

(A) identify, as early as practicable, any issues of concern regarding any potential environmental impacts of the covered project, including any issues that could substantially delay or prevent an agency from completing any environmental review or authorization required for the project; and

(B) communicate any issues described in subparagraph (A) to the project sponsor.

**(f) Categories of projects**

The authorities granted under this section may be exercised for an individual covered project or a category of covered projects.

(Pub. L. 114-94, div. D, title XLI, § 41005, Dec. 4, 2015, 129 Stat. 1755.)

REFERENCES IN TEXT

NEPA, referred to in subsecs. (a)(1) and (b)(1)(A)(i), (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-5. Delegated State permitting programs**

**(a) In general**

If a Federal statute permits a Federal agency to delegate to or otherwise authorize a State to issue or otherwise administer a permit program in lieu of the Federal agency, the Federal agency with authority to carry out the statute shall—

(1) on publication by the Council of best practices under section 4370m-1(c)(2)(B) of this title, initiate a national process, with public participation, to determine whether and the extent to which any of the best practices are generally applicable on a delegation- or authorization-wide basis to permitting under the statute; and

(2) not later than 2 years after December 4, 2015, make model recommendations for State modifications of the applicable permit program to reflect the best practices described in section 4370m-1(c)(2)(B) of this title, as appropriate.

**(b) Best practices**

Lead and cooperating agencies may share with State, tribal, and local authorities best practices involved in review of covered projects and invite input from State, tribal, and local authorities regarding best practices.

(Pub. L. 114-94, div. D, title XLI, § 41006, Dec. 4, 2015, 129 Stat. 1758.)

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-6. Litigation, judicial review, and savings provision**

**(a) Limitations on claims**

**(1) In general**

Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of any authorization issued by a Federal agency for a covered project shall be barred unless—

(A) the action is filed not later than 2 years after the date of publication in the Federal Register of the final record of decision or approval or denial of a permit, unless a shorter time is specified in the Federal law under which judicial review is allowed; and

(B) in the case of an action pertaining to an environmental review conducted under NEPA—

(i) the action is filed by a party that submitted a comment during the environmental review; and

(ii) any commenter filed a sufficiently detailed comment so as to put the lead agency on notice of the issue on which the party seeks judicial review, or the lead agency did not provide a reasonable opportunity for such a comment on that issue.

**(2) New information**

**(A) In general**

The head of a lead agency or participating agency shall consider new information received after the close of a comment period if the information satisfies the requirements under regulations implementing NEPA.

**(B) Separate action**

If Federal law requires the preparation of a supplemental environmental impact statement or other supplemental environmental document, the preparation of such document shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the agency action shall be 2 years after the date on which a notice announcing the final agency action is published in the Federal Register, unless a shorter time is specified in the Federal law under which judicial review is allowed.

**(3) Rule of construction**

Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of an authorization.

**(b) Preliminary injunctive relief**

In addition to considering any other applicable equitable factors, in any action seeking a temporary restraining order or preliminary injunction against an agency or a project sponsor in connection with review or authorization of a covered project, the court shall—

(1) consider the potential effects on public health, safety, and the environment, and the potential for significant negative effects on jobs resulting from an order or injunction; and

(2) not presume that the harms described in paragraph (1) are reparable.

**(c) Judicial review**

Except as provided in subsection (a), nothing in this subchapter affects the reviewability of