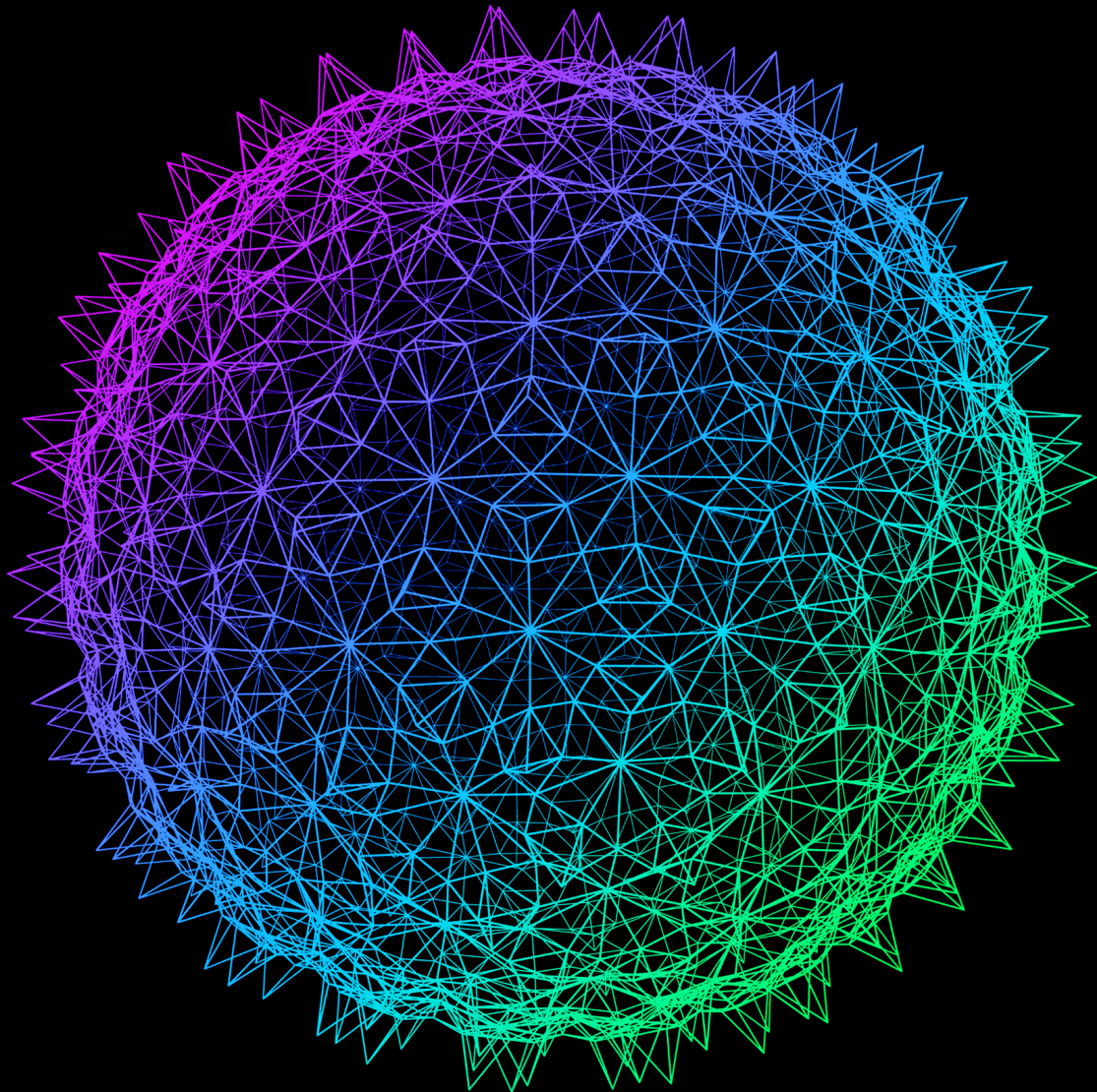


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Going for federal incentives?
Be prepared for more stringent
environmental reviews



The COVID-19 pandemic marked a pivotal moment in the evolution of industrialization and globalization. The world's leading economies fought back with more than a vaccine; many enacted new economic policies in response to supply chain disruptions and national security implications that surfaced during the pandemic.¹

Here in the United States, three core policies emerged in response to these issues, each with a focus on providing direct and indirect benefits for manufacturing-related investors: the Infrastructure Investment and Jobs Act, the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act, and the Inflation Reduction Act (IRA). These monumental incentive packages are spurring a resurgence of domestic manufacturing activity in the United States—a trend the Treasury calls “uniquely American.”²

According to an August 2023 article from *The Financial Times*, approximately \$225 billion in clean technology and semiconductor-related manufacturing investments have been announced in the United States since the passing of the CHIPS and Science Act, as well as the IRA.³ Yet, as expected, and also often the case with incentives in other advanced economies, private enterprises seeking government dollars must first adhere to additional requirements, including environmental approvals.

The ‘magna carta’ of environmental policy

In 1970, President Nixon signed the National Environmental Policy Act (NEPA) into law, establishing America's first significant policy on environmental protection—a response to the grassroots environmental movement spurred by activist Rachel Carson's 1962 book *Silent Spring*,⁴ which is lauded as one of the most influential environmental writings of the past century.⁵ NEPA requires federal agencies to assess the potential environmental effects of major federal actions, typically infrastructure investments (e.g., airports, toxic waste disposal sites, and interstates), prior to execution.⁶ Private enterprises must also engage in a formalized NEPA review when federal incentive awards are at play. Understanding the policy's requirements is critical, especially for prospective chip and clean tech investors, to mitigate potential impacts to construction timelines and production start.

NEPA establishes three levels of potential review to be conducted by the lead agency awarding federal dollars to private enterprises:⁷

- 1. Categorical Exclusion (CATEX):** A CATEX is issued by lead agencies to projects determined not to pose a significant harm to the environment.⁸
- 2. Environmental Assessment (EA):** If a project does not qualify for a CATEX, an EA must be prepared by the applicant within one-year of project kickoff describing the proposed activity, anticipated environmental effects, and potential alternatives. The EA determines if the proposed activity will cause a significant environmental effect; if no significant effect is likely to occur, the lead agency issues a Finding of No Significant Impact, or FONSI.⁹ Otherwise, the applicant must complete an Environmental Impact Statement. Lead agencies must review EAs within one year of submission.
- 3. Environmental Impact Statement (EIS):** An EIS must be prepared by the applicant when a project is deemed to pose significant adverse effects to the environment, prompting a more extensive public comment period and further analysis of proposed mitigation measures and monitoring activities.¹⁰ Lead agencies are now subject to a two-year time limit for EIS reviews per recent legislative changes introduced in the Fiscal Responsibility Act (FRA).¹¹

Companies should understand the potential environmental impacts, required mitigation activities, and other potential project delays for each site under consideration. While newly imposed NEPA review deadlines stipulated in the FRA provide a greater degree of confidence to project proponents on timeline implications, the process can still be lengthy and costly, depending upon the studies and consultations required.¹² However, permitting reforms like the FRA signify the federal government's acknowledgment that uncapped timelines pose unreasonable uncertainty to project schedules and threaten on-time deployments.

CHIPS and Science Act spotlight

As part of the formal CHIPS application process, applicants must submit a completed [Environmental Questionnaire \(EQ\)](#) for review by the National Institute of Standards and Technology (NIST) CHIPS Program Office. The questionnaire includes 26 sections, ranging from wetlands disturbance to waste management protocols. Responses are evaluated by NIST to determine the “appropriate level of environmental review required under [NEPA].”¹³

Congress continues to entertain more extensive permitting reform measures for the semiconductor industry. In December 2023, the Senate passed a bipartisan bill exempting federally funded semiconductor project proponents from NEPA reviews—so long as construction starts by the end of 2024 and federal financial assistance (in the form of a loan or loan guarantee) does not exceed more than 10% of total project expenditures.¹⁴ The House is expected to support such permitting reform given the broad interest in advancing these capital-intensive projects, though the timeline of a vote remains uncertain.

The road ahead

Corporations understand that permitting and regulatory compliance are critical elements of project implementation; local and state-level permits—and even federal permits, when required—are automatically baked into project timelines. However, the more stringent environmental reviews mandated by NEPA place additional burden and uncertainty on large manufacturing investments and can extend the construction timeline by years for these projects.

While Washington recognizes the need for more efficient permitting procedures, companies progressing with these multibillion-dollar investments should still plan for potentially lengthy environmental approvals, public input delays, and litigation risks.

Federal incentives, such as those in the CHIPS Act and IRA, promote industry growth in America but require NEPA compliance.¹⁵ Prior to pursuing capital-intensive projects and applying for federal incentives, companies should understand the environmental impacts of their planned investments and the extra layers of approval required by NEPA to avoid potential project delays. Engaging an experienced advisor early on in a project is critical to navigate the complex—and often overwhelming—environmental review process and to help assess a site’s viability in meeting operational objectives and timeline requirements.

If navigating the NEPA process and confirming an on-time project deployment are top of mind for your organization, learn more about how Deloitte can help.



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