

113TH CONGRESS
1ST SESSION

S. 1397

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

JULY 30, 2013

Mr. PORTMAN (for himself, Mrs. MCCASKILL, Mr. DONNELLY, Mr. ENZI, and Mr. BARRASSO) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Permitting
5 Improvement Act of 2013”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

4 (2) AGENCY CPO.—The term “agency CPO”
5 means the chief permitting officer of an agency des-
6 ignated by the head of the agency under section
7 3(b)(2)(A)(i).

8 (3) AUTHORIZATION.—The term “authoriza-
9 tion” means—

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

17 (B) any determination or finding required
18 to be issued by an agency—

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

21 (ii) before an applicant may take a
22 particular action with respect to the siting,
23 construction, reconstruction, or commence-
24 ment of operations of a covered project

1 under Federal law, whether administered
2 by a Federal or State agency.

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

6 (5) COVERED PROJECT.—

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

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

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

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

1 (6) DASHBOARD.—The term “Dashboard”
2 means the Permitting Dashboard required by section
3 4(b).

4 (7) ENVIRONMENTAL ASSESSMENT.—The term
5 “environmental assessment” means a concise public
6 document for which a Federal agency is responsible
7 that serves—

8 (A) to briefly provide sufficient evidence
9 and analysis for determining whether to prepare
10 an environmental impact statement or a finding
11 of no significant impact;

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

15 (C) to facilitate preparation of an environ-
16 mental impact statement, if an environmental
17 impact statement is necessary.

18 (8) ENVIRONMENTAL DOCUMENT.—The term
19 “environmental document” means an environmental
20 assessment or environmental impact statement.

21 (9) ENVIRONMENTAL IMPACT STATEMENT.—
22 The term “environmental impact statement” means
23 the detailed statement of significant environmental
24 impacts required to be prepared under NEPA.

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

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

9 (12) INVENTORY.—The term “inventory”
10 means the inventory of covered projects established
11 by the Federal CPO under section 3(c)(1)(A).

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

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

19 (15) PARTICIPATING AGENCY.—The term “par-
20 ticipating agency” means any agency participating
21 in reviews or authorizations for a particular covered
22 project in accordance with section 4.

23 (16) PROJECT SPONSOR.—The term “project
24 sponsor” means the entity, including any private,

1 public, or public-private entity, that seeks approval
2 for a project.

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

4 (a) ESTABLISHMENT.—There is established the Fed-
5 eral Permitting Improvement Council.

6 (b) COMPOSITION.—

7 (1) CHAIR.—The President shall appoint an of-
8 ficer of the Office of Management and Budget as the
9 Federal Chief Permitting Officer to serve as Chair
10 of the Council, by and with the advice and consent
11 of the Senate.

12 (2) CHIEF PERMITTING OFFICERS.—

13 (A) IN GENERAL.—

14 (i) DESIGNATION BY HEAD OF AGEN-
15 CY.—Each individual listed in subpara-
16 graph (B) shall designate a member of the
17 agency in which the individual serves to
18 serve as the agency CPO.

19 (ii) QUALIFICATIONS.—The agency
20 CPO described in clause (i) shall hold a
21 position in the agency of the equivalent of
22 a deputy secretary or higher.

23 (iii) MEMBERSHIP.—Each agency
24 CPO described in clause (i) shall serve on
25 the Council.

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

4 (i) The Secretary of Agriculture.

5 (ii) The Secretary of Commerce.

6 (iii) The Secretary of the Interior.

7 (iv) The Secretary of Energy.

8 (v) The Secretary of Transportation.

9 (vi) The Secretary of Defense.

10 (vii) The Administrator of the Envi-
11 ronmental Protection Agency.

12 (viii) The Chairman of the Federal
13 Energy Regulatory Commission.

14 (ix) The Chairman of the Nuclear
15 Regulatory Commission.

16 (x) The Chairman of the Advisory
17 Council on Historic Preservation.

18 (xi) Any other head of a Federal
19 agency that the Federal CPO may invite to
20 participate as a member of the Council.

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

1 (c) DUTIES.—

2 (1) FEDERAL CPO.—

3 (A) INVENTORY DEVELOPMENT.—The
4 Federal CPO, in consultation with the members
5 of the Council, shall—

6 (i) not later than 3 months after the
7 date of enactment of this Act, establish an
8 inventory of covered projects that are
9 pending the review or authorization of the
10 head of any Federal agency;

11 (ii)(I) categorize the projects in the
12 inventory as appropriate based on the
13 project type; and

14 (II) for each category, identify the
15 types of reviews and authorizations most
16 commonly involved; and

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

20 (B) LEAD AGENCY DESIGNATION.—The
21 Federal CPO, in consultation with the Council,
22 shall—

23 (i) designate a lead agency for each
24 category of covered projects described in
25 subparagraph (A)(ii); and

1 (ii) publish on an Internet website the
2 designations and categories in an easily ac-
3 cessible format.

4 (C) PERFORMANCE SCHEDULES.—

5 (i) IN GENERAL.—The Federal CPO,
6 in consultation with the Council, shall de-
7 velop nonbinding performance schedules,
8 including intermediate and final deadlines,
9 for reviews and authorizations for each
10 category of covered projects described in
11 subparagraph (A)(ii).

12 (ii) REQUIREMENTS.—

13 (I) IN GENERAL.—The perform-
14 ance schedules shall reflect employ-
15 ment of the use of the most efficient
16 applicable processes.

17 (II) LIMIT.—The final deadline
18 for completion of any review or au-
19 thorization contained in the perform-
20 ance schedules shall not be later than
21 180 days after the date on which the
22 completed application or request is
23 filed.

24 (iii) REVIEW AND REVISION.—Not
25 later than 2 years after the date on which

1 the performance schedules are established
2 under this subparagraph, and not less fre-
3 quently than once every 2 years thereafter,
4 the Federal CPO, in consultation with the
5 Council, shall review and revise the per-
6 formance schedules.

7 (D) GUIDANCE.—The Federal CPO may
8 issue circulars, bulletins, guidelines, and other
9 similar directives as necessary to carry out re-
10 sponsibilities under this Act and to effectuate
11 the adoption by agencies of the best practices
12 and recommendations of the Council described
13 in paragraph (2).

14 (2) COUNCIL.—

15 (A) RECOMMENDATIONS.—

16 (i) IN GENERAL.—The Council shall
17 make recommendations to the Federal
18 CPO with respect to the designations
19 under paragraph (1)(B) and the perform-
20 ance schedules under paragraph (1)(C).

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

24 (B) BEST PRACTICES.—Not later than 1
25 year after the date of enactment of this Act,

1 and at least annually thereafter, the Council
2 shall issue recommendations on the best prac-
3 tices for—

4 (i) early stakeholder engagement, in-
5 cluding fully considering and, as appro-
6 priate, incorporating recommendations pro-
7 vided in public comments on any proposed
8 covered project;

9 (ii) assuring timeliness of permitting
10 and review decisions;

11 (iii) coordination between Federal and
12 non-Federal governmental entities;

13 (iv) transparency;

14 (v) reduction of information collection
15 requirements and other administrative bur-
16 dens on agencies, project sponsors, and
17 other interested parties;

18 (vi) evaluating lead agencies and par-
19 ticipating agencies under this Act; and

20 (vii) other aspects of infrastructure
21 permitting, as determined by the Council.

22 **SEC. 4. PERMITTING PROCESS IMPROVEMENT.**

23 (a) PROJECT INITIATION AND DESIGNATION OF PAR-
24 TICIPATING AGENCIES.—

25 (1) NOTICE.—

1 (A) IN GENERAL.—A project sponsor shall
2 provide the Federal CPO and the lead agency
3 notice of the initiation of a proposed covered
4 project.

5 (B) CONTENTS.—Each notice described in
6 subparagraph (A) shall include—

7 (i) a description, including the general
8 location, of the proposed project;

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

12 (iii) an assessment of the reasons why
13 the proposed project meets the definition
14 of a covered project in section 2.

15 (2) INVITATION.—

16 (A) IN GENERAL.—Not later than 45 days
17 after the date on which a lead agency receives
18 the notice under paragraph (1), the lead agency
19 shall—

20 (i) identify another agency that may
21 have an interest in the proposed project;
22 and

23 (ii) invite the agency to become a par-
24 ticipating agency in the permitting man-

1 agement process and in the environmental
2 review process described in section 6.

3 (B) DEADLINES.—Each invitation made
4 under subparagraph (A) shall include a dead-
5 line for a response to be submitted to the lead
6 agency.

7 (3) PARTICIPATING AGENCIES.—An agency in-
8 vited under paragraph (2) shall be designated as a
9 participating agency for a covered project, unless the
10 agency informs the lead agency in writing before the
11 deadline described in paragraph (2)(B) that the
12 agency—

13 (A) has no jurisdiction or authority with
14 respect to the proposed project; or

15 (B) does not intend to exercise authority
16 related to, or submit comments on, the pro-
17 posed project.

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

22 (5) CHANGE OF LEAD AGENCY.—

23 (A) IN GENERAL.—On the request of a
24 lead agency, participating agency, or project
25 sponsor, the Federal CPO may designate a dif-

1 ferent agency as the lead agency for a covered
2 project if the Federal CPO receives new infor-
3 mation regarding the scope or nature of a cov-
4 ered project that indicates that the project
5 should be placed in a different category under
6 section 3(c)(1)(B).

7 (B) RESOLUTION OF DISPUTE.—Any dis-
8 pute over designation of a lead agency for a
9 particular covered project shall be resolved by
10 the Federal CPO.

11 (b) PERMITTING DASHBOARD.—

12 (1) REQUIREMENT TO MAINTAIN.—

13 (A) IN GENERAL.—The Federal CPO, in
14 coordination with the Administrator of General
15 Services, shall maintain an online database to
16 be known as the “Permitting Dashboard” to
17 track the status of Federal reviews and author-
18 izations for any covered project in the inven-
19 tory.

20 (B) SPECIFIC AND SEARCHABLE ENTRY.—

21 The Dashboard shall include a specific and
22 searchable entry for each project.

23 (2) ADDITIONS.—Not later than 7 days after
24 the date on which the Federal CPO receives a notice
25 under subsection (a)(1), the Federal CPO shall cre-

1 ate a specific entry on the Dashboard for the
2 project, unless the Federal CPO or lead agency de-
3 termines that the project is not a covered project.

4 (3) SUBMISSIONS BY AGENCIES.—The lead
5 agency and each participating agency shall submit to
6 the Federal CPO for posting on the Dashboard for
7 each covered project—

8 (A) any application and any supporting
9 document submitted by a project sponsor for
10 any required Federal review or authorization
11 for the project;

12 (B) not later than 2 business days after
13 the date on which any agency action or decision
14 that materially affects the status of the project
15 is made, a description, including significant
16 supporting documents, of the agency action or
17 decision; and

18 (C) the status of any litigation to which
19 the agency is a party that is directly related to
20 the project, including, if practicable, any judi-
21 cial document made available on an electronic
22 docket maintained by a Federal, State, or local
23 court.

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

4 (A) the information submitted under para-
5 graph (3)(A) not later than 2 days after the
6 date on which the Federal CPO receives the in-
7 formation;

8 (B) a permitting timetable approved by the
9 Federal CPO under subsection (c)(2)(C);

10 (C) the status of the compliance of each
11 participating agency with the permitting time-
12 table;

13 (D) any modifications of the permitting
14 timetable; and

15 (E) an explanation of each modification
16 described in subparagraph (D).

17 (c) COORDINATION AND TIMETABLES.—

18 (1) COORDINATION PLAN.—

19 (A) IN GENERAL.—Not later than 60 days
20 after the date on which the lead agency receives
21 a notice under subsection (a)(1), the lead agen-
22 cy, in consultation with each participating agen-
23 cy, shall establish a concise plan for coordi-
24 nating public and agency participation in, and

1 completion of, any required Federal review and
2 authorization for the project.

3 (B) MEMORANDUM OF UNDERSTANDING.—

4 The lead agency may incorporate the coordina-
5 tion plan described in subparagraph (A) into a
6 memorandum of understanding.

7 (2) PERMITTING TIMETABLE.—

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

17 (B) FACTORS FOR CONSIDERATION.—In
18 establishing the permitting timetable under sub-
19 paragraph (A), the lead agency shall follow the
20 performance schedules established under section
21 3(e)(1)(C), but may vary the timetable based on
22 relevant factors, including—

23 (i) the size and complexity of the cov-
24 ered project;

1 (ii) the resources available to each
2 participating agency;

3 (iii) the regional or national economic
4 significance of the project;

5 (iv) the sensitivity of the natural or
6 historic resources that may be affected by
7 the project; and

8 (v) the extent to which similar
9 projects in geographic proximity to the
10 project were recently subject to environ-
11 mental review or similar procedures under
12 State law.

13 (C) APPROVAL BY THE FEDERAL CPO.—

14 (i) REQUIREMENT TO SUBMIT.—The
15 lead agency shall promptly submit to the
16 Federal CPO a permitting timetable estab-
17 lished under subparagraph (A) for review.

18 (ii) REVISION AND APPROVAL.—

19 (I) IN GENERAL.—The Federal
20 CPO, after consultation with the lead
21 agency, may revise the permitting
22 timetable if the Federal CPO deter-
23 mines that the timetable deviates
24 without reasonable justification from

1 the performance schedule established
2 under section 3(e)(1)(C).

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

12 (D) MODIFICATION AFTER APPROVAL.—

13 The lead agency may modify a permitting time-
14 table established under subparagraph (A) for
15 good cause only if—

16 (i) the lead agency and the affected
17 participating agency agree to a different
18 deadline;

19 (ii) the lead agency or the affected
20 participating agency provides a written ex-
21 planation of the justification for the modi-
22 fication; and

23 (iii) the lead agency submits to the
24 Federal CPO a modification, which the
25 Federal CPO may revise or disapprove.

1 (E) CONSISTENCY WITH OTHER TIME PE-
2 RIODS.—A permitting timetable established
3 under subparagraph (A) shall be consistent
4 with any other relevant time periods established
5 under Federal law.

6 (F) COMPLIANCE.—

7 (i) IN GENERAL.—Each Federal par-
8 ticipating agency shall comply with the
9 deadlines set forth in the permitting time-
10 table approved under subparagraph (C), or
11 with any deadline modified under subpara-
12 graph (D).

13 (ii) FAILURE TO COMPLY.—If a Fed-
14 eral participating agency fails to comply
15 with a deadline for agency action on a cov-
16 ered project, the head of the participating
17 agency shall—

18 (I) promptly report to the Fed-
19 eral CPO for posting on the Dash-
20 board an explanation of any specific
21 reason for failing to meet the deadline
22 and a proposal for an alternative
23 deadline; and

24 (II) report to the Federal CPO
25 for posting on the Dashboard a

1 monthly status report describing any
2 agency activity related to the project
3 until the agency has taken final action
4 on the delayed authorization or re-
5 view.

6 (3) COOPERATING STATE, LOCAL, OR TRIBAL
7 GOVERNMENTS.—

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

17 (B) MEMORANDUM OF UNDERSTANDING.—

18 (i) IN GENERAL.—Any coordination
19 plan between the lead agency and any
20 State, local, or tribal agency shall, to the
21 maximum extent practicable, be included
22 in a memorandum of understanding.

23 (ii) SUBMISSION TO FEDERAL CPO.—

24 A lead agency shall submit to the Federal

1 CPO each memorandum of understanding
2 described in clause (i).

3 (iii) POST TO DASHBOARD.—The Fed-
4 eral CPO shall post to the Dashboard each
5 memorandum of understanding submitted
6 under clause (ii).

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

14 (1) the likelihood of approval for a potential
15 covered project; and

16 (2) key issues of concern to each participating
17 agency and to the public.

18 (e) COOPERATING AGENCY.—

19 (1) IN GENERAL.—A lead agency may designate
20 a participating agency as a cooperating agency in
21 accordance with part 1501 of title 40, Code of Fed-
22 eral Regulations (or successor regulations).

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

1 (3) LIMITATION ON DESIGNATION.—Any agency
2 not designated as a participating agency under sub-
3 section (a)(3) shall not be designated as a cooper-
4 ating agency under paragraph (1).

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

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

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

15 (a) CONCURRENT REVIEWS.—Each agency shall, to
16 the greatest extent permitted by law—

17 (1) carry out the obligations of the agency
18 under other applicable law concurrently, and in con-
19 junction with other reviews being conducted by other
20 participating agencies, including environmental re-
21 views required under NEPA, unless doing so would
22 impair the ability of the agency to carry out statu-
23 tory obligations; and

24 (2) formulate and implement administrative,
25 policy, and procedural mechanisms to enable the

1 agency to ensure completion of the environmental re-
2 view process in a timely, coordinated, and environ-
3 mentally responsible manner.

4 (b) ADOPTION AND USE OF DOCUMENTS.—

5 (1) STATE ENVIRONMENTAL DOCUMENTS; SUP-
6 PLEMENTAL DOCUMENTS.—

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

20 (B) NEPA OBLIGATIONS.—An environ-
21 mental document adopted under subparagraph
22 (A) may serve as, or supplement, an environ-
23 mental impact statement or environmental as-
24 sessment required to be prepared by a lead
25 agency under NEPA.

1 (C) SUPPLEMENTAL DOCUMENT.—In the
2 case of an environmental document described in
3 subparagraph (A), during the period after prep-
4 aration of the document and prior to the adop-
5 tion of the document by the lead agency, the
6 lead agency shall prepare and publish a supple-
7 mental document to the document if the lead
8 agency determines that—

9 (i) a significant change has been made
10 to the project that is relevant for purposes
11 of environmental review of the project; or

12 (ii) there have been significant
13 changes in circumstances or availability of
14 information relevant to the environmental
15 review for the project.

16 (D) COMMENTS.—If a lead agency pre-
17 pares and publishes a supplemental document
18 under subparagraph (C), the lead agency may
19 solicit comments from other agencies and the
20 public on the supplemental document for a pe-
21 riod of not more than 30 days beginning on the
22 date on which the supplemental document is
23 published.

24 (E) RECORD OF DECISION.—A lead agency
25 shall issue a record of decision or finding of no

1 significant impact, as appropriate, based on the
2 document adopted under subparagraph (A) and
3 any supplemental document prepared under
4 subparagraph (C).

5 (c) ALTERNATIVES ANALYSIS.—

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

19 (3) METHODOLOGIES.—The lead agency shall
20 determine, in collaboration with each cooperating
21 agency at appropriate times during the environ-
22 mental review, the methodologies to be used and the
23 level of detail required in the analysis of each alter-
24 native for a project.

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

9 (A) the lead agency from making an im-
10 partial decision as to whether to accept another
11 alternative that is being considered in the envi-
12 ronmental review; and

13 (B) the public from commenting on the
14 preferred and other alternatives

15 (d) ENVIRONMENTAL REVIEW COMMENTS.—

16 (1) COMMENTS ON DRAFT ENVIRONMENTAL IM-
17 PACT STATEMENT.—For comments by an agency or
18 the public on a draft environmental impact state-
19 ment, the lead agency shall establish a comment pe-
20 riod of not more than 60 days after the date on
21 which a notice announcing availability of the envi-
22 ronmental impact statement is published in the Fed-
23 eral Register, unless—

1 (A) the lead agency, the project sponsor,
2 and each participating agency agree to a dif-
3 ferent deadline; or

4 (B) the deadline is extended by the lead
5 agency for good cause.

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

12 (A) the lead agency, the project sponsor,
13 and each participating agency agree to a dif-
14 ferent deadline; or

15 (B) the lead agency modifies the deadline
16 for good cause.

17 (e) ISSUE IDENTIFICATION AND RESOLUTION.—

18 (1) COOPERATION.—The lead agency and each
19 participating agency shall work cooperatively in ac-
20 cordance with this section to identify and resolve
21 issues that could delay completion of the environ-
22 mental review or could result in denial of any ap-
23 proval required for the project under applicable laws.

24 (2) LEAD AGENCY RESPONSIBILITIES.—

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

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

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

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

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

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

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

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

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

18 (a) LIMITATIONS ON CLAIMS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, a claim arising under Federal law
21 seeking judicial review of any authorization issued
22 by a Federal agency for a covered project shall be
23 barred unless—

24 (A) the action is filed not later than 150
25 days after the date on which a notice is pub-
26 lished in the Federal Register that the author-

1 ization is final pursuant to the law under which
2 the agency action is taken, unless a shorter
3 time is specified in the Federal law under which
4 judicial review is allowed; and

5 (B) in the case of an action pertaining to
6 an environmental review conducted under
7 NEPA—

8 (i) the action is filed by a party that
9 submitted a comment during the environ-
10 mental review on the issue on which the
11 party seeks judicial review; and

12 (ii) the comment was sufficiently de-
13 tailed to put the lead agency on notice of
14 the issue on which the party seeks judicial
15 review.

16 (2) NEW INFORMATION.—

17 (A) IN GENERAL.—The head of a lead
18 agency or participating agency shall consider
19 new information received after the close of a
20 comment period if the information satisfies the
21 requirements under regulations implementing
22 NEPA.

23 (B) SUPPLEMENTAL ENVIRONMENTAL IM-
24 PACT STATEMENT.—If the preparation of a
25 supplemental environmental impact statement

1 is required, the preparation of the supplemental
2 environmental impact statement shall be consid-
3 ered a separate final agency action and the
4 deadline for filing a claim for judicial review of
5 the agency action shall be 150 days after the
6 date on which a notice announcing the agency
7 action is published in the Federal Register.

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

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

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

22 (2) not presume that the harms described in
23 paragraph (1) are reparable.

24 (c) JUDICIAL REVIEW.—Except as provided in sub-
25 section (a), nothing in this Act affects the reviewability

1 of any final Federal agency action in a court of the United
2 States or in the court of any State.

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

4 (1) supersedes, amends, or modifies NEPA or
5 any other Federal environmental statute or affects
6 the responsibility of any Federal officer to comply
7 with or enforce any statute; or

8 (2) creates a presumption that a covered
9 project will be approved or favorably reviewed by any
10 agency.

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

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

15 (2) any power, jurisdiction, responsibility, or
16 authority that a Federal, State, or local govern-
17 mental agency, metropolitan planning organization,
18 Indian tribe, or project sponsor has with respect to
19 carrying out a project or any other provisions of law
20 applicable to any project, plan, or program.

21 **SEC. 9. REPORT TO CONGRESS.**

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

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

5 (c) OPPORTUNITY TO INCLUDE COMMENTS.—Each
6 agency CPO shall have the opportunity to include com-
7 ments concerning the performance of the agency in the
8 report described in subsection (a).

9 **SEC. 10. APPLICATION.**

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

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