

114TH CONGRESS  
1ST SESSION

# S. 280

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

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

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## 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 2015”.

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 not less than annually thereafter, the  
2 Council shall issue recommendations on the best  
3 practices 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), as  
15 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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