

“(vi) EVALUATION.—Not later than 5 years after the date of enactment of this Act [Dec. 27, 2020], the Chair shall—

“(I) reevaluate the need for the task forces; and

“(II) submit to Congress a recommendation as to whether the task forces should continue.”

PLACEMENT IN UNITED STATES CODE

Pub. L. 114-94, div. D, title XLI, § 41014, Dec. 4, 2015, 129 Stat. 1762, provided that: “The Office of the Law Revision Counsel is directed to place sections 41001 through 41013 of this title in chapter 55 of title 42, United States Code, as subchapter IV.”

Executive Documents

EXECUTIVE ORDER NO. 13766

Ex. Ord. No. 13766, Jan. 24, 2017, 82 F.R. 8657, which related to expediting environmental reviews and approvals for high priority infrastructure projects, was revoked by Ex. Ord. No. 13990, § 7(a), Jan. 20, 2021, 86 F.R. 7041, set out in a note under section 4321 of this title.

EXECUTIVE ORDER NO. 13807

Ex. Ord. No. 13807, Aug. 15, 2017, 82 F.R. 40463, which related to environmental review and permitting process for infrastructure projects, was revoked by Ex. Ord. No. 13990, § 7(b), Jan. 20, 2021, 86 F.R. 7042, set out in a note under section 4321 of this title.

§ 4370m-1. Federal Permitting Improvement Steering Council

(a) Establishment

There is established the Federal Permitting Improvement Steering Council.

(b) Composition

(1) Chair

The Executive Director shall—

(A) be appointed by the President; and

(B) serve as Chair of the Council.

(2) Council members

(A) In general

(i) Designation by head of agency

(I) In general

Each individual listed in subparagraph (B) shall designate a member of the agency in which the individual serves to serve on the Council.

(II) Redesignation

If an individual listed in subparagraph (B) designates a different member to serve on the Council than the member designated under subclause (I), the individual shall notify the Executive Director of the designation by not later than 30 days after the date on which the designation is made.

(ii) Qualifications

A councilmember described in clause (i) shall hold a position in the agency of deputy secretary (or the equivalent) or higher.

(iii) Support

(I) In general

Consistent with guidance provided by the Director of the Office of Management and Budget, each individual listed in subparagraph (B) shall designate 1 or more appropriate members of the agency

in which the individual serves to serve as an agency CERPO.

(II) Reporting

In carrying out the duties of the agency CERPO under this subchapter, an agency CERPO shall report directly to the applicable agency councilmember.

(B) Heads of agencies

The individuals that shall each designate a councilmember under this subparagraph are as follows:

(i) The Secretary of Agriculture.

(ii) The Secretary of the Army.

(iii) The Secretary of Commerce.

(iv) The Secretary of the Interior.

(v) The Secretary of Energy.

(vi) The Secretary of Transportation.

(vii) The Secretary of Defense.

(viii) The Administrator of the Environmental Protection Agency.

(ix) The Chairman of the Federal Energy Regulatory Commission.

(x) The Chairman of the Nuclear Regulatory Commission.

(xi) The Secretary of Homeland Security.

(xii) The Secretary of Housing and Urban Development.

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

(xiv) Any other head of a Federal agency that the Executive Director may invite to participate as a member of the Council.

(3) Additional members

In addition to the members listed in paragraphs (1) and (2), the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget shall also be members of the Council.

(c) Duties

(1) Executive Director

(A) Inventory development

The Executive Director, in consultation with the Council, shall—

(i) not later than 180 days after December 4, 2015, establish an inventory of covered projects that are pending the environmental review or authorization of the head of any Federal agency;

(ii)(I) categorize the projects in the inventory as appropriate, based on sector and project type; and

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

(iii) add a covered project to the inventory after receiving a notice described in section 4370m-2(a)(1) of this title.

(B) Facilitating agency designation

The Executive Director, in consultation with the Council, shall—

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

(ii) publish the list of designated facilitating agencies for each category of projects in the inventory on the Dashboard in an easily accessible format.

(C) Performance schedules**(i) In general**

Not later than 1 year after December 4, 2015, the Executive Director, in consultation with the Council, shall develop recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects described in subparagraph (A)(ii).

(ii) Requirements**(I) In general**

The performance schedules shall reflect employment of the most sound and efficient applicable processes, including the alignment of Federal reviews of projects, reduction of permitting and project delivery time, and consideration of the best practices for public participation.

(II) Goal**(aa) In general**

To the maximum extent practicable, and consistent with applicable Federal law, the Executive Director, in consultation with the Council, shall aim to develop recommended performance schedules under clause (i) of not more than 2 years.

(bb) Exception

If a recommended performance schedule developed under clause (i) exceeds 2 years, the relevant agencies, in consultation with the Executive Director and the Council, shall explain in that recommended performance schedule the factors that cause the environmental reviews and authorizations in that category of covered projects to take longer than 2 years.

(III) Limit**(aa) In general**

The final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed the average time to complete an environmental review or authorization for a project within that category.

(bb) Calculation of average time

The average time referred to in item (aa) shall be calculated based on relevant historical data, as determined by the Executive Director, and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under section 4370m-2(b)(2) of this title (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.

(cc) Completion date

Each performance schedule shall specify that any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency.

(iii) Review and revision

Not later than 2 years after the date on which the performance schedules are established under this subparagraph, and not less frequently than once every 2 years thereafter, the Executive Director, in consultation with the Council, shall review and revise the performance schedules.

(D) Guidance

The Executive Director, in consultation with the Council, may recommend to the Director of the Office of Management and Budget or to the Council on Environmental Quality, as appropriate, that guidance be issued as necessary for agencies—

(i) to carry out responsibilities under this subchapter; and

(ii) to effectuate the adoption by agencies of the best practices and recommendations of the Council described in paragraph (2).

(E) Personnel

The Executive Director of the Council may appoint and fix the compensation of such employees as the Executive Director considers necessary to carry out the roles and responsibilities of the Executive Director.

(2) Council**(A) Recommendations****(i) In general**

The Council shall make recommendations to the Executive Director with respect to the designations under paragraph (1)(B) and the performance schedules under paragraph (1)(C).

(ii) Update

The Council may update the recommendations described in clause (i).

(B) Best practices

Not less frequently than annually, the Council shall issue recommendations on the best practices for improving the Federal permitting process for covered projects, which may include—

(i) enhancing early stakeholder engagement, including—

(I) engaging with Native American stakeholders to ensure that project sponsors and agencies identify potential natural, archeological, and cultural resources and locations of historic and religious significance in the area of a covered project; and

(II) fully considering and, as appropriate, incorporating recommendations

provided in public comments on any proposed covered project;

(ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;

(iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;

(iv) increasing transparency;

(v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;

(vi) developing and making available to applicants appropriate geographic information systems and other tools;

(vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials;

(viii) in coordination with the Executive Director, improving preliminary engagement with project sponsors in developing coordinated project plans;

(ix) using programmatic assessments, templates, and other tools based on the best available science and data; and

(x) addressing other aspects of infrastructure permitting, as determined by the Council.

(C) Meetings

The Council shall meet not less frequently than annually with groups or individuals representing State, tribal, and local governments that are engaged in the infrastructure permitting process.

(3) Agency CERPOs

An agency CERPO shall—

(A) advise the respective agency councilmember on matters related to environmental reviews and authorizations, including agency compliance with intermediate and final completion dates described in coordinated project plans;

(B) provide technical support, when requested to facilitate efficient and timely processes for environmental reviews and authorizations for covered projects under the jurisdictional responsibility of the agency, including supporting timely identification and resolution of potential disputes within the agency or between the agency and other Federal agencies;

(C) analyze agency environmental review and authorization processes, policies, and authorities and make recommendations to the respective agency councilmember for ways to standardize, simplify, and improve the efficiency of the processes, policies, and authorities, including by implementing guidance issued under paragraph (1)(D) and other best practices, including the use of information technology and geographic information system tools within the agency and across agencies, to the extent consistent with existing law; and

(D) review and develop training programs for agency staff that support and conduct environmental reviews or authorizations.

(Pub. L. 114-94, div. D, title XLI, § 41002, Dec. 4, 2015, 129 Stat. 1743; Pub. L. 117-58, div. G, title VIII, § 70801(b), (1), Nov. 15, 2021, 135 Stat. 1288, 1294; Pub. L. 117-328, div. E, title VI, § 635(a), Dec. 29, 2022, 136 Stat. 4703.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

2022—Subsec. (c)(1)(E). Pub. L. 117-328 added subpar. (E).

2021—Pub. L. 117-58, § 70801(b)(1), substituted “Federal Permitting Improvement Steering Council” for “Federal Permitting Improvement Council” in section catchline.

Subsec. (b)(2)(A)(i). Pub. L. 117-58, § 70801(b)(2)(A), designated existing provisions as subcl. (I), inserted subcl. heading, and added subcl. (II).

Subsec. (b)(2)(A)(ii). Pub. L. 117-58, § 70801(i), substituted “councilmember” for “councilmember”.

Subsec. (b)(2)(A)(iii)(II). Pub. L. 117-58, § 70801(b)(2)(B), substituted “the applicable agency councilmember” for “a deputy secretary (or the equivalent) or higher”.

Subsec. (c)(1)(C)(ii)(I). Pub. L. 117-58, § 70801(b)(3)(A)(i), added subcl. (I) and struck out former subcl. (I). Prior to amendment, text read as follows: “The performance schedules shall reflect employment of the use of the most efficient applicable processes, including the alignment of Federal reviews of projects and reduction of permitting and project delivery time.”

Subsec. (c)(1)(C)(ii)(II), (III). Pub. L. 117-58, § 70801(b)(3)(A)(ii), (iii), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (c)(1)(C)(ii)(III)(bb). Pub. L. 117-58, § 70801(b)(3)(A)(iv), substituted “based on relevant historical data, as determined by the Executive Director,” for “on the basis of data from the preceding 2 calendar years”.

Subsec. (c)(2)(B). Pub. L. 117-58, § 70801(b)(3)(B)(i), substituted “less frequently than annually, the Council shall issue recommendations on the best practices for improving the Federal permitting process for covered projects, which may include” for “later than 1 year after December 4, 2015, and not less frequently than annually thereafter, the Council shall issue recommendations on the best practices for” in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 117-58, § 70801(b)(3)(B)(ii), substituted “stakeholder engagement, including—” for “stakeholder engagement, including”, added subcl. (I), and inserted designation for subcl. (II) before “fully considering”.

Subsec. (c)(2)(B)(viii) to (x). Pub. L. 117-58, § 70801(b)(3)(B)(iii)–(v), added cls. (viii) and (ix) and redesignated former cl. (viii) as (x).

Subsec. (c)(3)(A). Pub. L. 117-58, § 70801(b)(3)(C), inserted “, including agency compliance with intermediate and final completion dates described in coordinated project plans” after “authorizations”.

Subsec. (d). Pub. L. 117-58, § 70801(b)(4), struck out subsec. (d). Prior to amendment, text read as follows: “The Director of the Office of Management and Budget shall designate a Federal agency, other than an agency that carries out or provides support only for projects that are not covered projects, to provide administrative support for the Executive Director, and the designated agency shall, as reasonably necessary, provide support and staff to enable the Executive Director to fulfill the duties of the Executive Director under this subchapter.”

§ 4370m-2. Permitting process improvement**(a) Project initiation and designation of participating agencies****(1) Notice****(A) In general**

A project sponsor of a covered project shall submit to the Executive Director and the facilitating agency notice of the initiation of a proposed covered project.

(B) Default designation

If, at the time of submission of the notice under subparagraph (A), the Executive Director has not designated a facilitating agency under section 4370m-1(c)(1)(B) of this title for the categories of projects noticed, the agency that receives the notice under subparagraph (A) shall be designated as the facilitating agency.

(C) Contents

Each notice described in subparagraph (A) shall include—

- (i) a statement of the purposes and objectives of the proposed project;
- (ii) a concise description, including the general location of the proposed project and a summary of geospatial information, if available, illustrating the project area and the locations, if any, of environmental, cultural, and historic resources;
- (iii) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project;
- (iv) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and
- (v) an assessment that the proposed project meets the definition of a covered project under section 4370m of this title and a statement of reasons supporting the assessment.

(D) Confidentiality

Any information relating to Native American natural, cultural, and historical resources submitted in a notice by a project sponsor under subparagraph (A) shall be—

- (i) kept confidential; and
- (ii) exempt from the disclosure requirements under section 552 of title 5 (commonly known as the “Freedom of Information Act”) and the Federal Advisory Committee Act (5 U.S.C. App.).¹

(2) Invitation**(A) In general**

Not later than 21 calendar days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating agency or lead agency, as applicable, shall—

- (i) identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project; and

- (ii) invite all Federal agencies identified under clause (i) to become a participating agency or a cooperating agency, as appropriate, in the environmental review and authorization management process described in section 4370m-4 of this title.

(B) Deadlines

Each invitation made under subparagraph (A) shall include a 14 calendar day deadline for a response to be submitted to the facilitating or lead agency, as applicable.

(3) Participating and cooperating agencies**(A) In general**

An agency invited under paragraph (2) shall be designated as a participating or cooperating agency for a covered project, unless the agency informs the facilitating or lead agency, as applicable, and the Executive Director in writing before the deadline under paragraph (2)(B) that the agency—

- (i) has no jurisdiction or authority with respect to the proposed project; or
- (ii) does not intend to exercise authority related to, or submit comments on, the proposed project.

(B) Changed circumstances

On request and a showing of changed circumstances, the Executive Director may designate an agency that has opted out under subparagraph (A)(ii) to be a participating or cooperating agency, as appropriate.

(4) Effect of designation

The designation described in paragraph (3) shall not—

- (A) give the participating agency authority or jurisdiction over the covered project; or
- (B) expand any jurisdiction or authority a cooperating agency may have over the proposed project.

(5) Lead agency designation**(A) In general**

On establishment of the lead agency, the lead agency shall assume the responsibilities of the facilitating agency under this subchapter.

(B) Redesignation of facilitating agency

If the lead agency assumes the responsibilities of the facilitating agency under subparagraph (A), the facilitating agency may be designated as a cooperative or participating agency.

(6) Change of facilitating or lead agency**(A) In general**

On the request of a participating agency or project sponsor, the Executive Director may designate a different agency as the facilitating or lead agency, as applicable, for a covered project, if the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should be placed in a different category under section 4370m-1(c)(1)(B) of this title.

¹ See References in Text note below.