environmental impacts of their actions (i.e., through environmental review). NEPA does not *require* agencies to alter a course of action based on identified impacts. Rather, NEPA focuses on the agency having the information and analyses it needs to make more informed decisions. In the words of the Supreme Court, NEPA "merely prohibits uninformed—rather than unwise—agency action."

NEPA also established the Council on Environmental Quality (CEQ) within the Executive Office of the President. NEPA directs CEQ to, among other duties, assist and advise the President on certain environmental matters, including NEPA implementation. In consultation with CEQ, federal agencies develop methods and procedures to implement NEPA. CEQ has previously issued NEPA regulations and also issues guidance that complements agency-specific statutes, regulations, and procedures.

Although NEPA does not expressly direct CEQ to issue regulations that agencies would be required to follow, over nearly five decades CEQ issued and maintained—and agencies and courts routinely applied—government-wide regulations implementing NEPA. This practice ended on April 11, 2025, when, following a series of court decisions and an Executive Order, CEQ rescinded its NEPA regulations in their entirety. For a discussion of the rescission, see CRS In Focus IF12960, *Council on Environmental Quality Rescinds NEPA Regulations: Legal and Policy Considerations* (2025).

Scope of Agency Review

Unless Congress exempts a certain action from environmental review, NEPA requires agencies to identify and evaluate the impacts of "major Federal actions significantly affecting the quality of the human environment" prior to finalizing certain decisions. For this requirement to apply, the "major Federal action" must occur in the United States, and the decision underlying the action must be subject to agency discretion and a degree of agency control over the outcome. The range of federal agencies and actions subject to NEPA is broad and commonly includes activities such as issuing permits and funding infrastructure projects.

Major federal actions do not include nonfederal actions with "no or minimal federal funding," federally funded actions where the agency lacks oversight or control over the subsequent use of the funds, or other circumstances where the federal agency "does not exercise sufficient control" over the outcome of the project. While only domestic actions are subject to the environmental review process, NEPA also requires agencies to recognize the global nature of environmental problems and "maximize international cooperation" (consistent with U.S. foreign policy) to prevent environmental decline.

In some instances, agencies have developed review and disclosure processes that are functionally equivalent to the NEPA process. Courts have held that if a statute provides for such a functional equivalence, both procedurally and substantively, then an agency is exempt from producing a separate NEPA document.

Levels of Review

During an environmental review, agencies typically consider and analyze social, ecological, and health impacts. The depth of analysis and type of documentation required by NEPA depend in large part on the extent to which anticipated impacts are expected to be "significant."

Environmental Impact Statement

Unless exempted by law, an agency must prepare an *environmental impact statement* (EIS) for a proposed action that would result in significant environmental effects. The EIS is a detailed statement that must assess reasonably foreseeable effects of a proposed action, identify "irreversible and irretrievable" resource commitments, and consider a reasonable range of alternatives to the proposed action, among other criteria. NEPA states that an EIS should generally be completed within two years and be limited to 150-300 pages, excluding citations and appendices. While nonfederal actors, including any project sponsor and state or local governments, may prepare documentation, the lead federal agency remains responsible for the content. EPA maintains an online database of all agencies' EISs.

Upon completion of the EIS, including any associated interagency coordination, agencies have typically issued a Record of Decision, which courts have held constitutes final agency action for purposes of judicial review.

Environmental Assessment

If a proposed action does not have reasonably foreseeable significant impacts, or if the significance is unknown, an agency prepares an *environmental assessment* (EA). An EA helps an agency document the basis of its determination of whether impacts are significant. NEPA states that EAs should be completed within one year and be limited to 75 pages in length, excluding citations and appendices. If the impacts will not be significant, the agency issues a Finding of No Significant Impact (FONSI) to conclude the NEPA process. If the agency finds through the EA that the proposed action is expected to result in significant impacts, the agency then prepares an EIS.

Categorical Exclusion

A *categorical exclusion* (CE) refers to a type of action that a federal agency has determined "normally does not significantly affect the quality of the human environment." If an agency determines that a CE applies to a proposed action, the agency does not prepare an EA or EIS. Actions subject to a CE account for the vast majority of federal agencies' NEPA outcomes. When an agency considers applying its CEs to a proposal, it has typically also decided whether site-specific extraordinary circumstances exist that could result in more significant impacts than would typically be anticipated, thus warranting further analysis.

Agencies establish their own CEs and, in some cases, may adopt another agency's CE. Most CEs have historically been established by federal agencies pursuant to CEQ regulations, which have since been rescinded. In certain instances, Congress has enacted legislation that directly authorizes some CEs. For CEs established by statute, Congress can specify whether the agency should consider any extraordinary circumstances.

Tiering

Agencies have the option of undertaking NEPA in stages through a process commonly referred to as *tiering*. Agencies sometimes elect to first consider the overall impacts of a suite of related actions or landscape-scale plans by issuing a *programmatic* EA or EIS. For individual projects, a NEPA review may refer back to the previous programmatic analysis and can tier subsequent related actions by focusing on any project-specific impacts.

Process Considerations

NEPA requires agencies to follow certain processes in the preparation of EAs and EISs.

Interagency Coordination

When more than one agency is involved, a lead agency oversees and develops a schedule for completing the environmental review process as well as any associated federal permits or related authorizations. Lead agencies may extend NEPA deadlines as circumstances warrant. Other federal agencies, as well as state, tribal, and local agencies, may serve alongside a federal agency as joint lead agencies. The lead agency must consult with and obtain comments from cooperating agencies with jurisdiction or special expertise on associated impacts. Any comments received from states, tribes, and local agencies accompany an EIS. To the extent "practicable," federal agencies should issue a single EIS or EA.

For certain larger-scale projects likely to require both an EIS and at least one federal permit, agencies can undertake additional coordination through a process known as FAST-41. For a FAST-41 covered project, a lead agency tracks the development of each EIS and individual permit applications on an online Permitting Dashboard.

Public Comment

A notice of intent to prepare an EIS must include a request for public comment on impacts, alternatives, and information relevant to the proposed action. Agencies have typically offered draft EISs for public comment. Agencies sometimes also offer draft EAs for public comment and may discuss responses received in a final EA. Additionally, while agencies generally receive public comments when establishing a CE, agencies typically do not solicit public comments when applying a CE to an individual project. While agencies generally consider and respond to substantive comments prior to publishing a final EIS, they are not required to change an EIS to address a comment.

Judicial Review

Most challenges to NEPA activity, such as alleging an agency applied an improper level of review or inadequately considered certain impacts, are typically brought under the Administrative Procedure Act (APA). Under the APA, a reviewing court evaluates whether the agency acted arbitrarily or capriciously or abused its discretion, among other things, when conducting an environmental review under NEPA. Since 2023, NEPA provides an additional cause of action for a project sponsor to seek judicial review if an agency fails to complete its environmental review process in a timely manner.

In 2025, the Supreme Court clarified that the role of courts evaluating agency NEPA reviews under the APA's "deferential" arbitrary and capricious standard is limited to evaluating whether the agency reasonably analyzed the effects of the "project at hand." As the Supreme Court has held, courts are to consider on a case-by-case basis whether the agency has followed the appropriate NEPA procedure and adequately considered impacts. Courts have generally not dictated the substance of the agency's decision. Instead, they have enforced the requirement for agencies to take a "hard look" at the consequences of proposed actions, consider alternatives, identify unavoidable adverse impacts, and consult with other agencies and the public before making final decisions.

While only a small percentage of agency actions require EISs, a higher percentage of EISs are challenged in court compared to other environmental review documents. For more information on judicial review and NEPA, see CRS In Focus IF11932, *National Environmental Policy Act: Judicial Review and Remedies*.

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