

(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 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 fiscal year limitation, solely for the purposes of administering, implementing, and enforcing this subchapter, including the expenses of the Council, staffing of the Office of the Executive Director, and support of the role of the Council as a Federal center for permitting excellence, which may include supporting inter-agency detailee and rotation opportunities, advanced training, enhanced support for agency project managers, and fora for sharing information and lessons learned.

(3) Transfer

For the purpose of carrying out this subchapter, the Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other Federal agencies and State, Tribal, and local governments to facilitate timely and efficient environmental reviews and authorizations for covered projects and other projects under this subchapter, including direct reimbursement agreements with agency CERPOs, reimbursable agreements, and approval and consultation processes and staff for 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; Pub. L. 117-58, div. G, title VIII, § 70801(g), Nov. 15, 2021, 135 Stat. 1293.)

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.

AMENDMENTS

2021—Subsec. (a). Pub. L. 117-58, § 70801(g)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “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.”

Subsec. (b). Pub. L. 117-58, § 70801(g)(2), substituted “through 4370m-7” for “and 4370m-2”.

Subsec. (d). Pub. L. 117-58, § 70801(g)(3)(A), struck out “and Permitting” after “Review” in heading.

Subsec. (d)(2), (3). Pub. L. 117-58, § 70801(g)(3)(B), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

“(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.”

§ 4370m-9. Application

This subchapter applies to any covered project for which—

(1) a notice is filed under section 4370m-2(a)(1) of this title; or

(2) an application or other request for a Federal authorization is pending before a Federal agency 90 days after December 4, 2015.

(Pub. L. 114-94, div. D, title XLI, § 41010, Dec. 4, 2015, 129 Stat. 1761.)

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-10. GAO report

Not later than 3 years after December 4, 2015, the Comptroller General of the United States shall submit to Congress a report that includes an analysis of whether the provisions of this