

SUBCHAPTER IV—FEDERAL PERMITTING
IMPROVEMENT

§ 4370m. Definitions

In this subchapter:

(1) Agency

The term “agency” has the meaning given the term in section 551 of title 5.

(2) Agency CERPO

The term “agency CERPO” means the chief environmental review and permitting officer of an agency, as designated by the head of the agency under section 4370m-1(b)(2)(A)(iii)(I) of this title.

(3) Authorization

The term “authorization” means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with section 4370m-2(c)(3)(A) of this title, a State agency.

(4) Cooperating agency

The term “cooperating agency” means any agency with—

(A) jurisdiction under Federal law; or

(B) special expertise as described in section 1501.6 of title 40, Code of Federal Regulations (as in effect on December 4, 2015).

(5) Council

The term “Council” means the Federal Infrastructure Permitting Improvement Steering Council¹ established under section 4370m-1(a) of this title.

(6) Covered project

(A) In general

The term “covered project” means any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the Council that—

(i)(I) is subject to NEPA;

(II) is likely to require a total investment of more than \$200,000,000; and

(III) does not qualify for abbreviated authorization or environmental review processes under any applicable law; or

(ii) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require—

(I) authorization from or environmental review involving more than 2 Federal agencies; or

(II) the preparation of an environmental impact statement under NEPA.

(B) Exclusion

The term “covered project” does not include—

(i) any project subject to section 139 of title 23; or

(ii) any project subject to section 2348 of title 33.

(7) Dashboard

The term “Dashboard” means the Permitting Dashboard required under section 4370m-2(b) of this title.

(8) Environmental assessment

The term “environmental assessment” means a concise public document for which a Federal agency is responsible under section 1508.9 of title 40, Code of Federal Regulations (or successor regulations).

(9) Environmental document

(A) In general

The term “environmental document” means an environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision.

(B) Inclusions

The term “environmental document” includes—

(i) any document that is a supplement to a document described in subparagraph (A); and

(ii) a document prepared pursuant to a court order.

(10) Environmental impact statement

The term “environmental impact statement” means the detailed written statement required under section 102(2)(C) of NEPA [42 U.S.C. 4332(2)(C)].

(11) Environmental review

The term “environmental review” means the agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under NEPA.

(12) Executive Director

The term “Executive Director” means the Executive Director appointed by the President under section 4370m-1(b)(1)(A) of this title.

(13) Facilitating agency

The term “facilitating agency” means the agency that receives the initial notification from the project sponsor required under section 4370m-2(a) of this title.

(14) Inventory

The term “inventory” means the inventory of covered projects established by the Executive Director under section 4370m-1(c)(1)(A) of this title.

(15) Lead agency

The term “lead agency” means the agency with principal responsibility for an environ-

¹So in original. Probably should be “Federal Permitting Improvement Steering Council”.

mental review of a covered project under NEPA and parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(16) NEPA

The term “NEPA” means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(17) Participating agency

The term “participating agency” means an agency participating in an environmental review or authorization for a covered project in accordance with section 4370m-2 of this title.

(18) Project sponsor

The term “project sponsor” means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project.

(Pub. L. 114-94, div. D, title XLI, § 41001, Dec. 4, 2015, 129 Stat. 1741.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969 or NEPA, referred to in pars. (6)(A), (11), and (15) and defined in (16), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. 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.

SAVINGS CLAUSE

Pub. L. 114-94, div. A, title XI, §11503(b), Dec. 4, 2015, 129 Stat. 1692, provided that: “Except as expressly provided in section 41003(f) [42 U.S.C. 4370m-2(f)] and subsection (o) of section 139 of title 23, United States Code, the requirements and other provisions of title 41 of this Act [probably means title XLI of div. D of Pub. L. 114-94, 42 U.S.C. 4370m et seq.] shall not apply to—

“(1) programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49, United States Code; or

“(2) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).”

PLACEMENT IN UNITED STATES CODE

Pub. L. 114-94, div. D, title XLI, §41014, Dec. 4, 2015, 129 Stat. 1762, provided that: “The Office of the Law Revision Counsel is directed to place sections 41001 through 41013 of this title in chapter 55 of title 42, United States Code, as subchapter IV.”

§ 4370m-1. Federal Permitting Improvement Council

(a) Establishment

There is established the Federal Permitting Improvement Steering Council.

(b) Composition

(1) Chair

The Executive Director shall—

(A) be appointed by the President; and

(B) serve as Chair of the Council.

(2) Council members

(A) In general

(i) Designation by head of agency

Each individual listed in subparagraph (B) shall designate a member of the agency in which the individual serves to serve on the Council.

(ii) Qualifications

A councilmember¹ described in clause (i) shall hold a position in the agency of deputy secretary (or the equivalent) or higher.

(iii) Support

(I) In general

Consistent with guidance provided by the Director of the Office of Management and Budget, each individual listed in subparagraph (B) shall designate 1 or more appropriate members of the agency in which the individual serves to serve as an agency CERPO.

(II) Reporting

In carrying out the duties of the agency CERPO under this subchapter, an agency CERPO shall report directly to a deputy secretary (or the equivalent) or higher.

(B) Heads of agencies

The individuals that shall each designate a councilmember under this subparagraph are as follows:

- (i) The Secretary of Agriculture.
- (ii) The Secretary of the Army.
- (iii) The Secretary of Commerce.
- (iv) The Secretary of the Interior.
- (v) The Secretary of Energy.
- (vi) The Secretary of Transportation.
- (vii) The Secretary of Defense.
- (viii) The Administrator of the Environmental Protection Agency.
- (ix) The Chairman of the Federal Energy Regulatory Commission.
- (x) The Chairman of the Nuclear Regulatory Commission.
- (xi) The Secretary of Homeland Security.
- (xii) The Secretary of Housing and Urban Development.
- (xiii) The Chairman of the Advisory Council on Historic Preservation.
- (xiv) Any other head of a Federal agency that the Executive Director may invite to participate as a member of the Council.

(3) Additional members

In addition to the members listed in paragraphs (1) and (2), the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget shall also be members of the Council.

(c) Duties

(1) Executive Director

(A) Inventory development

The Executive Director, in consultation with the Council, shall—

¹ So in original.