

establish a right-of-way for such action is complete; and

(iii) the date on which such agency issues a notice of intent to prepare the environmental assessment for such action.

(2) Delay

A lead agency that determines it is not able to meet the deadline described in paragraph (1) may extend such deadline, in consultation with the applicant, to establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

(3) Petition to court

(A) Right to petition

A project sponsor may obtain a review of an alleged failure by an agency to act in accordance with an applicable deadline under this section by filing a written petition with a court of competent jurisdiction seeking an order under subparagraph (B).

(B) Court order

If a court of competent jurisdiction finds that an agency has failed to act in accordance with an applicable deadline, the court shall set a schedule and deadline for the agency to act as soon as practicable, which shall not exceed 90 days from the date on which the order of the court is issued, unless the court determines a longer time period is necessary to comply with applicable law.

(h) Report

(1) In general

The head of each lead agency shall annually submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that—

(A) identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in subsection (g); and

(B) provides an explanation for any failure to meet such deadline.

(2) Inclusions

Each report submitted under paragraph (1) shall identify, as applicable—

(A) the office, bureau, division, unit, or other entity within the Federal agency responsible for each such environmental assessment and environmental impact statement;

(B) the date on which—

(i) such lead agency notified the applicant that the application to establish a right-of-way for the major Federal action is complete;

(ii) such lead agency began the scoping for the major Federal action; or

(iii) such lead agency issued a notice of intent to prepare the environmental assessment or environmental impact statement for the major Federal action; and

(C) when such environmental assessment and environmental impact statement is expected to be complete.

(Pub. L. 91-190, title I, §107, as added Pub. L. 118-5, div. C, title III, §321(b), June 3, 2023, 137 Stat. 40.)

§ 4336b. Programmatic environmental document

When an agency prepares a programmatic environmental document for which judicial review was available, the agency may rely on the analysis included in the programmatic environmental document in a subsequent environmental document for related actions as follows:

(1) Within 5 years and without additional review of the analysis in the programmatic environmental document, unless there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

(2) After 5 years, so long as the agency re-evaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid.

(Pub. L. 91-190, title I, §108, as added Pub. L. 118-5, div. C, title III, §321(b), June 3, 2023, 137 Stat. 43.)

§ 4336c. Adoption of categorical exclusions

An agency may adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established consistent with this paragraph. The agency shall—

(1) identify the categorical exclusion listed in another agency's NEPA procedures that covers a category of proposed actions or related actions;

(2) consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate;

(3) identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and

(4) document adoption of the categorical exclusion.

(Pub. L. 91-190, title I, §109, as added Pub. L. 118-5, div. C, title III, §321(b), June 3, 2023, 137 Stat. 43.)

§ 4336d. E-NEPA

(a) Permitting portal study

The Council on Environmental Quality shall conduct a study and submit a report to Congress within 1 year of the enactment of this Act¹ on the potential for online and digital technologies to address delays in reviews and improve public accessibility and transparency under section 4332(2)(C) of this title including, but not limited to, a unified permitting portal that would—

(1) allow applicants to—

(A) submit required documents or materials for their project in one unified portal;

(B) upload and collaborate with the applicable agencies to edit documents in real-time, as required;

(C) upload and display visual features such as video, animation, geographic information

¹ See References in Text note below.

system displays, and three-dimensional renderings; and

(D) track the progress of individual applications;

(2) include a cloud based, digital tool for more complex reviews that would enhance interagency coordination in consultation by—

(A) centralizing, across all necessary agencies, the data, visuals, and documents, including but not limited to geographic information system displays, other visual renderings, and completed reports and analyses necessary for reviews;

(B) streamlining communications between all necessary agencies and the applicant;

(C) allowing for comments and responses by and to all necessary agencies in one unified portal;

(D) generating analytical reports to aid in organizing and cataloguing public comments; and

(E) be² accessible on mobile devices;

(3) boost transparency in agency processes and present information suitable for a lay audience, including but not limited to—

(A) scientific data and analysis; and

(B) anticipated agency process and timeline; and

(4) include examples describing how at least five permits would be reviewed and processed through this portal.

(b) Authorization of appropriations

There is authorized to be appropriated \$500,000 for the Council on Environmental Quality to carry out the study directed by this section.

(Pub. L. 91-190, title I, §110, as added Pub. L. 118-5, div. C, title III, §321(b), June 3, 2023, 137 Stat. 44.)

Editorial Notes

REFERENCES IN TEXT

The enactment of this Act, referred to in subsec. (a), probably means the enactment of Pub. L. 118-5, which added this section to title I of Pub. L. 91-190 and was approved June 3, 2023.

§ 4336e. Definitions

In this subchapter:

(1) Categorical exclusion

The term “categorical exclusion” means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 4332(2)(C) of this title.

(2) Cooperating agency

The term “cooperating agency” means any Federal, State, Tribal, or local agency that has been designated as a cooperating agency under section 4336a(a)(3) of this title.

(3) Council

The term “Council” means the Council on Environmental Quality established in subchapter II.

(4) Environmental assessment

The term “environmental assessment” means an environmental assessment prepared under section 4336(b)(2) of this title.

(5) Environmental document

The term “environmental document” means an environmental impact statement, an environmental assessment, or a finding of no significant impact.

(6) Environmental impact statement

The term “environmental impact statement” means a detailed written statement that is required by section 4332(2)(C) of this title.

(7) Finding of no significant impact

The term “finding of no significant impact” means a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.

(8) Participating Federal agency

The term “participating Federal agency” means a Federal agency participating in an environmental review or authorization of an action.

(9) Lead agency

The term “lead agency” means, with respect to a proposed agency action—

(A) the agency that proposed such action; or

(B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 4336a(a)(1) of this title.

(10) Major Federal action

(A) In general

The term “major Federal action” means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

(B) Exclusion

The term “major Federal action” does not include—

(i) a non-Federal action—

(I) with no or minimal Federal funding; or

(II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;

(ii) funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;

(iv) business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and¹ of the Small

² So in original. Probably should be “being”.

¹ So in original. The word “and” probably should not appear.