

110TH CONGRESS  
2D SESSION

# H. R. 7032

To improve interagency coordination and cooperation in the processing of  
Federal permits for production of domestic oil and gas resources.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2008

Mr. BARTON of Texas (for himself, Mr. SULLIVAN, Mr. CONAWAY, Mr. HALL  
of Texas, Mr. TERRY, Mr. SESSIONS, Mr. McCAUL of Texas, Mr.  
CULBERSON, and Mr. UPTON) introduced the following bill; which was re-  
ferred to the Committee on Natural Resources

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## A BILL

To improve interagency coordination and cooperation in the  
processing of Federal permits for production of domestic  
oil and gas resources.

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

3       **SECTION 1. PURPOSES.**

4       The purposes of this Act are to—

5               (1) respond to the Nation's increased need for  
6       domestic energy resources;

7               (2) facilitate interagency coordination and co-  
8       operation in the processing of permits required to  
9       support oil and gas use authorization on Federal

1 lands, both onshore and on the Outer Continental  
2 Shelf, in order to achieve greater consistency, cer-  
3 tainty, and timeliness in permit processing require-  
4 ments;

5 (3) promote process streamlining and increased  
6 interagency efficiency, including elimination of inter-  
7 agency duplication of effort;

8 (4) improve information sharing among agen-  
9 cies and understanding of respective agency roles  
10 and responsibilities;

11 (5) promote coordination with State agencies  
12 with expertise and responsibilities related to Federal  
13 oil and gas permitting decisions;

14 (6) promote responsible stewardship of Federal  
15 oil and gas resources;

16 (7) maintain high standards of safety and envi-  
17 ronmental protection; and

18 (8) enhance the benefits to Federal permitting  
19 already occurring as a result of a coordinated and  
20 timely interagency process for oil and gas permit re-  
21 view for certain Federal oil and gas leases.

22 **SEC. 2. FEDERAL COORDINATOR.**

23 (a) ESTABLISHMENT.—There is established, as an  
24 independent agency in the Executive Branch, the Office  
25 of the Federal Oil and Gas Permit Coordinator.

1 (b) FEDERAL PERMIT COORDINATOR.—The Office  
2 shall be headed by a Federal Permit Coordinator, who  
3 shall be appointed by the President within 90 days after  
4 the date of enactment of this Act.

5 (c) DUTIES.—The Federal Permit Coordinator shall  
6 be responsible for the following:

7 (1) Coordinating the timely completion of all  
8 permitting activities by Federal agencies, and State  
9 agencies to the maximum extent practicable, with re-  
10 spect to any oil and gas project under a Federal  
11 lease issued pursuant to the mineral leasing laws, ei-  
12 ther onshore or on the Outer Continental Shelf. For  
13 purposes of this Act only, such oil and gas projects  
14 shall include oil shale projects under Federal oil  
15 shale leases.

16 (2) Ensuring the compliance of Federal agen-  
17 cies, and State agencies to the extent they partici-  
18 pate, with this Act.

19 **SEC. 3. REGIONAL OFFICES AND REGIONAL PERMIT COOR-**  
20 **DINATORS.**

21 (a) REGIONAL OFFICES.—Within 90 days after the  
22 date of appointment of the Federal Permit Coordinator,  
23 the Secretary of the Interior (Secretary), in consultation  
24 with the Federal Permit Coordinator, shall establish re-  
25 gional offices to coordinate review of Federal permits for

1 oil and gas projects on Federal lands onshore and on the  
2 Outer Continental Shelf.

3 (b) NUMBER AND LOCATION OF REGIONAL OF-  
4 FICES.—The number of regional offices shall be estab-  
5 lished by the Secretary in consultation with the Federal  
6 Permit Coordinator. The Secretary shall ensure that there  
7 is an adequate number of offices in each region proximate  
8 to available Federal oil and gas lease tracts onshore and  
9 on the Outer Continental Shelf to meet the demands for  
10 expeditious permitting in that region. The Secretary shall  
11 designate as regional offices under this section all offices  
12 established under section 365 of the Energy Policy Act  
13 of 2005 (42 U.S.C. 15924).

14 (c) MEMORANDUM OF UNDERSTANDING.—Within 90  
15 days after the appointment of the Federal Permit Coordi-  
16 nator, the Federal Permit Coordinator, the Secretary, the  
17 Secretary of Agriculture, the Secretary of Commerce, the  
18 Secretary of Homeland Security, the Administrator of the  
19 Environmental Protection Agency, the Secretary of De-  
20 fense, and the head of any other Federal agency with re-  
21 sponsibilities related to permitting of Federal oil and gas  
22 leases, shall enter into a memorandum of understanding  
23 (MOU) establishing respective duties and responsibilities  
24 for staffing the regional offices and accomplishing the ob-  
25 jectives of this section.

1 (d) DESIGNATION OF QUALIFIED STAFF.—

2 (1) IN GENERAL.—Not later than 30 days after  
3 the date of signing of the MOU under subsection  
4 (c), all Federal signatory agencies shall assign to  
5 each regional office the appropriate employees with  
6 expertise in the oil and gas permitting issues relat-  
7 ing to that office, including, but not limited, with re-  
8 spect to—

9 (A) consultation and preparation of bio-  
10 logical opinions under section 7 of the Endan-  
11 gered Species Act of 1973 (16 U.S.C. 1536);

12 (B) permits under section 404 of Federal  
13 Water Pollution Control Act (33 U.S.C. 1344);

14 (C) regulatory matters under the Clean Air  
15 Act (42 U.S.C. 7401 et seq.);

16 (D) planning under the National Forest  
17 Management Act of 1976 (16 U.S.C. 472a et  
18 seq.);

19 (E) the preparation of analyses under the  
20 National Environmental Policy Act of 1969 (42  
21 U.S.C. 4321 et seq.) (NEPA);

22 (F) applications for permits to drill under  
23 the Mineral Leasing Act (30 U.S.C. 181 et  
24 seq.); and

1 (G) exploration plans and development and  
2 production plans under the Outer Continental  
3 Shelf Lands Act (43 U.S.C. 1331 et seq.).

4 (2) PREFERENCE AND INCENTIVES.—To the  
5 maximum extent practicable, for purposes of this  
6 subsection, Federal agencies shall give preference to  
7 employees volunteering for reassignment to the re-  
8 gional offices, and shall offer incentives to attract  
9 and retain regional office employees, including, but  
10 not limited to, retaining contract employees, rota-  
11 tional assignments, salary incentives of up to 120  
12 percent of an employee’s existing salary immediately  
13 prior to reassignment, or any combination of strate-  
14 gies.

15 (e) DUTIES.—Each employee assigned under sub-  
16 section (d) shall—

17 (1) within 90 days after the date of assignment,  
18 report to the regional office to which the employee  
19 is assigned;

20 (2) be responsible for all issues relating to the  
21 jurisdiction of the home office or agency of the em-  
22 ployee; and

23 (3) participate as part of the team working on  
24 proposed oil and gas projects, planning, and environ-  
25 mental analyses.

1 (f) CREATION OF AND DELEGATION OF AUTHORITY  
2 TO REGIONAL PERMIT COORDINATORS.—The Federal  
3 Permit Coordinator shall appoint a Regional Permit Coor-  
4 dinator to be located within each regional office estab-  
5 lished under this section, with full authority to act on be-  
6 half of the Federal Permit Coordinator.

7 (g) ADDITIONAL PERSONNEL.—The Federal Permit  
8 Coordinator or Regional Permit Coordinators may at any  
9 time direct that any Federal agency party to the MOU  
10 under subsection (c) assign additional staff required to im-  
11 plement the duties of the regional offices.

12 **SEC. 4. REVIEWS AND ACTIONS OF FEDERAL AGENCIES.**

13 (a) SCHEDULES FOR TIMELY PERMIT DECISION-  
14 MAKING.—Within 10 days after the date on which the Sec-  
15 retary receives any oil and gas permit application or  
16 amended application, the Secretary shall either notify the  
17 applicant that the application is complete or notify the ap-  
18 plicant that information is missing and specify the infor-  
19 mation that is required to be submitted for the application  
20 to be complete. Within 30 days after notifying a permit  
21 applicant that an application is complete, the Secretary,  
22 in consultation with the permit applicant as necessary,  
23 shall determine and inform the Regional Permit Coordi-  
24 nator responsible for that project area whether the pro-  
25 posed permit is a class I, class II, or class III permit. The

1 Regional Permit Coordinator shall as soon as possible but  
2 in no event later than 30 days following the Secretary's  
3 determination establish a binding schedule to ensure the  
4 most expeditious possible review and processing of the re-  
5 quested permit, in accordance with this section.

6 (b) PERMIT CLASSES AND SCHEDULES.—

7 (1) CLASS I PERMITS.—An oil and gas permit  
8 shall be designated as a class I permit under this  
9 section if the permitted activity is of a nature that  
10 would typically require preparation of an environ-  
11 mental impact statement under NEPA to inform the  
12 permitting decision. For such permits, the Regional  
13 Permit Coordinator shall establish a schedule for  
14 timely completion of all permit reviews and proc-  
15 essing, not to exceed 30 months. The Regional Per-  
16 mit Coordinator shall make the schedule publicly  
17 available within 10 days after the schedule is estab-  
18 lished.

19 (2) CLASS II PERMITS.—An oil and gas permit  
20 shall be designated as a class II permit under this  
21 section if the permitted activity is of a nature that  
22 would typically be found not to significantly affect  
23 the quality of the human environment under NEPA.  
24 For such permits, the Regional Permit Coordinator  
25 shall establish the most expeditious schedule possible



1 for completion of all permit reviews and processing,  
2 not to exceed 90 days. The Regional Permit Coordi-  
3 nator may grant a one-time extension of that sched-  
4 ule, not to exceed 60 days, upon a good cause show-  
5 ing that additional time is necessary to complete  
6 permit decisions. Not later than 15 days after estab-  
7 lishing or extending any schedule for a class II per-  
8 mit, the Regional Permit Coordinator shall provide  
9 the permit applicant with the schedule.

10 (3) CLASS III PERMITS.—Notwithstanding para-  
11 graphs (1) and (2), an oil and gas permit shall be  
12 designated as a class III permit under this section  
13 if the permitted activity either qualifies for a statu-  
14 tory or regulatory categorical exclusion under NEPA  
15 or if the requirements under NEPA and other appli-  
16 cable law for the permit have been completed within  
17 30 days after the date of a complete application. For  
18 such permits, the permit shall be issued within 30  
19 days after the date of a complete application.

20 (4) RECLASSIFICATION OF CLASS II PERMIT.—  
21 If prior to the expiration of the established schedule  
22 for a class II permit newly discovered information  
23 indicates that the class II permit will significantly  
24 affect the quality of the human environment, the  
25 Secretary may, in consultation with the permit appli-

1 cant, reclassify the permit as a class I permit under  
2 paragraph (1), and the Regional Coordinator shall  
3 establish an amended schedule that complies with  
4 the provisions of that paragraph.

5 (c) REPORTING.—The Regional Permit Coordinators  
6 shall include data on all schedule timing and compliance  
7 in their reports to the Federal Permit Coordinator re-  
8 quired under subsection (i), who shall include such data  
9 in the report to the President and Congress required  
10 under subsection (i).

11 (d) DISPUTE RESOLUTION.—The Regional Permit  
12 Coordinator shall resolve all administrative issues that af-  
13 fect oil and gas permit reviews. The Regional Permit Coor-  
14 dinator shall report jointly to the Federal Permit Coordi-  
15 nator and to the head of the relevant action agency, or  
16 his or her designee, for resolution of any issue regarding  
17 an oil and gas permit that may result in missing the  
18 schedule deadlines established pursuant to subsection (b).  
19 The Regional Permit Coordinators shall include data re-  
20 garding the incidence and resolution of disputes under this  
21 subsection in their reports to the Federal Permit Coordi-  
22 nator required under subsection (i), who shall include such  
23 reported data and develop recommendations in the report  
24 to the President and Congress required under subsection  
25 (i).

1 (e) REMEDIES.—An applicant for a class I permit  
2 may bring a cause of action to seek expedited mandamus  
3 review, pursuant to the procedures in section 7, if a Re-  
4 gional Permit Coordinator or the Secretary fails to—

5 (1) establish a schedule in accordance with sub-  
6 section (b);

7 (2) enforce and ensure completion of reviews  
8 within schedule deadlines; or

9 (3) take all actions as are necessary and proper  
10 to avoid jeopardizing the timely completion of the  
11 entire schedule.

12 If an agency fails to complete its review of and issue a  
13 decision upon a permit within the schedule established by  
14 the Court pursuant to section 7(f), that permit shall be  
15 deemed granted to the applicant.

16 (f) PROHIBITION OF CERTAIN TERMS AND CONDI-  
17 TIONS.—No Federal agency may include in any permit,  
18 right-of-way, or other authorization issued for an oil and  
19 gas project subject to the provisions of this Act, any term  
20 or condition that may be authorized, but is not required,  
21 by the provisions of any applicable law, if the Federal Per-  
22 mit Coordinator determines that such term or condition  
23 would prevent or impair in any significant respect comple-  
24 tion of a permit review within the time schedule estab-  
25 lished pursuant to subsection (b) or would otherwise im-

1 pair in any significant respect expeditious oil and gas de-  
2 velopment. The Federal Permit Coordinator shall not have  
3 any authority to impose any terms, conditions, or require-  
4 ments beyond those imposed by any Federal law, agency,  
5 regulation, or lease term.

6 (g) CONSOLIDATED RECORD.—The Federal Permit  
7 Coordinator, acting through the appropriate Regional Per-  
8 mit Coordinator, with the cooperation of Federal and  
9 State administrative officials and agencies, shall maintain  
10 a complete, consolidated record of all decisions made or  
11 actions taken by the Federal Permit Coordinator or Re-  
12 gional Permit Coordinator or by any Federal agency with  
13 respect to any oil and gas permit.

14 (h) RELATIONSHIP TO NEPA AND ENERGY POLICY  
15 ACT OF 2005.—

16 (1) Section 390(a) of the Energy Policy Act of  
17 2005 (42 U.S.C. 15942(a)) is amended—

18 (A) by striking “rebuttable presumption  
19 that the use of a”; and

20 (B) by striking “would apply”.

21 (2) Section 17(p) of the Mineral Leasing Act  
22 (30 U.S.C. 226(p)) is repealed.

23 (i) ADDITIONAL POWERS AND RESPONSIBILITIES.—

24 (1) REGIONAL PERMIT COORDINATOR RE-  
25 PORTS.—The Regional Permit Coordinators shall

1 each submit a report to the Federal Permit Coordi-  
2 nator by December 31 of each year that documents  
3 each office's performance in meeting the objectives  
4 under this Act, including recommendations to fur-  
5 ther streamline the permitting process.

6 (2) REDIRECTION OF PRIORITIES OR RE-  
7 SOURCES.—In order to expedite overall permitting  
8 activity, the Federal Permit Coordinator may redi-  
9 rect the priority of regional office activities or the al-  
10 location of resources among such offices, and shall  
11 engage the agencies that are parties to the MOU to  
12 the extent such adjustments implicate their respec-  
13 tive staffs or resources.

14 (3) REPORT TO CONGRESS.—Beginning three  
15 years after the date of enactment of this Act, the  
16 Federal Permit Coordinator shall prepare and sub-  
17 mit a report to the President and Congress by April  
18 15 of each year that outlines the results achieved  
19 under this Act and makes recommendations to the  
20 President and Congress for further improvements in  
21 processing oil and gas permits on Federal lands.

22 **SEC. 5. STATE COORDINATION.**

23 The Governor of any State wherein an oil and gas  
24 operation may require a Federal permit, or the coastline  
25 of which is in immediate geographic proximity to oil and

1 gas operations on the Outer Continental Shelf, may be a  
2 signatory to the MOU for purposes of fulfilling any State  
3 responsibilities with respect to Federal oil and gas permit-  
4 ting decisions. The Regional Permit Coordinators shall fa-  
5 cilitate and coordinate concurrent State reviews of re-  
6 quested permits for oil and gas projects on the Outer Con-  
7 tinental Shelf.

8 **SEC. 6. SAVINGS PROVISION.**

9 Except as expressly stated, nothing in this Act af-  
10 fects—

11 (1) the applicability of any Federal or State  
12 law; or

13 (2) any delegation of authority made by the  
14 head of a Federal agency the employees of which are  
15 participating in the implementation of this section.

16 **SEC. 7. ADMINISTRATIVE AND JUDICIAL REVIEW.**

17 (a) ADMINISTRATIVE REVIEW.—Any oil and gas per-  
18 mitting decision for Federal lands onshore or on the Outer  
19 Continental Shelf that was issued in accordance with the  
20 procedures established by this Act shall not be subject to  
21 further administrative review within the respective Federal  
22 agency responsible for that decision, and shall be the final  
23 decision of that agency for purposes of judicial review.

24 (b) EXCLUSIVE JURISDICTION OVER PERMIT DECI-  
25 SIONS.—Only the United States District Court for the

1 District of Columbia shall have original jurisdiction over  
2 any civil action for the review of such a permit decision,  
3 including any civil action brought pursuant to section 4(e)  
4 and subsection (f) of this section.

5 (c) LIMITATIONS ON CLAIMS.—Notwithstanding any  
6 other provision of law, any action arising under Federal  
7 law seeking judicial review of a permit, license, or approval  
8 issued by a Federal agency for an oil and gas permit sub-  
9 ject to this Act shall be barred unless it is filed within  
10 90 days of the date of the decision. Nothing in this Act  
11 shall creates a right to judicial review or places any limit  
12 on filing a claim that a person has violated the terms of  
13 a permit, license, or approval.

14 (d) FILING OF RECORD.—When any civil action is  
15 brought pursuant to this Act, the Federal Permit Coordi-  
16 nator shall immediately prepare for the court the consoli-  
17 dated record compiled pursuant to section 4(f).

18 (e) EXPEDITED REVIEW.—Any action for judicial re-  
19 view challenging a decision approved pursuant to this sec-  
20 tion shall be set for consideration by not later than 90  
21 days after the date the action is filed.

22 (f) EXPEDITED MANDAMUS REVIEW.—Notwith-  
23 standing subsection (e), within 30 days after the filing of  
24 an action under section 4(e) challenging or seeking to en-  
25 force an established permit review schedule for a class I

1 permit, the court shall issue a decision either compelling  
2 permit issuance or sanctioning the delay and establishing  
3 a new schedule that enables the most expeditious possible  
4 completion of proceedings. In rendering its decision, the  
5 court shall review whether the agencies subject to the  
6 schedule have been acting in good faith, whether the per-  
7 mit applicant has been cooperating fully with the agencies  
8 that are responsible for issuing the requested permits, and  
9 any other relevant matters. The court may issue orders  
10 to enforce any schedule it establishes under this sub-  
11 section.

12 (g) NO PRIVATE RIGHT OF ACTION.—Except as ex-  
13 pressly provided in section 4(e) and subsection (f) of this  
14 section, this Act shall not be construed to create any addi-  
15 tional right, benefit, or trust responsibility, substantive or  
16 procedural, enforceable at law or equity, by a person  
17 against the United States, its agencies, its officers, or any  
18 person.

19 (h) FINALITY OF LEASING DECISIONS.—Notwith-  
20 standing the provisions of any law or regulation to the  
21 contrary, a decision by the Bureau of Land Management  
22 or the Minerals Management Service to issue a Final No-  
23 tice of Sale and proceed with an oil and gas lease sale  
24 pursuant to any mineral leasing law shall not be subject  
25 to further administrative review within the Department of



1 the Interior, and shall be the final decision of the agency  
2 for purposes of judicial review.

3 **SEC. 8. AMENDMENTS TO PUBLICATION PROCESS.**

4 Section 18 of the Outer Continental Shelf Lands Act  
5 (43 U.S.C. 1344) is amended—

6 (1) by amending subsection (c)(2) to read as  
7 follows:

8 “(2) The Secretary shall publish a proposed  
9 leasing program in the Federal Register, and shall  
10 submit a copy of such proposed program to the Gov-  
11 ernor of each affected State, for review and com-  
12 ment. The Governor may solicit comments from  
13 those executives of local governments in his State  
14 which he, in his discretion, determines will be af-  
15 fected by the proposed program.”;

16 (2) by striking subsection (c)(3); and

17 (3) in subsection (d)(2) by inserting “final”  
18 after “proposed”.

19 **SEC. 9. TRANSFER OF FUNDS.**

20 The Secretary may use any Federal oil and gas lease  
21 revenues that otherwise would be deposited to the Treas-  
22 ury of the United States as “miscellaneous receipts” pur-  
23 suant to section 35 of the Mineral Leasing Act (30 U.S.C.  
24 191) or section 9 of the Outer Continental Shelf Lands  
25 Act (43 U.S.C. 1338), for all costs of staffing and oper-

1 ating the regional offices authorized pursuant to this Act.  
2 The Secretary may use such funds to reimburse each Fed-  
3 eral agency for the costs of its personnel assigned to the  
4 regional offices.

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