GUIDE TO THE ISSUES

HOUSE REPUBLICAN POLICY COMMITTEE
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CURTAIL REGULATORY DELAYS FOR INFRASTRUCTURE PROJECTS

Inefficiencies in the federal permitting process often delay U.S. infrastructure projects for decades and add billions of dollars to project development costs.

Congress must streamline permitting and provide reliable timelines and a predictable process for federal regulatory decisions.

Quick Take

Delays for federal regulatory compliance may last for decades and cost billions of dollars.

Streamlining the regulatory review process to avoid these delays saves money without compromising the quality of necessary project oversight.

BACKGROUND

America's infrastructure is crumbling and in need of repair. In 2017, the American Society of Civil Engineers scored the nation's infrastructure with a "D plus" grade. They further estimated that failure to act would cause families to lose upwards of $3,400 dollars each year at a cost of nearly $4 trillion to the GDP and nearly 2.5 million jobs by 2025.[1]

Failure to address America's aging infrastructure on the federal level imposes costs on communities and families locally. Counties invest more than $100 billion annually in roads, bridges, transit, water systems and other public infrastructure, according to the National Association of Counties.[2] America's counties also build and maintain 45 percent of public roads and 40 percent of bridges. They serve one-third of transit systems and airports across the country and spend $23.3 billion on correctional facilities and another $18.6 billion on sewage and waste management.[3]

Burdensome federal mandates impede progress in repairing failing infrastructure. The National Environmental Policy Act (NEPA) of 1970 requires federal agencies consider the environmental impacts of proposed projects prior to approving them.[4] NEPA applies to "programs entirely or partly funded, assisted, conducted, regulated, or approved by federal agencies."[5]

All federal agencies are required to follow NEPA. As NEPA does not mandate a lead agency oversee a project, many projects must meet duplicative requirements across multiple agencies to move forward.[6] The growth of the Federal Government over time exacerbates the permitting review process as more agencies and departments inevitably claim "jurisdiction over some aspect of an infrastructure project."[7] As one example of the extensive compliance process, *The NEPA Book: A Step-by-Step Guide on How to Comply With the National Environmental Policy Act* runs 475 pages long.[8]

As the table below shows, there are three major levels of environmental review:[9]

NEPA Level	Description
Categorical Exclusion (CE)	This status is given to those projects that do not significantly impact the environment.
Environmental Assessment (EA)	An EA must be conducted when the environmental significance is unknown. The results of an EA can lead to one of the following: • Finding of No Significant Impact (FONSI). • Environmental Impact Statement.
Environmental Impact Statement (EIS)	An EIS is a more in-depth report that must include consideration of alternatives and public involvement. The EIS consists of four steps: 1. Notice of Intent (NOI). 2. Draft EIS (DEIS). 3. Final EIS (FEIS). 4. Record of Decision (ROD).

Texas Transportation Institute, Texas A&M University System, 2011[10]

Determining that a potential project will yield a "significant" environmental impact is made on a case-by-case basis and generally includes multiple factors, including broad interpretations over the location of the work, the scope of the work, and the societal impact.

A 2014 Government Accountability Office (GAO) report noted that the total financial costs of a NEPA analysis is unknown, since data reporting requirements varied across agencies.[11] According to the National Association of Environmental Professional's (NAEP) annual NEPA report, "27 federal agencies made 144 final EISs available" as well as 175 draft EISs available to the public in 2018.[12]

According to the Council on Environmental Quality (CEQ), the average final impact statement took over 4.5 years and over 669 pages to complete from 2013 to 2017.[13] CEQ found that the average document length for draft EISs was 586 pages.[14] CEQ also noted that EISs vary widely in complexity within a single federal agency.[15]

Studies conducted for the Federal Highway Administration (FHWA) found that the average time to complete a NEPA study increased from 2.2 years in the 1970s to 6.6 years in 2011.[16] As of 2017, there were about 148 energy and transit projects with an estimated cost of $229.4 billion in the NEPA review process.[17] According to the Western Energy Alliance, NEPA review can take over eight years for oil and gas development on federal lands.[18] Moreover, a 2017 Common Good report estimated that a six-year delay on major infrastructure projects cost the nation $3.7 trillion,[19] while ASCE projects that the total cost to modernize infrastructure would reach $1.7 trillion in five years.[20] In 2020, CEQ reported that EISs for federal highway projects averaged over seven years to complete, with many years taking over a decade or more.[21]

Lengthy permitting processes, multi-agency approvals, and tens of thousands of pages of environmental impact assessments can delay an infrastructure project for several decades. While there are many examples across the nation,[22] a select few include:

- Funding for the Northern Beltline project in Birmingham, Alabama, was approved in 1989.[23] The project would create a six-lane beltway around Birmingham. Nearly thirty years later, with only two miles built, Birmingham remains one of the largest cities in the country without a completed beltline. The FHWA recently predicted construction of the remaining 50 miles will take another 35 years, at a cost of over $5 billion.[24]

- Construction to elevate the New Jersey Bayonne Bridge by 65 feet was delayed by five years due to a lengthy regulatory review process that required 47 permits from 19 federal agencies and a 20,000-page environmental review report.[25]

Federal delays in approvals shift costs onto project developers and communities.[26] Project developers often have to comply with duplicative and costly environmental reviews and permits on the same project at every level of government – federal, state, and local – with no guarantee a project will be approved.[27] Project managers "conservatively" estimate that project delays raises direct costs to construction by 5 percent, accounting for inflation.[28]

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution gives Congress the authority to "make all laws which shall be necessary and proper" for the purpose of "general welfare."[29]

POLICY SOLUTIONS

In August 2017, President Trump signed Executive Order 13807, which established a federal policy for major infrastructure projects known as the "One Federal Decision."[30] E.O. 13807 directed federal agencies to develop plans to streamline the review process for major infrastructure projects with a stated goal of two years or less. It also authorizes a sole agency to lead these projects through the federal review process.

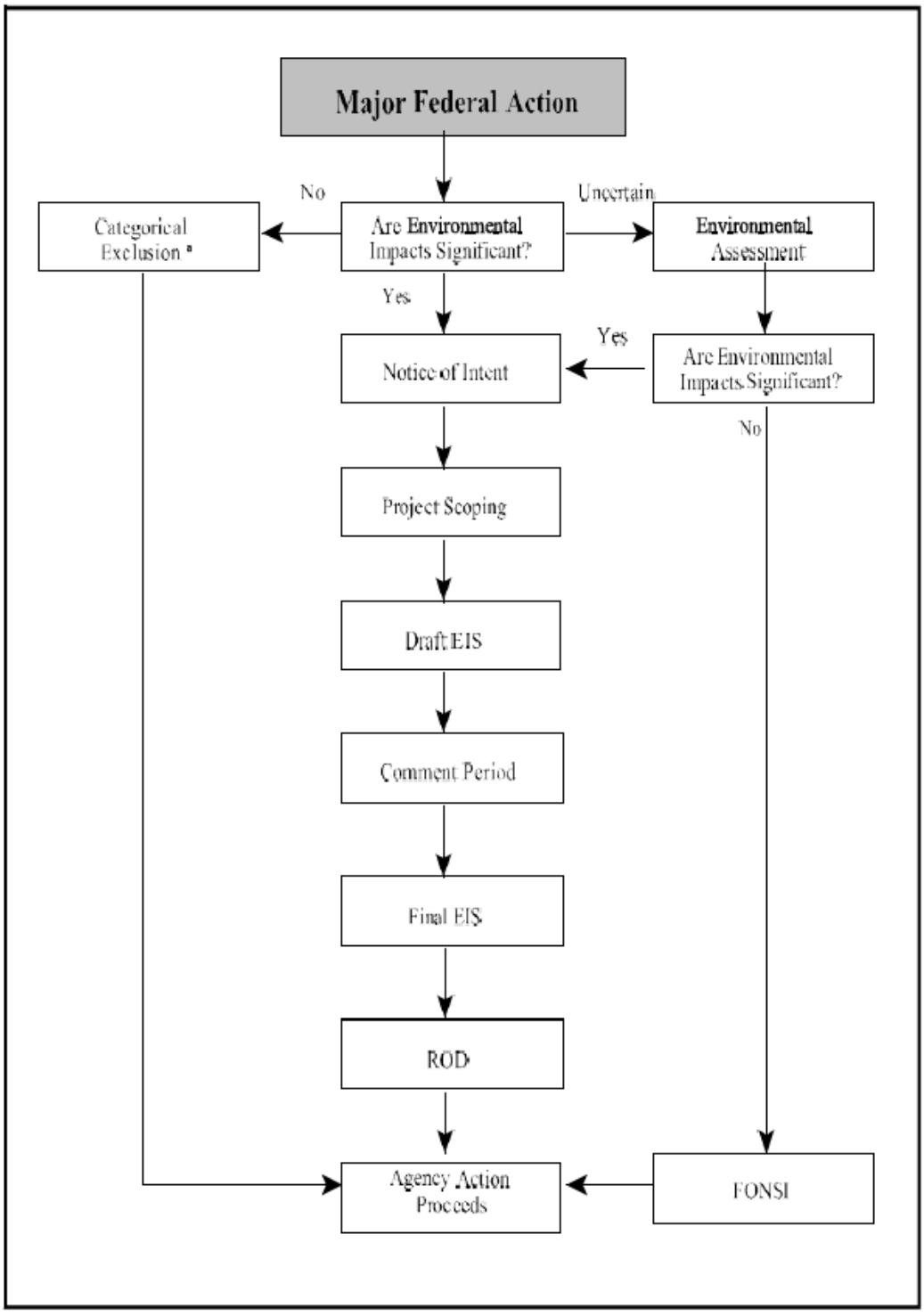
On September 26, 2018, the Office of Management and Budget (OMB) and CEQ issued a memorandum for heads of executive departments and agencies explaining the performance accountability system that will be used to track agencies' compliance with the OFD policy.[31] OMB, in consultation with CEQ and the Federal Permitting Improvement Steering Council (FPISC), created a Federal Agency Portal of the Permitting Dashboard, where agencies will be required to provide information on six assessment areas. OMB will use that information to compile quarterly scorecards for agency performance and progress towards achieving the administration's goals.

On January 9, 2020, the Council on Environmental Quality (CEQ) issued a Notice of Proposed Rulemaking building on the One Federal Decision. The public has 60 days to comment on the proposed rule. The American Wind Energy Association has endorsed the Trump administration's proposed rule, noting the costly delays imposed by the NEPA permitting and environmental review process onto renewable energy projects.[32]

Modernizing the permitting process has bipartisan support. In 2015, President Obama signed the Fixing America's Surface Transportation Act (FAST-41) into law which laid the groundwork to expedite the permitting review process. Additionally, the Obama administration granted over 179,000 categorical exclusions to expedite stimulus projects under the American Recovery and Reinvestment Act.

Congress should review public comments on the proposed rule to codify the common-sense streamlining reforms implemented by the Trump administration's proposed One Federal Decision rule.

APPENDIX I



Congressional Research Service, 2011[33]

[1] American Society of Civil Engineers, *2017 Infrastructure Report Card*, available at: https://www.infrastructurereportcard.org/wp-content/uploads/2019/02/Full-2017-Report-Card-FINAL.pdf
[2] National Association of Counties, Transportation and Infrastructure page, http://www.naco.org/topics/transportation-infrastructure (Last visited Feb. 27, 2017).
[3] *Id.*
[4] 42 U.S.C. §§ 4321 *et seq.*
[5] Examples of infrastructure projects requiring NEPA review include: Mining and timber operations on federal land; Federal permitting for dredge and fill operations in "Waters of the United States;" Oil and gas drilling on federal lands; Construction of certain housing projects; Highway and bridge construction, repair and maintenance; and airport construction and expansion. Linda Luther, Cong. Research Serv., (CRS), *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011).
[6] Daren Bakst, Senior Research Fellow in Agricultural Policy, The Heritage Foundation, Testimony before the U.S. House Comm. On Oversight and Gov't Reform, Jt. Subcomm Hearing on the Subc. On Intergovernmental Affairs and Interior, Energy, and Environment, *Permitting: Finding A Path Forward,* (2018), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Bakst%20Testimony%20-%20IGA%20IEE%20Permitting%20Hearing%20-%2009.06.2018.pdf, and Philip K. Howard, Chair, Common Good, Testimony before the U.S. House Comm. On Oversight and Gov't Reform, Jt. Subcomm Hearing on the Subc. On Intergovernmental Affairs and Interior, Energy, and Environment, *Permitting: Finding A Path Forward,* (2018), https://docs.house.gov/meetings/GO/GO04/20180906/108656/HHRG-115-GO04-Wstate-HowardP-20180906.pdf.
[7] Philip K. Howard, *Two Years, Not Ten Years: Redesigning Infrastructure Approvals*, COMMON GOOD, (2017), https://www.commongood.org/wp-content/uploads/2017/07/2YearsNot10Years.pdf?mod=article_inline
[8]Amazon.com, Ronald E. Bass, *The NEPA Book: A Step-by-Step Guide on How to Comply with the National Environmental Policy Act,* (2001), https://www.amazon.com/Nepa-Book-Step-Step-Environmental/dp/0923956670
[9] *See also* Appendix 1 for a visual of the environmental review process.
[10] Texas Transportation Institute, The Texas A&M University System, Report prepared in cooperation with the Texas Department of Transportation, *Assessing the Costs Attributed to Project Delays,* Sept. 2011, https://ftp.dot.state.tx.us/pub/txdot-info/fed/project-delay-summary.pdf..
[11] U.S. Gov't Accountability Off., GAO-14-369, *National Environmental Policy Act: Little Information Exists on NEPA Analyses* (2014) https://www.gao.gov/assets/670/662543.pdf.
[12] Annual Report, The National Association of Environmental Professionals, NAEP Annual NEPA Report – 2018, https://naep.memberclicks.net/assets/documents/2019/NEPA_Annual_Report_2018.pdf.
[13] Executive Office of the President, Council on Environmental Quality (heretofore CEQ), *Length of Environmental Impact Statements (2013-2017),* July 22, 2019, *available at* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf?mod=article_inline.
[14] One-quarter of draft EISs was 288 pages or shorter, and one-quarter reached 630 pages or longer. Executive Office of the President, Council on Environmental Quality (heretofore CEQ), *Length of Environmental Impact Statements (2013-2017),* July 22, 2019, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf?mod=article_inline.
[15] Executive Office of the President, Council on Environmental Quality (heretofore CEQ), *Length of Environmental Impact Statements (2013-2017),* July 22, 2019, *available at* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf?mod=article_inline.
[16] Chris Edwards, "Removing Barriers to Infrastructure Investment", CATO Institute: CATO at Liberty (Jan. 9, 2017) https://www.cato.org/blog/removing-barriers-infrastructure-investment
[17] Curtis Arndt, "Regulatory Burdens And The Supply of Infrastructure Projects", American Action Forum: Research (Feb. 23, 2017) https://www.americanactionforum.org/research/infrastructure-regulatory-burdens/.
[18] Western Energy Alliance, *National Environmental Policy Act,* https://www.westernenergyalliance.org/national-environmental-policy-act-nepa.
[19] Howard, *supra* at 7.
[20] 2013 Report Card for America's Infrastructure, American Society of Civil Engineers, March 2013, Executive Summary, http://www.infrastructurereportcard.org/a/#p/overview/executive-summary.
[21] CEQ, *Fact Sheet: CEQ's Proposal to Modernize its NEPA Implementing Regulations,* Jan. 2020, https://www.whitehouse.gov/wp-content/uploads/2020/01/20200109FINAL-FACT-SHEET-v3-1.pdf.
[22] WhiteHouse.gov, *Remarks by President Trump on Proposed National Environmental Policy Act Regulations,* Jan. 9, 2020, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-proposed-national-environmental-policy-act-regulations/, and CEQ, *What They Are Saying: Support for CEQ's Proposal to Modernize its NEPA Regulations,* January 2020, https://www.whitehouse.gov/wp-content/uploads/2020/01/20200116-FINAL-NPRM-WTAS-1.pdf.
[23] The Appalachian Highway Development System (AHDS) Act of 1964 authorized funding for the Northern Beltline project in Alabama. The Environmental Impact Statement for the Northern Beltline was originally approved in 1997. However, the DOT failed to advance the project within the appropriate window of time. The EIS reevaluation took three years to receive approval, creating significant delays and duplicating previous efforts. The state of Alabama was required to fly in a Chief from a Native

American tribe in Oklahoma to reevaluate potential impact to tribal lands, despite having already satisfied this requirement in the original evaluation.

[24]John Archibald, AL.com, "The 7th Biggest Boondoggle in the U.S. is Alabama's," Nov. 25, 2015, https://www.al.com/opinion/2015/11/the_7th_biggest_boondoggle_in.html, and Dilip Vishwanat, Birmingham Business Journal, "Funding Secured to Resume Northern Beltline Construction," (2019), https://www.bizjournals.com/birmingham/news/2019/12/20/funding-secured-to-resume-northern-beltline.html.

[25] Howard, *supra* at 7.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] U.S. CONST. art. 1, § 8.

[30] Executive Order 13707, *Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure,* Aug. 15, 2017, at https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/.

[31] Memorandum for Heads of Executive Departments and Agencies, Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System, M-18-25, From Mick Mulvaney, Director, Off. of Mgm't and Budget (Sept. 26, 2018), *available at* https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-25.pdf.

[32] Kelsey Brugger, E&E News, "NEPA Rewrite Reveals Tensions Between Greens, Renewables," Jan. 13, 2020, *available at* https://www.eenews.net/stories/1062071569.

[33] *Supra* at 5.