

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