

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; Pub. L. 117-58, div. G, title VIII, § 70801(c), Nov. 15, 2021, 135 Stat. 1289.)

**Editorial Notes**

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1)(D)(ii), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

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.

AMENDMENTS

2021—Subsec. (a)(1)(D). Pub. L. 117-58, § 70801(c)(1)(A), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 117-58, § 70801(c)(1)(B)(i), substituted “21 calendar days” for “45 days” in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 117-58, § 70801(c)(1)(B)(ii), inserted “14 calendar day” before “deadline”.

Subsec. (a)(3)(A). Pub. L. 117-58, § 70801(c)(1)(C), inserted “and the Executive Director” after “as applicable,” in introductory provisions.

Subsec. (b)(2)(A)(iii). Pub. L. 117-58, § 70801(c)(2)(A), added cl. (iii).

Subsec. (b)(3)(A)(i)(V), (VI). Pub. L. 117-58, § 70801(c)(2)(B)(i), added subcl. (V), redesignated former subcl. (V) as (VI), and struck out “and” at end of subcl. (VI).

Subsec. (b)(3)(A)(iii). Pub. L. 117-58, § 70801(c)(2)(B)(ii), (iii), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 117-58, § 70801(c)(3)(A), substituted “coordinated” for “coordination”.

Subsec. (c)(2)(D)(i). Pub. L. 117-58, § 70801(c)(3)(B)(i), (ii), added subcl. (I) and redesignated former subcls. (I) to (III) as (II) to (IV), respectively.

Subsec. (c)(2)(D)(i)(II). Pub. L. 117-58, § 70801(c)(3)(B)(iii), inserted “, the Executive Director,” after “participating agencies”.

Subsec. (c)(2)(F)(i). Pub. L. 117-58, § 70801(c)(3)(C)(i), inserted “intermediate and final” before “completion dates” and “intermediate or final” before “completion date”.

Subsec. (c)(2)(F)(ii). Pub. L. 117-58, § 70801(c)(3)(C)(ii)(I), substituted “an intermediate or final completion date for agency action on a covered project or reasonably believes the agency will fail to conform with a completion date 30 days before” for “a completion date for agency action on a covered project or is at significant risk of failing to conform with” in introductory provisions.

Subsec. (c)(2)(F)(i)(I). Pub. L. 117-58, § 70801(c)(3)(C)(ii)(II), substituted “reasonably believing the agency will fail to conform” for “significantly risking failing to conform”.

**§ 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.)

**Editorial Notes**

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;

(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; and

(3) where an environmental impact statement is required for a project, prepare a single, joint interagency environmental impact statement for the project unless the lead agency provides justification in the coordinated project plan that multiple environmental documents are more efficient for project review and authorization.

**(b) Adoption, incorporation by reference, and use of documents**

**(1) Use of existing documents**

**(A) 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 the laws and procedures of a State or Indian Tribe (as defined in section 5130 of title 25) 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, developed pursuant to laws and procedures of that State or Indian Tribe (as so defined) that are of equal or greater rigor to each applicable Federal law and procedure, and 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.

**(B) Guidance by CEQ**

The Council on Environmental Quality may issue guidance to carry out this subsection.

**(2) NEPA obligations**

An environmental document adopted under paragraph (1) or a document that includes documentation incorporated under paragraph (1) 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.

**(3) Supplementation of State documents**

If the lead agency adopts or incorporates analysis and documentation described in paragraph (1), 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—

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

(B) there has been a significant circumstance or new information has emerged

that is relevant to the environmental review for the covered project.

**(4) Comments**

If a lead agency prepares and publishes a supplemental document under paragraph (3), 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—

(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.

**(5) 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 paragraph (1) and any supplemental document prepared under paragraph (3).

**(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.

**(3) Methodologies**

**(A) In general**

The lead agency shall determine, in collaboration with each cooperating agency at 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—

(A) the development of the higher level of detail will not prevent 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 preferred and other alternatives are developed in sufficient detail to enable the public to comment on the 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) Record of decision**

When an environmental impact statement is prepared, Federal agencies must, to the maximum extent practicable, issue a record of decision not later than 90 days after the date on which the final environmental impact statement is issued.

**(g) 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; Pub. L. 117-58, div. G, title VIII, § 70801(d), Nov. 15, 2021, 135 Stat. 1291.)

**Editorial Notes**

## REFERENCES IN TEXT

NEPA, referred to in subsecs. (a)(1) and (b)(1)(A), (2), 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.

## AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 117-58, § 70801(d)(1), added par. (3).

Subsec. (b). Pub. L. 117-58, § 70801(d)(2)(A), (B), struck out par. (1) designation and heading and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively.

Subsec. (b)(1). Pub. L. 117-58, § 70801(d)(2)(C)(i), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

Subsec. (b)(1)(A). Pub. L. 117-58, § 70801(d)(2)(C)(ii), substituted “the laws and procedures of a State or Indian Tribe (as defined in section 5130 of title 25)” for “State laws and procedures” and inserted “developed pursuant to laws and procedures of that State or Indian Tribe (as so defined) that are of equal or greater rigor to each applicable Federal law and procedure, and” after “Council on Environmental Quality.”

Subsec. (b)(2). Pub. L. 117-58, § 70801(d)(2)(D), substituted “paragraph (1)” for “subparagraph (A)” in two places.

Subsec. (b)(3). Pub. L. 117-58, §70801(d)(2)(E), substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

Subsec. (b)(4). Pub. L. 117-58, §70801(d)(2)(F), substituted “paragraph (3)” for “subparagraph (C)” in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

Subsec. (b)(5). Pub. L. 117-58, §70801(d)(2)(G), substituted “paragraph (1)” for “subparagraph (A)” and “paragraph (3)” for “subparagraph (C)”.

Subsec. (c)(4). Pub. L. 117-58, §70801(d)(3)(A), substituted “determines that—” for “determines that the development of the higher level of detail will not prevent—” in introductory provisions.

Subsec. (c)(4)(A). Pub. L. 117-58, §70801(d)(3)(B), inserted “the development of the higher level of detail will not prevent” before “the lead agency”.

Subsec. (c)(4)(B). Pub. L. 117-58, §70801(d)(3)(C), added subpar. (B) and struck out former subpar. (B) which read as follows: “the public from commenting on the preferred and other alternatives.”

Subsecs. (f), (g). Pub. L. 117-58, §70801(d)(4), (5), added subsec. (f) and redesignated former subsec. (f) as (g).

### § 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.)

#### Editorial Notes

##### 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 ju-

dicial review of any authorization issued by a Federal agency for a covered project shall be barred unless—

(A) the claim is filed not later than 2 years after the date of publication in the Federal Register of notice of final agency action on the authorization, 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 claim 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