

I've blogged quite a bit about the challenges of interpreting the NEPA amendments, which snuck through as part of last year's debt ceiling bill. I haven't said much about their impact. Given the amount of energy infrastructure we need to build in the near future, a streamlined permitting process would be great. Alas, I don't think the NEPA amendments will do much, if anything, to help.

The first reason is that NEPA may not be a major reason why the process gets delayed. [some careful empirical research](#) suggests the contrary. It's true that some environmental impact statements take years to produce. But there aren't very many environmental impact statements, maybe 90 a year as compared with tens of thousands of environmental assessments, which are a much lighter lift.

Moreover, even when impact statements take a long time, it's not clear that environmental impact statements cause the delays, or whether they're just staying on pace with other parts of the permitting process. It wouldn't make sense to rush the impact statement and wait for other parts of the process to catch up. For one thing, it might be necessary to do supplements as new evidence arrives.

The second reason is that many — probably most — impact statements are already subject to earlier NEPA laws that streamlined the process for many types of projects, including many energy and transportation projects. Some of those laws are stricter than the NEPA amendments. Projects that aren't covered by those earlier laws are covered by White House regulations that include many of the same ideas. Thus, the procedures required by the new statute aren't really a change for most projects.

The third reason is that some of the provisions are symbolic. There are tight page limits, but they don't include appendices. And no agency is going to leave out information if there's any risk that doing so would be the basis for a judicial challenge. It just isn't realistic to expect the environmental evaluation for a big pipeline that's hundreds of miles long to fit in a short paperback. There are also tight time limits, but those are likely to be equally useless. Agencies seem to regard statutory time limits the way Romans regard speed limits, and judicial enforcement can take years.

To the extent that the NEPA amendments do speed up the process, it will probably do so by freeing up some resources for more significant projects. Lack of resources is probably the biggest cause of delay in the NEPA process. The amendments contain provisions that, while poorly written, seem designed to cut down on the number of environmental assessments for small projects. Also, agencies are allowed to delegate the initial drafting to project applicants, which again could free up some resources (at the risk of major conflicts of

interest, admittedly). The amendments also allow freer use of programmatic impact statements, which allow consolidated consideration of issues that are common to many projects. I wouldn't expect these various changes to have major impacts on the speed of the process, but they might help at the margin.

In exchange for what we might have gotten in modest process improvements, we also got a mass of interpretation problems due to the poor drafting of the amendments. It's not a great bargain. On the other hand, Republican demands to raise the debt ceiling included repealing the Inflation Reduction Act and gutting agency power to issue major regulation. Compared to these dismal alternatives, the NEPA amendments start to look a lot better.