



Bipartisan Policy Center

How Does the Fiscal Responsibility Act Reform Permitting and Environmental Review?

As part of a bipartisan deal to raise the debt ceiling, the [Fiscal Responsibility Act](#) includes several reforms to the federal permitting and environmental review process recommended by BPC's [Smarter, Cleaner, Faster Infrastructure Task Force](#). This blog provides an overview of the four sections of the bill related to permitting, noting which of these provisions align with the task force's [recommendations](#) released in 2021.

SECTION 321: BUILDER ACT

[Clarifies the Scope of NEPA:](#)

The bill amends the National Environmental Policy Act (NEPA) requirements for detailed statements on federal actions affecting the environment, narrowing agency considerations to address environmental effects that are “reasonably foreseeable.” The bill also adds language narrowing the review of alternatives to the proposed action to those that are “technically and economically feasible and fit the purpose and need of the project,” clarifying that these should include “a reasonable range of alternatives to the proposed action, including an analysis of any negative environmental impacts of not implementing the proposed agency action.” The bill also adds language requiring the use of scientific integrity and reliable data to implement NEPA. See the line edits to NEPA Section 102 at the bottom of this document.

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New NEPA Provisions:

In addition to the above language modifying existing NEPA statute, the bill adds six new sections to NEPA.

Procedure for determination of level of review:

- Outlines circumstances where agencies are not required to prepare an environmental document, including: if the proposed agency action is not a “final agency action”; the action is covered by a categorical exclusion; the preparation of such a document would clearly violate another law; or if the agency cannot take environmental factors into consideration because the action is nondiscretionary.
- Clarifies that an agency shall issue an environmental impact statement (EIS) for actions that have a “reasonably foreseeable significant effect on the quality of the human environment,” and shall prepare a “concise” environmental assessment (EA) for actions that do not have such reasonably foreseeable significant effects or the effects are unknown, unless the action is covered by a categorical exclusion.
- Agencies are not required to undertake new scientific or technical research for environmental reviews unless such research is essential for a reasoned analysis.

Timely and unified federal reviews:

- Codifies principles of the [One Federal Decision](#) initiative, requiring multi-agency reviews to have one lead agency that must supervise all cooperating agencies’ preparation of environmental documents, develop a schedule for review, and use a single environmental document for evaluation. The lead agency may also appoint a state or local agency as a joint lead agency.
★ Aligns with BPC recommendations
- Sets page limits for environmental documents: a maximum of 150 pages for EISs, with an exception for extraordinary complex statements that allows up to 300 pages, and a maximum of 75 pages for EAs. (Though not a task force recommendation, this proposal was included in a [BPC letter](#) with recommendations to CEQ).
- Lead agencies shall establish procedures to allow project sponsors to prepare EAs or EISs with the agency doing an independent review and taking responsibility for the content.
★ Aligns with BPC recommendations
- Sets a two-year time limit for EISs and a one-year time limit for EAs. Agencies that determine they will not meet the deadline may extend the deadline in consultation with applicants.
★ Aligns with BPC recommendations
- If agencies miss review deadlines, project sponsors have a new right of

action in the courts. Courts that find an agency has failed to meet a deadline will set new deadlines that are as soon as is practical and no more than 90 days from the court decision. The head of lead agencies shall submit an annual report to Congress that identifies EAs and EISs that missed deadlines along with explanations for failures to meet them.

Programmatic environmental documents:

- Agencies may rely on programmatic environmental reviews for subsequent environmental documents within five years and without additional review of those documents unless there are substantial new circumstances or information. After five years, programmatic documents may be used so long as the agency re-evaluates the analysis.

★ **Aligns with BPC recommendations**

Adoption of categorical exclusions:

- Agencies may adopt another agency’s categorical exclusion. To do so, an agency must consult with the agency that established the categorical exclusion to ensure the proposed adoption is appropriate and report on the use of the categorical exclusion to the public.

★ **Aligns with BPC recommendations**

**For a more thorough description of categorical exclusions, see this previous [report](#) from the Smarter, Cleaner, Faster, Infrastructure Task Force.*

E-NEPA:

- CEQ shall conduct a study on the potential for online and digital technologies to address delays in reviews and improve public accessibility and transparency. Specifically, CEQ shall include in its study a permitting portal that would allow applicants to submit required documents for their projects, upload documents and collaborate with applicable agencies to edit documents in real-time, and track the progress of individual applications. The study will also include a cloud-based, digital tool for more complex reviews to enhance interagency coordination, centralizing documents and streamlining communications. The bill authorizes \$500,000 to carry out this study.

★ **Aligns with BPC recommendations**

Defining “Major Federal Action”

Among other definitions, this section clarifies what actions do not qualify as a “major federal action,” and therefore do not trigger inclusion in the NEPA process. “Major federal actions” are determined by an agency to be “subject to substantial Federal control and responsibility,” and do not include:

- Non-federal actions with no or minimal federal funding or where a federal

agency cannot control the outcome of the project

- Funding assistance solely in the form of general revenue sharing funds without federal agency compliance or enforcement responsibility
- Loans or financial assistance where a federal agency does not exercise sufficient control of the use of the financial assistance or effect of the action
- Business loan guarantees provided by the Small Business Administration [pursuant to section 7(a) or (b) of the Small Business Act, or title V of the Small Business Investment Act of 1958]
- Judicial or administrative civil or criminal enforcement actions
- Agency activities or decisions with effects located entirely outside of the jurisdiction of the U.S.
- Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority

SECTION 322: INTERREGIONAL TRANSFER CAPABILITY DETERMINA- TION STUDY

The bill would authorize [North American Electric Reliability Corporation](#) (NERC) to carry out a study, in consultation with regional operators, to examine the total current transfer capabilities between each pair of neighboring transmission planning regions. The study will include recommendations to strengthen reliability and meet and maintain total transfer capability. NERC will deliver the study to FERC within 18 months of passage of this legislation. FERC will then publish the study, seek public comments, and submit a report on its conclusions to Congress not later than 12 months after the public comment period ends.

SECTION 323: PERMITTING STREAMLINING FOR ENERGY STORAGE

The bill adds language to include energy storage in the list of project categories eligible for streamlining under the [FAST Act](#).

★ **Aligns with BPC recommendations**

SECTION 324: EXPEDITING COMPLETION OF THE MOUNTAIN VALLEY PIPELINE

The bill would expedite the Mountain Valley Pipeline, an interstate natural gas pipeline running from northwestern West Virginia to southern Virginia, which would be regulated by FERC. Specifically, the bill approves all existing permits and approvals that have been issued for the construction and operation of the pipeline, and directs the Secretary of the Army to issue remaining permits to complete construction and to operate the pipeline no later than 21 days after the bill is enacted. No court shall have jurisdiction to review actions taken by agencies that authorize permits and other approvals required by this bill for the Mountain Valley Pipeline, and the U.S. Court of Appeals for the District of Columbia Circuit will have exclusive jurisdiction over the validity of this section of the bill.

CONCLUSION

Overall, these permitting changes are a positive step forward, but they are not enough on their own to achieve the efficient permitting system that will be required to lower costs, improve energy security and reliability, and achieve net-zero emissions by 2050. Congress will need to return to negotiate additional permitting reforms including, but not limited to, those related to the build out of transmission and pipeline infrastructure and judicial review. Both Democrats and Republicans have incentive to pursue a bigger, more comprehensive permitting bill even with the bipartisan provisions included in the Fiscal Responsibility Act of 2023.

LINE EDITS TO NEPA

42 U.S. Code § 4332 - Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will ~~insure~~ **ensure** the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will ~~insure~~ **ensure** that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) consistent with the provisions of this Act and except where compliance would be inconsistent with other statutory requirements 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—

- (i)** the reasonably foreseeable environmental impact effects of the proposed agency action,
- (ii)** any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii)** a reasonable range of alternatives to the proposed 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 action should it be implemented.

Prior to making any detailed statement, ~~the responsible Federal official~~ the head of the lead agency shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by [section 552 of title 5](#), and shall accompany the proposal through the existing agency review processes;

(D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document;

(E) make use of reliable data and resources carrying out the Act

(F) Consistent with the provisions of this Act, study, develop, and describe technically and economically feasible alternatives

~~(D)~~ **(G)** Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i)** the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii)** the responsible Federal official furnishes guidance and participates in

such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.^[1]

(EH) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(FI) **consistent with the provisions of this Act**, recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(GJ) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(HK) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(IL) assist the Council on Environmental Quality established by subchapter II of this chapter.

([Pub. L. 91-190, title I, § 102](#), Jan. 1, 1970, [83 Stat. 853](#); [Pub. L. 94-83](#), Aug. 9, 1975, [89 Stat. 424](#).)

Endnote

- i As defined in Chapter 5 Title 5 of the U.S. Code



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