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[Report No. 114–113]

To improve the efficiency, management, and interagency coordination of the Federal permitting process through reforms overseen by the Director of the Office of Management and Budget, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

Mr. PORTMAN (for himself, Mrs. MCCASKILL, Mr. BLUNT, Mr. JOHNSON, Mr. KING, Mr. MANCHIN, Mr. PAUL, Mr. DONNELLY, Ms. COLLINS, Mr. SULLIVAN, Mr. WARNER, Ms. HEITKAMP, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

AUGUST 4, 2015

Reported by Mr. JOHNSON, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To improve the efficiency, management, and interagency coordination of the Federal permitting process through reforms overseen by the Director of the Office of Management and Budget, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Permitting
3 Improvement Act of 2015”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **AGENCY.**—The term “agency” has the
7 meaning given the term in section 551 of title 5,
8 United States Code.

9 (2) **AGENCY CPO.**—The term “agency CPO”
10 means the chief permitting officer of an agency des-
11 ignated by the head of the agency under section
12 3(b)(2)(A)(i).

13 (3) **AUTHORIZATION.**—The term “authoriza-
14 tion” means—

15 (A) any license, permit, approval, or other
16 administrative decision required or authorized
17 to be issued by an agency with respect to the
18 siting, construction, reconstruction, or com-
19 mencement of operations of a covered project
20 under Federal law, whether administered by a
21 Federal or State agency; or

22 (B) any determination or finding required
23 to be issued by an agency—

24 (i) as a precondition to an authoriza-
25 tion described under paragraph (A); or

1 (ii) before an applicant may take a
2 particular action with respect to the siting,
3 construction, reconstruction, or commence-
4 ment of operations of a covered project
5 under Federal law, whether administered
6 by a Federal or State agency.

7 (4) COUNCIL.—The term “Council” means the
8 Federal Infrastructure Permitting Improvement
9 Council established by section 3(a).

10 (5) COVERED PROJECT.—

11 (A) IN GENERAL.—The term “covered
12 project” means any construction activity in the
13 United States that requires authorization or re-
14 view by a Federal agency—

15 (i) involving renewable or conventional
16 energy production, electricity transmission,
17 surface transportation, aviation, ports and
18 waterways, water resource projects,
19 broadband, pipelines, manufacturing, or
20 any other sector as determined by the Fed-
21 eral CPO; and

22 (ii) that is likely to require an initial
23 investment of more than \$25,000,000, as
24 determined by the Federal CPO.

1 (B) EXCLUSION.—The term “covered
2 project” does not include any project subject to
3 section 101(b)(4) of title 23, United States
4 Code.

5 (6) DASHBOARD.—The term “Dashboard”
6 means the Permitting Dashboard required by section
7 4(b).

8 (7) ENVIRONMENTAL ASSESSMENT.—The term
9 “environmental assessment” means a concise public
10 document for which a Federal agency is responsible
11 that serves—

12 (A) to briefly provide sufficient evidence
13 and analysis for determining whether to prepare
14 an environmental impact statement or a finding
15 of no significant impact;

16 (B) to aid in the compliance of the agency
17 with NEPA if an environmental impact state-
18 ment is not necessary; and

19 (C) to facilitate preparation of an environ-
20 mental impact statement, if an environmental
21 impact statement is necessary.

22 (8) ENVIRONMENTAL DOCUMENT.—The term
23 “environmental document” means an environmental
24 assessment or environmental impact statement.

1 (9) ENVIRONMENTAL IMPACT STATEMENT.—

2 The term “environmental impact statement” means
3 the detailed statement of significant environmental
4 impacts required to be prepared under NEPA.

5 (10) ENVIRONMENTAL REVIEW.—The term
6 “environmental review” means the agency proce-
7 dures for preparing an environmental impact state-
8 ment, environmental assessment, categorical exclu-
9 sion, or other document required under NEPA.

10 (11) FEDERAL CPO.—The term “Federal CPO”
11 means the Federal Chief Permitting Officer ap-
12 pointed by the President under section 3(b)(1).

13 (12) INVENTORY.—The term “inventory”
14 means the inventory of covered projects established
15 by the Federal CPO under section 3(e)(1)(A).

16 (13) LEAD AGENCY.—The term “lead agency”
17 means the agency with principal responsibility for
18 review and authorization of a covered project, as de-
19 termined under section 3(e)(1)(B).

20 (14) NEPA.—The term “NEPA” means the
21 National Environmental Policy Act of 1969 (42
22 U.S.C. 4321 et seq.).

23 (15) PARTICIPATING AGENCY.—The term “par-
24 ticipating agency” means any agency participating

1 in reviews or authorizations for a particular covered
 2 project in accordance with section 4.

3 ~~(16) PROJECT SPONSOR.—~~The term “project
 4 sponsor”² means the entity, including any private,
 5 public, or public-private entity, that seeks approval
 6 for a project.

7 **SEC. 3. FEDERAL PERMITTING IMPROVEMENT COUNCIL.**

8 ~~(a) ESTABLISHMENT.—~~There is established the Fed-
 9 eral Permitting Improvement Council.

10 ~~(b) COMPOSITION.—~~

11 ~~(1) CHAIR.—~~The President shall appoint an of-
 12 ficer of the Office of Management and Budget as the
 13 Federal Chief Permitting Officer to serve as Chair
 14 of the Council, by and with the advice and consent
 15 of the Senate.

16 ~~(2) CHIEF PERMITTING OFFICERS.—~~

17 ~~(A) IN GENERAL.—~~

18 ~~(i) DESIGNATION BY HEAD OF AGEN-~~
 19 ~~CY.—~~Each individual listed in subpara-
 20 graph ~~(B)~~ shall designate a member of the
 21 agency in which the individual serves to
 22 serve as the agency CPO.

23 ~~(ii) QUALIFICATIONS.—~~The agency
 24 CPO described in clause ~~(i)~~ shall hold a

1 position in the agency of the equivalent of
2 a deputy secretary or higher.

3 (iii) MEMBERSHIP.—Each agency
4 CPO described in clause (i) shall serve on
5 the Council.

6 (B) HEADS OF AGENCIES.—The individ-
7 uals that shall each designate an agency CPO
8 under this subparagraph are as follows:

9 (i) The Secretary of Agriculture.

10 (ii) The Secretary of Commerce.

11 (iii) The Secretary of the Interior.

12 (iv) The Secretary of Energy.

13 (v) The Secretary of Transportation.

14 (vi) The Secretary of Defense.

15 (vii) The Administrator of the Envi-
16 ronmental Protection Agency.

17 (viii) The Chairman of the Federal
18 Energy Regulatory Commission.

19 (ix) The Chairman of the Nuclear
20 Regulatory Commission.

21 (x) The Chairman of the Advisory
22 Council on Historic Preservation.

23 (xi) Any other head of a Federal
24 agency that the Federal CPO may invite to
25 participate as a member of the Council.

1 (3) CHAIRMAN OF THE COUNCIL ON ENVIRON-
 2 MENTAL QUALITY.—In addition to the members list-
 3 ed in paragraphs (1) and (2), the Chairman of the
 4 Council on Environmental Quality shall also be a
 5 member of the Council.

6 (c) DUTIES.—

7 (1) FEDERAL CPO.—

8 (A) INVENTORY DEVELOPMENT.—The
 9 Federal CPO, in consultation with the members
 10 of the Council, shall—

11 (i) not later than 3 months after the
 12 date of enactment of this Act, establish an
 13 inventory of covered projects that are
 14 pending the review or authorization of the
 15 head of any Federal agency;

16 (ii)(I) categorize the projects in the
 17 inventory as appropriate based on the
 18 project type; and

19 (II) for each category, identify the
 20 types of reviews and authorizations most
 21 commonly involved; and

22 (iii) add covered projects to the inven-
 23 tory after the Federal CPO receives a no-
 24 tice described in section 4(a)(1).

1 (B) LEAD AGENCY DESIGNATION.—The
2 Federal CPO, in consultation with the Council,
3 shall—

4 (i) designate a lead agency for each
5 category of covered projects described in
6 subparagraph (A)(ii); and

7 (ii) publish on an Internet website the
8 designations and categories in an easily ac-
9 cessible format.

10 (C) PERFORMANCE SCHEDULES.—

11 (i) IN GENERAL.—The Federal CPO,
12 in consultation with the Council, shall de-
13 velop nonbinding performance schedules,
14 including intermediate and final deadlines,
15 for reviews and authorizations for each
16 category of covered projects described in
17 subparagraph (A)(ii).

18 (ii) REQUIREMENTS.—

19 (I) IN GENERAL.—The perform-
20 ance schedules shall reflect employ-
21 ment of the use of the most efficient
22 applicable processes.

23 (II) LIMIT.—The final deadline
24 for completion of any review or au-
25 thorization contained in the perform-

1 ance schedules shall not be later than
2 180 days after the date on which the
3 completed application or request is
4 filed.

5 (iii) REVIEW AND REVISION.—Not
6 later than 2 years after the date on which
7 the performance schedules are established
8 under this subparagraph, and not less fre-
9 quently than once every 2 years thereafter,
10 the Federal CPO, in consultation with the
11 Council, shall review and revise the per-
12 formance schedules.

13 (D) GUIDANCE.—The Federal CPO may
14 issue circulars, bulletins, guidelines, and other
15 similar directives as necessary to carry out re-
16 sponsibilities under this Act and to effectuate
17 the adoption by agencies of the best practices
18 and recommendations of the Council described
19 in paragraph (2).

20 (2) COUNCIL.—

21 (A) RECOMMENDATIONS.—

22 (i) IN GENERAL.—The Council shall
23 make recommendations to the Federal
24 CPO with respect to the designations

1 under paragraph (1)(B) and the perform-
2 ance schedules under paragraph (1)(C).

3 (ii) UPDATE.—The Council may up-
4 date the recommendations described in
5 clause (i).

6 (B) BEST PRACTICES.—Not later than 1
7 year after the date of enactment of this Act,
8 and not less than annually thereafter, the
9 Council shall issue recommendations on the best
10 practices for—

11 (i) early stakeholder engagement, in-
12 cluding fully considering and, as appro-
13 priate, incorporating recommendations pro-
14 vided in public comments on any proposed
15 covered project;

16 (ii) assuring timeliness of permitting
17 and review decisions;

18 (iii) coordination between Federal and
19 non-Federal governmental entities;

20 (iv) transparency;

21 (v) reduction of information collection
22 requirements and other administrative bur-
23 dens on agencies, project sponsors, and
24 other interested parties;

- 1 (vi) evaluating lead agencies and par-
 2 ticipating agencies under this Act; and
 3 (vii) other aspects of infrastructure
 4 permitting, as determined by the Council.

5 **SEC. 4. PERMITTING PROCESS IMPROVEMENT.**

6 (a) **PROJECT INITIATION AND DESIGNATION OF PAR-**
 7 **TICIPATING AGENCIES.—**

8 (1) **NOTICE.—**

9 (A) **IN GENERAL.—**A project sponsor shall
 10 provide the Federal CPO and the lead agency
 11 notice of the initiation of a proposed covered
 12 project.

13 (B) **CONTENTS.—**Each notice described in
 14 subparagraph (A) shall include—

15 (i) a description, including the general
 16 location, of the proposed project;

17 (ii) a statement of any Federal au-
 18 thorization or review anticipated to be re-
 19 quired for the proposed project; and

20 (iii) an assessment of the reasons why
 21 the proposed project meets the definition
 22 of a covered project in section 2.

23 (2) **INVITATION.—**

24 (A) **IN GENERAL.—**Not later than 45 days
 25 after the date on which a lead agency receives

1 the notice under paragraph (1), the lead agency
2 shall—

3 (i) identify another agency that may
4 have an interest in the proposed project;
5 and

6 (ii) invite the agency to become a par-
7 ticipating agency in the permitting man-
8 agement process and in the environmental
9 review process described in section 6.

10 (B) DEADLINES.—Each invitation made
11 under subparagraph (A) shall include a dead-
12 line for a response to be submitted to the lead
13 agency.

14 (3) PARTICIPATING AGENCIES.—An agency in-
15 vited under paragraph (2) shall be designated as a
16 participating agency for a covered project, unless the
17 agency informs the lead agency in writing before the
18 deadline described in paragraph (2)(B) that the
19 agency—

20 (A) has no jurisdiction or authority with
21 respect to the proposed project; or

22 (B) does not intend to exercise authority
23 related to, or submit comments on, the pro-
24 posed project.

1 (4) EFFECT OF DESIGNATION.—The designa-
2 tion described in paragraph (3) shall not give the
3 participating agency jurisdiction over the proposed
4 project.

5 (5) CHANGE OF LEAD AGENCY.—

6 (A) IN GENERAL.—On the request of a
7 lead agency, participating agency, or project
8 sponsor, the Federal CPO may designate a dif-
9 ferent agency as the lead agency for a covered
10 project if the Federal CPO receives new infor-
11 mation regarding the scope or nature of a cov-
12 ered project that indicates that the project
13 should be placed in a different category under
14 section 3(e)(1)(B).

15 (B) RESOLUTION OF DISPUTE.—Any dis-
16 pute over designation of a lead agency for a
17 particular covered project shall be resolved by
18 the Federal CPO.

19 (b) PERMITTING DASHBOARD.—

20 (1) REQUIREMENT TO MAINTAIN.—

21 (A) IN GENERAL.—The Federal CPO, in
22 coordination with the Administrator of General
23 Services, shall maintain an online database to
24 be known as the “Permitting Dashboard” to
25 track the status of Federal reviews and author-

1 izations for any covered project in the inven-
2 tory.

3 ~~(B) SPECIFIC AND SEARCHABLE ENTRY.—~~

4 The Dashboard shall include a specific and
5 searchable entry for each project.

6 ~~(2) ADDITIONS.—~~Not later than 7 days after
7 the date on which the Federal CPO receives a notice
8 under subsection (a)(1), the Federal CPO shall cre-
9 ate a specific entry on the Dashboard for the
10 project, unless the Federal CPO or lead agency de-
11 termines that the project is not a covered project.

12 ~~(3) SUBMISSIONS BY AGENCIES.—~~The lead
13 agency and each participating agency shall submit to
14 the Federal CPO for posting on the Dashboard for
15 each covered project—

16 ~~(A)~~ any application and any supporting
17 document submitted by a project sponsor for
18 any required Federal review or authorization
19 for the project;

20 ~~(B)~~ not later than 2 business days after
21 the date on which any agency action or decision
22 that materially affects the status of the project
23 is made, a description, including significant
24 supporting documents, of the agency action or
25 decision; and

1 (C) the status of any litigation to which
2 the agency is a party that is directly related to
3 the project, including, if practicable, any judi-
4 cial document made available on an electronic
5 docket maintained by a Federal, State, or local
6 court.

7 (4) POSTINGS BY THE FEDERAL CPO.—The
8 Federal CPO shall post on the Dashboard an entry
9 for each covered project that includes—

10 (A) the information submitted under para-
11 graph (3)(A) not later than 2 days after the
12 date on which the Federal CPO receives the in-
13 formation;

14 (B) a permitting timetable approved by the
15 Federal CPO under subsection (e)(2)(C);

16 (C) the status of the compliance of each
17 participating agency with the permitting time-
18 table;

19 (D) any modifications of the permitting
20 timetable; and

21 (E) an explanation of each modification
22 described in subparagraph (D).

23 (e) COORDINATION AND TIMETABLES.—

24 (1) COORDINATION PLAN.—

1 (A) IN GENERAL.—Not later than 60 days
2 after the date on which the lead agency receives
3 a notice under subsection (a)(1), the lead agen-
4 cy, in consultation with each participating agen-
5 cy, shall establish a concise plan for coordi-
6 nating public and agency participation in, and
7 completion of, any required Federal review and
8 authorization for the project.

9 (B) MEMORANDUM OF UNDERSTANDING.—
10 The lead agency may incorporate the coordina-
11 tion plan described in subparagraph (A) into a
12 memorandum of understanding.

13 (2) PERMITTING TIMETABLE.—

14 (A) ESTABLISHMENT.—As part of the co-
15 ordination plan required by paragraph (1), the
16 lead agency, in consultation with each partici-
17 pating agency, the project sponsor, and the
18 State in which the project is located, shall es-
19 tablish a permitting timetable that includes in-
20 termediate and final deadlines for action by
21 each participating agency on any Federal review
22 or authorization required for the project.

23 (B) FACTORS FOR CONSIDERATION.—In
24 establishing the permitting timetable under sub-
25 paragraph (A), the lead agency shall follow the

1 performance schedules established under section
 2 3(e)(1)(C), but may vary the timetable based on
 3 relevant factors, including—

4 (i) the size and complexity of the cov-
 5 ered project;

6 (ii) the resources available to each
 7 participating agency;

8 (iii) the regional or national economic
 9 significance of the project;

10 (iv) the sensitivity of the natural or
 11 historic resources that may be affected by
 12 the project; and

13 (v) the extent to which similar
 14 projects in geographic proximity to the
 15 project were recently subject to environ-
 16 mental review or similar procedures under
 17 State law.

18 ~~(C) APPROVAL BY THE FEDERAL CPO.—~~

19 ~~(i) REQUIREMENT TO SUBMIT.—The~~
 20 ~~lead agency shall promptly submit to the~~
 21 ~~Federal CPO a permitting timetable estab-~~
 22 ~~lished under subparagraph (A) for review.~~

23 ~~(ii) REVISION AND APPROVAL.—~~

24 ~~(I) IN GENERAL.—The Federal~~
 25 ~~CPO, after consultation with the lead~~

1 agency, may revise the permitting
2 timetable if the Federal CPO deter-
3 mines that the timetable deviates
4 without reasonable justification from
5 the performance schedule established
6 under section 3(e)(1)(C).

7 (H) NO REVISION BY FEDERAL
8 CPO WITHIN 7 DAYS.—If the Federal
9 CPO does not revise the permitting
10 timetable earlier than the date that is
11 7 days after the date on which the
12 lead agency submits to the Federal
13 CPO the permitting timetable, the
14 permitting timetable shall be approved
15 by the Federal CPO.

16 (D) MODIFICATION AFTER APPROVAL.—

17 The lead agency may modify a permitting time-
18 table established under subparagraph (A) for
19 good cause only if—

20 (i) the lead agency and the affected
21 participating agency agree to a different
22 deadline;

23 (ii) the lead agency or the affected
24 participating agency provides a written ex-

1 planation of the justification for the modi-
2 fication; and

3 (iii) the lead agency submits to the
4 Federal CPO a modification, which the
5 Federal CPO may revise or disapprove.

6 (E) CONSISTENCY WITH OTHER TIME PE-
7 RIODS.—A permitting timetable established
8 under subparagraph (A) shall be consistent
9 with any other relevant time periods established
10 under Federal law.

11 (F) COMPLIANCE.—

12 (i) IN GENERAL.—Each Federal par-
13 ticipating agency shall comply with the
14 deadlines set forth in the permitting time-
15 table approved under subparagraph (C), or
16 with any deadline modified under subpara-
17 graph (D).

18 (ii) FAILURE TO COMPLY.—If a Fed-
19 eral participating agency fails to comply
20 with a deadline for agency action on a cov-
21 ered project, the head of the participating
22 agency shall—

23 (I) promptly report to the Fed-
24 eral CPO for posting on the Dash-
25 board an explanation of any specific

1 reason for failing to meet the deadline
 2 and a proposal for an alternative
 3 deadline; and

4 (H) report to the Federal CPO
 5 for posting on the Dashboard a
 6 monthly status report describing any
 7 agency activity related to the project
 8 until the agency has taken final action
 9 on the delayed authorization or re-
 10 view.

11 ~~(3) COOPERATING STATE, LOCAL, OR TRIBAL~~
 12 ~~GOVERNMENTS.—~~

13 (A) IN GENERAL.—To the maximum ex-
 14 tent practicable under applicable Federal law,
 15 the lead agency shall coordinate the Federal re-
 16 view and authorization process under this sub-
 17 section with any State, local, or tribal agency
 18 responsible for conducting any separate review
 19 or authorization of the covered project to en-
 20 sure timely and efficient review and permitting
 21 decisions.

22 ~~(B) MEMORANDUM OF UNDERSTANDING.—~~

23 (i) IN GENERAL.—Any coordination
 24 plan between the lead agency and any
 25 State, local, or tribal agency shall, to the

1 maximum extent practicable, be included
2 in a memorandum of understanding.

3 (ii) SUBMISSION TO FEDERAL CPO.—

4 A lead agency shall submit to the Federal
5 CPO each memorandum of understanding
6 described in clause (i).

7 (iii) POST TO DASHBOARD.—The Fed-
8 eral CPO shall post to the Dashboard each
9 memorandum of understanding submitted
10 under clause (ii).

11 (d) EARLY CONSULTATION.—The lead agency shall
12 provide an expeditious process for project sponsors to con-
13 fer with each participating agency involved and to have
14 each participating agency determine and communicate to
15 the project sponsor, not later than 60 days after the date
16 on which the project sponsor submits a request, informa-
17 tion concerning—

18 (1) the likelihood of approval for a potential
19 covered project; and

20 (2) key issues of concern to each participating
21 agency and to the public.

22 (e) COOPERATING AGENCY.—

23 (1) IN GENERAL.—A lead agency may designate
24 a participating agency as a cooperating agency in

1 accordance with part 1501 of title 40, Code of Fed-
 2 eral Regulations (or successor regulations).

3 ~~(2) EFFECT ON OTHER DESIGNATION.—~~The
 4 designation described in paragraph ~~(1)~~ shall not af-
 5 fect any designation under subsection ~~(a)(3)~~.

6 ~~(3) LIMITATION ON DESIGNATION.—~~Any agency
 7 not designated as a participating agency under sub-
 8 section ~~(a)(3)~~ shall not be designated as a cooper-
 9 ating agency under paragraph ~~(1)~~.

10 **SEC. 5. INTERSTATE COMPACTS.**

11 The consent of Congress is given for 3 or more con-
 12 tiguous States to enter into an interstate compact estab-
 13 lishing regional infrastructure development agencies to fa-
 14 cilitate authorization and review of covered projects, under
 15 State law or in the exercise of delegated permitting au-
 16 thority described under section 7, that will advance infra-
 17 structure development, production, and generation within
 18 the States that are parties to the compact.

19 **SEC. 6. COORDINATION OF REQUIRED REVIEWS.**

20 ~~(a) CONCURRENT REVIEWS.—~~Each agency shall, to
 21 the greatest extent permitted by law—

22 ~~(1)~~ carry out the obligations of the agency
 23 under other applicable law concurrently, and in con-
 24 junction with other reviews being conducted by other
 25 participating agencies, including environmental re-

1 views required under NEPA, unless doing so would
2 impair the ability of the agency to carry out statu-
3 tory obligations; and

4 (2) formulate and implement administrative,
5 policy, and procedural mechanisms to enable the
6 agency to ensure completion of the environmental re-
7 view process in a timely, coordinated, and environ-
8 mentally responsible manner.

9 (b) ADOPTION AND USE OF DOCUMENTS.—

10 (1) STATE ENVIRONMENTAL DOCUMENTS; SUP-
11 PLEMENTAL DOCUMENTS.—

12 (A) USE OF EXISTING DOCUMENTS.—On
13 the request of a project sponsor, a lead agency
14 shall consider and, as appropriate, adopt or in-
15 corporate, a document that has been prepared
16 for a project under State laws and procedures
17 as the environmental impact statement or envi-
18 ronmental assessment for the project if the
19 State laws and procedures under which the doc-
20 ument was prepared provide, as determined by
21 the lead agency in consultation with the Council
22 on Environmental Quality, environmental pro-
23 tection and opportunities for public participa-
24 tion that are substantially equivalent to NEPA.

1 (B) NEPA OBLIGATIONS.—An environ-
2 mental document adopted under subparagraph
3 (A) may serve as, or supplement, an environ-
4 mental impact statement or environmental as-
5 sessment required to be prepared by a lead
6 agency under NEPA.

7 (C) SUPPLEMENTAL DOCUMENT.—In the
8 ease of an environmental document described in
9 subparagraph (A), during the period after prep-
10 aration of the document and prior to the adop-
11 tion of the document by the lead agency, the
12 lead agency shall prepare and publish a supple-
13 mental document to the document if the lead
14 agency determines that—

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

18 (ii) there have been significant
19 changes in circumstances or availability of
20 information relevant to the environmental
21 review for the project.

22 (D) COMMENTS.—If a lead agency pre-
23 pares and publishes a supplemental document
24 under subparagraph (C), the lead agency may
25 solicit comments from other agencies and the

1 public on the supplemental document for a pe-
2 riod of not more than 30 days beginning on the
3 date on which the supplemental document is
4 published.

5 (E) RECORD OF DECISION.—A lead agency
6 shall issue a record of decision or finding of no
7 significant impact, as appropriate, based on the
8 document adopted under subparagraph (A) and
9 any supplemental document prepared under
10 subparagraph (C).

11 (e) ALTERNATIVES ANALYSIS.—

12 (1) PARTICIPATION.—As early as practicable
13 during the environmental review, but not later than
14 the commencement of scoping for a project requiring
15 the preparation of an environmental impact state-
16 ment, the lead agency shall provide an opportunity
17 for the involvement of cooperating agencies in deter-
18 mining the range of alternatives to be considered for
19 a project.

20 (2) RANGE OF ALTERNATIVES.—Following par-
21 ticipation under paragraph (1), the lead agency shall
22 determine the range of alternatives for consideration
23 in any document that the lead agency is responsible
24 for preparing for the project.

1 (3) ~~METHODOLOGIES.~~—The lead agency shall
 2 determine, in collaboration with each cooperating
 3 agency at appropriate times during the environ-
 4 mental review, the methodologies to be used and the
 5 level of detail required in the analysis of each alter-
 6 native for a project.

7 (4) ~~PREFERRED ALTERNATIVE.~~—At the discre-
 8 tion of the lead agency, the preferred alternative for
 9 a project, after being identified, may be developed to
 10 a higher level of detail than other alternatives to fa-
 11 cilitate the development of mitigation measures or
 12 concurrent compliance with other applicable laws if
 13 the lead agency determines that the development of
 14 the higher level of detail will not prevent—

15 (A) the lead agency from making an im-
 16 partial decision as to whether to accept another
 17 alternative that is being considered in the envi-
 18 ronmental review; and

19 (B) the public from commenting on the
 20 preferred and other alternatives.

21 (d) ~~ENVIRONMENTAL REVIEW COMMENTS.~~—

22 (1) ~~COMMENTS ON DRAFT ENVIRONMENTAL IM-~~
 23 ~~PACT STATEMENT.~~—For comments by an agency or
 24 the public on a draft environmental impact state-
 25 ment, the lead agency shall establish a comment pe-

1 riod of not more than 60 days after the date on
2 which a notice announcing availability of the envi-
3 ronmental impact statement is published in the Fed-
4 eral Register, unless—

5 (A) the lead agency, the project sponsor,
6 and each participating agency agree to a dif-
7 ferent deadline; or

8 (B) the deadline is extended by the lead
9 agency for good cause.

10 (2) OTHER COMMENTS.—For all other comment
11 periods for agency or public comments in the envi-
12 ronmental review process, the lead agency shall es-
13 tablish a comment period of not later than 30 days
14 after the date on which the materials on which com-
15 ment is requested are made available, unless—

16 (A) the lead agency, the project sponsor,
17 and each participating agency agree to a dif-
18 ferent deadline; or

19 (B) the lead agency modifies the deadline
20 for good cause.

21 (c) ISSUE IDENTIFICATION AND RESOLUTION.—

22 (1) COOPERATION.—The lead agency and each
23 participating agency shall work cooperatively in ac-
24 cordance with this section to identify and resolve
25 issues that could delay completion of the environ-

1 mental review or could result in denial of any ap-
2 proval required for the project under applicable laws.

3 ~~(2)~~ LEAD AGENCY RESPONSIBILITIES.—

4 (A) IN GENERAL.—The lead agency shall
5 make information available to each partici-
6 pating agency as early as practicable in the en-
7 vironmental review regarding the environ-
8 mental, historic, and socioeconomic resources
9 located within the project area and the general
10 locations of the alternatives under consider-
11 ation.

12 (B) SOURCES OF INFORMATION.—The in-
13 formation described in subparagraph (A) may
14 be based on existing data sources, including ge-
15 ographic information systems mapping.

16 ~~(3)~~ PARTICIPATING AGENCY RESPONSIBIL-
17 ITIES.—Based on information received from the lead
18 agency under paragraph ~~(2)~~, each participating
19 agency shall identify, as early as practicable, any
20 issues of concern, including any issues that could
21 substantially delay or prevent an agency from grant-
22 ing a permit or other approval needed for the
23 project, regarding any potential environmental, his-
24 toric, or socioeconomic impacts of the project.

1 (f) CATEGORIES OF PROJECTS.—The authorities
2 granted under this section may be exercised for an indi-
3 vidual project or a category of projects.

4 **SEC. 7. DELEGATED STATE PERMITTING PROGRAMS.**

5 If a Federal statute permits a State to be delegated
6 or otherwise authorized by a Federal agency to issue or
7 otherwise administer a permit program in lieu of the Fed-
8 eral agency, each member of the Council shall—

9 (1) on publication by the Council of best prac-
10 tices under section 3(e)(2)(B), initiate a process,
11 with public participation, to determine whether and
12 the extent to which any of the best practices are ap-
13 plicable to permitting under the statute; and

14 (2) not later than 2 years after the date of en-
15 actment of this Act, make recommendations for
16 State modifications of the permit program to reflect
17 the best practices described in section 3(e)(2)(B), as
18 appropriate.

19 **SEC. 8. LITIGATION, JUDICIAL REVIEW, AND SAVINGS PRO-**
20 **VISION.**

21 (a) LIMITATIONS ON CLAIMS.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, a claim arising under Federal law
24 seeking judicial review of any authorization issued

1 by a Federal agency for a covered project shall be
2 barred unless—

3 (A) the action is filed not later than 150
4 days after the date on which a notice is pub-
5 lished in the Federal Register that the author-
6 ization is final pursuant to the law under which
7 the agency action is taken; unless a shorter
8 time is specified in the Federal law under which
9 judicial review is allowed; and

10 (B) in the case of an action pertaining to
11 an environmental review conducted under
12 NEPA—

13 (i) the action is filed by a party that
14 submitted a comment during the environ-
15 mental review on the issue on which the
16 party seeks judicial review; and

17 (ii) the comment was sufficiently de-
18 tailed to put the lead agency on notice of
19 the issue on which the party seeks judicial
20 review.

21 ~~(2) NEW INFORMATION.—~~

22 ~~(A) IN GENERAL.—~~The head of a lead
23 agency or participating agency shall consider
24 new information received after the close of a
25 comment period if the information satisfies the

1 requirements under regulations implementing
2 NEPA.

3 (B) SUPPLEMENTAL ENVIRONMENTAL IM-
4 PACT STATEMENT.—If the preparation of a
5 supplemental environmental impact statement
6 is required, the preparation of the supplemental
7 environmental impact statement shall be consid-
8 ered a separate final agency action and the
9 deadline for filing a claim for judicial review of
10 the agency action shall be 150 days after the
11 date on which a notice announcing the agency
12 action is published in the Federal Register.

13 (3) RULE OF CONSTRUCTION.—Nothing in this
14 subsection creates a right to judicial review or places
15 any limit on filing a claim that a person has violated
16 the terms of an authorization.

17 (b) PRELIMINARY INJUNCTIVE RELIEF.—In addition
18 to considering any other applicable equitable factors, in-
19 cluding the effects on public health, safety, and the envi-
20 ronment, in any action seeking a temporary restraining
21 order or preliminary injunction against an agency or a
22 project sponsor in connection with review or authorization
23 of a covered project, the court shall—

1 (1) consider the potential for significant job
2 losses or other economic harm resulting from an
3 order or injunction; and

4 (2) not presume that the harms described in
5 paragraph (1) are reparable.

6 (c) JUDICIAL REVIEW.—Except as provided in sub-
7 section (a), nothing in this Act affects the reviewability
8 of any final Federal agency action in a court of the United
9 States or in the court of any State.

10 (d) SAVINGS CLAUSE.—Nothing in this Act—

11 (1) supersedes, amends, or modifies NEPA or
12 any other Federal environmental statute or affects
13 the responsibility of any Federal officer to comply
14 with or enforce any statute; or

15 (2) creates a presumption that a covered
16 project will be approved or favorably reviewed by any
17 agency.

18 (e) LIMITATIONS.—Nothing in this section preempts,
19 limits, or interferes with—

20 (1) any practice of seeking, considering, or re-
21 sponding to public comment; or

22 (2) any power, jurisdiction, responsibility, or
23 authority that a Federal, State, or local govern-
24 mental agency, metropolitan planning organization,
25 Indian tribe, or project sponsor has with respect to

1 carrying out a project or any other provisions of law
2 applicable to any project, plan, or program.

3 **SEC. 9. REPORT TO CONGRESS.**

4 (a) IN GENERAL.—Not later than April 15 of each
5 year, the Federal CPO shall submit to Congress a report
6 detailing the progress accomplished under this Act during
7 the previous fiscal year.

8 (b) CONTENTS.—The report described in subsection
9 (a) shall assess the performance of each participating
10 agency and lead agency based on the best practices de-
11 scribed in section 3(e)(2)(B).

12 (c) OPPORTUNITY TO INCLUDE COMMENTS.—Each
13 agency CPO shall have the opportunity to include com-
14 ments concerning the performance of the agency in the
15 report described in subsection (a).

16 **SEC. 10. APPLICATION.**

17 This Act applies to any covered project for which an
18 application or request for a Federal authorization is pend-
19 ing before a Federal agency 90 days after the date of en-
20 actment of this Act.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Federal Permitting Im-*
23 *provement Act of 2015”.*

24 **SEC. 2. DEFINITIONS.**

25 *In this Act:*

1 (1) *AGENCY.*—*The term “agency” has the mean-*
2 *ing given the term in section 551 of title 5, United*
3 *States Code.*

4 (2) *AGENCY CERPO.*—*The term “agency*
5 *CERPO” means the chief environmental review and*
6 *permitting officer of an agency, as designated by the*
7 *head of the agency under section 3(b)(2)(A)(iii)(I).*

8 (3) *AUTHORIZATION.*—*The term “authorization”*
9 *means any license, permit, approval, finding, deter-*
10 *mination, or other administrative decision issued by*
11 *an agency that is required or authorized under Fed-*
12 *eral law in order to site, construct, reconstruct, or*
13 *commence operations of a covered project, whether ad-*
14 *ministered by a Federal or State agency.*

15 (4) *COOPERATING AGENCY.*—*The term “cooper-*
16 *ating agency” means any agency with—*

17 (A) *jurisdiction under Federal law; or*

18 (B) *special expertise as described in section*
19 *1501.6 of title 40, Code of Federal Regulations*
20 *(as in effect on the date of enactment of this*
21 *Act).*

22 (5) *COUNCIL.*—*The term “Council” means the*
23 *Federal Infrastructure Permitting Improvement*
24 *Steering Council established under section 3(a).*

25 (6) *COVERED PROJECT.*—

1 (A) *IN GENERAL.*—*The term “covered*
2 *project” means any construction activity in the*
3 *United States that requires authorization or en-*
4 *vironmental review by a Federal agency—*

5 *(i) involving renewable or conventional*
6 *energy production, electricity transmission,*
7 *surface transportation, aviation, ports and*
8 *waterways, water resource projects,*
9 *broadband, pipelines, manufacturing, or*
10 *any other sector as determined by a major-*
11 *ity vote of the Council;*

12 *(ii)(I) that is likely to require a total*
13 *investment of more than \$200,000,000; and*

14 *(II) that does not qualify for abbrev-*
15 *viated authorization or environmental re-*
16 *view processes under any applicable law; or*

17 *(iii) the size and complexity of which*
18 *make the project likely to benefit from en-*
19 *hanced oversight and coordination, includ-*
20 *ing a project likely to require—*

21 *(I) authorization from or environ-*
22 *mental review involving more than 2*
23 *Federal agencies; or*

1 (II) the preparation of an envi-
2 ronmental impact statement under
3 NEPA.

4 (B) *EXCLUSION.*—The term “covered
5 project” does not include—

6 (i) any project subject to section 139 of
7 title 23, United States Code; or

8 (ii) any project subject to section 2045
9 of the Water Resources Development Act of
10 2007 (33 U.S.C. 2348).

11 (7) *DASHBOARD.*—The term “Dashboard” means
12 the Permitting Dashboard required under section
13 4(b).

14 (8) *ENVIRONMENTAL ASSESSMENT.*—The term
15 “environmental assessment” means a concise public
16 document for which a Federal agency is responsible
17 under section 1508.9 of title 40, Code of Federal Reg-
18 ulations (or successor regulations).

19 (9) *ENVIRONMENTAL DOCUMENT.*—

20 (A) *IN GENERAL.*—The term “environ-
21 mental document” means an environmental as-
22 sessment, finding of no significant impact, notice
23 of intent, environmental impact statement, or
24 record of decision.

1 (B) *INCLUSIONS.*—*The term “environment*
2 *document” includes—*

3 (i) *any document that is a supplement*
4 *to a document described in subparagraph*
5 *(A); and*

6 (ii) *a document prepared pursuant to*
7 *a court order.*

8 (10) *ENVIRONMENTAL IMPACT STATEMENT.*—*The*
9 *term “environmental impact statement” means the*
10 *detailed written statement required under section*
11 *102(2)(C) of NEPA.*

12 (11) *ENVIRONMENTAL REVIEW.*—*The term “envi-*
13 *ronmental review” means the agency procedures and*
14 *processes for applying a categorical exclusion or for*
15 *preparing an environmental assessment, an environ-*
16 *mental impact statement, or other document required*
17 *under NEPA.*

18 (12) *EXECUTIVE DIRECTOR.*—*The term “Execu-*
19 *tive Director” means the Executive Director ap-*
20 *pointed by the President under section 3(b)(1)(A).*

21 (13) *FACILITATING AGENCY.*—*The term “facili-*
22 *tating agency” means the agency that receives the ini-*
23 *tial notification from the project sponsor required*
24 *under section 4(a).*

1 (14) *INVENTORY*.—*The term “inventory” means*
 2 *the inventory of covered projects established by the*
 3 *Executive Director under section 3(c)(1)(A).*

4 (15) *LEAD AGENCY*.—*The term “lead agency”*
 5 *means the agency with principal responsibility for an*
 6 *environmental review of a covered project under*
 7 *NEPA and parts 1500 through 1508 of title 40, Code*
 8 *of Federal Regulations (or successor regulations).*

9 (16) *NEPA*.—*The term “NEPA” means the Na-*
 10 *tional Environmental Policy Act of 1969 (42 U.S.C.*
 11 *4321 et seq.).*

12 (17) *PARTICIPATING AGENCY*.—*The term “par-*
 13 *ticipating agency” means an agency participating in*
 14 *an environmental review or authorization for a cov-*
 15 *ered project in accordance with section 4.*

16 (18) *PROJECT SPONSOR*.—*The term “project*
 17 *sponsor” means an entity, including any private,*
 18 *public, or public-private entity, seeking an authoriza-*
 19 *tion for a covered project.*

20 **SEC. 3. FEDERAL PERMITTING IMPROVEMENT COUNCIL.**

21 (a) *ESTABLISHMENT*.—*There is established the Federal*
 22 *Permitting Improvement Steering Council.*

23 (b) *COMPOSITION*.—

24 (1) *CHAIR*.—*The Executive Director shall—*

25 (A) *be appointed by the President; and*

1 (B) serve as Chair of the Council.

2 (2) COUNCIL MEMBERS.—

3 (A) IN GENERAL.—

4 (i) DESIGNATION BY HEAD OF AGEN-
5 CY.—Each individual listed in subpara-
6 graph (B) shall designate a member of the
7 agency in which the individual serves to
8 serve on the Council.

9 (ii) QUALIFICATIONS.—A
10 councilmember described in clause (i) shall
11 hold a position in the agency of deputy sec-
12 retary (or the equivalent) or higher.

13 (iii) SUPPORT.—

14 (I) IN GENERAL.—Consistent with
15 guidance provided by the Director of
16 the Office of Management and Budget,
17 each individual listed in subparagraph
18 (B) shall designate 1 or more appro-
19 priate members of the agency in which
20 the individual serves to serve as an
21 agency CERPO.

22 (II) REPORTING.—An agency
23 CERPO shall report directly to a dep-
24 uty secretary (or the equivalent) or
25 higher.

1 (B) *HEADS OF AGENCIES.*—*The individuals*
2 *that shall each designate a councilmember under*
3 *this subparagraph are as follows:*

4 (i) *The Secretary of Agriculture.*

5 (ii) *The Secretary of the Army.*

6 (iii) *The Secretary of Commerce.*

7 (iv) *The Secretary of the Interior.*

8 (v) *The Secretary of Energy.*

9 (vi) *The Secretary of Transportation.*

10 (vii) *The Secretary of Defense.*

11 (viii) *The Administrator of the Envi-*
12 *ronmental Protection Agency.*

13 (ix) *The Chairman of the Federal En-*
14 *ergy Regulatory Commission.*

15 (x) *The Chairman of the Nuclear Regu-*
16 *latory Commission.*

17 (xi) *The Secretary of Homeland Secu-*
18 *rity.*

19 (xii) *The Secretary of Housing and*
20 *Urban Development.*

21 (xiii) *The Chairman of the Advisory*
22 *Council on Historic Preservation.*

23 (xiv) *Any other head of a Federal*
24 *agency that the Executive Director may in-*

1 *vite to participate as a member of the*
2 *Council.*

3 (3) *ADDITIONAL MEMBERS.*—*In addition to the*
4 *members listed in paragraphs (1) and (2), the Chair-*
5 *man of the Council on Environmental Quality and*
6 *the Director of the Office of Management and Budget*
7 *shall also be members of the Council.*

8 (c) *DUTIES.*—

9 (1) *EXECUTIVE DIRECTOR.*—

10 (A) *INVENTORY DEVELOPMENT.*—*The Exec-*
11 *utive Director, in consultation with the Council,*
12 *shall—*

13 (i) *not later than 180 days after the*
14 *date of enactment of this Act, establish an*
15 *inventory of covered projects that are pend-*
16 *ing the environmental review or authoriza-*
17 *tion of the head of any Federal agency;*

18 (ii)(I) *categorize the projects in the in-*
19 *ventory as appropriate, based on sector and*
20 *project type; and*

21 (II) *for each category, identify the*
22 *types of environmental reviews and author-*
23 *izations most commonly involved; and*

1 (iii) add a covered project to the inven-
2 tory after receiving a notice described in
3 section 4(a)(1).

4 (B) *FACILITATING AGENCY DESIGNATION.*—
5 *The Executive Director, in consultation with the*
6 *Council, shall—*

7 (i) designate a facilitating agency for
8 each category of covered projects described
9 in subparagraph (A)(ii); and

10 (ii) publish the list of designated facili-
11 tating agencies for each category of projects
12 in the inventory on the Dashboard in an
13 easily accessible format.

14 (C) *PERFORMANCE SCHEDULES.*—

15 (i) *IN GENERAL.*—*Not later than 1*
16 *year after the date of enactment of this Act,*
17 *the Executive Director, in consultation with*
18 *the Council, shall develop nonbinding per-*
19 *formance schedules, including intermediate*
20 *and final deadlines, for environmental re-*
21 *views and authorizations most commonly*
22 *required for each category of covered*
23 *projects described in subparagraph (A)(ii).*

24 (ii) *REQUIREMENTS.*—

1 (I) *IN GENERAL.*—*The performance*
2 *schedules shall reflect employment*
3 *of the use of the most efficient applica-*
4 *ble processes.*

5 (II) *LIMIT.*—

6 (aa) *IN GENERAL.*—*The final*
7 *deadline in any performance*
8 *schedule for the completion of an*
9 *environmental review or author-*
10 *ization under clause (i) shall not*
11 *exceed the average time to com-*
12 *plete an environmental review or*
13 *authorization for a project within*
14 *that category.*

15 (bb) *CALCULATION OF AVER-*
16 *AGE TIME.*—*The average time re-*
17 *ferred to in item (aa) shall be cal-*
18 *culated on the basis of data from*
19 *the preceding 2 calendar years*
20 *and shall run from the period be-*
21 *ginning on the date on which the*
22 *Executive Director must make a*
23 *specific entry for the project on*
24 *the Dashboard under section*
25 *4(b)(2) (except that, for projects*

1 *initiated before that duty takes ef-*
2 *fect, the period beginning on the*
3 *date of filing of a completed ap-*
4 *plication), and ending on the date*
5 *of the issuance of a record of deci-*
6 *sion or other final agency action*
7 *on the review or authorization.*

8 *(cc) DEADLINE.—Each per-*
9 *formance schedule shall specify*
10 *that any decision by an agency on*
11 *an environmental review or au-*
12 *thorization must be issued not*
13 *later than 180 days after the date*
14 *on which all information needed*
15 *to complete the review or author-*
16 *ization is in the possession of the*
17 *agency.*

18 *(iii) REVIEW AND REVISION.—Not*
19 *later than 2 years after the date on which*
20 *the performance schedules are established*
21 *under this subparagraph, and not less fre-*
22 *quently than once every 2 years thereafter,*
23 *the Executive Director, in consultation with*
24 *the Council, shall review and revise the per-*
25 *formance schedules.*

1 (D) *GUIDANCE.*—*The Executive Director, in*
 2 *consultation with the Council, may recommend*
 3 *to the Director of the Office of Management and*
 4 *Budget or to the Council on Environmental*
 5 *Quality, as appropriate, that guidance be issued*
 6 *as necessary for agencies—*

7 (i) *to carry out responsibilities under*
 8 *this Act; and*

9 (ii) *to effectuate the adoption by agen-*
 10 *cies of the best practices and recommenda-*
 11 *tions of the Council described in paragraph*
 12 *(2).*

13 (2) *COUNCIL.*—

14 (A) *RECOMMENDATIONS.*—

15 (i) *IN GENERAL.*—*The Council shall*
 16 *make recommendations to the Executive Di-*
 17 *rector with respect to the designations under*
 18 *paragraph (1)(B) and the performance*
 19 *schedules under paragraph (1)(C).*

20 (ii) *UPDATE.*—*The Council may up-*
 21 *date the recommendations described in*
 22 *clause (i).*

23 (B) *BEST PRACTICES.*—*Not later than 1*
 24 *year after the date of enactment of this Act, and*
 25 *not less frequently than annually thereafter, the*

1 *Council shall issue recommendations on the best*
2 *practices for—*

3 *(i) enhancing early stakeholder engage-*
4 *ment, including fully considering and, as*
5 *appropriate, incorporating recommenda-*
6 *tions provided in public comments on any*
7 *proposed covered project;*

8 *(ii) ensuring timely decisions regard-*
9 *ing environmental reviews and authoriza-*
10 *tions, including through the development of*
11 *performance metrics;*

12 *(iii) improving coordination between*
13 *Federal and non-Federal governmental enti-*
14 *ties, including through the development of*
15 *common data standards and terminology*
16 *across agencies;*

17 *(iv) increasing transparency;*

18 *(v) reducing information collection re-*
19 *quirements and other administrative bur-*
20 *dens on agencies, project sponsors, and other*
21 *interested parties;*

22 *(vi) developing and making available*
23 *to applicants appropriate geographic infor-*
24 *mation systems and other tools;*

1 (vii) creating and distributing train-
2 ing materials useful to Federal, State, trib-
3 al, and local permitting officials; and

4 (viii) addressing other aspects of infra-
5 structure permitting, as determined by the
6 Council.

7 (3) AGENCY CERPOS.—An agency CERPO
8 shall—

9 (A) advise the respective agency
10 councilmember on matters related to environ-
11 mental reviews and authorizations;

12 (B) provide technical support, when re-
13 quested to facilitate efficient and timely processes
14 for environmental reviews and authorizations for
15 covered projects under the jurisdictional respon-
16 sibility of the agency, including supporting time-
17 ly identification and resolution of potential dis-
18 putes within the agency or between the agency
19 and other Federal agencies;

20 (C) analyze agency environmental review
21 and authorization processes, policies, and au-
22 thorities and make recommendations to the re-
23 spective agency councilmember for ways to
24 standardize, simplify, and improve the efficiency
25 of the processes, policies, and authorities, includ-

1 *ing by implementing guidance issued under*
 2 *paragraph (1)(D) and other best practices, in-*
 3 *cluding the use of information technology and*
 4 *geographic information system tools within the*
 5 *agency and across agencies, to the extent con-*
 6 *sistent with existing law; and*

7 *(D) review and develop training programs*
 8 *for agency staff that support and conduct envi-*
 9 *ronmental reviews or authorizations.*

10 *(d) ADMINISTRATIVE SUPPORT.—The Director of the*
 11 *Office of Management and Budget shall designate a Federal*
 12 *agency to provide administrative support for the Executive*
 13 *Director, and the designated agency shall, as reasonably*
 14 *necessary, provide support and staff to enable the Executive*
 15 *Director to fulfill the duties of the Executive Director under*
 16 *this Act.*

17 **SEC. 4. PERMITTING PROCESS IMPROVEMENT.**

18 *(a) PROJECT INITIATION AND DESIGNATION OF PAR-*
 19 *TICIPATING AGENCIES.—*

20 *(1) NOTICE.—*

21 *(A) IN GENERAL.—A project sponsor of a*
 22 *covered project shall submit to the Executive Di-*
 23 *rector and the facilitating agency notice of the*
 24 *initiation of a proposed covered project.*

1 (B) *DEFAULT DESIGNATION.*—If, at the
2 time of submission of the notice under subpara-
3 graph (A), the Executive Director has not des-
4 igned a facilitating agency under section
5 3(c)(1)(B) for the categories of projects noticed,
6 the agency that receives the notice under sub-
7 paragraph (A) shall be designated as the facili-
8 tating agency.

9 (C) *CONTENTS.*—Each notice described in
10 subparagraph (A) shall include—

11 (i) a statement of the purposes and ob-
12 jectives of the proposed project;

13 (ii) a concise description, including the
14 general location of the proposed project and
15 a summary of geospatial information, if
16 available, illustrating the project area and
17 the locations, if any, of environmental, cul-
18 tural, and historic resources;

19 (iii) a statement regarding the tech-
20 nical and financial ability of the project
21 sponsor to construct the proposed project;

22 (iv) a statement of any Federal financ-
23 ing, environmental reviews, and authoriza-
24 tions anticipated to be required to complete
25 the proposed project; and

1 (v) *an assessment that the proposed*
2 *project meets the definition of a covered*
3 *project under section 2 and a statement of*
4 *reasons supporting the assessment.*

5 (2) *INVITATION.—*

6 (A) *IN GENERAL.—Not later than 45 days*
7 *after the date on which the Executive Director*
8 *must make a specific entry for the project on the*
9 *Dashboard under subsection (b)(2)(A), the facili-*
10 *tating agency or lead agency, as applicable,*
11 *shall—*

12 (i) *identify all Federal and non-Fed-*
13 *eral agencies and governmental entities like-*
14 *ly to have financing, environmental review,*
15 *authorization, or other responsibilities with*
16 *respect to the proposed project; and*

17 (ii) *invite all Federal agencies identi-*
18 *fied under clause (i) to become a partici-*
19 *pating agency or a cooperating agency, as*
20 *appropriate, in the environmental review*
21 *and authorization management process de-*
22 *scribed in section 6.*

23 (B) *DEADLINES.—Each invitation made*
24 *under subparagraph (A) shall include a deadline*

1 *for a response to be submitted to the facilitating*
2 *or lead agency, as applicable.*

3 (3) *PARTICIPATING AND COOPERATING AGEN-*
4 *CIES.—*

5 (A) *IN GENERAL.—An agency invited under*
6 *paragraph (2) shall be designated as a partici-*
7 *pating or cooperating agency for a covered*
8 *project, unless the agency informs the facilitating*
9 *or lead agency, as applicable, in writing before*
10 *the deadline under paragraph (2)(B) that the*
11 *agency—*

12 (i) *has no jurisdiction or authority*
13 *with respect to the proposed project; or*

14 (ii) *does not intend to exercise author-*
15 *ity related to, or submit comments on, the*
16 *proposed project.*

17 (B) *CHANGED CIRCUMSTANCES.—On re-*
18 *quest and a showing of changed circumstances,*
19 *the Executive Director may designate an agency*
20 *that has opted out under subparagraph (A)(ii) to*
21 *be a participating or cooperating agency, as ap-*
22 *propriate.*

23 (4) *EFFECT OF DESIGNATION.—The designation*
24 *described in paragraph (3) shall not—*

1 (A) give the participating agency authority
2 or jurisdiction over the covered project; or

3 (B) expand any jurisdiction or authority a
4 cooperating agency may have over the proposed
5 project.

6 (5) *LEAD AGENCY DESIGNATION.*—

7 (A) *IN GENERAL.*—On establishment of the
8 lead agency, the lead agency shall assume the re-
9 sponsibilities of the facilitating agency under
10 this Act.

11 (B) *REDESIGNATION OF FACILITATING*
12 *AGENCY.*—If the lead agency assumes the respon-
13 sibilities of the facilitating agency under sub-
14 paragraph (A), the facilitating agency may be
15 designated as a cooperative or participating
16 agency.

17 (6) *CHANGE OF FACILITATING OR LEAD AGEN-*
18 *CY.*—

19 (A) *IN GENERAL.*—On the request of a par-
20 ticipating agency or project sponsor, the Execu-
21 tive Director may designate a different agency as
22 the facilitating or lead agency, as applicable, for
23 a covered project, if the facilitating or lead agen-
24 cy or the Executive Director receives new infor-
25 mation regarding the scope or nature of a cov-

1 *ered project that indicates that the project should*
2 *be placed in a different category under section*
3 *3(c)(1)(B).*

4 *(B) RESOLUTION OF DISPUTE.—The Execu-*
5 *tive Director shall resolve any dispute over des-*
6 *ignation of a facilitating or lead agency for a*
7 *particular covered project.*

8 *(b) PERMITTING DASHBOARD.—*

9 *(1) REQUIREMENT TO MAINTAIN.—*

10 *(A) IN GENERAL.—The Executive Director,*
11 *in coordination with the Administrator of Gen-*
12 *eral Services, shall maintain an online database*
13 *to be known as the “Permitting Dashboard” to*
14 *track the status of Federal environmental reviews*
15 *and authorizations for any covered project in the*
16 *inventory described in section 3(c)(1)(A) and*
17 *any projects subject to section 139 of title 23,*
18 *United States Code, or section 2045 of the Water*
19 *Resources Development Act of 2007 (33 U.S.C.*
20 *2348).*

21 *(B) SPECIFIC AND SEARCHABLE ENTRY.—*
22 *The Dashboard shall include a specific and*
23 *searchable entry for each covered project.*

24 *(2) ADDITIONS.—*

25 *(A) IN GENERAL.—*

1 (i) *EXISTING PROJECTS.*—Not later
2 than 14 days after the date on which the
3 Executive Director adds a project to the in-
4 ventory under section 3(c)(1)(A), the Execu-
5 tive Director shall create a specific entry on
6 the Dashboard for the covered project.

7 (ii) *NEW PROJECTS.*—Not later than
8 14 days after the date on which the Execu-
9 tive Director receives a notice under sub-
10 section (a)(1), the Executive Director shall
11 create a specific entry on the Dashboard for
12 the covered project, unless the Executive Di-
13 rector, facilitating agency, or lead agency,
14 as applicable, determines that the project is
15 not a covered project.

16 (B) *EXPLANATION.*—If the facilitating
17 agency or lead agency, as applicable, determines
18 that the project is not a covered project, the
19 project sponsor may submit a further expla-
20 nation as to why the project is a covered project
21 not later than 14 days after the date of the deter-
22 mination under subparagraph (A).

23 (C) *FINAL DETERMINATION.*—Not later than
24 14 days after receiving an explanation described

1 in subparagraph (B), the Executive Director
2 shall—

3 (i) make a final and conclusive deter-
4 mination as to whether the project is a cov-
5 ered project; and

6 (ii) if the Executive Director deter-
7 mines that the project is a covered project,
8 create a specific entry on the Dashboard for
9 the covered project.

10 (3) *POSTINGS BY AGENCIES.*—

11 (A) *IN GENERAL.*—For each covered project
12 added to the Dashboard under paragraph (2),
13 the facilitating or lead agency, as applicable,
14 and each cooperating and participating agency
15 shall post to the Dashboard—

16 (i) a hyperlink that directs to a website
17 that contains, to the extent consistent with
18 applicable law—

19 (I) the notification submitted
20 under subsection (a)(1);

21 (II)(aa) where practicable, the ap-
22 plication and supporting documents, if
23 applicable, that have been submitted by
24 a project sponsor for any required en-

1 *vironmental review or authorization;*
2 *or*

3 *(bb) a notice explaining how the*
4 *public may obtain access to such docu-*
5 *ments;*

6 *(III) a description of any Federal*
7 *agency action taken or decision made*
8 *that materially affects the status of a*
9 *covered project;*

10 *(IV) any significant document*
11 *that supports the action or decision de-*
12 *scribed in subclause (III); and*

13 *(V) a description of the status of*
14 *any litigation to which the agency is a*
15 *party that is directly related to the*
16 *project, including, if practicable, any*
17 *judicial document made available on*
18 *an electronic docket maintained by a*
19 *Federal, State, or local court; and*

20 *(ii) any document described in clause*
21 *(i) that is not available by hyperlink on an-*
22 *other website.*

23 *(B) DEADLINE.—The information described*
24 *in subparagraph (A) shall be posted to the*
25 *website made available by hyperlink on the*

1 *Dashboard not later than 2 business days after*
2 *the date on which the Federal agency receives the*
3 *information.*

4 (4) *POSTINGS BY THE EXECUTIVE DIRECTOR.—*
5 *The Executive Director shall publish to the Dash-*
6 *board—*

7 (A) *the permitting timetable established*
8 *under subparagraph (A) or (C) of subsection*
9 *(c)(2);*

10 (B) *the status of the compliance of each*
11 *agency with the permitting timetable;*

12 (C) *any modifications of the permitting*
13 *timetable;*

14 (D) *an explanation of each modification de-*
15 *scribed in subparagraph (C); and*

16 (E) *any memorandum of understanding es-*
17 *tablished under subsection (c)(3)(B).*

18 (c) *COORDINATION AND TIMETABLES.—*

19 (1) *COORDINATED PROJECT PLAN.—*

20 (A) *IN GENERAL.—Not later than 60 days*
21 *after the date on which the Executive Director*
22 *must make a specific entry for the project on the*
23 *Dashboard under subsection (b)(2)(A), the facili-*
24 *tating or lead agency, as applicable, in consulta-*
25 *tion with each coordinating and participating*

1 *agency, shall establish a concise plan for coordi-*
2 *inating public and agency participation in, and*
3 *completion of, any required Federal environ-*
4 *mental review and authorization for the project.*

5 *(B) REQUIRED INFORMATION.—The Coordi-*
6 *nated Project Plan shall include the following in-*
7 *formation and be updated by the facilitating or*
8 *lead agency, as applicable, at least once per*
9 *quarter:*

10 *(i) A list of, and roles and responsibil-*
11 *ities for, all entities with environmental re-*
12 *view or authorization responsibility for the*
13 *project.*

14 *(ii) A permitting timetable, as de-*
15 *scribed in paragraph (2), setting forth a*
16 *comprehensive schedule of dates by which all*
17 *environmental reviews and authorizations,*
18 *and to the maximum extent practicable,*
19 *State permits, reviews and approvals must*
20 *be made.*

21 *(iii) A discussion of potential avoid-*
22 *ance, minimization, and mitigation strate-*
23 *gies, if required by applicable law and*
24 *known.*

1 (iv) *Plans and a schedule for public*
2 *and tribal outreach and coordination, to the*
3 *extent required by applicable law.*

4 (C) *MEMORANDUM OF UNDERSTANDING.—*
5 *The coordinated project plan described in sub-*
6 *paragraph (A) may be incorporated into a*
7 *memorandum of understanding.*

8 (2) *PERMITTING TIMETABLE.—*

9 (A) *ESTABLISHMENT.—As part of the co-*
10 *ordination project plan under paragraph (1), the*
11 *facilitating or lead agency, as applicable, in con-*
12 *sultation with each cooperating and partici-*
13 *parting agency, the project sponsor, and any*
14 *State in which the project is located, shall estab-*
15 *lish a permitting timetable that includes inter-*
16 *mediate and final deadlines for action by each*
17 *participating agency on any Federal environ-*
18 *mental review or authorization required for the*
19 *project.*

20 (B) *FACTORS FOR CONSIDERATION.—In es-*
21 *tablishing the permitting timetable under sub-*
22 *paragraph (A), the facilitating or lead agency*
23 *shall follow the performance schedules established*
24 *under section 3(c)(1)(C), but may vary the time-*
25 *table based on relevant factors, including—*

1 (i) *the size and complexity of the cov-*
2 *ered project;*

3 (ii) *the resources available to each par-*
4 *ticipating agency;*

5 (iii) *the regional or national economic*
6 *significance of the project;*

7 (iv) *the sensitivity of the natural or*
8 *historic resources that may be affected by*
9 *the project;*

10 (v) *the financing plan for the project;*
11 *and*

12 (vi) *the extent to which similar*
13 *projects in geographic proximity to the*
14 *project were recently subject to environ-*
15 *mental review or similar procedures under*
16 *State law.*

17 (C) *DISPUTE RESOLUTION.—*

18 (i) *IN GENERAL.—The Executive Di-*
19 *rector, in consultation with appropriate*
20 *agency CERPOs and the project sponsor,*
21 *shall, as necessary, mediate any disputes re-*
22 *garding the permitting timetable established*
23 *under subparagraph (A).*

24 (ii) *DISPUTES.—If a dispute remains*
25 *unresolved 30 days after the date on which*

1 the dispute was submitted to the Executive
2 Director, the Director of the Office of Man-
3 agement and Budget, in consultation with
4 the Chairman of the Council on Environ-
5 mental Quality, shall resolve the dispute.

6 (iii) *FINAL RESOLUTION.*—Resolution
7 of a dispute by the Director of the Office of
8 Management and Budget under clause (ii)
9 shall—

10 (I) be final and conclusive; and

11 (II) not be subject to judicial re-
12 view.

13 (D) *MODIFICATION AFTER APPROVAL.*—

14 (i) *IN GENERAL.*—The facilitating or
15 lead agency, as applicable, may modify a
16 permitting timetable established under sub-
17 paragraph (A) only if—

18 (I) the facilitating or lead agency,
19 as applicable, and the affected cooper-
20 ating agencies, after consultation with
21 the participating agencies, agree to a
22 different deadline; and

23 (II) the facilitating agency or lead
24 agency, as applicable, or the affected

1 *cooperating agency provides a written*
2 *justification for the modification.*

3 *(ii) DEADLINE.—A deadline in the*
4 *permitting timetable may not be modified*
5 *within 30 days of the deadline.*

6 *(E) CONSISTENCY WITH OTHER TIME PERI-*
7 *ODS.—A permitting timetable established under*
8 *subparagraph (A) shall be consistent with any*
9 *other relevant time periods established under*
10 *Federal law and shall not prevent any cooper-*
11 *ating or participating agency from discharging*
12 *any obligation under Federal law in connection*
13 *with the project.*

14 *(F) CONFORMING TO PERMITTING TIME-*
15 *TABLES.—*

16 *(i) IN GENERAL.—Each Federal agency*
17 *shall conform to the deadlines set forth in*
18 *the permitting timetable established under*
19 *subparagraph (A), or with any deadline*
20 *modified under subparagraph (D).*

21 *(ii) FAILURE TO CONFORM.—If a Fed-*
22 *eral agency fails to conform with a deadline*
23 *for agency action on a covered project or is*
24 *at significant risk of failing to conform*
25 *with such a deadline, the agency shall—*

1 (I) promptly submit to the Execu-
 2 tive Director for publication on the
 3 Dashboard an explanation of the spe-
 4 cific reasons for failing or significantly
 5 risking failing to conform to the dead-
 6 line and a proposal for an alternative
 7 deadline;

8 (II) in consultation with the fa-
 9 cilitating or lead agency, as applicable,
 10 establish an alternative deadline; and

11 (III) each month thereafter until
 12 the agency has taken final action on
 13 the delayed authorization or review,
 14 submit to the Executive Director for
 15 posting on the Dashboard a status re-
 16 port describing any agency activity re-
 17 lated to the project.

18 (G) ABANDONMENT OF COVERED
 19 PROJECT.—

20 (i) IN GENERAL.—If the facilitating or
 21 lead agency, as applicable, has a reasonable
 22 basis to doubt the continuing technical or
 23 financial ability of the project sponsor to
 24 construct the covered project, the facilitating
 25 or lead agency may request the project

1 *sponsor provide an updated statement re-*
2 *garding the ability of the project sponsor to*
3 *complete the project.*

4 *(ii) FAILURE TO RESPOND.—If the*
5 *project sponsor fails to respond to a request*
6 *described in clause (i) by the date that is 30*
7 *days after receiving the request, the lead or*
8 *facilitating agency, as applicable, shall no-*
9 *tify the Executive Director, who shall pub-*
10 *lish an appropriate notice on the Dash-*
11 *board.*

12 *(iii) PUBLICATION TO DASHBOARD.—*
13 *On publication of a notice under clause (ii),*
14 *the deadlines in the permitting timetable*
15 *shall be tolled and agencies shall be relieved*
16 *of the obligation to comply with subpara-*
17 *graph (F) until such time as the project*
18 *sponsor submits to the facilitating or lead*
19 *agency, as applicable, an updated statement*
20 *regarding the technical and financial abil-*
21 *ity of the project sponsor to construct the*
22 *project.*

23 *(3) COOPERATING STATE, LOCAL, OR TRIBAL*
24 *GOVERNMENTS.—*

1 (A) *IN GENERAL.*—*To the maximum extent*
2 *practicable under applicable law, the facilitating*
3 *or lead agency, as applicable, shall coordinate*
4 *the Federal environmental review and authoriza-*
5 *tion processes under this subsection with any*
6 *State, local, or tribal agency responsible for con-*
7 *ducting any separate review or authorization of*
8 *the covered project to ensure timely and efficient*
9 *completion of environmental reviews and author-*
10 *izations.*

11 (B) *MEMORANDUM OF UNDERSTANDING.*—

12 (i) *IN GENERAL.*—*Any coordination*
13 *plan between the facilitating or lead agency,*
14 *as applicable, and any State, local, or trib-*
15 *al agency shall, to the maximum extent*
16 *practicable, be included in a memorandum*
17 *of understanding.*

18 (ii) *SUBMISSION TO EXECUTIVE DIREC-*
19 *TOR.*—*The facilitating or lead agency, as*
20 *applicable, shall submit to the Executive*
21 *Director each memorandum of under-*
22 *standing described in clause (i).*

23 (d) *EARLY CONSULTATION.*—*The facilitating or lead*
24 *agency, as applicable, shall provide an expeditious process*
25 *for project sponsors to confer with each cooperating and*

1 *participating agency involved and, not later than 60 days*
 2 *after the date on which the project sponsor submits a request*
 3 *under this subsection, to have each such agency provide to*
 4 *the project sponsor information concerning—*

5 *(1) the availability of information and tools, in-*
 6 *cluding pre-application toolkits, to facilitate early*
 7 *planning efforts;*

8 *(2) key issues of concern to each agency and to*
 9 *the public; and*

10 *(3) issues that must be addressed before an envi-*
 11 *ronmental review or authorization can be completed.*

12 *(e) COOPERATING AGENCY.—*

13 *(1) IN GENERAL.—A lead agency may designate*
 14 *a participating agency as a cooperating agency in*
 15 *accordance with part 1501 of title 40, Code of Federal*
 16 *Regulations (or successor regulations).*

17 *(2) EFFECT ON OTHER DESIGNATION.—The des-*
 18 *ignation described in paragraph (1) shall not affect*
 19 *any designation under subsection (a)(3).*

20 *(3) LIMITATION ON DESIGNATION.—Any agency*
 21 *not designated as a participating agency under sub-*
 22 *section (a)(3) shall not be designated as a cooperating*
 23 *agency under paragraph (1).*

1 **SEC. 5. INTERSTATE COMPACTS.**

2 (a) *IN GENERAL.*—*The consent of Congress is given*
3 *for 3 or more contiguous States to enter into an interstate*
4 *compact establishing regional infrastructure development*
5 *agencies to facilitate authorization and review of covered*
6 *projects, under State law or in the exercise of delegated per-*
7 *mitting authority described under section 7, that will ad-*
8 *vance infrastructure development, production, and genera-*
9 *tion within the States that are parties to the compact.*

10 (b) *REGIONAL INFRASTRUCTURE.*—*For the purpose of*
11 *this Act, a regional infrastructure development agency re-*
12 *ferred to in subsection (a) shall have the same authorities*
13 *and responsibilities of a State agency.*

14 **SEC. 6. COORDINATION OF REQUIRED REVIEWS.**

15 (a) *CONCURRENT REVIEWS.*—*To integrate environ-*
16 *mental reviews and authorizations, each agency shall, to the*
17 *maximum extent practicable—*

18 (1) *carry out the obligations of the agency with*
19 *respect to a covered project under any other applica-*
20 *ble law concurrently, and in conjunction with, other*
21 *environmental reviews and authorizations being con-*
22 *ducted by other cooperating or participating agencies,*
23 *including environmental reviews and authorizations*
24 *required under NEPA, unless the agency determines*
25 *that doing so would impair the ability of the agency*

1 to carry out the statutory obligations of the agency;
2 and

3 (2) formulate and implement administrative,
4 policy, and procedural mechanisms to enable the
5 agency to ensure completion of the environmental re-
6 view process in a timely, coordinated, and environ-
7 mentally responsible manner.

8 (b) *ADOPTION, INCORPORATION BY REFERENCE, AND*
9 *USE OF DOCUMENTS.*—

10 (1) *STATE ENVIRONMENTAL DOCUMENTS; SUP-*
11 *PLEMENTAL DOCUMENTS.*—

12 (A) *USE OF EXISTING DOCUMENTS.*—

13 (i) *IN GENERAL.*—*On the request of a*
14 *project sponsor, a lead agency shall consider*
15 *and, as appropriate, adopt or incorporate*
16 *by reference, the analysis and documenta-*
17 *tion that has been prepared for a covered*
18 *project under State laws and procedures as*
19 *the documentation, or part of the docu-*
20 *mentation, required to complete an environ-*
21 *mental review for the covered project, if the*
22 *analysis and documentation were, as deter-*
23 *mined by the lead agency in consultation*
24 *with the Council on Environmental Qual-*
25 *ity, prepared under circumstances that al-*

1 *lowed for opportunities for public participa-*
2 *tion and consideration of alternatives and*
3 *environmental consequences that are sub-*
4 *stantially equivalent to what would have*
5 *been available had the documents and anal-*
6 *ysis been prepared by a Federal agency*
7 *pursuant to NEPA.*

8 *(ii) GUIDANCE BY CEQ.—The Council*
9 *on Environmental Quality may issue guid-*
10 *ance to carry out this subsection.*

11 *(B) NEPA OBLIGATIONS.—An environ-*
12 *mental document adopted under subparagraph*
13 *(A) or a document that includes documentation*
14 *incorporated under subparagraph (A) may serve*
15 *as the documentation required for an environ-*
16 *mental review or a supplemental environmental*
17 *review required to be prepared by a lead agency*
18 *under NEPA.*

19 *(C) SUPPLEMENTATION OF STATE DOCU-*
20 *MENTS.—If the lead agency adopts or incor-*
21 *porates analysis and documentation described in*
22 *subparagraph (A), the lead agency shall prepare*
23 *and publish a supplemental document if the lead*
24 *agency determines that during the period after*

1 *preparation of the analysis and documentation*
2 *and before the adoption or incorporation—*

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

7 *(ii) there has been a significant cir-*
8 *cumstance or new information has emerged*
9 *that is relevant to the environmental review*
10 *for the covered project.*

11 *(D) COMMENTS.—If a lead agency prepares*
12 *and publishes a supplemental document under*
13 *subparagraph (C), the lead agency shall solicit*
14 *comments from other agencies and the public on*
15 *the supplemental document for a period of not*
16 *more than 45 days, beginning on the date on*
17 *which the supplemental document is published,*
18 *unless—*

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

22 *(ii) the lead agency extends the dead-*
23 *line for good cause.*

24 *(E) NOTICE OF OUTCOME OF ENVIRON-*
25 *MENTAL REVIEW.—A lead agency shall issue a*

1 *record of decision or finding of no significant*
2 *impact, as appropriate, based on the document*
3 *adopted under subparagraph (A) and any sup-*
4 *plemental document prepared under subpara-*
5 *graph (C).*

6 (c) *ALTERNATIVES ANALYSIS.*—

7 (1) *PARTICIPATION.*—*As early as practicable*
8 *during the environmental review, but not later than*
9 *the commencement of scoping for a project requiring*
10 *the preparation of an environmental impact state-*
11 *ment, the lead agency shall engage cooperating agen-*
12 *cies in determining the range of alternatives to be*
13 *considered for a covered project.*

14 (2) *RANGE OF ALTERNATIVES.*—*Following par-*
15 *ticipation under paragraph (1), the lead agency shall*
16 *determine the range of alternatives for consideration*
17 *in any document that the lead agency is responsible*
18 *for preparing for the covered project.*

19 (3) *METHODOLOGIES.*—

20 (A) *IN GENERAL.*—*The lead agency shall*
21 *determine, in collaboration with each cooper-*
22 *ating agency at appropriate times during the en-*
23 *vironmental review, the methodologies to be used*
24 *and the level of detail required in the analysis*
25 *of each alternative for a covered project.*

1 (B) *ENVIRONMENTAL REVIEW*.—A cooper-
 2 ating agency shall use the methodologies referred
 3 to in subparagraph (A) when conducting any re-
 4 quired environmental review, to the extent con-
 5 sistent with existing law.

6 (4) *PREFERRED ALTERNATIVE*.—With the con-
 7 currence of the cooperating agencies and at the discre-
 8 tion of the lead agency, the preferred alternative for
 9 a project, after being identified, may be developed to
 10 a higher level of detail than other alternatives to fa-
 11 cilitate the development of mitigation measures or
 12 concurrent compliance with other applicable laws if
 13 the lead agency determines that the development of the
 14 higher level of detail will not prevent—

15 (A) the lead agency from making an impar-
 16 tial decision as to whether to accept another al-
 17 ternative that is being considered in the environ-
 18 mental review; and

19 (B) the public from commenting on the pre-
 20 ferred and other alternatives.

21 (d) *ENVIRONMENTAL REVIEW COMMENTS*.—

22 (1) *COMMENTS ON DRAFT ENVIRONMENTAL IM-*
 23 *PACT STATEMENT*.—For comments by an agency or
 24 the public on a draft environmental impact state-
 25 ment, the lead agency shall establish a comment pe-

1 *riod of not less than 45 days and not more than 60*
2 *days after the date on which a notice announcing*
3 *availability of the environmental impact statement is*
4 *published in the Federal Register, unless—*

5 *(A) the lead agency, the project sponsor,*
6 *and any cooperating agency agree to a longer*
7 *deadline; or*

8 *(B) the lead agency extends the deadline for*
9 *good cause.*

10 *(2) OTHER REVIEW AND COMMENT PERIODS.—*

11 *For all other review or comment periods in the envi-*
12 *ronmental review process described in parts 1500*
13 *through 1508 of title 40, Code of Federal Regulations*
14 *(or successor regulations), the lead agency shall estab-*
15 *lish a comment period of not more than 45 days after*
16 *the date on which the materials on which comment is*
17 *requested are made available, unless—*

18 *(A) the lead agency, the project sponsor,*
19 *and any cooperating agency agree to a longer*
20 *deadline; or*

21 *(B) the lead agency extends the deadline for*
22 *good cause.*

23 *(e) ISSUE IDENTIFICATION AND RESOLUTION.—*

24 *(1) COOPERATION.—The lead agency and each*
25 *cooperating and participating agency shall work co-*

1 *operatively in accordance with this section to identify*
2 *and resolve issues that could delay completion of an*
3 *environmental review or an authorization required*
4 *for the project under applicable law or result in the*
5 *denial of any approval under applicable law.*

6 (2) *LEAD AGENCY RESPONSIBILITIES.—*

7 (A) *IN GENERAL.—The lead agency shall*
8 *make information available to each cooperating*
9 *and participating agency and project sponsor as*
10 *early as practicable in the environmental review*
11 *regarding the environmental, historic, and socio-*
12 *economic resources located within the project*
13 *area and the general locations of the alternatives*
14 *under consideration.*

15 (B) *SOURCES OF INFORMATION.—The infor-*
16 *mation described in subparagraph (A) may be*
17 *based on existing data sources, including geo-*
18 *graphic information systems mapping.*

19 (3) *COOPERATING AND PARTICIPATING AGENCY*
20 *RESPONSIBILITIES.—Each cooperating and partici-*
21 *pating agency shall—*

22 (A) *identify, as early as practicable, any*
23 *issues of concern regarding any potential envi-*
24 *ronmental impacts of the covered project, includ-*
25 *ing any issues that could substantially delay or*

1 *prevent an agency from completing any environ-*
 2 *mental review or authorization required for the*
 3 *project; and*

4 *(B) communicate any issues described in*
 5 *subparagraph (A) to the project sponsor.*

6 *(f) CATEGORIES OF PROJECTS.—The authorities*
 7 *granted under this section may be exercised for an indi-*
 8 *vidual covered project or a category of covered projects.*

9 **SEC. 7. DELEGATED STATE PERMITTING PROGRAMS.**

10 *(a) IN GENERAL.—If a Federal statute permits a Fed-*
 11 *eral agency to delegate to or otherwise authorize a State*
 12 *to issue or otherwise administer a permit program in lieu*
 13 *of the Federal agency, the Federal agency with authority*
 14 *to carry out the statute shall—*

15 *(1) on publication by the Council of best prac-*
 16 *tices under section 3(c)(2)(B), initiate a national*
 17 *process, with public participation, to determine*
 18 *whether and the extent to which any of the best prac-*
 19 *tices are generally applicable on a delegation- or au-*
 20 *thorization-wide basis to permitting under the stat-*
 21 *ute; and*

22 *(2) not later than 2 years after the date of enact-*
 23 *ment of this Act, make model recommendations for*
 24 *State modifications of the applicable permit program*

1 *to reflect the best practices described in section*
 2 *3(c)(2)(B), as appropriate.*

3 *(b) BEST PRACTICES.—Lead and cooperating agencies*
 4 *may share with State, tribal, and local authorities best*
 5 *practices involved in review of covered projects and invite*
 6 *input from State, tribal, and local authorities regarding*
 7 *best practices.*

8 **SEC. 8. LITIGATION, JUDICIAL REVIEW, AND SAVINGS PRO-**
 9 **VISION.**

10 *(a) LIMITATIONS ON CLAIMS.—*

11 *(1) IN GENERAL.—Notwithstanding any other*
 12 *provision of law, a claim arising under Federal law*
 13 *seeking judicial review of any authorization issued by*
 14 *a Federal agency for a covered project shall be barred*
 15 *unless—*

16 *(A) the action is filed not later than 2 years*
 17 *after the date of publication in the Federal Reg-*
 18 *ister of the final record of decision or approval*
 19 *or denial of a permit, unless a shorter time is*
 20 *specified in the Federal law under which judicial*
 21 *review is allowed; and*

22 *(B) in the case of an action pertaining to*
 23 *an environmental review conducted under*
 24 *NEPA—*

1 (i) the action is filed by a party that
2 submitted a comment during the environ-
3 mental review or a party that lacked a rea-
4 sonable opportunity to submit a comment;
5 and

6 (ii) a party filed a sufficiently detailed
7 comment so as to put the lead agency on
8 notice of the issue on which the party seeks
9 judicial review.

10 (2) NEW INFORMATION.—

11 (A) IN GENERAL.—The head of a lead agen-
12 cy or participating agency shall consider new
13 information received after the close of a comment
14 period if the information satisfies the require-
15 ments under regulations implementing NEPA.

16 (B) SEPARATE ACTION.—If Federal law re-
17 quires the preparation of a supplemental envi-
18 ronmental impact statement or other supple-
19 mental environmental document, the preparation
20 of such document shall be considered a separate
21 final agency action and the deadline for filing a
22 claim for judicial review of the agency action
23 shall be 2 years after the date on which a notice
24 announcing the final agency action is published
25 in the Federal Register, unless a shorter time is

1 *specified in the Federal law under which judicial*
2 *review is allowed.*

3 (3) *RULE OF CONSTRUCTION.*—*Nothing in this*
4 *subsection creates a right to judicial review or places*
5 *any limit on filing a claim that a person has violated*
6 *the terms of an authorization.*

7 (b) *PRELIMINARY INJUNCTIVE RELIEF.*—*In addition*
8 *to considering any other applicable equitable factors, in any*
9 *action seeking a temporary restraining order or prelimi-*
10 *nary injunction against an agency or a project sponsor in*
11 *connection with review or authorization of a covered*
12 *project, the court shall—*

13 (1) *consider the effects on public health, safety,*
14 *and the environment, the potential for significant job*
15 *losses, and other economic harm resulting from an*
16 *order or injunction; and*

17 (2) *not presume that the harms described in*
18 *paragraph (1) are reparable.*

19 (c) *JUDICIAL REVIEW.*—*Except as provided in sub-*
20 *section (a), nothing in this Act affects the reviewability of*
21 *any final Federal agency action in a court of competent*
22 *jurisdiction.*

23 (d) *SAVINGS CLAUSE.*—*Nothing in this Act—*

1 (1) *supersedes, amends, or modifies any Federal*
2 *statute or affects the responsibility of any Federal of-*
3 *ficer to comply with or enforce any statute; or*

4 (2) *creates a presumption that a covered project*
5 *will be approved or favorably reviewed by any agen-*
6 *cy.*

7 (e) *LIMITATIONS.—Nothing in this section preempts,*
8 *limits, or interferes with—*

9 (1) *any practice of seeking, considering, or re-*
10 *sponding to public comment; or*

11 (2) *any power, jurisdiction, responsibility, or*
12 *authority that a Federal, State, or local governmental*
13 *agency, metropolitan planning organization, Indian*
14 *tribe, or project sponsor has with respect to carrying*
15 *out a project or any other provisions of law applica-*
16 *ble to any project, plan, or program.*

17 **SEC. 9. REPORT TO CONGRESS.**

18 (a) *IN GENERAL.—Not later than April 15 of each*
19 *year for 10 years beginning on the date of enactment of*
20 *this Act, the Executive Director shall submit to Congress*
21 *a report detailing the progress accomplished under this Act*
22 *during the previous fiscal year.*

23 (b) *CONTENTS.—The report described in subsection (a)*
24 *shall assess the performance of each participating agency*

1 *and lead agency based on the best practices described in*
 2 *section 3(c)(2)(B).*

3 (c) *OPPORTUNITY TO INCLUDE COMMENTS.—Each*
 4 *councilmember, with input from the respective agency*
 5 *CERPO, shall have the opportunity to include comments*
 6 *concerning the performance of the agency in the report de-*
 7 *scribed in subsection (a).*

8 **SEC. 10. FUNDING FOR GOVERNANCE, OVERSIGHT, AND**
 9 **PROCESSING OF ENVIRONMENTAL REVIEWS**
 10 **AND PERMITS.**

11 (a) *IN GENERAL.—The heads of agencies listed in sec-*
 12 *tion 3(b)(2)(B), with the guidance of the Director of the*
 13 *Office of Management and Budget and in consultation with*
 14 *the Executive Director, may, after public notice and oppor-*
 15 *tunity for comment, issue regulations establishing a fee*
 16 *structure for project proponents to reimburse the United*
 17 *States for reasonable costs incurred in conducting environ-*
 18 *mental reviews and authorizations for covered projects.*

19 (b) *REASONABLE COSTS.—As used in this section, the*
 20 *term “reasonable costs” shall include costs to implement the*
 21 *requirements and authorities required under sections 3 and*
 22 *4, including the costs to agencies and the costs of operating*
 23 *the Council.*

24 (c) *FEE STRUCTURE.—The fee structure established*
 25 *under subsection (a) shall—*

1 (1) *be developed in consultation with affected*
2 *project proponents, industries, and other stakeholders;*

3 (2) *exclude parties for which the fee would im-*
4 *pose an undue financial burden or is otherwise deter-*
5 *mined to be inappropriate; and*

6 (3) *be established in a manner that ensures that*
7 *the aggregate amount of fees collected for a fiscal year*
8 *is estimated not to exceed 20 percent of the total esti-*
9 *mated costs for the fiscal year for the resources allo-*
10 *cated for the conduct of the environmental reviews*
11 *and authorizations covered by this Act, as determined*
12 *by the Director of the Office of Management and*
13 *Budget.*

14 (d) *ENVIRONMENTAL REVIEW AND PERMITTING IM-*
15 *PROVEMENT FUND.—*

16 (1) *IN GENERAL.—All amounts collected pursu-*
17 *ant to this section shall be deposited into a separate*
18 *fund in the Treasury of the United States to be*
19 *known as the “Environmental Review Improvement*
20 *Fund” (referred to in this section as the “Fund”).*

21 (2) *AVAILABILITY.—Amounts in the Fund shall*
22 *be available to the Executive Director, without appro-*
23 *priation or fiscal year limitation, solely for the pur-*
24 *poses of administering, implementing, and enforcing*
25 *this Act, including the expenses of the Council.*

1 (3) *TRANSFER.*—*The Executive Director, with*
 2 *the approval of the Director of the Office of Manage-*
 3 *ment and Budget, may transfer amounts in the Fund*
 4 *to other agencies to facilitate timely and efficient en-*
 5 *vironmental reviews and authorizations for proposed*
 6 *covered projects.*

7 (e) *EFFECT ON PERMITTING.*—*The regulations adopt-*
 8 *ed pursuant to subsection (a) shall ensure that the use of*
 9 *funds accepted under subsection (d) will not impact impar-*
 10 *tial decision-making with respect to environmental reviews*
 11 *or authorizations, either substantively or procedurally.*

12 (f) *TRANSFER OF APPROPRIATED FUNDS.*—*The heads*
 13 *of agencies listed in section 3(b)(2)(B) shall have the au-*
 14 *thority to transfer funds appropriated to those agencies and*
 15 *not otherwise obligated for the development of infrastructure*
 16 *projects, or the environmental review and authorization of*
 17 *infrastructure projects, among affected Federal agencies to*
 18 *implement the provisions of this Act in accordance with sec-*
 19 *tion 1535 of title 31, United States Code.*

20 **SEC. 11. APPLICATION.**

21 *This Act applies to any covered project for which—*

22 (1) *a notice is filed under section 4(a)(1); or*

23 (2) *an application or other request for a Federal*
 24 *authorization is pending before a Federal agency 90*
 25 *days after the date of enactment of this Act.*

Amend the title so as to read: “A bill to improve the efficiency, management, and interagency coordination of the Federal permitting process, and for other purposes.”.

Calendar No. 193

114TH CONGRESS
1ST Session

S. 280

[Report No. 114-113]

A BILL

To improve the efficiency, management, and inter-agency coordination of the Federal permitting process through reforms overseen by the Director of the Office of Management and Budget, and for other purposes.

AUGUST 4, 2015

Reported with an amendment and an amendment to the
title