

(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-

port detailing the progress accomplished under this subchapter during the previous fiscal year.

(2) Contents

The report described in paragraph (1) shall assess the performance of each participating agency and lead agency based on the best practices described in section 4370m-1(c)(2)(B) of this title, including—

(A) agency progress in making improvements consistent with those best practices; and

(B) agency compliance with the performance schedules established under section 4370m-1(c)(1)(C) of this title.

(3) Opportunity to include comments

Each councilmember, with input from the respective agency CERPO, shall have the opportunity to include comments concerning the performance of the agency in the report described in paragraph (1).

(b) Comptroller general report

Not later than 3 years after December 4, 2015, the Comptroller General of the United States shall submit to Congress a report that describes—

(1) agency progress in making improvements consistent with the best practices issued under section 4370m-1(c)(2)(B) of this title; and

(2) agency compliance with the performance schedules established under section 4370m-1(c)(1)(C) of this title.

(Pub. L. 114-94, div. D, title XLI, § 41008, Dec. 4, 2015, 129 Stat. 1760.)

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-8. Funding for governance, oversight, and processing of environmental reviews and permits

(a) In general

The heads of agencies listed in section 4370m-1(b)(2)(B) of this title, with the guidance of the Director of the Office of Management and Budget and in consultation with the Executive Director, may, after public notice and opportunity for comment, issue regulations establishing a fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects.

(b) Reasonable costs

As used in this section, the term “reasonable costs” shall include costs to implement the requirements and authorities required under sections 4370m-1 and 4370m-2 of this title, including the costs to agencies and the costs of operating the Council.

(c) Fee structure

The fee structure established under subsection (a) shall—

(1) be developed in consultation with affected project proponents, industries, and other stakeholders;

(2) exclude parties for which the fee would impose an undue financial burden or is otherwise determined to be inappropriate; and

(3) be established in a manner that ensures that the aggregate amount of fees collected for a fiscal year is estimated not to exceed 20 percent of the total estimated costs for the fiscal year for the resources allocated for the conduct of the environmental reviews and authorizations covered by this subchapter, as determined by the Director of the Office of Management and Budget.

(d) Environmental Review and Permitting Improvement Fund

(1) In general

All amounts collected pursuant to this section shall be deposited into a separate fund in the Treasury of the United States to be known as the “Environmental Review Improvement Fund” (referred to in this section as the “Fund”).

(2) Availability

Amounts in the Fund shall be available to the Executive Director, without appropriation or fiscal year limitation, solely for the purposes of administering, implementing, and enforcing this subchapter, including the expenses of the Council.

(3) Transfer

The Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other agencies to facilitate timely and efficient environmental reviews and authorizations for proposed covered projects.

(e) Effect on permitting

The regulations adopted pursuant to subsection (a) shall ensure that the use of funds accepted under subsection (d) will not impact impartial decision-making with respect to environmental reviews or authorizations, either substantively or procedurally.

(f) Transfer of appropriated funds

(1) In general

The heads of agencies listed in section 4370m-1(b)(2)(B) of this title shall have the authority to transfer, in accordance with section 1535 of title 31, funds appropriated to those agencies and not otherwise obligated to other affected Federal agencies for the purpose of implementing the provisions of this subchapter.

(2) Limitation

Appropriations under title 23 and appropriations for the civil works program of the Army Corps of Engineers shall not be available for transfer under paragraph (1).

(Pub. L. 114-94, div. D, title XLI, § 41009, Dec. 4, 2015, 129 Stat. 1760.)

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-9. Application

This subchapter applies to any covered project for which—