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The Bipartisan American Affordability and Jobs Act of 2026: Changes to When National Environmental Policy Act Reviews Are Required

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The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA; H.R. 2347 as amended by S.Amdt. 6883) would address certain federal environmental review and permitting processes, including by making changes to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. §§4321 et seq.). Among other changes, BAAJA would modify NEPA's requirements for determining which federal actions are subject to environmental review and the requirements to prepare an environmental document. These changes could mean fewer federal actions undergo an environmental review and/or require preparation of environmental documents. One aspect of the congressional deliberations related to the bill is whether BAAJA's text could result in some actions receiving no environmental review, including actions in sectors not expressly named among the major federal action exclusions. The extent of these potential effects (e.g., on associated project timelines, costs, design, and impacts) would depend in part on how agencies apply the new exclusions and standards.

NEPA, Major Federal Action, and Threshold Determinations

NEPA establishes a national policy with respect to environmental quality and the basic process for integrating environmental considerations into federal decisionmaking. NEPA generally requires federal agencies to evaluate the environmental impacts of a proposed federal agency action and to document those effects (i.e., through an environmental review). Unless Congress exempts a certain action from environmental review, NEPA requires federal agencies to prepare an environmental impact statement (EIS) for "every recommendation or report on proposals for legislation and other major [f]ederal actions significantly affecting the quality of the human environment." NEPA defines a *major federal action* as an action that the responsible agency determines is subject to "substantial [f]ederal control and responsibility." The statute excludes seven categories of actions, including specified nonfederal actions, general revenue-sharing funds, certain forms of financial assistance, Small Business Administration loan guarantees, enforcement actions, certain extraterritorial activities, and nondiscretionary actions.

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NEPA also identifies several *threshold determinations* or circumstances in which an agency need not prepare an environmental document (i.e., an EIS, an environmental assessment, or a finding of no significant impact). These circumstances include when an action (1) is not a final agency action, (2) qualifies for a categorical exclusion (CE), (3) would "clearly and fundamentally conflict" with another provision of law, or (4) is nondiscretionary.

Changes Proposed by BAAJA

Major federal action exclusions. BAAJA Section 1102(a) would expand the statutory list of exclusions from 7 categories to 15. New exclusions would include wireline broadband deployment with federal assistance on a previously analyzed right-of-way; routine administrative actions costing no more than $10 million; certain repairs or replacements of "lifeline infrastructure"; geothermal observation tests; specified transmission activities; covered natural gas pipeline activities; actions whose effects another agency previously evaluated under NEPA; and certain Army Corps activities with a federal share of $50 million or less. BAAJA would also change from "sufficient" to "predominant" federal control and responsibility NEPA's existing exclusion related to financial assistance for grants (including capitalization grants), cost-share awards, and other forms of financial assistance. The meaning of "predominant" may suggest a higher bar of federal control than "sufficient," but BAAJA does not define the term "predominant." BAAJA also includes a rule of construction in its proposed changes to the definition of major federal action whereby the Department of Transportation (DOT) is "considered to have predominant control and responsibility" for projects receiving more than $10 million in DOT assistance.

Threshold determinations. BAAJA Section 1105(1) would add circumstances to threshold determinations that allow an agency to determine whether an environmental document is required, including when a state or Tribal review, or compliance with another federal law, "serves a similar function" as NEPA compliance. BAAJA would not specify detailed criteria for making that comparison. BAAJA Section 1105(3) would also provide that if a lead agency determines that an environmental document is not required for a proposed agency action, no other agency may prepare an environmental document "with respect to" that action.

If enacted, actions excluded from the definition of major federal action would fall outside of NEPA's review requirements, thus reducing the number of proposed actions required to undergo an environmental review. Some projects with limited federal involvement that would otherwise be within "[f]ederal control or responsibility" may be excluded, but some uncertainty would exist, as the contours of the specific terms (e.g., "predominant") would be left to administrative and judicial interpretation. Newly excluded projects may also include projects where the provision of financial assistance may be the only federal involvement (e.g., Department of Homeland Security detention facilities or Department of Housing and Urban Development Community Development Block Grants). In addition, a threshold determination based on an equivalent state, Tribal, or federal review could replace the requirement for the federal agency to prepare an environmental document altogether. Whether another review provides comparable analysis and public participation would depend on the agency's assessment of the proposed agency action, agency procedures, and the requirements of environmental reviews enshrined in other laws serving a similar function to NEPA.

Considerations for Congress

Congress may consider several topics as it weighs the advantages and disadvantages of changing when and how NEPA review is required, including the following:

- **Scope of exclusions.** Is "predominant federal control" sufficiently clear to promote consistent decisions across agencies that align with Congress's intent? Should legislation

include or prohibit a cap on the amount of financial assistance (similar to the DOT rule of construction) that could be excluded from the definition of major federal action?

- **Standards for equivalent reviews.** What features would a state, Tribe, or other federal review have to include to "serve a similar function" as NEPA compliance? Should agencies be required to document how they make that determination and the rationale they based their decision on?
- **Reach of a lead agency's threshold determination.** Would a lead agency's decision that no environmental document is required bind other agencies with separate authorizations, responsibilities, or information about a proposed action's effects?
- **Transparency and oversight.** What information, if any, would agencies be required to make public when they determine that an action is not a major federal action or that no environmental document is required?

Author Information

Heather McPherron
Analyst in Environmental Policy

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