

(D) Guidance

The Executive Director, in consultation with the Council, may recommend to the Director of the Office of Management and Budget or to the Council on Environmental Quality, as appropriate, that guidance be issued as necessary for agencies—

- (i) to carry out responsibilities under this subchapter; and
- (ii) to effectuate the adoption by agencies of the best practices and recommendations of the Council described in paragraph (2).

(2) Council**(A) Recommendations****(i) In general**

The Council shall make recommendations to the Executive Director with respect to the designations under paragraph (1)(B) and the performance schedules under paragraph (1)(C).

(ii) Update

The Council may update the recommendations described in clause (i).

(B) Best practices

Not later than 1 year after December 4, 2015, and not less frequently than annually thereafter, the Council shall issue recommendations on the best practices for—

- (i) enhancing early stakeholder engagement, including fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;
- (ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;
- (iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;
- (iv) increasing transparency;
- (v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;
- (vi) developing and making available to applicants appropriate geographic information systems and other tools;
- (vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials; and
- (viii) addressing other aspects of infrastructure permitting, as determined by the Council.

(C) Meetings

The Council shall meet not less frequently than annually with groups or individuals representing State, tribal, and local governments that are engaged in the infrastructure permitting process.

(3) Agency CERPOs

An agency CERPO shall—

- (A) advise the respective agency councilmember on matters related to environmental reviews and authorizations;

(B) provide technical support, when requested to facilitate efficient and timely processes for environmental reviews and authorizations for covered projects under the jurisdictional responsibility of the agency, including supporting timely identification and resolution of potential disputes within the agency or between the agency and other Federal agencies;

(C) analyze agency environmental review and authorization processes, policies, and authorities and make recommendations to the respective agency councilmember for ways to standardize, simplify, and improve the efficiency of the processes, policies, and authorities, including by implementing guidance issued under paragraph (1)(D) and other best practices, including the use of information technology and geographic information system tools within the agency and across agencies, to the extent consistent with existing law; and

(D) review and develop training programs for agency staff that support and conduct environmental reviews or authorizations.

(d) Administrative support

The Director of the Office of Management and Budget shall designate a Federal agency, other than an agency that carries out or provides support only for projects that are not covered projects, to provide administrative support for the Executive Director, and the designated agency shall, as reasonably necessary, provide support and staff to enable the Executive Director to fulfill the duties of the Executive Director under this subchapter.

(Pub. L. 114-94, div. D, title XLI, § 41002, Dec. 4, 2015, 129 Stat. 1743.)

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370m-2. Permitting process improvement**(a) Project initiation and designation of participating agencies****(1) Notice****(A) In general**

A project sponsor of a covered project shall submit to the Executive Director and the facilitating agency notice of the initiation of a proposed covered project.

(B) Default designation

If, at the time of submission of the notice under subparagraph (A), the Executive Director has not designated a facilitating agency under section 4370m-1(c)(1)(B) of this title for the categories of projects noticed, the agency that receives the notice under subparagraph (A) shall be designated as the facilitating agency.

(C) Contents

Each notice described in subparagraph (A) shall include—

- (i) a statement of the purposes and objectives of the proposed project;

(ii) a concise description, including the general location of the proposed project and a summary of geospatial information, if available, illustrating the project area and the locations, if any, of environmental, cultural, and historic resources;

(iii) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project;

(iv) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and

(v) an assessment that the proposed project meets the definition of a covered project under section 4370m of this title and a statement of reasons supporting the assessment.

(2) Invitation

(A) In general

Not later than 45 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating agency or lead agency, as applicable, shall—

(i) identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project; and

(ii) invite all Federal agencies identified under clause (i) to become a participating agency or a cooperating agency, as appropriate, in the environmental review and authorization management process described in section 4370m-4 of this title.

(B) Deadlines

Each invitation made under subparagraph (A) shall include a deadline for a response to be submitted to the facilitating or lead agency, as applicable.

(3) Participating and cooperating agencies

(A) In general

An agency invited under paragraph (2) shall be designated as a participating or cooperating agency for a covered project, unless the agency informs the facilitating or lead agency, as applicable, in writing before the deadline under paragraph (2)(B) that the agency—

(i) has no jurisdiction or authority with respect to the proposed project; or

(ii) does not intend to exercise authority related to, or submit comments on, the proposed project.

(B) Changed circumstances

On request and a showing of changed circumstances, the Executive Director may designate an agency that has opted out under subparagraph (A)(ii) to be a participating or cooperating agency, as appropriate.

(4) Effect of designation

The designation described in paragraph (3) shall not—

(A) give the participating agency authority or jurisdiction over the covered project; or

(B) expand any jurisdiction or authority a cooperating agency may have over the proposed project.

(5) Lead agency designation

(A) In general

On establishment of the lead agency, the lead agency shall assume the responsibilities of the facilitating agency under this subchapter.

(B) Redesignation of facilitating agency

If the lead agency assumes the responsibilities of the facilitating agency under subparagraph (A), the facilitating agency may be designated as a cooperative or participating agency.

(6) Change of facilitating or lead agency

(A) In general

On the request of a participating agency or project sponsor, the Executive Director may designate a different agency as the facilitating or lead agency, as applicable, for a covered project, if the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should be placed in a different category under section 4370m-1(c)(1)(B) of this title.

(B) Resolution of dispute

The Chairman of the Council on Environmental Quality shall resolve any dispute over designation of a facilitating or lead agency for a particular covered project.

(b) Permitting dashboard

(1) Requirement to maintain

(A) In general

The Executive Director, in coordination with the Administrator of General Services, shall maintain an online database to be known as the “Permitting Dashboard” to track the status of Federal environmental reviews and authorizations for any covered project in the inventory described in section 4370m-1(c)(1)(A) of this title.

(B) Specific and searchable entry

The Dashboard shall include a specific and searchable entry for each covered project.

(2) Additions

(A) In general

(i) Existing projects

Not later than 14 days after the date on which the Executive Director adds a project to the inventory under section 4370m-1(c)(1)(A) of this title, the Executive Director shall create a specific entry on the Dashboard for the covered project.

(ii) New projects

Not later than 14 days after the date on which the Executive Director receives a notice under subsection (a)(1), the Executive Director shall create a specific entry on the Dashboard for the covered project, unless the Executive Director, facilitating agency, or lead agency, as applicable, de-

termines that the project is not a covered project.

(B) Explanation

If the facilitating agency or lead agency, as applicable, determines that the project is not a covered project, the project sponsor may submit a further explanation as to why the project is a covered project not later than 14 days after the date of the determination under subparagraph (A).

(C) Final determination

Not later than 14 days after receiving an explanation described in subparagraph (B), the Executive Director shall—

- (i) make a final and conclusive determination as to whether the project is a covered project; and
- (ii) if the Executive Director determines that the project is a covered project, create a specific entry on the Dashboard for the covered project.

(3) Postings by agencies

(A) In general

For each covered project added to the Dashboard under paragraph (2), the facilitating or lead agency, as applicable, and each cooperating and participating agency shall post to the Dashboard—

- (i) a hyperlink that directs to a website that contains, to the extent consistent with applicable law—
 - (I) the notification submitted under subsection (a)(1);
 - (II)(aa) where practicable, the application and supporting documents, if applicable, that have been submitted by a project sponsor for any required environmental review or authorization; or
 - (bb) a notice explaining how the public may obtain access to such documents;
 - (III) a description of any Federal agency action taken or decision made that materially affects the status of a covered project;
 - (IV) any significant document that supports the action or decision described in subclause (III); and
 - (V) a description of the status of any litigation to which the agency is a party that is directly related to the project, including, if practicable, any judicial document made available on an electronic docket maintained by a Federal, State, or local court; and
- (ii) any document described in clause (i) that is not available by hyperlink on another website.

(B) Deadline

The information described in subparagraph (A) shall be posted to the website made available by hyperlink on the Dashboard not later than 5 business days after the date on which the Federal agency receives the information.

(4) Postings by the Executive Director

The Executive Director shall publish to the Dashboard—

(A) the permitting timetable established under subparagraph (A) or (C) of subsection (c)(2);

(B) the status of the compliance of each agency with the permitting timetable;

(C) any modifications of the permitting timetable;

(D) an explanation of each modification described in subparagraph (C); and

(E) any memorandum of understanding established under subsection (c)(3)(B).

(c) Coordination and timetables

(1) Coordinated project plan

(A) In general

Not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating or lead agency, as applicable, in consultation with each coordinating and participating agency, shall establish a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project.

(B) Required information

The Coordinated Project Plan shall include the following information and be updated by the facilitating or lead agency, as applicable, at least once per quarter:

- (i) A list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project.
- (ii) A permitting timetable, as described in paragraph (2), setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable, State permits, reviews and approvals must be made.
- (iii) A discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known.
- (iv) Plans and a schedule for public and tribal outreach and coordination, to the extent required by applicable law.

(C) Memorandum of understanding

The coordinated project plan described in subparagraph (A) may be incorporated into a memorandum of understanding.

(2) Permitting timetable

(A) Establishment

As part of the coordination project plan under paragraph (1), the facilitating or lead agency, as applicable, in consultation with each cooperating and participating agency, the project sponsor, and any State in which the project is located, and, subject to subparagraph (C), with the concurrence of each cooperating agency, shall establish a permitting timetable that includes intermediate and final completion dates for action by each participating agency on any Federal environmental review or authorization required for the project.

(B) Factors for consideration

In establishing the permitting timetable under subparagraph (A), the facilitating or

lead agency shall follow the performance schedules established under section 4370m-1(c)(1)(C) of this title, but may vary the timetable based on relevant factors, including—

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

(C) Dispute resolution

(i) In general

The Executive Director, in consultation with appropriate agency CERPOs and the project sponsor, shall, as necessary, mediate any disputes regarding the permitting timetable referred to under subparagraph (A).

(ii) Disputes

If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, shall facilitate a resolution of the dispute and direct the agencies party to the dispute to resolve the dispute by the end of the 60-day period beginning on the date of submission of the dispute to the Executive Director.

(iii) Final resolution

Any action taken by the Director of the Office of Management and Budget in the resolution of a dispute under clause (ii) shall—

- (I) be final and conclusive; and
- (II) not be subject to judicial review.

(D) Modification after approval

(i) In general

The facilitating or lead agency, as applicable, may modify a permitting timetable established under subparagraph (A) only if—

- (I) the facilitating or lead agency, as applicable, and the affected cooperating agencies, after consultation with the participating agencies and the project sponsor, agree to a different completion date;
- (II) the facilitating agency or lead agency, as applicable, or the affected cooperating agency provides a written justification for the modification; and
- (III) in the case of a modification that would necessitate an extension of a final completion date under a permitting

timetable established under subparagraph (A) to a date more than 30 days after the final completion date originally established under subparagraph (A), the facilitating or lead agency submits a request to modify the permitting timetable to the Executive Director, who shall consult with the project sponsor and make a determination on the record, based on consideration of the relevant factors described under subparagraph (B), whether to grant the facilitating or lead agency, as applicable, authority to make such modification.

(ii) Completion date

A completion date in the permitting timetable may not be modified within 30 days of the completion date.

(iii) Limitation on length of modifications

(I) In general

Except as provided in subclause (II), the total length of all modifications to a permitting timetable authorized or made under this subparagraph, other than for reasons outside the control of Federal, State, local, or tribal governments, may not extend the permitting timetable for a period of time greater than half of the amount of time from the establishment of the permitting timetable under subparagraph (A) to the last final completion date originally established under subparagraph (A).

(II) Additional extensions

The Director of the Office of Management and Budget, after consultation with the project sponsor, may permit the Executive Director to authorize additional extensions of a permitting timetable beyond the limit prescribed by subclause (I). In such a case, the Director of the Office of Management and Budget shall transmit, not later than 5 days after making a determination to permit an authorization of extension under this subclause, a report to Congress explaining why such modification is required. Such report shall explain to Congress with specificity why the original permitting timetable and the modifications authorized by the Executive Director failed to be adequate. The lead or facilitating agency, as applicable, shall transmit to Congress, the Director of the Office of Management and Budget, and the Executive Director a supplemental report on progress toward the final completion date each year thereafter, until the permit review is completed or the project sponsor withdraws its notice or application or other request to which this subchapter applies under section 4370m-9 of this title.

(iv) Limitation on judicial review

The following shall not be subject to judicial review:

- (I) A determination by the Executive Director under clause (i)(III).

(II) A determination under clause (iii)(II) by the Director of the Office of Management and Budget to permit the Executive Director to authorize extensions of a permitting timetable.

(E) Consistency with other time periods

A permitting timetable established under subparagraph (A) shall be consistent with any other relevant time periods established under Federal law and shall not prevent any cooperating or participating agency from discharging any obligation under Federal law in connection with the project.

(F) Conforming to permitting timetables

(i) In general

Each Federal agency shall conform to the completion dates set forth in the permitting timetable established under subparagraph (A), or with any completion date modified under subparagraph (D).

(ii) Failure to conform

If a Federal agency fails to conform with a completion date for agency action on a covered project or is at significant risk of failing to conform with such a completion date, the agency shall—

(I) promptly submit to the Executive Director for publication on the Dashboard an explanation of the specific reasons for failing or significantly risking failing to conform to the completion date and a proposal for an alternative completion date;

(II) in consultation with the facilitating or lead agency, as applicable, establish an alternative completion date; and

(III) each month thereafter until the agency has taken final action on the delayed authorization or review, submit to the Executive Director for posting on the Dashboard a status report describing any agency activity related to the project.

(G) Abandonment of covered project

(i) In general

If the facilitating or lead agency, as applicable, has a reasonable basis to doubt the continuing technical or financial ability of the project sponsor to construct the covered project, the facilitating or lead agency may request the project sponsor provide an updated statement regarding the ability of the project sponsor to complete the project.

(ii) Failure to respond

If the project sponsor fails to respond to a request described in clause (i) by the date that is 30 days after receiving the request, the lead or facilitating agency, as applicable, shall notify the Executive Director, who shall publish an appropriate notice on the Dashboard.

(iii) Publication to Dashboard

On publication of a notice under clause (ii), the completion dates in the permitting timetable shall be tolled and agencies shall be relieved of the obligation to com-

ply with subparagraph (F) until such time as the project sponsor submits to the facilitating or lead agency, as applicable, an updated statement regarding the technical and financial ability of the project sponsor to construct the project.

(3) Cooperating State, local, or tribal governments

(A) State authority

If the Federal environmental review is being implemented within the boundaries of a State, the State, consistent with State law, may choose to participate in the environmental review and authorization process under this subsection and to make subject to the process all State agencies that—

(i) have jurisdiction over the covered project;

(ii) are required to conduct or issue a review, analysis, opinion, or statement for the covered project; or

(iii) are required to make a determination on issuing a permit, license, or other approval or decision for the covered project.

(B) Coordination

To the maximum extent practicable under applicable law, the facilitating or lead agency, as applicable, shall coordinate the Federal environmental review and authorization processes under this subsection with any State, local, or tribal agency responsible for conducting any separate review or authorization of the covered project to ensure timely and efficient completion of environmental reviews and authorizations.

(C) Memorandum of understanding

(i) In general

Any coordination plan between the facilitating or lead agency, as applicable, and any State, local, or tribal agency shall, to the maximum extent practicable, be included in a memorandum of understanding.

(ii) Submission to Executive Director

The facilitating or lead agency, as applicable, shall submit to the Executive Director each memorandum of understanding described in clause (i).

(D) Applicability

The requirements under this subchapter shall only apply to a State or an authorization issued by a State if the State has chosen to participate in the environmental review and authorization process pursuant to this paragraph.

(d) Early consultation

The facilitating or lead agency, as applicable, shall provide an expeditious process for project sponsors to confer with each cooperating and participating agency involved and, not later than 60 days after the date on which the project sponsor submits a request under this subsection, to have each such agency provide to the project sponsor information concerning—

(1) the availability of information and tools, including pre-application toolkits, to facilitate early planning efforts;

(2) key issues of concern to each agency and to the public; and

(3) issues that must be addressed before an environmental review or authorization can be completed.

(e) Cooperating agency

(1) In general

A lead agency may designate a participating agency as a cooperating agency in accordance with part 1501 of title 40, Code of Federal Regulations (or successor regulations).

(2) Effect on other designation

The designation described in paragraph (1) shall not affect any designation under subsection (a)(3).

(3) Limitation on designation

Any agency not designated as a participating agency under subsection (a)(3) shall not be designated as a cooperating agency under paragraph (1).

(f) Reporting status of other projects on Dashboard

(1) In general

On request of the Executive Director, the Secretary and the Secretary of the Army shall use best efforts to provide information for inclusion on the Dashboard on projects subject to section 139 of title 23 and section 2348 of title 33 likely to require—

(A) a total investment of more than \$200,000,000; and

(B) an environmental impact statement under NEPA.

(2) Effect of inclusion on Dashboard

Inclusion on the Dashboard of information regarding projects subject to section 139 of title 23 or section 2348 of title 33 shall not subject those projects to any requirements of this subchapter.

(Pub. L. 114-94, div. D, title XLI, § 41003, Dec. 4, 2015, 129 Stat. 1747.)

REFERENCES IN TEXT

NEPA, referred to in subsec. (f)(1)(B), means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. See section 4370m(16) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370m-3. Interstate compacts

(a) In general

The consent of Congress is given for 3 or more contiguous States to enter into an interstate compact establishing regional infrastructure development agencies to facilitate authorization and review of covered projects, under State law or in the exercise of delegated permitting authority described under section 4370m-5 of this title, that will advance infrastructure develop-

ment, production, and generation within the States that are parties to the compact.

(b) Regional infrastructure

For the purpose of this subchapter, a regional infrastructure development agency referred to in subsection (a) shall have the same authorities and responsibilities of a State agency.

(Pub. L. 114-94, div. D, title XLI, § 41004, Dec. 4, 2015, 129 Stat. 1755.)

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370m-4. Coordination of required reviews

(a) Concurrent reviews

To integrate environmental reviews and authorizations, each agency shall, to the maximum extent practicable—

(1) carry out the obligations of the agency with respect to a covered project under any other applicable law concurrently, and in conjunction with, other environmental reviews and authorizations being conducted by other cooperating or participating agencies, including environmental reviews and authorizations required under NEPA, unless the agency determines that doing so would impair the ability of the agency to carry out the statutory obligations of the agency; and

(2) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(b) Adoption, incorporation by reference, and use of documents

(1)¹ State environmental documents; supplemental documents

(A) Use of existing documents

(i) In general

On the request of a project sponsor, a lead agency shall consider and, as appropriate, adopt or incorporate by reference, the analysis and documentation that has been prepared for a covered project under State laws and procedures as the documentation, or part of the documentation, required to complete an environmental review for the covered project, if the analysis and documentation were, as determined by the lead agency in consultation with the Council on Environmental Quality, prepared under circumstances that allowed for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what would have been available had the documents and analysis been prepared by a Federal agency pursuant to NEPA.

(ii) Guidance by CEQ

The Council on Environmental Quality may issue guidance to carry out this subsection.

¹ So in original. No par. (2) has been enacted.