

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 development, 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)<sup>1</sup> 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.

###### (B) NEPA obligations

An environmental document adopted under subparagraph (A) or a document that includes documentation incorporated under subparagraph (A) may serve as the documentation required for an environmental review or a supplemental environmental review required to be prepared by a lead agency under NEPA.

##### (C) Supplementation of State documents

If the lead agency adopts or incorporates analysis and documentation described in subparagraph (A), the lead agency shall prepare and publish a supplemental document if the lead agency determines that during the period after preparation of the analysis and documentation and before the adoption or incorporation—

(i) a significant change has been made to the covered project that is relevant for purposes of environmental review of the project; or

(ii) there has been a significant circumstance or new information that has emerged that is relevant to the environmental review for the covered project.

##### (D) Comments

If a lead agency prepares and publishes a supplemental document under subparagraph (C), the lead agency shall solicit comments from other agencies and the public on the supplemental document for a period of not more than 45 days, beginning on the date on which the supplemental document is published, unless—

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

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

##### (E) Notice of outcome of environmental review

A lead agency shall issue a record of decision or finding of no significant impact, as appropriate, based on the document adopted under subparagraph (A) and any supplemental document prepared under subparagraph (C).

##### (c) Alternatives analysis

###### (1) Participation

###### (A) In general

As early as practicable during the environmental review, but not later than the commencement of scoping for a project requiring the preparation of an environmental impact statement, the lead agency shall engage the cooperating agencies and the public to determine the range of reasonable alternatives to be considered for a covered project.

###### (B) Determination

The determination under subparagraph (A) shall be completed not later than the completion of scoping.

###### (2) Range of alternatives

###### (A) In general

Following participation under paragraph (1) and subject to subparagraph (B), the lead agency shall determine the range of reasonable alternatives for consideration in any document that the lead agency is responsible for preparing for the covered project.

###### (B) Alternatives required by law

In determining the range of alternatives under subparagraph (A), the lead agency shall include all alternatives required to be considered by law.

<sup>1</sup> So in original. No par. (2) has been enacted.