

Amending the National Environmental Policy Act: Analysis of the SPEED Act (H.R. 4776)

October 9, 2026

Congressional Research Service

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R49485



R49485

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Heather McPherron
Analyst in Environmental
Policy

Kristen Hite
Legislative Attorney

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Congress has enacted and considered a variety of measures concerning various aspects of federal permitting processes. Certain activities that support the nation's economy and infrastructure, including energy production, transportation, and natural resource development, require one or more federal authorizations (e.g., license, permit, approval). Many federal permitting processes (e.g., issuing permits, licensing, or granting rights-of-way across federal lands) involve environmental review under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.). NEPA establishes a common procedural framework for federal agencies to consider environmental impacts across various activities and projects—including federal permitting authorizations—but does not itself authorize projects. Instead, environmental review under NEPA generally informs agency decisions made pursuant to other statutory authorities, including those related to federal permitting.

The House of Representatives passed the Standardizing Permitting and Expediting Economic Development Act (SPEED Act; H.R. 4776) on December 18, 2025. H.R. 4776 proposes a number of changes to NEPA, some of which include modifying the current federal environmental review process as well as broader changes to federal permitting. The House Committee on Natural Resources reported that the stated purpose of H.R. 4776 is “to amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions and facilitate a more efficient, effective, and timely environmental review process.”

The bill would revise, among other things, NEPA's purpose, the scope of environmental review, timing and coordination of other federal reviews, programmatic environmental documents, categorical exclusions, definitions, judicial review, and circumstances under which agencies may modify or revoke federal authorizations. In addition to amendments to the process for considering the environmental impacts of a proposed federal action, the bill would also incorporate some broader permitting-related requirements and deadlines into NEPA's statutory framework.

Many of the NEPA amendments in H.R. 4776 would limit or place new deadlines on agencies in determining and analyzing the significance, scope, and alternatives of a proposed agency action. Some provisions would limit the circumstances under which environmental review is required or the environmental effects that agencies must consider, or would expand the extent to which agencies may rely on prior analyses. Others would address matters that are governed under separate authorities, such as deadlines for an agency to make a final permit decision and related procedures governing agency decisionmaking beyond the consideration of environmental impacts. The bill also contains provisions addressing the treatment reversibility of administrative decisions, among other matters.

The potential effects of these amendments may depend in part on how agencies implement them alongside other environmental considerations and permitting requirements. Some provisions could, among other things, reduce duplication of effort, concentrate the use of agency resources, or provide greater certainty regarding completed environmental documents and federal authorizations. Other provisions could raise implementation questions concerning, among other things, the information available for environmental analysis, coordination among agencies, interaction between new NEPA deadlines and requirements imposed by other statutes, and the availability and scope of judicial review.

H.R. 4776 is one of several permitting reform proposals considered in the 119th Congress. Whereas H.R. 4776 would principally pursue permitting reform through amendments to NEPA, other proposals would address federal permitting through changes to authorization processes, project-specific permitting requirements, permitting technology and administration, or individual permitting statutes. A variety of stakeholders have expressed interest in improving the efficiency and predictability of federal permitting but often differ over whether and how NEPA should be amended to achieve those objectives.

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Certain activities that support the nation’s economy and infrastructure, including energy production, transportation, and natural resource development, require one or more federal authorizations.¹ Many federal permitting processes (e.g., issuing permits, licensing, or granting rights-of-way across federal lands) implicate the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. §§4321 et seq.). NEPA establishes a national policy with respect to environmental quality and a process for integrating environmental considerations into federal decisionmaking (i.e., through an *environmental review*). Although NEPA often informs federal action—and thus decisions relating to certain authorizations—it does not itself authorize or prohibit projects; rather, it operates alongside the substantive statutes that govern individual federal authorizations.

Congress made substantial amendments to NEPA in the Fiscal Responsibility Act of 2023 (FRA; P.L. 118-5).² Among other changes, the FRA amended NEPA to address when the statute applies, the procedure for determining the level of review, page and time limits, and the use of programmatic environmental documents. Congress amended NEPA again in the FY2025 budget reconciliation act (P.L. 119-21) to allow a project sponsor to pay a fee for expedited environmental reviews.³ Congress has also enacted and considered a variety of other measures that would affect various aspects of NEPA with respect to federal permitting processes. One such example is Title 41 of the Fixing America’s Surface Transportation Act (“FAST-41”; P.L. 114-94).⁴ Among other things, FAST-41 established the Federal Permitting Improvement Steering Council (“Permitting Council”), authorized a streamlined administrative process for certain covered infrastructure projects, and directed the Permitting Council to identify the types of environmental reviews and authorizations most commonly required for certain types of infrastructure projects.⁵

The House of Representatives passed the Standardizing Permitting and Expediting Economic Development Act (SPEED Act; H.R. 4776) on December 18, 2025. According to the House Committee on Natural Resources report accompanying H.R. 4776, the purpose of H.R. 4776 is “to amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions and facilitate a more efficient, effective, and timely environmental review process.”⁶ H.R. 4776, as engrossed in the House, contains four sections:

- **Section 1** provides the short title.

¹ The statutory and administrative steps through which federal agencies review proposed projects or activities and issue any required federal authorizations are generally referred to as *federal permitting* or the *federal permitting process*. The federal permitting process can involve multiple agencies, laws, and regulations. For a list of common federal environmental reviews, authorizations, licenses, permits, approvals, findings, determinations, and other administrative decisions, see Permitting Council, “Federal Environmental Review and Authorization Inventory,” <https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory>.

² Fiscal Responsibility Act (FRA; P.L. 118-5).

³ Section 60026 of P.L. 119-21 added Section 112 to NEPA that authorizes project sponsors to pay a fee for environmental reviews that cut NEPA’s statutory deadlines in half, reducing the deadline of an environmental impact statement (EIS) from two years to one year and an environmental assessment (EA) from one year to 180 days. For additional information on NEPA’s levels of review, see CRS In Focus IF12560, *National Environmental Policy Act: An Overview*, by Kristen Hite and Heather McPherron.

⁴ 42 U.S.C. §§4370m et seq.

⁵ The statutory criteria for eligibility under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41) are codified within the definition of *covered project* in 42 U.S.C. §4370m(6).

⁶ U.S. Congress, House Natural Resources Committee, *Standardizing Permitting and Expediting Economic Development Act*, report together with dissenting views to accompany H.R. 4776, 119th Cong., 1st sess., H.Rept. 119-395, December 4, 2025, p. 8.

- **Section 2**, entitled “NEPA Reforms,” would change NEPA’s policy provisions. Among other changes, the provisions would affect when environmental review is required, the scope of analysis for any such review, certain deadlines, and interagency coordination.
- **Section 3**, entitled “Judicial Review,” would add a new section to NEPA governing judicial review. Among other changes, the provisions would affect the timing, standards, and available remedies for legal challenges associated with environmental reviews under NEPA.
- **Section 4**, entitled “Preservation of Ongoing Administrative Corrections,” would provide a savings clause regarding certain ongoing administrative actions at the time of enactment.

This report provides a brief overview of and context for provisions in H.R. 4776 as engrossed in the House on December 18, 2025. It then provides a section-by-section analysis of H.R. 4776 as compared with current law. The report is organized to generally follow the structure and section headings of H.R. 4776, providing an overview and analysis of the proposed changes in the order in which they appear in the bill. For each major provision, the report describes relevant background, summarizes the proposed changes, and identifies selected potential effects and implementation considerations, including examples illustrating how the legislation could affect existing laws and processes.⁷

Background on Environmental Reviews and Federal Permitting

H.R. 4776 would affect environmental reviews and certain procedural aspects of federal permitting. While NEPA’s environmental review requirements apply broadly across the federal government, federal permitting requirements and the agencies involved for any particular project depend on factors such as the nature of the proposed action, applicable jurisdictions, and anticipated environmental impacts. Though beyond the scope of the analysis in this report, state and local permits (e.g., zoning approvals, land use permits, and state-specific environmental certifications) are often required in addition to the approvals or requirements imposed at the federal level.

Unless Congress exempts an action from environmental review, NEPA requires agencies, prior to finalizing certain decisions,

NEPA and Federal Permitting

NEPA establishes procedural requirements for federal agencies. It mandates that federal agencies evaluate a proposed action’s potential significant environmental impacts. NEPA provides *inputs* to federal decisions. Completion of a NEPA review does not automatically grant or deny project approval. Such review may be a prerequisite for an agency to finalize a federal decision to issue a permit.

Federal permitting, by comparison, typically regulates nonfederal actors by requiring that they obtain specific authorizations from regulatory agencies to proceed with project activities. An agency’s decision to approve or authorize a proposed course of action (e.g., issuing permits, licensing, or granting rights-of-way) is often subject to NEPA. Even if approved, a federal permit alone may not be sufficient for a project to proceed. For example, permits may also be required at the state or local level before a project may proceed.

⁷ In addition to the National Environmental Policy Act (NEPA), the Standardizing Permitting and Expediting Economic Development Act (SPEED Act; H.R. 4776) could affect other federal permitting laws and processes. While CRS has identified some provisions of federal laws and processes that could be affected by the SPEED Act, this report does not provide an exhaustive treatment.

to assess reasonably foreseeable environmental effects, identify “irreversible and irretrievable” resource commitments, and consider a reasonable range of alternatives if it is a “major Federal [action] significantly affecting the quality of the human environment.”⁸ A federal agency’s issuance of a permit or other authorization is often considered a *major federal action* under NEPA.⁹ During an environmental review, agencies typically consider and analyze social, ecological, and health impacts. NEPA does not require agencies to select the most environmentally protective outcomes or any other specific alternative option. Rather, for major federal actions likely to have significant impacts, NEPA requires agencies to conduct thorough analyses before making final decisions.

How a federal agency demonstrates compliance with NEPA depends on the level of the proposed action’s impacts. If the proposed action has “a reasonably foreseeable significant effect on the quality of the human environment,” an agency prepares an environmental impact statement (EIS).¹⁰ If the proposed action “does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown,” an agency typically prepares an environmental assessment (EA).¹¹ An agency is not required to prepare an EIS or EA for a proposed agency action if the action is covered by one of the agency’s own categorical exclusions (CEs) or if another agency’s CE is applied to the action consistent with 42 U.S.C. §4336c.¹²

NEPA establishes a procedural framework for evaluating the environmental impacts of a given project and for informing federal agency decisionmaking; it does not itself confer authority to approve or deny a project or replace the need for specific permits or other authorizations mandated by regulatory statutes. In contrast, federal permitting statutes grant agencies substantive decisionmaking authority and define the criteria under which an authorization may be issued. In practice, agencies often integrate NEPA analyses with permitting requirements.¹³ NEPA

⁸ 42 U.S.C. §4332(C).

⁹ Section 4336e(10) defines *major federal action* as an action that an agency “determines is subject to substantial Federal control and responsibility,” subject to certain exclusions. For example, NEPA excludes actions with no or minimal federal funding and those with no or minimal federal involvement where the agency cannot control the outcome of the project; see 42 U.S.C. §4336e(10)(B). Additionally, NEPA does not apply to actions that are exempted by statute or involve nondiscretionary agency functions, or where the preparation of an environmental document would conflict with another provision of federal law; see 42 U.S.C. §4336(a). Congress also may designate statutory exemptions for certain agency actions, removing the requirement for environmental review or compliance with NEPA altogether. For example, in Section 316 of P.L. 93-288 (42 U.S.C. §5159), Congress exempted certain natural disaster and emergency response actions from NEPA requirements by declaring that such actions were not “major federal actions significantly affecting the quality of the human environment.”

¹⁰ 42 U.S.C. §4336(b)(1).

¹¹ 42 U.S.C. §4336(b)(2).

¹² 42 U.S.C. §4336(a)(2). Categorical exclusions (CEs) are not exemptions from the NEPA process; rather, they are typically used for actions that an agency does repeatedly and expects will routinely not result in significant impacts. Further, 42 U.S.C. §4336e(1) defines a *categorical exclusion* (CE) as a category of actions that a federal agency has determined normally does not significantly affect the quality of the human environment. Congress also may choose to enact CEs legislatively; see CRS Report R48595, *Legislative Categorical Exclusions Under the National Environmental Policy Act*.

¹³ 42 U.S.C. §§4336a(2)(D) and 4336a(b) specify that lead agencies shall coordinate any environmental review, permit, or authorization required to carry out the proposed agency action and to the extent practicable, all agencies shall evaluate those actions in a single environmental document. This means that compliance requirements of any additional environmental laws (e.g., the Endangered Species Act [ESA]) should be identified (but not necessarily completed) during the NEPA process. If full compliance is not possible by the time the final NEPA document is prepared, the document should reflect consultation with the appropriate agencies and provide reasonable assurance that requirements will be met.

documents may inform permitting decisions; completion of NEPA does not guarantee issuance of a permit, and a permit may be denied after an environmental document is finalized.

Section 2 of H.R. 4776: NEPA Reforms

Section 2 of H.R. 4776 would change multiple NEPA provisions. Some changes would address traditional NEPA subjects, such as the scope of environmental review, what constitutes a major federal action, and the role of cooperating agencies. Other changes concern matters historically addressed by regulatory agencies rather than specified in NEPA itself, including deadlines associated with authorizations and certainty of completed authorizations. Collectively, Section 2 would revise the existing environmental review process and would incorporate certain permitting-related concepts into NEPA's statutory framework.

NEPA's Purpose, Section 2(a)

NEPA's stated purposes are to declare a national environmental policy, to reduce environmental damage and improve human health and welfare, to enrich the understanding of the ecological systems and natural resources, and to establish a Council on Environmental Quality (CEQ).¹⁴ Although the Supreme Court has repeatedly stated that NEPA is a "purely procedural" statute in terms of its requirements, the statute does not expressly characterize itself as procedural.¹⁵

Section 2(a) of H.R. 4776 would expressly state that NEPA is a "purely procedural statute" and that NEPA "does not mandate particular results, and only prescribes a process." It would also specify that NEPA does not "confer substantive rights or impose substantive duties beyond procedural requirements." While this change would codify judicial precedent in statute, it is unclear how this language would affect other portions of NEPA beyond environmental review.¹⁶

Procedure for Determination of Level of Review, Section 2(b)

Threshold Determinations, Section 2(b)(2)

Section 106(a) of NEPA establishes *threshold determinations* that identify the circumstances under which an agency is not required to prepare an *environmental document*¹⁷ for a proposed

¹⁴ 42 U.S.C. §4321.

¹⁵ 42 U.S.C. §4231 (establishing NEPA's purposes), §4331(a) (declaring the "continuing" policy of the federal government "to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans"); *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 173 (2025) (characterizing NEPA as a "purely procedural" statute).

¹⁶ 42 U.S.C. §4331. See also 42 U.S.C. §§4342, 4344 (specifying the establishment, duties, and functions of the Council on Environmental Quality [CEQ]). Section 2(a) of H.R. 4776 would apply beyond NEPA's environmental review requirements and would also apply to those provisions in NEPA pertaining to CEQ as codified in 42 U.S.C. §§4341-4347 as well as the direction in 42 U.S.C. §4331 for agencies "to carry out the policy set forth in this chapter" and that it "is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources" in furtherance of specific policy priorities.

¹⁷ 42 U.S.C. §4336e(5) defines an *environmental document* as an environmental impact statement (EIS), an environmental assessment (EA), or a finding of no significant impact (FONSI).

agency action.¹⁸ The Supreme Court has also held that NEPA was not intended to repeal any other statute by implication and therefore, when “a clear and unavoidable conflict in statutory authority exists,” NEPA’s requirements regarding level of review “must give way.”¹⁹ Additionally, a number of court cases have determined that a NEPA review is not necessary when an agency’s action complies with another statute that is “functionally equivalent” to NEPA—a matter now pending before the Supreme Court.²⁰ For a functional equivalence analysis, courts have typically assessed what environmental effects or considerations an agency must take into account when complying with another statute.²¹ Further, for certain federal infrastructure projects, at the request of a project sponsor, the federal agency is required to consider and, “as appropriate,” use analysis prepared under applicable state or tribal laws and procedures; such analyses may be deemed functionally equivalent and satisfy NEPA if the state or tribal laws are determined to be of equal or greater rigor than the NEPA requirements.²²

Section 2(b)(2)(C) of H.R. 4776 would add new circumstances under which an agency would not be required to prepare an environmental document. It would provide that a new environmental document would not be required for NEPA compliance if

- an agency determined that the proposed action related to one in which another applicable statute’s requirements “serve[d] the function of agency compliance” with NEPA; or
- a proposed agency action related to a project or action that was already reviewed consistent with certain state or tribal environmental review requirements and the agency “determine[d] such review serves the function of agency compliance” with NEPA.

If enacted, these provisions would provide an express statutory mandate allowing agencies to not conduct additional analysis under NEPA if they determined another federal, state, or tribal review process was functionally equivalent to NEPA.

¹⁸ 42 U.S.C. §4336(a). An agency is not required to prepare an environmental document for a proposed agency action if the action is not a final agency action, if it is covered by one of the agency’s CEs or by another agency’s CE and is applied consistent with 42 U.S.C. §4336c, if the preparation would conflict with the requirements of another provision of law, or if the action is nondiscretionary. Further, an existing provision in 42 U.S.C. §4332 also provides that an EIS for an action funded under a state grant program may not be deemed insufficient on account of having been prepared by a state agency responsible for the proposed action, so long as the responsible federal official provides support and oversight

¹⁹ *Flint Ridge Dev. Corp. v. Scenic Rivers Ass’n of Okla.*, 426 U.S. 776, 788 (1976); see also *United States v. Students Challenging Regul. Agency Procs.*, 412 U.S. 669, 694 (1973) (clarifying that NEPA’s policy goals were not intended to repeal other statutes by implication); 42 U.S.C. §4332(C) (stating that environmental review is not required “where compliance would be inconsistent with other statutory requirements”).

²⁰ *Prutehi Litekyan: Save Ritidian v. U.S. Dep’t of Airforce*, 128 F.4th 1089, 1117 (9th Cir. 2025) (quoting *Alabama ex rel. Siegelman v. Env’t Prot. Agency (EPA)*, 911 F.2d 499, 504 (11th Cir. 1990)), *cert. granted*, 146 S. Ct. 1794 (2026) (mem.).

²¹ See, for example, *Env’t Def. Fund, Inc. v. EPA*, 489 F.2d 1247 (D.C. Cir. 1973) (holding the Federal Insecticide, Fungicide, and Rodenticide Act to be the functional equivalent of NEPA because the statute required the agency to take environmental effects into account and consider public comments about such effects); see also *Pac. Legal Found. v. Andrus*, 657 F.2d 829, 834 (6th Cir. 1981) (discussing lower court practice applying the “functional equivalent” test).

²² 42 U.S.C. §4370m-4. To qualify, projects must be designated as covered under FAST-41, and the lead federal agency in consultation with CEQ must determine that the state or tribal laws are of “equal or greater rigor to each applicable Federal law and procedure, and prepared under circumstances that allowed for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what would have been available had the documents and analysis been prepared by a Federal agency pursuant to NEPA.”

Levels of Review, Section 2(b)(3)(A)

The depth of analysis and type of documentation (i.e., “environmental document”) required by NEPA depend in large part on the extent to which anticipated impacts are expected to be “significant.”²³ Even if a project is likely to have little or no significant impact, compliance with NEPA may still require an agency to demonstrate that it considered the expected level of impacts. Section 106(b) of NEPA describes the level of environmental review an agency must prepare based on the expected level of the proposed action’s impacts. For a proposed action that has a “reasonably foreseeable significant effect on the quality of the human environment,” an agency typically prepares an EIS.²⁴ If the proposed action “does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown,” an agency typically prepares an EA.²⁵ If, after preparing the EA, the agency determines that the impacts are not likely to be significant, the agency issues a finding of no significant impact (FONSI).²⁶ If the EA finds that significant impacts are likely, and the agency intends to continue considering a proposed action, the agency must then prepare an EIS in order to comply with NEPA.

Section 2(b)(3)(A) of H.R. 4776 would amend NEPA Section 106(b)(2) to change the threshold determination standard for preparing an EA from when an action “*does not*” to when it “*is not likely to*” have significant effects.²⁷ If enacted, the extent to which this change would result in substantive differences is unclear. An agency is already required to prepare an EA if an action is not covered by a categorical exclusion and the agency either anticipates that the action will not have a reasonably significant effect or is unsure whether such effects would be significant. To some degree, the effect of this potential change may depend on how agencies or courts interpret the phrase “is not likely to,” including what level of probability or support would be sufficient to justify preparation of an EA rather than an EIS.

Sources of Information, Section 2(b)(3)(B)

To determine the appropriate level of environmental review for a proposed agency action, Section 106(b)(3) of NEPA states that agencies may use any reliable data source and are not required to undertake any new research unless it is essential and the cost and time frame to obtain that information are not unreasonable.²⁸ **Section 2(b)(3)(B)** of H.R. 4776 would add that agencies are “not required to undertake new scientific or technical research after the receipt of an application, as applicable, with respect to a proposed agency action.”

If this provision were enacted, agencies would be able to decline to develop new scientific research after receipt of an application. The change could reduce processing time if agencies would have otherwise conducted new research to determine which environmental document to prepare. However, the impact of this provision may depend on the completeness and adequacy of the scientific and technical information available when an application is received and whether the

²³ 42 U.S.C. §4332(2)(C).

²⁴ 42 U.S.C. §4336(b)(1).

²⁵ 42 U.S.C. §4336(b)(2).

²⁶ 42 U.S.C. §4336(b)(2).

²⁷ 42 U.S.C. §4336(b)(1)-(2) requires that an agency issue an EIS for a proposed agency action that has a reasonably foreseeable significant effect on the quality of the human environment, or an EA for a proposed agency action that does not have a reasonably foreseeable significant effect on the human environment or if the significance of such effect is unknown (unless a CE applies).

²⁸ 42 U.S.C. §4336(b)(3). In practice, agencies often use, among other things, prior environmental analyses, technical studies, and information supplied by applicants.

information is sufficient to evaluate the reasonably foreseeable environmental effects of the proposed action. Where an agency is unsure of the environmental effects, it may be compelled to first prepare an EA to evaluate unresolved uncertainty.

Scope of Review, Section 2(b)(4)

Under NEPA, agencies must evaluate, among other things, the “reasonably foreseeable environmental effects” and “any reasonably foreseeable adverse environmental effects which cannot be avoided” of proposed agency actions.²⁹ Agencies historically relied on CEQ’s NEPA regulations to guide the scope and analysis of “reasonably foreseeable environmental effects;” CEQ rescinded those regulations in 2025.³⁰

In May 2025, the Supreme Court ruled in *Seven County Infrastructure Coalition v. Eagle County* that agencies have discretion to determine the appropriate scope of the project to be analyzed under NEPA.³¹ Pursuant to this decision, a NEPA analysis for any given project need not consider the broader effects of “separate projects” related to the action if an agency determines that those upstream and downstream effects are sufficiently remote in both time and place from the project at hand.³² The Court acknowledged a “gray area” in defining the project at hand, where the defined scope of the agency action itself could be considered intertwined with or distinct from other projects whose effects could also be removed in time (e.g., more speculative future projects) or place (e.g., located in a different region).³³ The Court reiterated that a reviewing court must remain deferential to the agency in such circumstances.³⁴

Section 2(b)(4) of H.R. 4776 would add a new subsection (c) to NEPA Section 106 (42 U.S.C. §4336) that would limit the scope of NEPA review to “only those effects that share a reasonably close causal relationship to, and are proximately caused by, the immediate project or action under consideration,” and would provide that agencies “may not consider effects that are speculative, attenuated from the project or action, separate in time or place from the project or action, or in relation to separate existing or potential future projects or actions.”

If enacted, the new provision would narrow agencies’ discretion to decide whether to include any cumulative or indirect effects in the scope of an environmental review and would expressly tie review to proximate cause and a reasonably close causal relationship. In practice, the provision would potentially reduce the required breadth of an environmental review—such as upstream,

²⁹ 42 U.S.C. §4332(2)(C)(i)-(ii). NEPA also requires that agencies evaluate

(iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.

³⁰ Until CEQ rescinded its regulations in April 2025, agencies were to include cumulative and indirect effects when considering the impacts of a proposed agency action; see former 40 C.F.R. §1508.1(i), rescinded per CEQ, “Removal of National Environmental Policy Act Implementing Regulations,” 91 *Federal Register* 618, January 8, 2026. For more information related to CEQ’s rescission of its regulations, see CRS In Focus IF12960, *Council on Environmental Quality Rescinds NEPA Regulations: Legal and Policy Considerations*, by Heather McPherron and Kristen Hite .

³¹ *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168 (2025).

³² *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 190 (granting the agency deference in its decision to exclude detailed consideration of impacts in other parts of the country than the proposed rail line that was under consideration for agency decision concerning 88 miles of new railway in Utah).

³³ *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 179, 190.

³⁴ *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 190.

downstream, indirect, or cumulative effects—but the extent of the effect of the change could vary by agency and administration.³⁵

Certainty, Section 2(b)(4)

Environmental Documents

Agencies have discretion as to whether and when to reconsider completed environmental documents.³⁶ It is not uncommon for an agency to prepare a supplemental environmental document to complement an existing analysis or to prepare a new environmental document when there are substantial changes to the proposed action or significant new information relative to prior analysis.³⁷ Circumstances that may cause an agency to modify or replace a completed environmental document include when the proposed action or relevant circumstances change; when new information or legal or analytical deficiencies are identified; when required by judicial decisions; or when policy or administrative priorities change. Beyond general requirements under the Administrative Procedure Act (APA) for reviewing agencies' changes in position, agencies are not limited under NEPA in their ability to modify or replace a completed environmental document.³⁸

Section 2(b)(4) would add a new subsection (d)(1) to NEPA Section 106 (42 U.S.C. §4336) on project certainty for completed environmental documents that would limit a federal agency from taking any action to “rescind, withdraw, amend, alter, or otherwise render ineffective” any environmental document prepared under NEPA involving a project applicant unless the federal agency has been “ordered by a court or the applicant has agreed in writing” to such action. If enacted, this provision would limit the circumstances in which federal agencies may later modify or replace prior completed analyses. Under this provision, finalized analysis would be less susceptible to modification as a result of policy changes made by a subsequent administration, changed circumstances, or newly available environmental information.

³⁵ For example, in 2024 CEQ updated its regulations to require consideration of climate change and environmental justice effects in addition to indirect and cumulative effects; in 2025, CEQ rescinded those regulations in their entirety. See footnote 30. With the rescission of CEQ's government-wide regulations, individual agencies determine how to implement NEPA, and those determinations can change if and when administration priorities shift.

³⁶ Generally speaking, agencies have broad discretion in how they implement NEPA and whether to update or revisit a decision pertaining to NEPA's environmental review. Whether an agency opts to rely on existing NEPA documentation for a new decision is generally case- and fact-specific. If a decision to reopen or revisit a decision is challenged in court, the Administrative Procedure Act (APA) provides for judicial review and allows a final action to be set aside under certain circumstances, including if it is found by a court to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; see 5 U.S.C. §706. An agency that issues a new final decision that changes, rescinds, or reopens a previous one would need to explain its decision and is generally held to the same standard as if it were originally making the decision; it is not held to a different or higher standard simply because it has changed course on its decision. See *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

³⁷ Prior to the rescission of the CEQ NEPA regulations, agencies were directed to prepare supplemental environmental documents when there were substantial changes to the proposed action, when there were new circumstances or information about the significance of the adverse effects, or when the agency determined that the purposes of NEPA would be furthered by doing so; see CEQ, “National Environmental Policy Act Implementing Regulations Revisions Phase 2,” 89 *Federal Register* 35564, May 1, 2024.

³⁸ Under the APA, courts generally do not hold agencies to a heightened level of scrutiny for the revocation of an agency action as compared to a new agency action. See generally *Fed. Comm'n v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009). Agencies are required, however, to provide a reasoned explanation for a change in position, display awareness that they are changing position, and consider serious reliance interests that would be affected by the change. See *Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025).

Authorizations

NEPA establishes a procedural framework for environmental reviews that inform federal decisions. And while NEPA environmental reviews may influence agency decisions and timelines, separate authorities generally govern the issuance of authorizations. Completion of an environmental review under NEPA does not automatically grant or deny an authorization, although it can complete a step in the process by which an agency decides whether to grant or deny an authorization. NEPA's statutory text does not affect an agency's ability to issue, modify, or revoke an authorization except to the extent additional environmental review may be required; the timing, sequencing, and approval of authorizations are generally governed by the separate permitting authority, agency procedures, and any applicable coordination requirements. Depending on the program and legal basis for the authorization, agencies have reopened, reconsidered, or initiated other actions affecting previously issued authorizations in response to a variety of circumstances, including litigation, changed policy priorities, and newly identified information. A change to or revocation of a previous authorization is generally held to the same standard of review as the initial decision, as specified in the governing permitting statute, the APA, or both.

Aside from actions taken within the dates excluded by Section 4 of H.R. 4776 (discussed below), **Section 2(b)(4)** would amend NEPA Section 106(d)(2) to prevent an agency from exercising its discretion to modify or reverse an authorization following enactment of H.R. 4776 and limit any such changes to the specific conditions specified in H.R. 4776.³⁹ Specifically, Section 2(b)(4) of H.R. 4776 would amend Section 106 of NEPA to preclude a federal agency from taking action to “revoke, rescind, withdraw, terminate, suspend, amend, alter, or take any other action to interfere with an authorization” unless

- the federal agency has been ordered to do so by a court of “competent jurisdiction”;
- the authorization holder “has materially breached the terms of the authorization, or otherwise violated applicable law”;
- “the authorization was obtained through fraud, intentional concealment, or material misrepresentation”;
- the action affecting the authorization is “necessary to prevent specific, immediate, substantial, and proximate harm or damage to life, property, national security, or defense” not previously considered “in the underlying environmental review process or final agency action for the authorization”; or
- the authorization holder or project sponsor requests that the federal agency take such action.

Section 2(b)(4) further specifies that any judicial challenge to agency actions related to this provision would be reviewable directly in a federal court of appeals. Additionally, no federal agency could voluntarily request that a court remand or vacate an existing authorization without consent of the project sponsor. Section 2(b)(4) would provide that any change to an authorization that qualified for one of the exceptions would generally be “limited in duration and scope by the agency to address the specific issue.” Further, agencies would be required to notify the affected

³⁹ Section 4 of H.R. 4776 would specify that any amendments made by H.R. 4776 would not apply to any agency action that a federal agency moved to voluntarily remand or “otherwise reopened, reconsidered, or initiated corrective action” between January 20, 2025, and the date of enactment, “regardless of whether the [F]ederal agency has completed such corrective action as of the date of enactment.” For additional information, see discussion under “Preservation of Ongoing Administrative Corrections, Section 4” of this report.

authorization holder and project sponsor in writing, providing a detailed explanation for the decision—including the statutory authority relied upon for the action and the basis for the decision, “supported by clear and convincing evidence.” **Section 4** of H.R. 4776 would exclude any changes made between January 20, 2025, and enactment into law of H.R. 4776 from the limitations of Section 2(b)(4).

NEPA has historically been limited to environmental review procedures that serve as inputs to inform agency actions (including authorizations for projects). Section 2(b)(4), if enacted, would expand the scope of NEPA by expressly limiting actions that agencies could take after finalizing an authorization. Specifically, this provision would limit the circumstances under which agencies could revisit previously issued authorizations.⁴⁰ At the same time, implementation may depend on how the provision interacted with substantive statutes that independently govern the approvals of certain authorizations.

Presumption of Negative Impacts of Taking No Action Relating to Tribal Trust Resources, Section 2b(4)

NEPA requires that an EIS identify and evaluate a reasonable range of alternatives to the proposed federal action, including an analysis of the environmental effects from not taking action (i.e., the no-action alternative).⁴¹ NEPA does not mandate that agencies select the alternative with the least adverse effects or prohibit actions that may result in negative impacts. In the context of a federal authorization, the no-action alternative typically assumes that the agency would not issue or approve the proposed action (e.g., a permit, license, right-of-way).

Section 2(b)(4) of H.R. 4776 would add a new subsection (e) to NEPA Section 106 (42 U.S.C. §4336) that would establish a “presumption” that selecting the “no action” alternative (if included) for an action proposed by a federally recognized Tribe that would be carried out on or directly affect land or resources held in trust for that Tribe would have negative effects for the federally recognized Tribe.⁴²

Many Tribes have land and resources held in trust by the federal government.⁴³ Projects and activities that use or develop tribal trust land or resources may require NEPA compliance.⁴⁴ NEPA is silent regarding how an agency should analyze or determine the impacts of proposed actions affecting tribal trust resources. The proposed presumption of negative effects could influence the analysis of alternatives for covered proposed actions. Although H.R. 4776 does not address how a negative effect presumption could be overcome, it could potentially influence how agencies characterize and compare the environmental effects of the no-action alternative (i.e., not issuing or approving an authorization) relative to proposed action alternatives.⁴⁵ The provision could also

⁴⁰ See, for example, CRS Legal Sidebar LSB11402, *Trump Administration Actions to Curtail Offshore Wind Energy Development Meet Judicial Resistance*, by Adam Vann.

⁴¹ 42 U.S.C. §4332(2)(C)(iii).

⁴² NEPA requires that an EIS identify and objectively evaluate a reasonable range of alternatives to the proposed federal action, including an analysis of not taking action (i.e., the no-action alternative); see 42 U.S.C. §4332(2)(C)(iii).

⁴³ See generally CRS Report IR10001, *Tribal and Other Indigenous Lands in the 119th Congress*, by Mariel J. Murray and Mainon A. Schwartz.

⁴⁴ Examples of activities on tribal lands that may be subject to NEPA include infrastructure development, rights-of-way, water-related projects, power lines and broadband construction, grazing permits, energy and mineral development permits, lease acquisitions, gift deeds, fee-to-trust land acquisitions, and environmental restoration projects. Bureau of Indian Affairs, “National Environmental Policy Act Compliance,” <https://www.bia.gov/service/nepa-compliance#nepa-compliance-on-american-indian-and-alaska-native-trust-or-restricted-lands>.

⁴⁵ Some agencies’ NEPA procedures include consideration of mitigation measures intended to reduce or avoid (continued...)

interact with agencies' separate federal trust responsibilities and tribal consultation practices, which are governed by other federal statutes and regulations. For example, alongside a NEPA analysis, the Bureau of Indian Affairs must evaluate a proposed action's potential impacts on tribal trust lands and resources in accordance with other statutes and regulations.⁴⁶ Beyond the no-action alternative for actions affecting tribal trust resources, the proposed language is silent on whether any other proposed action or alternative would have any presumption of beneficial or negative impacts.

Effect of Threshold Determinations on Other Agencies, Section 2(b)(4)

Section 106 of NEPA provides the standards for when an agency must prepare an EIS or EA and states the circumstances in which an agency is not required to prepare an "environmental document," defined as an EIS, EA, or FONSI.⁴⁷ Under Section 107(b) of NEPA, "to the extent practicable, if a proposed agency action will require action by more than one [f]ederal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document."⁴⁸ As each agency is operating under its statutory authorities and with its respective expertise, agencies may reach different determinations regarding a project proposal's anticipated environmental impacts and their significance and which level of review is necessary to support their decision.

Section 2(b)(4) of H.R. 4776 would add a new subsection (f) to NEPA Section 106 (42 U.S.C. §4336) providing that if a lead agency determined that an environmental document was not required for a proposed agency action pursuant to the threshold determinations in NEPA Section 106(a), another agency could not prepare an environmental document with respect to "such proposed agency action."

If this provision is enacted, an agency's decision to apply a CE or otherwise not prepare an EA or EIS may bar another agency from preparing an EA or EIS even where the other agency concludes that the environmental impacts could be significant.⁴⁹ This provision would make the lead agency's determination on whether and which environmental document to prepare controlling for other agencies involved with "such proposed action." How this directive operates in practice would depend in part on how agencies and courts interpreted the phrase "such proposed agency action," particularly in situations involving multiple federal authorizations or related but separate federal decisions. Generally, any given federal agency action is subject to a NEPA review, often with other federal agencies contributing to that NEPA review; however, if the proposed agency action requires action by more than one federal agency—such as when the underlying project or activity involves multiple authorizations—agencies typically evaluate the proposal in a single environmental document.⁵⁰ In those situations, implementation questions may arise where those agencies have distinct statutory mandates or jurisdiction over separate federal authorizations that

anticipated negative effects. See, for example, Department of the Interior, *NEPA Handbook*, §1.3(e), <https://www.doi.gov/media/document/doi-handbook-nepa-procedures>. Given that incorporation of mitigation measures could contemplate some form of additional action, an agency would likely need to consider what this would mean for a "no action" alternative.

⁴⁶ For example, 25 C.F.R. Part 162 governs leases on tribal trust lands.

⁴⁷ 42 U.S.C. §4336e defines *environmental document*; 42 U.S.C. §4336 lists when an EIS or EA is required.

⁴⁸ 42 U.S.C. §4336a(b).

⁴⁹ For additional information related to the role of the lead agency, see the following section, entitled "Lead Agency, Section 2(c)(1)".

⁵⁰ See, for example, covered projects listed under the FAST-41 permitting dashboard, <https://www.permits.performance.gov/projects/fast-41-covered>.

are part of the same underlying project and would otherwise come to different conclusions related to whether to prepare an environmental document, and if so, which one.

Timely and Unified Federal Reviews, Section 2(c)

Lead Agency, Section 2(c)(1)

Section 107(a) of NEPA specifies the roles and responsibilities for “lead” and “cooperating” agencies.⁵¹ Among other duties, a lead agency supervises the preparation of an environmental document for a proposed federal action and may designate as a cooperating agency any “federal, state, tribal, or local agency” with jurisdiction by law or special expertise associated with any environmental impact involved.⁵² A cooperating agency may submit comments to the lead agency related to the environmental impacts of a proposed agency action according to the schedule established by the lead agency.⁵³

Section 2(c)(1)(B)(i) of H.R. 4776 would clarify that a “local agency” designated as a cooperating agency under NEPA Section 107(a)(3) includes “counties, boroughs, parishes, and other political subdivisions of a state.” **Section 2(c)(1)(B)(ii)** would also limit comments from cooperating agencies to “matters relating to the proposed agency action with respect to which such federal cooperating agency has jurisdiction by law.”

If enacted, political subdivisions of a state could participate as “local” cooperating agencies. The new language on cooperating agency comments would formally limit the scope of interagency input by focusing comments on areas within a cooperating agency’s jurisdiction. This change may concentrate agency resources and time on the areas where agencies have the most expertise, reduce duplicative comments, and potentially expedite environmental reviews. Conversely, the limitation could reduce opportunities for cooperating agencies to identify relevant alternatives, gaps or errors in the analysis, or issues that extend across agency responsibilities. To the extent such issues are not identified and addressed during preparation of the environmental document, they could require additional analysis later in the review or authorization process or potentially increase the risk of legal challenges to the adequacy of the environmental review.

One Document, Section 2(c)(2)⁵⁴

Section 2(c)(2) of H.R. 4776 would add a subsection to Section 107 of NEPA, which generally addresses agencies’ procedural requirements for undertaking and coordinating on environmental reviews, to add a deadline for acquiring new information to inform an agency’s NEPA review.⁵⁵ Under NEPA Section 106 (Procedure for Determination of Level of Review), agencies may make

⁵¹ 42 U.S.C. §4336a(a).

⁵² 42 U.S.C. §4336a(a)(2)-(3). 42 U.S.C. §4336(a)(1) specifies that “if there are two or more participating Federal agencies, such agencies shall determine, by letter or memorandum, which agency shall be the lead agency based on consideration of the (i) magnitude of agency’s involvement; (ii) project approval or disapproval authority; (iii) expertise concerning the action’s environmental effects; (iv) duration of agency’s involvement; and (v) sequence of agency’s involvement.”

⁵³ 42 U.S.C. §4336(a)(3) and 42 U.S.C. §4332(2)(C). Additionally, 42 U.S.C. §4336e(13) defines *special expertise* as “statutory responsibility, agency mission, or related program experience.”

⁵⁴ Section 107(b) of NEPA establishes a “one document” approach to environmental review, which directs agencies to prepare a single environmental document for a proposed agency action, to the extent practicable. 42 U.S.C. §4336a(b). Section 2(c)(2) of H.R. 4776 is titled “One Document” and would amend Section 107(b) of NEPA but would not modify the “one document” approach.

⁵⁵ See 42 U.S.C. §4336a.

use of “any reliable data source” and are not required to prepare new analysis in deciding whether to apply a CE or prepare an EA or EIS unless “essential” for a reasoned choice among alternatives and not time- or cost-prohibitive; however, Section 107 (which concerns the review process after determining the level of review) is silent with respect to how new information is considered.⁵⁶ For example, after an agency has determined whether a proposed action is likely to have significant effects under Section 106, it generally has the option to commission scientific and technical research—such as engineering studies, biological surveys, hydrologic or air quality modeling, and traffic analyses—to inform the content of an environmental document. The timing of any such study can range from the pre-application stage to the drafting stage, such as in response to agency requests, public comments, newly identified issues, or evolving project designs. Agencies generally retain discretion, subject to applicable laws, to determine whether additional information is needed.

H.R. 4776 would continue to leave the decision on whether to undertake new studies to the agency’s discretion while adding new timing considerations. Specifically, **Section 2(c)(2)(B)** of H.R. 4776 would specify that agencies are not required to consider “any scientific or technical research that becomes publicly available” after the receipt date for an application associated with the agency action or the publication date for a notice of intent or decision to prepare an environmental document.⁵⁷ Further, it would provide that a federal agency “may not delay the issuance of an environmental document or a final agency action, including any decision or determination, on the basis of awaiting new scientific or technical research or information.”

If the provision is enacted, agencies would likely consider whether to commission new studies knowing they could not delay a final decision on the basis of awaiting new study information, or whether to make a decision with information available when an application is submitted. Interagency consultations and public comments (where applicable), both of which typically occur after an application is received and after an agency decides to prepare an environmental document (for example, a notice of intent is required after the agency decides to prepare an EIS), may provide information including scientific or technical research not available to the general public, or potentially identify the need for additional information.⁵⁸ Given that NEPA requires the lead agency to obtain the input of other federal agencies, it is unclear how much discretion a lead agency would have to exclude from consideration new information or nonpublic scientific or technical research appropriately submitted by a cooperating agency. In some cases, agencies may rely on existing information or proceed with available and potentially incomplete data where previously they might have sought supplemental research.

⁵⁶ 42 U.S.C. §4336(b)(3).

⁵⁷ Section 2(b)(3)(B) of H.R. 4776 proposes to amend a separate section of NEPA (§106, 42 U.S.C. §4336) to affect sources of information considered under the “levels of review” portion of NEPA. For additional information, see the “Sources of Information, Section 2(b)(3)(B)” section of this report.

⁵⁸ 42 U.S.C. §4331(2)(c) requires an agency to consult with and obtain the comments of any other federal agency with jurisdiction by law or special expertise with respect to any environmental impact involved; such impacts would not necessarily be known at the time an application is received or at the time an agency decides to prepare an environmental document. Additionally, §4336(a)(3) provides for cooperating agencies to submit comments on a proposed action, and §4336(c) requires that an EIS include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action, which would necessarily occur after an agency decides to prepare an EIS and commonly occurs following or in tandem with issuing a notice of intent to prepare an EIS.

Statement of Purpose and Need, Section 2(c)(3)

Under NEPA, any environmental document must include a statement that “briefly summarizes the underlying purpose and need for the proposed agency action.”⁵⁹ The statement of purpose and need helps frame the underlying problem the action seeks to address (i.e., the need) and the objectives the agency seeks to achieve (i.e., the purpose) and establishes the criteria against which potential alternatives are evaluated.⁶⁰

Section 2(c)(3) would amend NEPA Section 107(d) (42 U.S.C. §4336a(d)) to require the statement of purpose and need to meet the goals of the applicant, “where applicable.” NEPA is silent regarding the incorporation of the goals of the applicant in the purpose and need statement. If enacted, the amendment would potentially elevate the role of the applicant or project sponsor’s objectives in shaping the purpose and need statement. Because the purpose and need statement often influences the range of alternatives, any change to these requirements could influence the alternatives considered or preferred during the environmental review for applicant-driven projects. At the same time, agencies would not be relieved of other federal statutory responsibilities and considering how much weight to give to a sponsor’s objectives.

Deadlines, Section 2(c)(4)

NEPA’s environmental review process is one of multiple inputs to agency decisionmaking. That environmental review process generally governs the preparation of environmental documents, analysis of alternatives, and interagency coordination. Although environmental review is often a required step in federal permitting processes, separate authorities typically govern agency permitting decisions beyond NEPA review.

In terms of timing, NEPA specifies a two-year deadline to complete an EIS and a one-year deadline to complete an EA, both of which may be extended if necessary.⁶¹ NEPA also specifies that project sponsors can pay certain fees to accelerate the deadlines for an EIS and an EA to one year and six months, respectively.⁶² Aside from NEPA’s mandated timelines, any timelines for processing and approving federal authorizations are generally governed by other agency- or action-specific statutes, agency regulations, and procedures.⁶³ Agency actions may also be subject to broader procedural statutes, including the APA and/or FAST-41.⁶⁴

H.R. 4776 Section 2(c)(4) would amend NEPA to add several deadlines for federal permitting and environmental reviews, and to clarify the applicant’s role in approving delays and seeking judicial review, as described in more detail below.

⁵⁹ 42 U.S.C. §4336a(d).

⁶⁰ CEQ, *A Citizen’s Guide to NEPA: Having Your Voice Heard*, 2021, p. 16, <https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf>.

⁶¹ 42 U.S.C. §4336a.

⁶² 42 U.S.C. §4336f.

⁶³ For example, the Federal Power Act establishes program-specific timing provisions for hydropower licensing before the Federal Energy Regulatory Commission (FERC). FERC regulations set schedules for pre-filing consultation, filing of license applications, interventions, comments, and issuance of licensing decisions; see 16 U.S.C. §§792 et seq. and 18 C.F.R. Part 5.

⁶⁴ For example, the lead agency for a project covered under FAST-41 has 14 days to publish project information on the federal project dashboard, and following dashboard publication, there are deadlines of 14 days to issue a permitting timetable and 60 days to issue a plan for public comments and agency coordination of additional authorizations; see 42 U.S.C. §4370m-2. As another example, for any federal agency action considered to be “rulemaking,” the APA requires publication of the final text in the *Federal Register* at least 30 days prior to the effective date; see 5 U.S.C. §553.

Applications for Authorizations, Section 2(c)(4)(B)

An agency's environmental review under NEPA flows from the underlying agency action, such as issuing an authorization for which an applicant applies. NEPA's statutory deadlines are measured from the point at which an agency determines whether to prepare an EA or EIS, not the point at which an applicant submits an application.⁶⁵

Section 2(c)(4)(B) would require agencies to provide certain notices within specified periods after receipt of applications for authorization, including

- notifying an applicant whether its application is complete or incomplete and requesting in writing any additional information that the agency needs in order to determine that the application is complete not later than 60 days after the applicant submits its application to an agency (unless a shorter deadline is specified by law); and
- notifying the applicant that it has determined whether an environmental document is required and, if so, the level of review (i.e., an EIS or an EA) not later than 60 days after the agency determines that the application is complete.

Cooperating Agencies, Section 2(c)(4)(B)

NEPA Section 107(a)(3) specifies that a lead agency may designate certain entities as cooperating agencies and that the cooperating agencies must follow the schedule established by the lead agency.⁶⁶ The statute does not prescribe detailed timelines for cooperating agency participation.

Section 2(c)(4)(B) would specify certain deadlines associated with the participation of cooperating agencies, including the following:

- Not later than 21 days after the lead agency determines the appropriate level of review, the lead agency must identify and invite all "agencies that are likely to have environmental review, authorization, or other responsibilities with respect to the proposed agency action" to become a cooperating agency for the preparation of an EA or EIS.
- Not later than 21 days after receiving an invitation to become a cooperating agency, the invited agencies must accept or decline the invitation.
- Not later than seven days after the deadline for cooperating agencies to accept the invitation, the lead agency must convene each cooperating agency to coordinate on developing a schedule for completion of the EA or EIS.
- Not later than seven days after identifying any agency that has "jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed agency action," and which was not previously identified, the lead agency must invite the agency to become a cooperating agency.
- Not later than 14 days after the previously unidentified agency accepts the invitation to become a cooperating agency, the lead agency must update the schedule to incorporate the participation of the new cooperating agency.

⁶⁵ 42 U.S.C. §4336a(g)(1). Examples of an agency-specific process are a requirement to submit an application for certificate of public convenience and necessity in 15 U.S.C. §707f(d), or Bureau of Land Management's application requirements for obtaining a right-of-way under the Federal Land Policy and Management Act (43 U.S.C. §1761) in 43 C.F.R. Part 2800.

⁶⁶ 42 U.S.C. §4336a(a)(3).

If enacted, these provisions would provide more structured participation by cooperating agencies and may reduce timelines associated with interagency environmental review. While the cooperating agency deadlines would govern participation in the environmental review, they would not alter the substantive obligations of federal agencies under other statutes. Agencies that do not participate as cooperating agencies may nevertheless remain responsible for carrying out consultation, permitting, review, or other duties required under their respective statutory authorities. The provisions may provide earlier clarity for the lead agency on which agencies will participate in the environmental review. Additional questions may arise regarding the consequences of nonresponse or late participation on the part of a cooperating agency, including whether agencies that do not meet an initial deadline retain the ability to join later—for example, should new issues emerge or project circumstances materially change.

Deadline for Final Agency Action, Section 2(c)(4)(D)

Under the APA, federal agencies' NEPA and permitting decisions can be litigated in court once they become "final agency actions."⁶⁷ For NEPA, courts typically consider a FONSI or post-EIS Record of Decision (ROD), where an agency documents its preferred alternative, to be a final agency action for APA purposes.⁶⁸ Some courts also consider an EIS to constitute a final agency action in its own right.⁶⁹ In addition to NEPA, permitting and other agency activities may include other final agency actions, such as issuing an authorization or issuing a notice to proceed under the National Historic Preservation Act.⁷⁰

Section 2(c)(4)(D) of H.R. 4776 would add a new subsection entitled "deadline for final agency action," which specifies that "for any proposed agency action for which an applicant submitted an application for an authorization," the lead and cooperating agencies must issue a final agency action not later than 30 days after completing an EIS or EA and that "the agency issuing such final agency action shall include in the final agency action a performance schedule for the completion of any other outstanding authorizations."

If enacted, this new provision may increase predictability for applicants by establishing a deadline for the final agency decisions, including permitting-related authorizations. Because agencies issue authorizations under separate statutory authorities, the proposed deadline for final agency action would operate alongside requirements that an agency may have to satisfy before issuing an authorization. However, implementation questions could arise if those requirements have not been completed by the proposed deadline for final agency action. For example, an agency may need to complete consultation under the Endangered Species Act or National Historic Preservation Act, obtain information required by the statute governing the authorizations, or follow agency-specific procedures for determining whether applicable permitting criteria have been satisfied.

⁶⁷ 5 U.S.C. §704; see also *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (explaining that a "final" action is the consummation of an agency's decisionmaking affecting rights and obligations or other legal consequences).

⁶⁸ See, for example, *Driftless Area Land Conservancy v. Rural Utils. Serv.*, 74 F.4th 489, 495 (7th Cir. 2023) (finding that adoption of an EIS without issuing a record of decision (ROD) was insufficient to constitute final agency action for the purpose of challenging the underlying decision).

⁶⁹ See *Save the Colorado v. Spellmon*, 50 F.4th 954, 967 & n7 (10th Cir. 2022).

⁷⁰ See, for example, *Tohono O'odham Nation v. U.S. Dep't of the Interior*, 138 F.4th 1189, 1201 (9th Cir. 2025) (noting EIS had been completed and ROD issued for a right of way required for an energy infrastructure project but that did not constitute a final agency action writ large that would authorize construction to commence; rather, the selected alternative required additional measures under the National Historic Preservation Act).

Additional Deadline Provisions (Delay and Judicial Enforcement), Section 2(c)(4)(E-F)

Barring more specific statutory requirements or a project sponsor paying a fee to accelerate reviews, NEPA specifies a two-year deadline to complete an EIS and a one-year deadline to complete an EA, either of which can be extended if necessary.⁷¹ Until rescinded in April 2025, CEQ regulations specified minimum time frames for elements of the process of preparing and finalizing an EIS, such as 45 days for public comment on a draft EIS; with the regulations rescinded, each agency follows its own NEPA procedures, many of which do not include publication of a draft EIS.⁷² NEPA Section 107(g)(2) specifies that if a lead agency determines that it cannot meet the deadline for an EA or EIS, it “may extend such deadline, in consultation with the applicant, to establish a new deadline that provides only so much additional time as is necessary to complete” the EA or EIS.⁷³ This provision requires consultation with but not consent from the project sponsor. The Fiscal Responsibility Act of 2023’s amendments to NEPA added a provision allowing a project sponsor to bring a judicial action seeking to enforce statutory time limits for NEPA documents.⁷⁴

Section 2(c)(4)(E) of H.R. 4776 would amend NEPA to provide that the federal agency could extend a deadline only if the applicant approved the extension. **Section 2(c)(4)(F)** would modify the conditions under which a project sponsor could seek to enforce NEPA’s one- or two-year default deadlines for an agency to complete an EA or EIS, respectively. Specifically, it would preclude judicial review for a project sponsor that approved a deadline extension unless the lead agency failed to meet the extended deadline “or is delaying for reasons other than those necessary to complete its review.” **Section 3(2)** of H.R. 4776 specifies that other amendments to NEPA related to judicial review found in **Section 3**, which are discussed below, would not apply to this provision.⁷⁵ If enacted, these provisions may provide project sponsors (provided the proposed action involves a project sponsor) with the ability to disapprove of an extension to an agency’s deadline. If the applicant does not agree to an extension and the agency fails to finalize the environmental document by the statutory deadline, the agency could be subject to a lawsuit for failure to timely complete an environmental document. H.R. 4776 does not specify whether or how deadlines could be extended where a project does not have an applicant.

Concurrent Review, Section 2(c)(4)(G)

In practice, NEPA’s environmental reviews often occur in coordination with other required consultation and approval processes, such as consultations under the Endangered Species Act. Multiple federal agencies may be required to coordinate on the evaluation of a proposed action. In some cases, the other consultation and approval processes may occur concurrently; in others, they

⁷¹ 42 U.S.C. §4336a(g). 42 U.S.C. §4336f allows a project sponsor to pay a fee to reduce these deadlines to one year for an EIS and six months for an EA. Some statutes and agency procedures provide for more accelerated deadlines than these “default” timelines.

⁷² For any covered project under FAST-41, the lead agency must provide a 45- to 60-day public comment period for a draft EIS; see 42 U.S.C. §4370m-4. Other NEPA deadlines referenced in this provision pertaining to 40 C.F.R. Part 1500 have since been rescinded, as was the requirement for all agencies to issue a draft prior to finalizing an EIS. See 85 *Federal Register* 43370, July 16, 2020, as amended at 89 *Federal Register* 35554, May 1, 2024 (formerly codified in 40 C.F.R. §1506.10).

⁷³ 42 U.S.C. §4336a(g)(2).

⁷⁴ P.L. 118-5, §321(b), 137 Stat. 10, 43–44, as codified in NEPA §107, 42 U.S.C. §4336a(g)(3).

⁷⁵ The specific provision referred to in Section 3(2) of H.R. 4776 states that the other judicial review amendments to NEPA would “not affect the right to obtain review under section 107(g)(3).”

may not because of differing statutory triggers or information requirements.⁷⁶ Existing law has promoted coordination in certain sectors and programs, including projects enrolled in FAST-41 coverage.⁷⁷ However, NEPA itself has historically provided limited statutory direction.⁷⁸

Section 2(c)(4)(G) would add a new subsection (7) to NEPA Section 107(g) (42 U.S.C. §4336a(g)) on concurrent review specifying that lead and cooperating agencies are to carry out other statutory obligations and required reviews for the proposed agency action “concurrently, and in conjunction, with” environmental reviews required under NEPA.

If enacted, this provision would require agencies to align environmental review with other statutory obligations, such as permitting and consultation processes, during project development. Implementation may depend on how agencies and courts address new information that might arise during the course of additional federal actions such as consultation findings or permitting decisions that may be made on a different schedule than the NEPA review process.⁷⁹

Programmatic Environmental Documents, Section 2(d)

Unlike action- or project-specific environmental reviews—which evaluate the environmental effects of a specific proposed action or project—*programmatic environmental documents* evaluate the impacts of broader policies, plans, programs, or groups of related actions.⁸⁰ NEPA specifies that federal agencies may rely on a programmatic environmental document for five years, unless during that time there are “substantial new circumstances or information about the significance of adverse effects that bear on the analysis,” and beyond five years so long as the agency reevaluates the analysis and the underlying assumptions to ensure that the analysis remains valid.⁸¹ Agencies may also rely on or adopt another agency’s previously completed project-specific environmental reviews where the earlier analysis is relevant to the later action, and they may supplement an existing NEPA analysis with a NEPA review that considers only any new information or changed circumstances.⁸²

⁷⁶ For example, Section 102(2)(C)(iii) of NEPA requires agencies to consider a reasonable range of alternatives to a proposed action, whereas consultation under Section 7 of the Endangered Species Act evaluates the effects of the proposed agency action on listed species and critical habitat. See 16 U.S.C. §1536. Furthermore, the Endangered Species Consultation Handbook states that “[b]iological assessments are not required to analyze alternatives to proposed actions.” U.S. Fish and Wildlife Service and National Marine Fisheries Service, “Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act,” in *Consultation Handbook*, March 1998, pp. 3-12, <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>.

⁷⁷ See 42 U.S.C. §4270m-2. FAST-41 (P.L. 114-94) established the Federal Permitting Improvement Steering Council (i.e., “Permitting Council”) and related project coordination procedures. A project covered under FAST-41 has specific coordination requirements such as developing “a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project”; see 42 U.S.C. §4270m-2.

⁷⁸ 42 U.S.C. §4336a(b) of NEPA specifies that agencies evaluate a proposal involving more than one agency in a single document “to the extent practicable.”

⁷⁹ See, for example, *Tohono O’odham Nation v. U.S. Dep’t of the Interior*, 138 F.4th 1189 (9th Cir. 2025) (finding an NHPA analysis completed years after the NEPA analysis to constitute a separate final agency action where the EIS had been completed contingent on subsequent completion of the NHPA process).

⁸⁰ 42 U.S.C. §4336e(11) defines a *programmatic environmental document* as “an EIS or EA analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.”

⁸¹ 42 U.S.C. §4336b.

⁸² Although NEPA practice has long recognized this approach, the statute historically has provided limited detailed direction regarding the use of previously completed environmental reviews. Reliance on such analyses has historically been a common agency practice and was previously addressed (and in some circumstances required) in now-rescinded CEQ regulations formerly codified at 40 C.F.R. §1506.3.

H.R. 4776 would amend NEPA to address both programmatic environmental documents and reliance on previously completed environmental reviews. **Section 2(d)(2)-(3)** would extend the timeline for reliance on programmatic environmental documents from 5 years to 10 years. **Section 2(d)(4)** would also allow agencies to rely on previously completed environmental reviews (i.e., EISs, EAs, or CE determinations) when evaluating new proposed actions that are “substantially the same” as the action for which the previous review was completed where (if applicable) the effects of the new action are “substantially the same” as the previously analyzed effects. Section 2(d)(4) would further specify that for actions that are “not substantially the same,” agencies would be allowed to “modify or augment” previously completed EAs or EISs “as necessary to satisfy the requirements of [NEPA]” for the new federal action; agencies would be required to make the modified EAs or EISs available to the public as new EAs or EISs.

If enacted, these provisions would allow agencies to rely on preexisting programmatic environmental documents for a longer period. At the same time, implementation may depend on how agencies and courts interpret “substantially the same.” Before the 2023 amendments, no specific time limit existed for programmatic documents; rather, agencies and courts would review whether the agency reasonably relied on the earlier analysis in light of any change in the scope of the action or its anticipated effects since the analysis was published.⁸³ This approach is similar to the proposed language in Section 2(d)(4) for actions that are not substantially the same. For actions that are substantially the same and that would be affected by the five-year extension, information is limited as to what practical effect the five-year limit in the 2023 amendments had, and as such it would be difficult to predict the effect of extending the limit to 10 years.

Categorical Exclusions, Section 2(e)

When agencies determine that a category of actions generally does not significantly affect the human environment, they may establish a CE to allow for future compliance with NEPA without producing an EA or EIS.⁸⁴ Under NEPA, an agency may adopt a CE listed in another agency’s NEPA procedures; NEPA does not expressly authorize or direct agencies to create new CEs.⁸⁵ While most CEs have been established through agency procedures (generally pursuant to now-rescinded CEQ regulations), Congress has also enacted laws establishing CEs for specific federal actions.⁸⁶

Section 2(e) of H.R. 4776 (and the conforming amendment to the CE definition in **Section 2(f)**) would amend Section 109 of NEPA to expressly allow agencies to adopt any CEs that were legislatively established by Congress, even if originally intended for a different agency.⁸⁷ If enacted, this provision could allow additional agencies to adopt a statutory CE originally intended

⁸³ In such a situation, an agency could refer back to existing analysis and incorporate it by reference or take a multiphased approach such as starting with a broader strategic-level review and then supplementing on a project-specific basis with analysis limited to new conditions or information (tiering). See, for example, *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 512 (D.C. Cir. 2010) (noting that projects implemented over the course of several decades could understandably be subject to a change of conditions, but tiering enables agencies to refer back to older analysis so long as the effects are reasonably considered, even if methodologies have improved).

⁸⁴ 42 U.S.C. §4336(a)(2). Further, 42 U.S.C. §4336e(1) defines a CE as a “category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment.”

⁸⁵ 42 U.S.C. §4336e. CEQ regulations, that have since been rescinded, required agencies to develop CEs whose application would be evaluated for extraordinary circumstances, previously codified at 40 C.F.R. §1501.4.

⁸⁶ For additional information related to CEs, see CRS Report R48595, *Legislative Categorical Exclusions Under the National Environmental Policy Act*, by Heather McPherron.

⁸⁷ For additional information related to legislative CEs, see CRS Report R48595, *Legislative Categorical Exclusions Under the National Environmental Policy Act*, by Heather McPherron.

for use by a specific agency. The practical effect of the provision may vary by CE because many statutory CEs apply only to specific statutory authorities, programs, or activities applicable to a particular agency—such as CEs associated with highway funding distributed by the Federal Highway Administration—which may not be applicable to other agencies’ activities. As a result, other agencies may not have an opportunity or basis for applying a statutory CE that is explicitly applicable to another agency’s actions.

Definitions, Section 2(f)

Authorization, Section 2(f)(2)

Although the Fiscal Responsibility Act of 2023 amended NEPA to add references to *authorization* with respect to coordination and the lead agency’s role, that act did not define *authorization*.⁸⁸

Section 2(f)(2) would add a statutory definition of *authorization* to NEPA as “any lease, right-of-way, easement, license, permit, approval, finding determination, or other administrative decision issued by an agency or any interagency consultation that is required or authorized under Federal law in order to construct, modify, or operate a project.”⁸⁹ The definition would apply throughout NEPA as amended by H.R. 4776, including references to authorizations in provisions addressing certainty, judicial review, and deadlines.

If enacted, the provision would clarify which federal approvals are subject to NEPA’s provisions pertaining to authorizations. The provision does not alter agencies’ substantive authorities to issue, condition, or deny authorizations under other federal statutes.

Categorical Exclusion, Section 2(f)(3)

Consistent with changes discussed above pertaining to **Section 2(e)**, **Section 2(f)(3)** of H.R. 4776 would amend the definition of a CE to clarify that CEs are not limited to only those established by a federal agency and would extend the definition to include CEs “Congress deems by statute.”

Major Federal Action, Section 2(f)(4)

Section 102(2)(C) of NEPA requires all federal agencies to include in “every recommendation or report on proposals for legislation and other *major Federal actions* significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action.”⁹⁰ Because the requirement applies only to legislative proposals and other “major federal actions,” prior to the Fiscal Responsibility Act of 2023 amendments to NEPA, excluding an action from qualifying as a *major federal action* functionally served to exempt that action from NEPA’s environmental review process. In 2023, Congress added statutory procedures now codified in Section 106(b)(2) of NEPA for determining the appropriate level of NEPA review. These procedures include a requirement to prepare an EA for a *proposed agency action*—rather than for a *major federal action*—that does not have a significant effect on the human environment or if the significance of such effects is unknown.⁹¹ The 2023 amendments also defined *major federal action* in Section 111(10) of NEPA as “an

⁸⁸ P.L. 118-5, 137 Stat. 40, as codified in 42 U.S.C. §4336a(a)(2). Permits, licenses, rights-of-way, etc. are ordinarily governed by the specific substantive statutes that create the requirements for a project sponsor to obtain them.

⁸⁹ *Project* is not defined.

⁹⁰ 42 U.S.C. §4332(2)(C) (emphasis added). The “detailed statement” is subsequently referred to as an EIS.

⁹¹ P.L. 118-5, §321(b).

action that the agency carrying out such action determines is subject to substantial federal control and responsibility” and identified seven exclusions.⁹²

Section 2(f)(4) would amend NEPA’s definition of *major federal action* to expand the scope of excluded actions—that is, specified actions that are not to be considered major federal actions. Specific changes include the following:

- **Section 2(f)(4)(A)(i)** would add a major-federal-action exclusion for grants and cost-share awards.⁹³
- **Section 2(f)(4)(A)(i)** also would raise the threshold for what constitutes a major federal action from “sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action” to “complete control and responsibility over the effect of the action.”
- **Section 2(f)(4)(A)(iii)** would add a major-federal-action exclusion for certain activities related to farm ownership loans and operating guarantees that support the purchase, improvement, and operation of agriculture land and farming enterprises carried out under Section 305 and Sections 311 through 319 of the Consolidated Farm and Rural Development Act.
- **Section 2(f)(4)(A)(iii)** also would exclude “the issuance of an authorization by an agency where the effects of the action or project being permitted or authorized were previously evaluated by another agency in compliance with this Act.”⁹⁴
- **Section 2(f)(4)(B)** would provide that a proposed action “may not be determined to be a major Federal action solely on the basis of the provision of Federal funds, including a grant, loan, loan guarantee, and funding assistance.”

If enacted, these provisions would result in additional agency activities being excluded from the requirement to prepare an EIS—for example, where federal involvement is limited to financial assistance rather than direct project approval or management. Further, the provision excluding actions previously analyzed by another agency may reduce what some consider duplicative NEPA reviews where multiple federal authorizations are required for the same project or in subsequent renewals if the effects were already evaluated. The effects these provisions would have in practice may depend on how agencies determine whether prior reviews sufficiently addressed the relevant effects of the subsequent authorizations, particularly where approvals involve different statutory standards, project components, or environmental issues.

⁹² P.L. 118-5, §321(b). 42 U.S.C. §4336e(10). For a full list of exclusions, see NEPA §111(10)(B) (42 U.S.C. §4336e(10)(B)).

⁹³ 42 U.S.C. §4336e(10)(iii). To be eligible for this exclusion, a federal agency must also “not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action,” unless the definition is further amended as described here.

⁹⁴ 42 U.S.C. §4336(b) currently states that “to the extent practicable, if a proposed agency action will require action by more than one Federal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document.” For an example of adoption or incorporation by reference, see the Department of the Interior’s *Handbook of NEPA Procedures*, which states that agencies “may rely on an environmental impact statement, environmental assessment, or portion thereof, provided that the statement, assessment, or portion thereof.” Department of the Interior, *Handbook of National Environmental Policy Act Implementing Procedures*, February 2026, p. 17, <https://www.doi.gov/media/document/doi-handbook-nepa-procedures>.

Reasonably Foreseeable, Section 2(f)(5)

Section 102(2)(C) of NEPA (42 U.S.C. §4332(2)(C)) requires federal agencies to consider “reasonably foreseeable environmental effects of the proposed agency action” as well as “any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented” for any major federal action that would have a significant effect on the quality of the human environment. While NEPA itself does not define *reasonably foreseeable*, the Supreme Court in *Seven County Infrastructure Coalition* held that agencies have substantial discretion to determine the scope of effects to be evaluated and are only required to consider the “project at hand” based on a “manageable line” that need not include “the effects of projects separate in time or place.”⁹⁵ The Court acknowledged there can be a “gray area” when defining the scope of a project with respect to interrelated projects and admonished that a court’s review must remain deferential to the agency’s determination of scope in those circumstances.⁹⁶

Section 2(f)(5) would define *reasonably foreseeable* as “effects that share a reasonably close causal relationship to, and are proximately caused by, the immediate project or action under consideration.” Section 2(f)(5) would further specify that the definition does not include effects that are “speculative,” “attenuated from the proposed agency action,” “separate in time or place from the proposed agency action,” or “in relation to separate existing or potential future projects.” These changes would depart from previous CEQ regulations (rescinded in 2025) that required agencies to consider cumulative and indirect impacts in their analysis of effects.⁹⁷

Duties, Section 2(g)

Title II of NEPA established the CEQ within the Executive Office of the President.⁹⁸ Title II directs CEQ to, among other things, assist and advise the President on certain environmental matters, including NEPA implementation.⁹⁹ NEPA Section 204 specifies CEQ’s duties and functions, which include, among other things, to “develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation.”¹⁰⁰

Section 2(g) of H.R. 4776 would amend NEPA Section 204 to expand those goals and requirements to include “energy.” If enacted, this provision would expressly recognize energy as a factor relevant to CEQ’s responsibilities. Because the provision does not assign CEQ any new authorities or responsibilities related to energy, the practical effect of adding “energy” to CEQ’s existing duties is not evident from the statutory text alone. Whether the provision would result in changes to CEQ’s activities or function primarily as a statement of congressional priorities may depend on further executive branch implementation.

Judicial Review, Section 3

Section 3(2) of H.R. 4776 would affect how certain federal agency environmental reviews and permitting decisions could be challenged in federal court. Historically, while NEPA has been the most litigated federal environmental statute, fewer than 1% of federal actions subject to NEPA

⁹⁵ *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 179, 190 (2025).

⁹⁶ *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 190.

⁹⁷ 40 C.F.R. 1508.1(i) (as in effect on December 31, 2024).

⁹⁸ 42 U.S.C. §4342.

⁹⁹ 42 U.S.C. §4342.

¹⁰⁰ 42 U.S.C. §4344. For the full list of the duties and functions of CEQ, see 42 U.S.C. §4344.

have been litigated.¹⁰¹ While some have expressed concern that litigation increases the risk of project delays due to the potential for a judge to order a project halted (a form of *injunctive relief*) temporarily while litigation proceeds or indefinitely until an agency revises its analysis, others have suggested that permitting-related litigation delay concerns are “overblown.”¹⁰²

Plaintiffs may challenge agency NEPA reviews (or decisions not to conduct NEPA reviews) in federal court. Many of these challenges are brought pursuant to the APA, which provides for judicial review of final agency actions.¹⁰³ The APA is the default statute that applies in the absence of another statute providing judicial review for a particular agency action.¹⁰⁴ Other statutes provide for judicial review of specific types of permitting-related federal actions, including NEPA’s provision allowing a project sponsor to sue to enforce an agency deadline for completing an EA or EIS.¹⁰⁵ The APA generally establishes how courts review agency actions, including the appropriate standards of review.¹⁰⁶ A federal agency action may not be reviewed until it is final; thus, documents such as draft EISs typically cannot be challenged under the APA.¹⁰⁷ Most commonly for NEPA, a plaintiff may ask a court to “set aside” a final agency action based on allegations that it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁰⁸ Applying a general “rule of reason” for NEPA, courts have identified

¹⁰¹ CEQ, “NEPA Litigation Surveys 2001-2013,” <https://ceq.doe.gov/docs/ceq-reports/nepa-litigation-surveys-2001-2013.pdf>, archived August 12, 2025, at <https://perma.cc/G58E-BTFZ> (identifying an average of 145 cases per year subject to litigation); 85 *Federal Register* 43305, 43309 & n.5, n.40, July 16, 2020 (identifying over 100,000 NEPA actions annually). An analysis of the CEQ NEPA litigation data set found that roughly 1 in 450 NEPA decisions were litigated. See John Ruple and Kayla Race, “Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases,” *Environmental Law*, vol. 50 (2020), p. 479. For context, NEPA has been the most litigated of all environmental laws; see CEQ, “Fact Sheet: Modernizing CEQ’s NEPA Regulations,” 2020, <https://ceq.doe.gov/docs/laws-regulations/ceq-final-rule-fact-sheet-2020-07-15.pdf>, archived August 12, 2025, at <https://perma.cc/UG5R-8W5F>.

¹⁰² For more discussion of permitting litigation considerations, compare Michael Bennon and David Wilson, “NEPA Litigation over Large Energy and Transport Infrastructure Projects,” *Environmental Law Reporter*, vol. 53 (October 2023), p. 10836 (identifying litigation arising in 28% of select major transportation infrastructure projects requiring an EIS, of which 89% involved a NEPA claim), with David E. Adelman et al., “Dispelling the Myths of Permitting Reform and Identifying Effective Pathways Forward,” *Environmental Law Reporter*, vol. 55 (January/February 2025), pp. 10038, 10041-10042 (characterizing as a “myth” the notion that federal permitting is the cause for most project delays and noting a 90% decline in the number of EISs prepared annually from the 1970s to 2020s).

¹⁰³ 5 U.S.C. §704.

¹⁰⁴ 5 U.S.C. §706. Other statutes provide for judicial review of specific types of permitting-related federal actions; see, for example, 42 U.S.C. §4336a(g)(3) (allowing a project sponsor to sue under NEPA to enforce an agency deadline for completing an EA).

¹⁰⁵ See 5 U.S.C. §706; 42 U.S.C. §4336a(g)(3).

¹⁰⁶ 5 U.S.C. §704. For more information on judicial review under the APA, see CRS Legal Sidebar LSB10558, *Judicial Review Under the Administrative Procedure Act (APA)*, by Jonathan M. Gaffney; CRS Report R44699, *An Introduction to Judicial Review of Federal Agency Action*, by Jared P. Cole.

¹⁰⁷ 5 U.S.C. §704; *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (explaining that a “final” action is the consummation of an agency’s decisionmaking affecting rights and obligations or other legal consequences). Examples of situations where finality issues affected plaintiffs’ NEPA claims include *Whitewater Draw Natural Resource Conservation District v. Mayorkas*, 5 F.4th 997 (9th Cir. 2021) (affirming that lack of instructions on how to implement NEPA in an agency handbook did not rise to a final agency action), and *County Commissioners v. U.S. Department of the Interior*, 614 F. Supp. 3d 944, 947, 953 (D.N.M. 2022) (dismissing a claim challenging a decision to transfer two individual wolves). See also *Driftless Area Land Conservancy v. Rural Utils. Serv.*, 74 F.4th 489, 495 (7th Cir. 2023) (finding that adoption of an EIS without issuing a record of decision was insufficient to constitute final agency action for the purpose of challenging the underlying decision).

¹⁰⁸ 5 U.S.C. §706; see also *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989) (explaining that an arbitrary-and-capricious review is a “searching and careful” factual inquiry based on a “narrow” standard of “whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment” (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971))). As a part of the judicial review process (continued...)

various factors for determining whether an agency's NEPA review may be found arbitrary and capricious.¹⁰⁹ When evaluating the challenged action, a judge reviews the relevant portion of the agency's entire administrative record, typically accepting the facts as the agency has found them, barring certain exceptions, and considers whether the agency action was reasonable and reasonably explained.¹¹⁰

Section 3(2) of H.R. 4776 would amend NEPA to add provisions on judicial review in addition to the current provision enabling a project sponsor to enforce a deadline for completing an EA or EIS, as explained in more detail below.

Role of the Court, Section 3(2)

The Supreme Court has observed that on matters of agency policymaking and factfinding (including as applies to NEPA), the APA imposes a deferential standard of review; no similar deference exists with respect to matters of statutory interpretation.¹¹¹ The Supreme Court has repeatedly stated that a reviewing court cannot “substitute its judgment for that of the agency as to the environmental consequences of its actions.”¹¹² In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court reiterated that the role of courts is deferential and limited when evaluating agency NEPA reviews under the APA's arbitrary-and-capricious standard.¹¹³ The Court further held with respect to agency decisions to assess the significance of effects and evaluate alternatives: “Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.”¹¹⁴

Section 3(2) of H.R. 4776 would add a new Section 110B to NEPA on judicial review. Within that provision, Section 110B(a) would clarify that a reviewing court must afford “substantial deference” to the agency in assessing its compliance with NEPA and may not substitute its judgment for the agency's judgment on environmental effects included in a NEPA analysis. This would codify some of the Supreme Court's language in *Seven County Infrastructure Coalition* and would mean that the level of deference accorded to agencies in NEPA cases would not be determined by subsequent developments in case law.

under the APA, federal courts “decide all relevant questions of law, interpret constitutional and statutory provisions; and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. §706. Additional bases for setting aside an agency action include when an agency violates a statutory right or fails to follow a procedure required by law, among others. See also *Citizens to Preserve Overton Park*, 401 U.S. at 415 (discussing *de novo* review of facts when an adjudication involves inadequate factfinding resulting in an “unwarranted” agency decision as one of two specific circumstances).

¹⁰⁹ For examples of how courts consider relevant factors in NEPA cases, see *American Wild Horse Campaign v. Raby*, 144 F.4th 1178, 1188 (10th Cir. 2025) (first quoting *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 704 (10th Cir. 2009))). An example of an error in judgment is *City of Los Angeles v. Federal Aviation Administration*, 63 F.4th 835, 851–52 (9th Cir. 2023) (finding a “fundamental error” where the agency failed to consider combined noise impacts from multiple pieces of construction running simultaneously and had instead analyzed conditions as if only one machine were operating at any given time).

¹¹⁰ 5 U.S.C. §706; *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 180 (2025).

¹¹¹ *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 168, 180; *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 371, 392 (2024) (citing 5 U.S.C. §706(2)). For more information on NEPA and judicial review, see CRS Report R48717, *Judicial Review and the National Environmental Policy Act (NEPA)*, by Kristen Hite.

¹¹² *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976); *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 183.

¹¹³ *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 168.

¹¹⁴ *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 183.

Remand, Section 3(2)

A court typically has broad latitude to order a spectrum of remedies when it finds an agency violated the law with respect to NEPA reviews. Courts have recognized *vacatur* (annulling an action or document) as the “ordinary” remedy under the APA for a NEPA violation.¹¹⁵ Courts may vacate an agency’s environmental document or could potentially vacate the underlying agency decision that is the subject of the NEPA analysis.¹¹⁶ If a court determines an agency’s action with respect to NEPA requires reconsideration or a potential change, it may order the agency to revisit a decision in order to cure a violation (*remand*).¹¹⁷ For example, remand may be ordered (with or without vacatur) for an agency to consider certain information that was initially excluded from its analysis, or to explain its reasoning for making a certain decision.¹¹⁸

Beyond remand, other remedies for cases involving NEPA and environmental permitting could include declaring an agency’s NEPA or permitting action illegal or enjoining project activity.¹¹⁹ A litigant concerned about irreparable harm from the agency’s action may request *injunctive relief*, or an order requiring an agency to take or refrain from taking a certain action. For NEPA purposes, injunctive relief may be ordered on a preliminary basis as a pre-trial decision or if based on the merits, the injunction would be in place until the violation is cured or a judge orders otherwise.¹²⁰ A preliminary injunction is an “extraordinary remedy” that is “never awarded as a matter of right.”¹²¹

Section 3(2) of H.R. 4776 would amend NEPA to include a new Section 110B(b) that would require a court to remand a matter to an agency with a “reasonable schedule” to correct any deficiency, not to exceed 180 days. It would also limit relief available in the event of a court finding that an agency failed to comply with NEPA. Specifically, Section 3 of H.R. 4776 would limit the available remedy to only remand “without vacatur or injunction.” Additionally, even if a

¹¹⁵ See *Sierra Club v. U.S. Dep’t of Transp.*, 125 F.4th 1170, 1186 (D.C. Cir. 2025) (citing *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019)); *Black Warrior Riverkeeper v. U.S. Army Corps of Eng’rs*, 781 F.3d 1271, 1290 (11th Cir. 2015) (discussing history of remand without vacatur).

¹¹⁶ The U.S. Court of Appeals for the D.C. Circuit and some other courts apply two primary factors in considering vacatur: (1) the seriousness of the order’s deficiencies and (2) any disruptive consequences of vacatur. *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm’n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993).

¹¹⁷ See generally *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (“If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.”). Additionally, an appellate court may remand a matter to a lower court if there is additional action needed in order to proceed with a case.

¹¹⁸ See, for example, *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 282 F. Supp. 3d 91, 109 (D.D.C.), *subsequent determination*, 368 F. Supp. 3d 41 (D.D.C. 2017); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 75 (D.D.C. 2019).

¹¹⁹ For an example of a NEPA claim that included remand, vacatur, and an injunction, see CRS Legal Sidebar LSB10943, *The Willow Project: History and Litigation*, by Adam Vann.

¹²⁰ See generally Charles H. Koch and Richard Murphy, “Types of Remedies in Review,” in *Administrative Law and Practice*, 3rd ed., vol. 3 (Thomson Reuters, 2024), §8:31 (discussing the scope of injunctive relief) (citing *Sampson v. Murray*, 415 U.S. 61, 78, 88 (1974)). Vacatur is sometimes characterized as a specific form of injunctive relief. See, for example, *Diné Citizens Against Ruining Our Env’t v. Haaland*, 59 F.4th 1016, 1048 (10th Cir. 2023).

¹²¹ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2009). Injunctive relief in NEPA litigation could be complete (such as halting a project) or partial (such as imposing specific conditions for a project to proceed). A court might grant a narrow injunction when an agency can address discrete concerns or when a project is already approved or nearly complete when a lawsuit is filed. When a court orders an injunction in a NEPA case, it may be lifted once the underlying violation is cured.

court finds a violation of NEPA, H.R. 4776 would require the remanded agency action to remain in effect while the agency addressed any errors or deficiencies under NEPA.

Functionally, if H.R. 4776 were to become law, NEPA would prevent a court from ordering vacatur or injunctive relief regardless of the potential magnitude of harm. In other words, in the event of a NEPA violation, the agency's analysis could be corrected, but project operations would still move forward even if permanent or irreparable harm was likely to result and an updated NEPA review otherwise could have led to project redesign or selection of a different alternative.

Limitations on Claims, Section 3(2)

Judicial review of agencies' NEPA compliance and environmental documents is subject to various constitutional and statutory limits.¹²² Some of the more commonly cited limitations include the following:

- **Standing**, which includes requirements based on Article III of the Constitution that a plaintiff must demonstrate (1) an injury in fact (2) that is fairly traceable to the challenged action (e.g., caused by an alleged statutory violation) and (3) that can be remedied by a court.¹²³ The Supreme Court has long recognized that a plaintiff alleging a procedural injury—including a NEPA violation—may be subject to a modified standing requirement of demonstrating a concrete interest in a legally recognized procedure.¹²⁴
- **Exhaustion** of administrative remedies, meaning a claim is barred if a plaintiff has not first exhausted administrative options, such as by participating in an agency's administrative process for raising objections to a permitting matter.¹²⁵
- **Statute of limitations**, which is a provision in law specifying a time by which a plaintiff must file a lawsuit. If the specific statute at issue is silent, courts have generally defaulted to a six-year limit for a plaintiff who challenges a permitting action under the APA.¹²⁶ Some permitting-related statutes include limitations affecting timelines for review of certain NEPA claims. For example, judicial

¹²² For an overview of judicial review of agency action and a discussion of limitations on the availability of judicial review, see CRS Report R44699, *An Introduction to Judicial Review of Federal Agency Action*, by Jared P. Cole.

¹²³ *Friends of the Earth v. Laidlaw*, 528 U.S. 167, 180–81 (2000); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Standing principles also prohibit courts from addressing alleged injuries that are “generalized grievances,” as these do not present “cases” or “controversies.” U.S. Constitution, Article 3, §2.

¹²⁴ *Lujan*, 504 U.S. at 572 & n.7 (recognizing procedural rights as “special” and applying a modified standing requirement applies to a plaintiff with a concrete interest in a legally recognized procedural right “without meeting all the normal standards for redressability and immediacy,” such as could be the case for a claim arising under NEPA if a plaintiff alleges an EIS failed to consider future impacts to a nearby property in a pending permitting decision). For example, in considering whether an alleged injury falls within the “zone of interests” of NEPA, the Supreme Court has held that NEPA protects a broad range of harms, including recreational or aesthetic enjoyment of the environment. See *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990); *Ondrusek v. U.S. Army Corps of Eng'rs*, 123 F.4th 720, 734 (5th Cir. 2024) (noting the redressability standard is “not demanding” (first citing *Sierra Club v. FERC*, 827 F.3d 59, 67 (D.C. Cir. 2016); and then citing *Defs. of Wildlife*, 504 U.S. at 572 n.7); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127–128 & n.3 (2014).

¹²⁵ Some statutes have express exhaustion requirements. See, for example, 16 U.S.C. §6515(c).

¹²⁶ 28 U.S.C. §2401(a) states that “every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.” The Supreme Court held in 2024 that, for the purposes of facial challenges to agency actions, a claim accrues when an injury to the plaintiff occurs, rather than at the time the agency action becomes final. *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799 (2024); see also CRS Legal Sidebar LSB11197, *Corner Post and the Statute of Limitations for Administrative Procedure Act Claims*, by Benjamin M. Barczewski and Jonathan M. Gaffney.

review of some transportation projects is limited to 150 days, while Congress has imposed a maximum two-year statute of limitations on authorizations for large infrastructure and other projects covered under FAST-41.¹²⁷

Other limitations on NEPA claims include mootness, ripeness, finality, and statutory preclusion.¹²⁸ Congress may further limit review of NEPA claims.

Section 3(2) of H.R. 4776 would add a new Section 110B(c)(1) to NEPA, which would impose requirements that a plaintiff would need to meet in order to file a suit alleging violations of NEPA:

- Section 110B(c)(1)(A) of NEPA (as amended by H.R. 4776) would impose a statute of limitations of 150 days for a plaintiff to file a claim alleging a violation of NEPA (as amended by H.R. 4776) “after the final agency action is made public” unless a shorter deadline is specified under law. Further, Section 110B(d)(3) would provide that any notice of appeal must be filed within 60 days after the lower court issues its judgment. Pursuant to new Section 110B(c)(2), any claim for review of an agency’s supplemental analysis not contained in a previously issued environmental document would be treated as a separate claim with its own 150-day statute of limitations.
- Where the challenged agency action was issued after a public comment period on an environmental document, Section 110B(c)(1)(B) of NEPA (as amended by H.R. 4776) would require any potential plaintiff to have timely submitted a “substantive and unique comment” that was “sufficiently detailed to put the applicable Federal agency on notice of the issue upon which the party seeks review.”
- Section 110B(c)(1)(C) of NEPA (as amended by H.R. 4776) would require that the plaintiff “has suffered or imminently will suffer direct harm from the final agency action.”
- Section 110B(c)(1)(D) of NEPA (as amended by H.R. 4776) would bar a claim challenging the agency action unless “such claim does not challenge the establishment of a categorical exclusion.” Put another way, this provision would prohibit challenges to the establishment of categorical exclusions. The phrase

¹²⁷ 23 U.S.C. §139(f); 42 U.S.C. §4370m-6; §4370m(6) (defining *covered project*); see also 42 U.S.C. §4370m (3) defining *authorization* as “any license, permit, approval, finding, determination, or other administrative decision issued by an agency and any interagency consultation that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with section 4370m-2(c)(3)(A) of this title, a State agency.” *Authorization* includes both permits and federal actions related to the permitting process. The two-year time limit for FAST-41’s statute of limitations begins upon publication in the *Federal Register*, and the time period may be shorter if so specified in federal law. 42 U.S.C. §4370m-6(1).

¹²⁸ A case is moot if the controversy initially existing at the time the lawsuit was filed is no longer “live.” See, for example, *Native Village of Nuiqsut v. Bureau of Land Mgmt.*, 9 F.4th 1201 (9th Cir. 2021) (denying NEPA claim as moot where oil and gas producer had completed a project following agency approval of winter drilling exploration activities after all equipment had been demobilized, weather had warmed, and wells were capped). *Statutory preclusion* refers to a provision in the APA specifying that the judicial review provisions do not apply if “statutes preclude judicial review.” 5 U.S.C. §701(a)(1). While a modest set of statutes excludes specific actions or types of actions from judicial review under NEPA, the exception is relatively uncommon and generally requires a “persuasive reason” to believe that Congress intended to exclude a claim from judicial review. *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 670 (1986); see also *Mass. Coal. for Immig. Reform v. U.S. Dep’t of Homeland Sec.*, 621 F. Supp. 3d 84, 98 (D.D.C. 2022) (finding review of alleged failure to conduct a NEPA review prior to instituting administrative closure in immigration courts was not barred by a provision in the Immigration and Nationality Act excluding review of immigration removal decisions themselves).

“establishment of a categorical exclusion” is novel in the context of judicial review under NEPA, so courts may need to decide whether such “establishment” pertains exclusively to establishing a broad category of actions or whether it could be interpreted to include applying a categorical exclusion on a project- or action-specific basis.

Section 3(2) of H.R. 4776 would also add a new Section 110B(c)(3) to NEPA barring judicial review of claims involving tribal lands or resources held in trust by the United States, with exceptions for claims brought by the applicable Tribe and for claims regarding effects occurring “outside the lands, minerals, or other resources held in trust by the United States for the benefit of a federally recognized Indian Tribe.” The United States typically holds tribal lands and resources in trust for the benefit of a Tribe pursuant to applicable statutory and treaty provisions. In some cases, the United States may hold such resource rights in reserve for future use. H.R. 4776 does not specify how this provision would interface with other provisions of NEPA, including the proposed changes in Section 2(b)(4) of H.R. 4776 (Presumption of Negative Impacts of Taking No Action Relating to Tribal Trust Resources).

Deadline for Resolution, Section 3(2)

Absent specific statutory requirements, courts largely have discretion on the timing of any case or resulting opinion. While 28 U.S.C. §1657(a) generally gives courts discretion to determine the order in which civil cases should be considered, Congress can require courts to expedite certain matters, set standards for deciding whether to expedite, and encourage courts to resolve certain disputes quickly.¹²⁹ Further, unless the law (or a court) requires otherwise, agencies generally have discretion on the timing of any court-ordered remand action.

Section 3(2) of H.R. 4776 would add a new Section 110B(d) to NEPA that would direct a court to issue a judgment on a claim described in Section 110B(a) of NEPA (as amended by H.R. 4776) “as expeditiously as possible,” and, in the absence of a shorter deadline specified by another law, not later than “180 days after the date on which the agency record for the review is filed with the reviewing court” (which in turn would be within 60 days after a claim is filed).¹³⁰ The 180-day deadline for a court to issue a decision would also apply to appellate claims, starting from the day on which an appeal is filed. Section 3(2) would also allow the agency and an applicant to appeal a lower court judgment “during the pendency of the remand.”

Preservation of Ongoing Administrative Corrections, Section 4

Federal agencies may revisit previously issued authorizations. Depending on the program and legal basis, agencies have in the past reopened, reconsidered, or initiated other actions in response to a variety of circumstances, including litigation, changed policy priorities, and newly identified information. Such actions may affect projects that were previously approved. Such subsequent

¹²⁹ For more information, see CRS In Focus IF12624, *Expediting Cases and Setting Deadlines for Court Actions*, by Joanna R. Lampe. Typically, cases involve various procedural steps, many of which include assigned deadlines for parties (e.g., answering a complaint, requesting and responding to preliminary motions, conducting discovery).

¹³⁰ For a claim brought under the APA, courts must “review the whole record or those parts cited by a party.” 5 U.S.C. §706; see also *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971) (explaining for a NEPA case that while the record should generally contain the evidence the agency used to make its decision and explain the basis of its decision, courts can also require the agency to explain itself but should not conduct a *de novo* review).

actions and reconsiderations are generally governed by the underlying substantive statute, the APA, judicial decisions, and other project-specific legal constraints, rather than NEPA itself.

Section 4 of H.R. 4776 would not amend NEPA; rather, it would specify that H.R. 4776 and any amendments made by H.R. 4776 do not apply to any agency action that a federal agency moved to voluntarily remand or “otherwise reopened, reconsidered, or initiated corrective action” between January 20, 2025, and the date of enactment, “regardless of whether the Federal agency has completed such corrective action as of the date of enactment.”

If H.R. 4776 were to become law, Section 4 would preserve the legal status quo for ongoing agency actions commenced after January 20, 2025, and prior to the enactment of H.R. 4776. This provision may reduce uncertainty regarding whether pending agency actions affecting previously approved projects may continue under the legal framework existing at the time those actions began. After enactment, an agency could remand or reopen a covered action but would be subject to the limitations set forth in Section 2(b)(4) of H.R. 4776.¹³¹

Considerations for Congress

Many stakeholders have identified federal permitting as an area for reform, but many parties disagree as to how to achieve that end and, specifically, whether H.R. 4776’s provisions are the best way to achieve those goals. Support for H.R. 4776 includes organizations representing business, energy, transportation, construction, natural resources, technology, and other interests.¹³² One such coalition argued that H.R. 4776 “[c]ut[s] [r]ed [t]ape” in NEPA reviews, “[f]ocus[es] [r]eviews [w]here [t]hey [m]atter” (by limiting review of environmental impacts to those that have a reasonably close causal relationship to the project), “[r]ein[s] in [l]itigation [d]elays,” and “[h]elp[s] ensure [c]ertainty for [p]rojects.”¹³³ Other supporters generally characterize the legislation as a means of creating certainty in the permitting process and spurring domestic investment in critical infrastructure, energy, and conservation projects.¹³⁴ Organizations opposing H.R. 4776 have raised concerns regarding many of the same provisions. A December 2025 letter signed by more than 100 organizations argued that the legislation dramatically narrows the application of NEPA and limits the scope of reviews, restricts science and the integrity of information, shifts agency responsibility from deciding in the public interest in favor of private profit, and eliminates government accountability in the courts; and further asserted that permitting delays are attributable to factors beyond NEPA and have advocated alternative approaches,

¹³¹ Section 2(b)(4) of H.R. 4776 would amend NEPA to limit a federal agency from taking any action to “rescind, withdraw, amend, alter, or otherwise render ineffective” any environmental document prepared under NEPA involving a project applicant unless the federal agency has been “ordered by a court or the applicant has agreed in writing” to such action. For additional information, see discussion related to the “Authorizations” section of this report.

¹³² House Committee on Natural Resources, “375+ Organizations in Support of H.R. 4776 ‘Standardizing Permitting and Expediting Economic Development Act’ or the ‘SPEED Act,’” press release, updated April 2, 2026, https://naturalresources.house.gov/uploadedfiles/speed_supporters_4.2.26.pdf.

¹³³ Letter from Rodney Davis, Senior Vice President, Government Affairs, U.S. Chamber of Commerce, to Members of the U.S. House of Representatives, December 15, 2025, https://www.uschamber.com/assets/documents/251212_Key-Vote_SPEED-Act_House_Final.pdf.

¹³⁴ See, for example, views reported in House Committee on Natural Resources, “What They Are Saying: H.R. 4776, The SPEED Act,” press release, September 9, 2025, https://naturalresources.house.gov/uploadedfiles/speed_act_wtas_-_energy.pdf; House Committee on Natural Resources, “What They Are Saying: H.R. 4776, The SPEED Act,” press release, September 10, 2025, https://naturalresources.house.gov/uploadedfiles/speed_act_wtas_-_ti.pdf; House Committee on Natural Resources, “What They Are Saying: H.R. 4776, The SPEED Act,” press release, September 15, 2025; House Committee on Natural Resources, “What They Are Saying: H.R. 4776, The SPEED Act,” press release, October 28, 2025, <https://naturalresources.house.gov/news/email/show.aspx?ID=BB6YBW3BL6RVCAERSA4FZWNLFQ>.

including increased agency staffing and resources, leveraging technology, improved interagency coordination, and strengthened public engagement.¹³⁵

H.R. 4776 represents one of many bills introduced by Members of Congress to address the timing, coordination, predictability, and administration of environmental reviews in the context of federal permitting. Other proposals would address broader permitting coordination requirements or by amending permitting statutes. The scope and content of the bills vary based on a range of objectives, such as reducing review and permitting timelines, improving interagency coordination, increasing predictability and certainty for project sponsors, modernizing permitting systems, or increasing transparency.

For example, the Bipartisan American Affordability and Jobs Act (S. 5653) would amend NEPA, the Endangered Species Act, the National Historic Preservation Act, and several sector-specific permitting processes.¹³⁶ Alternatively, in the Senate, the SPEED Act, S. 3224, has some similar and some different provisions as compared to H.R. 4776. The Create Expedited Reviews to Transform American Infrastructure Now Act (CERTAIN Act; H.R. 8308) would, among other things, establish requirements concerning the completion and coordination of reviews for federal authorizations, certainty of authorizations, and judicial review.¹³⁷ Its provisions span multiple environmental and permitting statutes and generally emphasize coordination and administration of the broader authorization process rather than directly amending NEPA. The Fighting for Reliable Energy and Ending Doubt for Open Markets Act (FREEDOM Act; H.R. 7329) would, among other things, create enforceable federal authorization timelines, establish expedited judicial remedies, and limit orders or directives to terminate construction or operation of fully permitted projects for certain energy and mineral projects by amending several sector-specific energy and natural resources statutes.¹³⁸ The ePermit Act (H.R. 4503, as passed the House) would establish requirements for using interactive, digital, and cloud-based platforms in environmental reviews and federal authorization processes.¹³⁹ The Full Responsibility and Expedited Enforcement Act (FREE Act; H.R. 689, as reported) would, among other things, require agencies to evaluate whether certain permitting processes could be replaced with a *permitting by rule* system.¹⁴⁰ The Promoting Efficient Review for Modern Infrastructure Today Act (PERMIT Act; H.R. 3898, as passed the House) would modify a range of permitting and regulatory requirements under the Federal Water Pollution Control Act, also known as the Clean Water Act—a statute that

¹³⁵ Letter from Earthjustice, 198 methods, and 350 Bay Area Action, et al. to The Honorable Bruce Westerman, Chairman, House Committee on Natural Resources, November 19, 2025, <https://earthjustice.org/wp-content/uploads/2025/11/over-100-organizations-oppose-speed-act-final-letter-11-18.pdf>.

¹³⁶ See Senate Energy and Natural Resources Committee draft released September 30, 2026, available at <https://www.energy.senate.gov/wp-content/uploads/2026/09/Bipartisan-American-Affordability-and-Jobs-Act.pdf>

¹³⁷ See H.R. 8308, which the sponsor characterizes as an act “to establish requirements for the termination of authorizations, the completion and coordination of reviews for authorizations, and judicial review of actions relating to authorizations, and for other purposes.”

¹³⁸ See H.R. 7329, which the sponsor characterizes as an act “to amend the Energy Act of 2020, the Geothermal Steam Act of 1970, the Energy Policy Act of 2005, and the Mineral Leasing Act to streamline the leasing and permitting processes of Federal agencies for certain energy and mineral projects, to clarify Federal authorization requirements for certain projects on non-Federal land, to establish enforceable Federal authorization timelines and expedited judicial remedies, to limit Federal actions halting fully permitted projects, to create a de-risking compensation program, and for other purposes.”

¹³⁹ See H.R. 4503, which the sponsor characterizes as an act “to improve environmental review and authorizations through the use of interactive, digital, and cloud-based platforms, and for other purposes.”

¹⁴⁰ See H.R. 689, which the sponsor characterizes as an act “to require each agency to evaluate the permitting system of the agency, to consider whether permitting by rule could replace that system, and for other purposes.” Furthermore, the bill defines *permitting by rule* as “the application process that an agency establishes by rule for granting a certain type of permit.”

establishes federal permitting requirements applicable to many infrastructure and development projects.¹⁴¹ The PERMIT Act represents a statute-specific approach to permitting reform that would modify certain authorization requirements rather than establish government-wide permitting procedures.¹⁴²

These proposals illustrate differing approaches for interests related to federal permitting reform. Some would seek to reduce processing times, improve coordination, increase certainty, modernize permitting systems, or modify individual authorizations processes, while other proposals have sought to expand environmental analysis or public participation associated with environmental review and permitting. For Members of Congress, these differing approaches may frame consideration not only of whether or not to modify federal permitting process, but also which components of those processes to modify and through which mechanisms.

Author Information

Heather McPherron
Analyst in Environmental Policy

Kristen Hite
Legislative Attorney

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¹⁴¹ A project sponsor may need an authorization from the U.S. Army Corps of Engineers for projects that affect, cross, or involve discharges into certain jurisdictional waters, in accordance with the Clean Water Act. For example, Section 404 of the Clean Water Act (33 U.S.C. §1344) requires approval for activities that discharge dredged or fill material into waters of the United States, including certain wetlands.

¹⁴² See H.R. 3898, which the sponsor characterizes as an act “to amend the Federal Water Pollution Control Act to make targeted reforms with respect to waters of the United States and other matters, and for other purposes.”