

1 Title: To improve the efficiency, management, and interagency coordination of the Federal
2 permitting process through reforms overseen by the Office of Management and Budget, and for
3 other purposes.
4
5

6 Be it enacted by the Senate and House of Representatives of the United States of America in
7 Congress assembled,

8 SECTION 1. SHORT TITLE.

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

10 SEC. 2. DEFINITIONS.

11 In this Act:

12 (1) AGENCY.—The term “agency” has the meaning given the term in section 551 of title
13 5, United States Code.

14 (2) AGENCY CPO.—The term “agency CPO” means the chief permitting officer of an
15 agency designated by the head of the agency under section 3(b)(2)(A)(i).

16 (3) AUTHORIZATION.—The term “authorization” means—

17 (A) any license, permit, approval, or other administrative decision required or
18 authorized to be issued by an agency with respect to the siting, construction,
19 reconstruction, or commencement of operations of a covered project under Federal
20 law, whether administered by a Federal or State agency; or

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

22 (i) as a precondition to an authorization described under paragraph (A); or

23 (ii) before an applicant may take a particular action with respect to the siting,
24 construction, reconstruction, or commencement of operations of a covered project
25 under Federal law, whether administered by a Federal or State agency.

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

28 (5) COVERED PROJECT.—

29 (A) IN GENERAL.—The term “covered project” means any construction activity in
30 the United States that requires authorization or review by a Federal agency—

31 (i) involving renewable or conventional energy production, electricity
32 transmission, surface transportation, aviation, ports and waterways, water
33 resource projects, broadband, pipelines, manufacturing, or any other sector as
34 determined by the Federal CPO; and

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

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

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

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

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

7 (B) to aid in the compliance of the agency with NEPA if an environmental impact
8 statement is not necessary; and

9 (C) to facilitate preparation of an environmental impact statement, if an
10 environmental impact statement is necessary.

11 (8) ENVIRONMENTAL DOCUMENT.—The term “environmental document” means an
12 environmental assessment or environmental impact statement.

13 (9) ENVIRONMENTAL IMPACT STATEMENT.—The term “environmental impact statement”
14 means the detailed statement of significant environmental impacts required to be prepared
15 under NEPA.

16 (10) ENVIRONMENTAL REVIEW.—The term “environmental review” means the agency
17 procedures for preparing an environmental impact statement, environmental assessment,
18 categorical exclusion, or other document required under NEPA.

19 (11) FEDERAL CPO.—The term “Federal CPO” means the Federal Chief Permitting
20 Officer designated by the President under section 3(b)(1).

21 (12) INVENTORY.—The term “inventory” means the inventory of covered projects
22 established by the Federal CPO under section 3(d)(1)(A).

23 (13) LEAD AGENCY.—The term “lead agency” means the agency with principal
24 responsibility for review and authorization of a covered project, as determined under section
25 3(c)(1)(B).

26 (14) NEPA.—The term “NEPA” means the National Environmental Policy Act of 1969
27 (42 U.S.C. 4321 et seq.).

28 (15) PARTICIPATING AGENCY.—The term “participating agency” means any agency
29 participating in reviews or authorizations for a particular covered project in accordance with
30 section 4.

31 (16) PROJECT SPONSOR.—The term “project sponsor” means the entity, including any
32 private, public or public-private entity, that seeks approval for a project.

33 SEC. 3. FEDERAL PERMITTING IMPROVEMENT 34 COUNCIL.

35 (a) Establishment.—There is established the Federal Permitting Improvement Council.

36 (b) Composition.—

37 (1) CHAIR.—The President shall designate a Senate-confirmed officer of the Office of
38 Management and Budget as the Federal Chief Permitting Officer to serve as Chair of the

1 Council.

2 (2) CHIEF PERMITTING OFFICERS.—

3 (A) IN GENERAL.—

4 (i) DESIGNATION BY HEAD OF AGENCY.—Each individual listed in subparagraph
5 (B) shall designate a member of the agency in which the individual serves to serve
6 as the agency CPO.

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

9 (iii) MEMBERSHIP.—Each agency CPO described in clause (i) shall serve on the
10 Council.

11 (B) HEADS OF AGENCIES.—The individuals that shall each designate an agency CPO
12 under this subparagraph are as follows:

13 (i) The Secretary of Agriculture.

14 (ii) The Secretary of Commerce.

15 (iii) The Secretary of the Interior.

16 (iv) The Secretary of Energy.

17 (v) The Secretary of Transportation.

18 (vi) The Secretary of Defense.

19 (vii) The Administrator of the Environmental Protection Agency.

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

21 (ix) The Chairman of the Nuclear Regulatory Commission

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

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

25 (3) CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY.—In addition to the
26 members listed in paragraphs (1) and (2), the Chairman of the Council on Environmental
27 Quality shall also be a member of the Council.

28 (c) Duties.—

29 (1) FEDERAL CPO.—

30 (A) INVENTORY DEVELOPMENT.—The Federal CPO, in consultation with the
31 members of the Council, shall—

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

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

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

3 (iii) add covered projects to the inventory after the Federal CPO receives a
4 notice described in section 4(a)(1).

5 (B) LEAD AGENCY DESIGNATION.—The Federal CPO, in consultation with the
6 Council, shall designate a lead agency for each category of covered projects described
7 in subparagraph (A)(ii) and publish those designations and categories in an easily
8 accessible format online.

9 (C) PERFORMANCE SCHEDULES.—

10 (i) IN GENERAL.—The Federal CPO, in consultation with the Council, shall
11 develop nonbinding performance schedules, including intermediate and final
12 deadlines, for reviews and authorizations for each category of covered projects
13 described in subparagraph (A)(ii).

14 (ii) REQUIREMENTS.—

15 (I) IN GENERAL.—The performance schedules shall reflect employment of
16 the use of the most efficient applicable processes.

17 (II) LIMIT.—The final deadline for completion of any review or
18 authorization contained in the performance schedules shall not be later than
19 180 days after the date on which the completed application or request is
20 filed.

21 (iii) REVIEW AND REVISION.—Not later than 2 years after the date on which the
22 performance schedules are established under this subparagraph, and no less than
23 every 2 years thereafter, the Federal CPO, in consultation with the Council, shall
24 review and revise the performance schedules.

25 (D) GUIDANCE.—The Federal CPO may issue circulars, bulletins, guidelines, and
26 other similar directives as necessary to carry out responsibilities under this Act and to
27 effectuate the adoption by agencies of the best practices and recommendations of the
28 Council described in paragraph (2).

29 (2) COUNCIL.—

30 (A) RECOMMENDATIONS.—

31 (i) IN GENERAL.—The Council shall make recommendations to the Federal
32 CPO with respect to the designations under paragraph (1)(B) and the performance
33 schedules under paragraph (1)(C).

34 (ii) UPDATE.—The Council may update the recommendations described in
35 clause (i).

36 (B) BEST PRACTICES.—Not later than 1 year after the date of enactment of this Act,
37 and at least annually thereafter, the Council shall issue recommendations on the best
38 practices for—

39 (i) early stakeholder engagement, including fully considering and, as
40 appropriate, incorporating recommendations provided in public comments on any

- 1 proposed covered project;
- 2 (ii) assuring timeliness of permitting and review decisions;
- 3 (iii) coordination between Federal and non-Federal governmental entities;
- 4 (iv) transparency;
- 5 (v) reduction of information collection requirements and other administrative
- 6 burdens on agencies, project sponsors, and other interested parties;
- 7 (vi) evaluating lead agencies and participating agencies under this Act; and
- 8 (vii) other aspects of infrastructure permitting, as determined by the Council.

9 SEC. 4. PERMITTING PROCESS IMPROVEMENT.

10 (a) Project Initiation and Designation of Participating Agencies.—

11 (1) NOTICE.—

12 (A) IN GENERAL.—A project sponsor shall provide the Federal CPO and the lead
13 agency notice of the initiation of a proposed covered project.

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

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

16 (ii) a statement of any Federal authorization or review anticipated to be
17 required for the proposed project; and

18 (iii) an assessment of the reasons why the proposed project meets the definition
19 of a covered project in section 2.

20 (2) INVITATION.—

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

23 (i) identify another agency that may have an interest in the proposed project;
24 and

25 (ii) invite the agency to become a participating agency in the permitting
26 management process and in the environmental review process described in section
27 6.

28 (B) DEADLINES.—Each invitation made under subparagraph (A) shall include a
29 deadline for a response to be submitted to the lead agency.

30 (3) PARTICIPATING AGENCIES.—An agency invited under paragraph (2) shall be
31 designated as a participating agency for a covered project, unless the agency informs the
32 lead agency in writing before the deadline described in paragraph (2)(B) that the agency—

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

34 (B) does not intend to exercise authority related to, or submit comments on, the
35 proposed project.

36 (4) EFFECT OF DESIGNATION.—The designation described in paragraph (3) shall not give

1 the participating agency jurisdiction over the proposed project.

2 (5) CHANGE OF LEAD AGENCY. —Upon the request of a lead agency, participating
3 agency, or project sponsor, the Federal CPO may designate a different agency as the lead
4 agency for a covered project if the Federal CPO receives new information regarding the
5 scope or nature of a covered project that indicates the project should be placed in a different
6 category under section 3(c)(1)(B). Any dispute over designation of a lead agency for a
7 particular covered project shall be resolved by the Federal CPO.

8 (b) Permitting Dashboard.—

9 (1) REQUIREMENT TO MAINTAIN.—

10 (A) IN GENERAL.—The Federal CPO, in coordination with the Administrator of
11 General Services, shall maintain an online database to be known as the “Permitting
12 Dashboard” to track the status of Federal reviews and authorizations for any covered
13 project in the inventory.

14 (B) SPECIFIC AND SEARCHABLE ENTRY.—The Dashboard shall include a specific and
15 searchable entry for each project.

16 (2) ADDITIONS.—Not later than 7 days after the date on which the Federal CPO receives
17 a notice under subsection (a)(1), the Federal CPO shall create a specific entry on the
18 Dashboard for the project, unless the Federal CPO or lead agency determines that the
19 project is not a covered project.

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

22 (A) any application and any supporting document submitted by a project sponsor for
23 any required Federal review or authorization for the project;

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

27 (C) the status of any litigation to which the agency is a party that is directly related
28 to the project, including, if practicable, any judicial document made available on an
29 electronic docket maintained by a Federal, State, or local court.

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

32 (A) the information submitted under paragraph (3)(A) not later than 2 days after the
33 date on which the Federal CPO receives the information;

34 (B) a permitting timetable approved by the Federal CPO under section (c)(2)(C);

35 (C) the status of the compliance of each participating agency with the permitting
36 timetable;

37 (D) any modifications of the permitting timetable; and

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

39 (c) Coordination and Timetables.—

1 (1) COORDINATION PLAN.—

2 (A) IN GENERAL.—Not later than 60 days after the date on which the lead agency
3 receives a notice under subsection (a)(1), the lead agency, in consultation with each
4 participating agency, shall establish a concise plan for coordinating public and agency
5 participation in, and completion of, any required Federal review and authorization for
6 the project.

7 (B) MEMORANDUM OF UNDERSTANDING.—The lead agency may incorporate the
8 coordination plan described in subparagraph (A) into a memorandum of understanding.

9 (2) PERMITTING TIMETABLE.—

10 (A) ESTABLISHMENT.—As part of the coordination plan required by paragraph (1),
11 the lead agency, in consultation with each participating agency, the project sponsor,
12 and the State in which the project is located, shall establish a permitting timetable that
13 includes intermediate and final deadlines for action by each participating agency on
14 any Federal review or authorization required for the project.

15 (B) FACTORS FOR CONSIDERATION.—In establishing the permitting timetable under
16 subparagraph (A), the lead agency shall follow the performance schedules established
17 under section 3(d)(1)(C), but may vary the timetable based on relevant factors,
18 including—

19 (i) the size and complexity of the covered project;

20 (ii) the resources available to each participating agency;

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

22 (iv) the sensitivity of the natural or historic resources that may be affected by
23 the project; and

24 (v) the extent to which similar projects in geographic proximity to the project
25 were recently subject to environmental review or similar procedures under State
26 law.

27 (C) APPROVAL BY THE FEDERAL CPO.—

28 (i) REQUIREMENT TO SUBMIT.—The lead agency shall promptly submit to the
29 Federal CPO a permitting timetable established under subparagraph (A) for
30 review.

31 (ii) REVISION AND APPROVAL.—The Federal CPO, after consultation with the
32 lead agency, may revise the permitting timetable if the Federal CPO determines
33 that the timetable deviates without reasonable justification from the performance
34 schedule established under section 3(d)(1)(C). If the Federal CPO does not revise
35 the permitting timetable within 7 days of the lead agency's submission of the
36 timetable, the permitting timetable shall be deemed to be approved by the Federal
37 CPO.

38 (D) MODIFICATION AFTER APPROVAL.—The lead agency may modify a permitting
39 timetable established under subparagraph (A) for good cause only if—

40 (i) the lead agency and the affected participating agency agree to a different

1 deadline;

2 (ii) the lead agency or the affected participating agency provides a written
3 explanation of the justification for the modification; and

4 (iii) the lead agency submits the modification to the Federal CPO, which may
5 revise or disapprove the modification.

6 (E) CONSISTENCY WITH OTHER TIME PERIODS.—A permitting timetable established
7 under subparagraph (A) shall be consistent with any other relevant time periods
8 established under Federal law.

9 (F) COMPLIANCE.—

10 (i) IN GENERAL.—Each Federal participating agency shall comply with the
11 deadlines set forth in the permitting timetable approved under subparagraph (C),
12 or with any deadline modified under subparagraph (D).

13 (ii) FAILURE TO COMPLY.—If a Federal participating agency fails to comply
14 with a deadline for agency action on a covered project, the head of the
15 participating agency shall—

16 (I) promptly report to the Federal CPO for posting on the Dashboard an
17 explanation of any specific reason for failing to meet the deadline and a
18 proposal for an alternative deadline; and

19 (II) report to the Federal CPO for posting on the Dashboard a monthly
20 status report describing any agency activity related to the project until the
21 agency has taken final action on the delayed authorization or review.

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

23 (A) IN GENERAL.—To the maximum extent practicable under applicable Federal law,
24 the lead agency shall coordinate the Federal review and authorization process under
25 this subsection with any State, local, or tribal agency responsible for conducting any
26 separate review or authorization of the covered project to ensure timely and efficient
27 review and permitting decisions.

28 (B) MEMORANDUM OF UNDERSTANDING.—

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

32 (ii) SUBMISSION TO FEDERAL CPO.—A lead agency shall submit to the Federal
33 CPO each memorandum of understanding described in clause (i).

34 (iii) POST TO DASHBOARD.—The Federal CPO shall post to the Dashboard each
35 memorandum of understanding submitted under clause (ii).

36 (d) Early Consultation.—The lead agency shall provide an expeditious process for project
37 sponsors to confer with the each participating agency involved and to have each participating
38 agency determine and communicate to the project sponsor, not later than 60 days after the date
39 on which the project sponsor submits a request, information concerning—

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

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

2 (e) Cooperating Agency.—

3 (1) IN GENERAL.—A lead agency may designate a participating agency as a cooperating
4 agency in accordance with part 1501 of title 40, Code of Federal Regulations (or successor
5 regulations).

6 (2) EFFECT ON OTHER DESIGNATION.—The designation described in paragraph (1) shall
7 not affect any designation under subsection (a)(3).

8 (3) LIMITATION ON DESIGNATION.—Any agency not designated as a participating agency
9 under subsection (a)(3) shall not be designated as a cooperating agency under paragraph (1).

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

11 The consent of Congress is given for 3 or more contiguous States to enter into an interstate
12 compact establishing regional infrastructure development agencies to facilitate authorization and
13 review of covered projects, under State law or in the exercise of delegated permitting authority
14 described under section 7, that will advance infrastructure development, production, and
15 generation within the States that are parties to the compact.

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

17 (a) Concurrent Reviews.—Each agency shall, to the greatest extent permitted by law—

18 (1) carry out the obligations of the agency under other applicable law concurrently, and in
19 conjunction with other reviews being conducted by other participating agencies, including
20 environmental reviews required under NEPA, unless doing so would impair the ability of
21 the agency to carry out statutory obligations; and

22 (2) formulate and implement administrative, policy, and procedural mechanisms to
23 enable the agency to ensure completion of the environmental review process in a timely,
24 coordinated, and environmentally responsible manner.

25 (b) Adoption and Use of Documents.—

26 (1) STATE ENVIRONMENTAL DOCUMENTS; SUPPLEMENTAL DOCUMENTS.—

27 (A) USE OF EXISTING DOCUMENTS.—On the request of a project sponsor, a lead
28 agency shall consider and, as appropriate, adopt or incorporate a document that has
29 been prepared for a project under State laws and procedures as the environmental
30 impact statement or environmental assessment for the project if the State laws and
31 procedures under which the document was prepared provide, as determined by the lead
32 agency in consultation with the Council on Environmental Quality, environmental
33 protection and opportunities for public participation that are substantially equivalent to
34 NEPA.

35 (B) NEPA OBLIGATIONS.—An environmental document adopted under subparagraph
36 (A) may serve as, or supplement, an environmental impact statement or environmental
37 assessment required to be prepared by a lead agency under NEPA.

38 (C) SUPPLEMENTAL DOCUMENT.—In the case of an environmental document
39 described in subparagraph (A), during the period after preparation of the document and

1 prior to the adoption of the document by the lead agency, the lead agency shall prepare
2 and publish a supplemental document to the document if the lead agency determines
3 that—

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

6 (ii) there have been significant changes in circumstances or availability of
7 information relevant to the environmental review for the project.

8 (D) COMMENTS.—If a lead agency prepares and publishes a supplemental document
9 under subparagraph (C), the lead agency may solicit comments from other agencies
10 and the public on the supplemental document for a period of not more than 30 days
11 beginning on the date on which the supplemental document is published.

12 (E) RECORD OF DECISION.—A lead agency shall issue a record of decision or finding
13 of no significant impact, as appropriate, based on the document adopted under
14 subparagraph (A) and any supplemental document prepared under subparagraph (C).

15 (c) Alternatives Analysis.—

16 (1) PARTICIPATION.—As early as practicable during the environmental review, but not
17 later than the commencement of scoping for a project requiring the preparation of an
18 environmental impact statement, the lead agency shall provide an opportunity for the
19 involvement of cooperating agencies in determining the range of alternatives to be
20 considered for a project.

21 (2) RANGE OF ALTERNATIVES.—Following participation under paragraph (1), the lead
22 agency shall determine the range of alternatives for consideration in any document that the
23 lead agency is responsible for preparing for the project.

24 (3) METHODOLOGIES.—The lead agency shall determine, in collaboration with each
25 cooperating agency at appropriate times during the environmental review, the
26 methodologies to be used and the level of detail required in the analysis of each alternative
27 for a project.

28 (4) PREFERRED ALTERNATIVE.—At the discretion of the lead agency, the preferred
29 alternative for a project, after being identified, may be developed to a higher level of detail
30 than other alternatives to facilitate the development of mitigation measures or concurrent
31 compliance with other applicable laws if the lead agency determines that the development
32 of the higher level of detail will not prevent the lead agency from making an impartial
33 decision as to whether to accept another alternative that is being considered in the
34 environmental review and will not prevent the public from commenting on the preferred
35 and other alternatives.

36 (d) Environmental Review Comments.—

37 (1) COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT.—For comments by an
38 agency or the public on a draft environmental impact statement, the lead agency shall
39 establish a comment period of not more than 60 days after the date on which a notice
40 announcing availability of the environmental impact statement is published in the Federal
41 Register, unless—

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

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

4 (2) OTHER COMMENTS.—For all other comment periods for agency or public comments in
5 the environmental review process, the lead agency shall establish a comment period of not
6 later than 30 days after the date on which the materials on which comment is requested are
7 made available, unless—

8 (A) the lead agency, the project sponsor, and each participating agency agree to a
9 different deadline; or

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

11 (e) Issue Identification and Resolution.—

12 (1) COOPERATION.—The lead agency and each participating agency shall work
13 cooperatively in accordance with this section to identify and resolve issues that could delay
14 completion of the environmental review or could result in denial of any approval required
15 for the project under applicable laws.

16 (2) LEAD AGENCY RESPONSIBILITIES.—

17 (A) IN GENERAL.—The lead agency shall make information available to each
18 participating agency as early as practicable in the environmental review regarding the
19 environmental, historic, and socioeconomic resources located within the project area
20 and the general locations of the alternatives under consideration.

21 (B) SOURCES OF INFORMATION.—The information described in subparagraph (A)
22 may be based on existing data sources, including geographic information systems
23 mapping.

24 (3) PARTICIPATING AGENCY RESPONSIBILITIES.—Based on information received from the
25 lead agency under paragraph (2), each participating agency shall identify, as early as
26 practicable, any issues of concern, including any issues that could substantially delay or
27 prevent an agency from granting a permit or other approval needed for the project,
28 regarding any potential environmental, historic, or socioeconomic impacts of the project.

29 (f) Categories of Projects.—The authorities granted under this section may be exercised for an
30 individual project or a category of projects.

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

32 If a Federal statute permits a State to be delegated or otherwise authorized by a Federal agency
33 to issue or otherwise administer a permit program in lieu of the Federal agency, each member of
34 the Council shall—

35 (1) on publication by the Council of best practices under section 3(c)(2)(B), initiate a
36 process, with public participation, to determine whether and the extent to which any of the
37 best practices are applicable to permitting under the statute; and

38 (2) not later than 2 years after the date of enactment of this Act, make recommendations
39 for State modifications of the permit program to reflect the best practices described in

1 section (3)(c)(2)(B), as appropriate.

2 SEC. 8. LITIGATION, JUDICIAL REVIEW, AND SAVINGS 3 PROVISION.

4 (a) Limitations on Claims.—

5 (1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under
6 Federal law seeking judicial review of an authorization issued by a Federal agency for a
7 covered project shall be barred unless—

8 (A) the action is filed within 150 days after publication of a notice in the Federal
9 Register that the authorization is final pursuant to the law under which the agency action
10 is taken, unless a shorter time is specified in the Federal law pursuant to which judicial
11 review is allowed; and

12 (B) in the case of an action pertaining to an environmental review conducted under
13 NEPA—

14 (i) the action is filed by a party that submitted a comment during the
15 environmental review on the issue on which the party seeks judicial review; and

16 (ii) the comment was sufficiently detailed to put the lead agency on notice of
17 the issue on which the party seeks judicial review.

18 (2) NEW INFORMATION. —The head of a lead agency or participating agency shall
19 consider new information received after the close of a comment period if the information
20 satisfies the requirements for a supplemental environmental impact statement under NEPA
21 regulations. The preparation of a supplemental environmental impact statement when
22 required shall be considered a separate final agency action and the deadline for filing a
23 claim for judicial review of such action shall be 150 days after the date of publication of a
24 notice in the Federal Register announcing such action.

25 (3) RULE OF CONSTRUCTION.—Nothing in this subsection shall create a right to judicial
26 review or place any limit on filing a claim that a person has violated the terms of an
27 authorization.

28 (b) Preliminary Injunctive Relief.—In addition to considering any other applicable equitable
29 factors such as the effects on public health, safety, and the environment, in any action seeking a
30 temporary restraining order or preliminary injunction against an agency or a project sponsor in
31 connection with the review or authorization of a covered project, the court shall—

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

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

35 (c) Judicial Review.—Except as provided in subsection (a), nothing in this Act affects the
36 reviewability of any final Federal agency action in a court of the United States or in the court of
37 any State.

38 (d) Savings Clause.—

39 (1) Nothing in this Act supersedes, amends, or modifies NEPA or any other Federal

1 environmental statute or affects the responsibility of any Federal officer to comply with or
2 enforce any statute.

3 (2) Nothing in this Act shall create a presumption that a covered project will be approved
4 or favorably reviewed by any agency.

5 (e) Limitations.—Nothing in this section preempts, limits or interferes with—

6 (1) any practice of seeking, considering, or responding to public comment; or

7 (2) any power, jurisdiction, responsibility, or authority that a Federal, State, or local
8 governmental agency, metropolitan planning organization, Indian tribe, or project sponsor
9 has with respect to carrying out a project or any other provisions of law applicable to any
10 project, plan, or program.

11 **SEC. 9. REPORT TO CONGRESS.**

12 (a) In General.—Not later than April 15 of each year, the Federal CPO shall submit to
13 Congress a report detailing the progress accomplished under this Act during the previous fiscal
14 year.

15 (b) Contents.—The report described in subsection (a) shall assess the performance of each
16 participating agency and lead agency based on the best practices described in section 3(d)(2)(B).

17 (c) Opportunity to Include Comments.—Each agency CPO shall have the opportunity to
18 include comments concerning the performance of the agency in the report described in
19 subsection (a).

20 **SEC. 10. APPLICATION.**

21 This Act applies to any covered project for which an application or request for a Federal
22 authorization is pending before a Federal agency 90 days after the date of enactment of this Act.
23