

(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 judicial 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 reparable.

(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 subchapter 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; Pub. L. 117-58, div. G, title VIII, § 70801(e), Nov. 15, 2021, 135 Stat. 1293.)

Editorial Notes

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.

AMENDMENTS

2021—Subsec. (a)(1)(A). Pub. L. 117-58, § 70801(e)(1)(A), substituted “the claim” for “the action” and “of notice of final agency action on the authorization” for “of the final record of decision or approval or denial of a permit”.

Subsec. (a)(1)(B)(i). Pub. L. 117-58, § 70801(e)(1)(B), substituted “the claim” for “the action”.

Subsec. (e). Pub. L. 117-58, § 70801(e)(2), substituted “this subchapter” for “this section” in introductory provisions.

§ 4370m-7. Reports

(a) Reports to Congress

(1) Executive Director annual report

(A) In general

Not later than April 15 of each year for 10 years beginning on November 15, 2021, the Executive Director shall submit to Congress a report detailing the progress accomplished under this subchapter during the previous fiscal year.

(B) 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 subparagraph (A).

(2) Quarterly agency performance report

The Executive Director shall submit to Congress a quarterly report evaluating agency compliance with the provisions of this subchapter, which shall include a description of the implementation and adherence of each agency to the coordinated project plan and permitting timetable requirements under section 4370m-2(c) of this title.

(3) Agency best practices report

Not later than April 15 of each year, each participating agency and lead agency shall submit to Congress and the Director of the Office of Management and Budget a report assessing the performance of the agency in implementing the best practices described in section 4370m-1(c)(2)(B) of this title.

(b) Comptroller general report

Not later than 3 years after December 4, 2015, the Comptroller General of the United States