

appropriate times during the environmental review, the methodologies to be used and the level of detail required in the analysis of each alternative for a covered project.

**(B) Environmental review**

A cooperating agency shall use the methodologies referred to in subparagraph (A) when conducting any required environmental review, to the extent consistent with existing law.

**(4) Preferred alternative**

With the concurrence of the cooperating agencies with jurisdiction under Federal law and at the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of the higher level of detail will not prevent—

(A) the lead agency from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review; and

(B) the public from commenting on the preferred and other alternatives.

**(d) Environmental review comments**

**(1) Comments on draft environmental impact statement**

For comments by an agency or the public on a draft environmental impact statement, the lead agency shall establish a comment period of not less than 45 days and not more than 60 days after the date on which a notice announcing availability of the environmental impact statement is published in the Federal Register, unless—

(A) the lead agency, the project sponsor, and any cooperating agency agree to a longer deadline; or

(B) the lead agency, in consultation with each cooperating agency, extends the deadline for good cause.

**(2) Other review and comment periods**

For all other review or comment periods in the environmental review process described in parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations), the lead agency shall establish a comment period of not more than 45 days after the date on which the materials on which comment is requested are made available, unless—

(A) the lead agency, the project sponsor, and any cooperating agency agree to a longer deadline; or

(B) the lead agency extends the deadline for good cause.

**(e) Issue identification and resolution**

**(1) Cooperation**

The lead agency and each cooperating and participating agency shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of an environmental review or an authorization required for the project under applicable law

or result in the denial of any approval under applicable law.

**(2) Lead agency responsibilities**

**(A) In general**

The lead agency shall make information available to each cooperating and participating agency and project sponsor as early as practicable in the environmental review regarding the environmental, historic, and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

**(B) Sources of information**

The information described in subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

**(3) Cooperating and participating agency responsibilities**

Each cooperating and participating agency shall—

(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 repairable.

**(c) Judicial review**

Except as provided in subsection (a), nothing in this subchapter affects the reviewability of any final Federal agency action in a court of competent jurisdiction.

**(d) Savings clause**

Nothing in this subchapter—

(1) supersedes, amends, or modifies any Federal statute or affects the responsibility of any Federal officer to comply with or enforce any statute; or

(2) creates a presumption that a covered project will be approved or favorably reviewed by any agency.

**(e) Limitations**

Nothing in this section preempts, limits, or interferes with—

(1) any practice of seeking, considering, or responding to public comment; or

(2) any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.

(Pub. L. 114-94, div. D, title XLI, § 41007, Dec. 4, 2015, 129 Stat. 1758.)

REFERENCES IN TEXT

NEPA, referred to in subsec. (a)(1)(B), (2)(A), 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-7. Reports**

**(a) Report to Congress**

**(1) In general**

Not later than April 15 of each year for 10 years beginning on December 4, 2015, the Executive Director shall submit to Congress a re-