

116TH CONGRESS  
2D SESSION

# S. 4862

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under the Act, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 19), 2020

Mr. LEE (for himself, Mr. CRAMER, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under the Act, 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 “Undoing NEPA’s Sub-  
5 stantial Harm by Advancing Concepts that Kickstart the  
6 Liberation of the Economy Act of 2020” or the  
7 “UNSHACKLE Act of 2020”.

1 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT MODI-**  
2 **FICATIONS.**

3 (a) APPLICABLE TIMELINES.—Title I of the National  
4 Environmental Policy Act of 1969 is amended—

5 (1) by redesignating section 105 (42 U.S.C.  
6 4335) as section 108; and

7 (2) by inserting after section 104 (42 U.S.C.  
8 4334) the following:

9 **“SEC. 105. PROCESS REQUIREMENTS.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) FEDERAL AGENCY.—The term ‘Federal  
12 agency’ includes a State that has assumed the re-  
13 sponsibility of a Federal agency under—

14 “(A) section 107; or

15 “(B) section 327 of title 23, United States  
16 Code.

17 “(2) HEAD OF A FEDERAL AGENCY.—The term  
18 ‘head of a Federal agency’ includes the governor or  
19 head of an applicable State agency of a State that  
20 has assumed the responsibility of a Federal agency  
21 under—

22 “(A) section 107; or

23 “(B) section 327 of title 23, United States  
24 Code.

25 “(b) APPLICABLE TIMELINES.—

26 “(1) NEPA PROCESS.—

1           “(A) IN GENERAL.—The head of a Federal  
2 agency shall complete the NEPA process for a  
3 proposed action of the Federal agency, as de-  
4 scribed in section 109(3)(B)(ii), not later than  
5 2 years after the date described in section  
6 109(3)(B)(i).

7           “(B) ENVIRONMENTAL DOCUMENTS.—  
8 Within the period described in subparagraph  
9 (A), not later than 1 year after the date de-  
10 scribed in section 109(3)(B)(i), the head of the  
11 Federal agency shall, with respect to the pro-  
12 posed action—

13                   “(i) issue—

14                           “(I) a finding that a categorical  
15 exclusion applies to the proposed ac-  
16 tion; or

17                           “(II) a finding of no significant  
18 impact; or

19                   “(ii) publish a notice of intent to pre-  
20 pare an environmental impact statement in  
21 the Federal Register.

22           “(C) ENVIRONMENTAL IMPACT STATE-  
23 MENT.—If the head of a Federal agency pub-  
24 lishes a notice of intent described in subpara-  
25 graph (B)(ii), within the period described in

1           subparagraph (A) and not later than 1 year  
2           after the date on which the head of the Federal  
3           agency publishes the notice of intent, the head  
4           of the Federal agency shall complete the envi-  
5           ronmental impact statement and, if necessary,  
6           any supplemental environmental impact state-  
7           ment for the proposed action.

8           “(D) PENALTIES.—

9           “(i) DEFINITIONS.—In this subpara-  
10          graph:

11           “(I) DIRECTOR.—The term ‘Di-  
12          rector’ means the Director of the Of-  
13          fice of Management and Budget.

14           “(II) FEDERAL AGENCY.—The  
15          term ‘Federal agency’ does not in-  
16          clude a State.

17           “(III) FINAL NEPA COMPLIANCE  
18          DATE.—The term ‘final NEPA com-  
19          pliance date’, with respect to a pro-  
20          posed action, means the date by which  
21          the head of a Federal agency is re-  
22          quired to complete the NEPA process  
23          under subparagraph (A).

24           “(IV) HEAD OF A FEDERAL  
25          AGENCY.—The term ‘head of a Fed-

1           eral agency’ does not include the gov-  
2           ernor or head of a State agency of a  
3           State.

4           “(V) INITIAL EIS COMPLIANCE  
5           DATE.—The term ‘initial EIS compli-  
6           ance date’, with respect to a proposed  
7           action for which a Federal agency  
8           published a notice of intent described  
9           in subparagraph (B)(ii), means the  
10          date by which an environmental im-  
11          pact statement for that proposed ac-  
12          tion is required to be completed under  
13          subparagraph (C).

14          “(VI) INITIAL NEPA COMPLIANCE  
15          DATE.—The term ‘initial NEPA com-  
16          pliance date’, with respect to a pro-  
17          posed action, means the date by which  
18          the head of a Federal agency is re-  
19          quired to issue or publish a document  
20          described in subparagraph (B) for  
21          that proposed action under that sub-  
22          paragraph.

23          “(VII) INITIAL NONCOMPLIANCE  
24          DETERMINATION.—The term ‘initial  
25          noncompliance determination’ means

1 a determination under clause  
2 (ii)(I)(bb) that the head of a Federal  
3 agency has not complied with the re-  
4 quirements of subparagraph (A), (B),  
5 or (C).

6 “(ii) INITIAL NONCOMPLIANCE.—

7 “(I) DETERMINATION.—

8 “(aa) NOTIFICATION.—As  
9 soon as practicable after the date  
10 described in section 109(3)(B)(i)  
11 for a proposed action of a Fed-  
12 eral agency, the head of the Fed-  
13 eral agency shall notify the Di-  
14 rector that the head of the Fed-  
15 eral agency is beginning the  
16 NEPA process for that proposed  
17 action.

18 “(bb) DETERMINATIONS OF  
19 COMPLIANCE.—

20 “(AA) INITIAL DETER-  
21 MINATION.—As soon as  
22 practicable after the initial  
23 NEPA compliance date for a  
24 proposed action, the Direc-  
25 tor shall determine whether,

1 as of the initial NEPA com-  
2 pliance date, the head of the  
3 Federal agency has complied  
4 with subparagraph (B) for  
5 that proposed action.

6 “(BB) ENVIRON-  
7 MENTAL IMPACT STATE-  
8 MENT.—With respect to a  
9 proposed action of a Federal  
10 agency in which the head of  
11 the Federal agency publishes  
12 a notice of intent described  
13 in subparagraph (B)(ii), as  
14 soon as practicable after the  
15 initial EIS compliance date  
16 for a proposed action, the  
17 Director shall determine  
18 whether, as of the initial  
19 EIS compliance date, the  
20 head of the Federal agency  
21 has complied with subpara-  
22 graph (C) for that proposed  
23 action.

24 “(CC) COMPLETION OF  
25 NEPA PROCESS.—As soon as

1                   practicable after the final  
2                   NEPA compliance date for a  
3                   proposed action, the Direc-  
4                   tor shall determine whether,  
5                   as of the final NEPA com-  
6                   pliance date, the head of the  
7                   Federal agency has complied  
8                   with subparagraph (A) for  
9                   that proposed action.

10                   “(II) IDENTIFICATION; PENALTY;  
11                   NOTIFICATION.—If the Director  
12                   makes an initial noncompliance deter-  
13                   mination for a proposed action—

14                   “(aa) the Director shall  
15                   identify the account for the sala-  
16                   ries and expenses of the office of  
17                   the head of the Federal agency,  
18                   or an equivalent account;

19                   “(bb) beginning on the day  
20                   after the date on which the Di-  
21                   rector makes the initial non-  
22                   compliance determination, the  
23                   amount that the head of the Fed-  
24                   eral agency may obligate from  
25                   the account identified under item



1 (aa) for the fiscal year during  
2 which the determination is made  
3 shall be reduced by 0.5 percent  
4 from the amount initially made  
5 available for the account for that  
6 fiscal year; and

7 “(cc) the Director shall no-  
8 tify the head of the Federal  
9 agency of—

10 “(AA) the initial non-  
11 compliance determination;

12 “(BB) the account  
13 identified under item (aa);  
14 and

15 “(CC) the reduction  
16 under item (bb).

17 “(iii) CONTINUED NONCOMPLIANCE.—

18 “(I) DETERMINATION.—Every  
19 90 days after the date of an initial  
20 noncompliance determination, the Di-  
21 rector shall determine whether the  
22 head of the Federal agency has com-  
23 plied with the applicable requirements  
24 of subparagraphs (A) through (C) for  
25 the proposed action, until the date on

1 which the Director determines that  
2 the head of the Federal agency has  
3 completed the NEPA process for the  
4 proposed action.

5 “(II) PENALTY; NOTIFICATION.—

6 For each determination made by the  
7 Director under subclause (I) that the  
8 head of a Federal agency has not  
9 complied with a requirement of sub-  
10 paragraph (A), (B), or (C) for a pro-  
11 posed action—

12 “(aa) the amount that the  
13 head of the Federal agency may  
14 obligate from the account identi-  
15 fied under clause (ii)(II)(aa) for  
16 the fiscal year during which the  
17 most recent determination under  
18 subclause (I) is made shall be re-  
19 duced by 0.5 percent from the  
20 amount initially made available  
21 for the account for that fiscal  
22 year; and

23 “(bb) the Director shall no-  
24 tify the head of the Federal  
25 agency of—

1                   “(AA) the determina-  
2                   tion under subclause (I);  
3                   and

4                   “(BB) the reduction  
5                   under item (aa).

6                   “(iv) REQUIREMENTS.—

7                   “(I) AMOUNTS NOT RESTORED.—

8                   A reduction in the amount that the  
9                   head of a Federal agency may obligate  
10                  under clause (ii)(II)(bb) or  
11                  (iii)(II)(aa) during a fiscal year shall  
12                  not be restored for that fiscal year,  
13                  without regard to whether the head of  
14                  a Federal agency completes the  
15                  NEPA process for the proposed action  
16                  with respect to which the Director  
17                  made an initial noncompliance deter-  
18                  mination or a determination under  
19                  clause (iii)(I).

20                  “(II) REQUIRED TIMELINES.—

21                  The violation of subparagraph (B) or  
22                  (C), and any action carried out to re-  
23                  mediate or otherwise address the vio-  
24                  lation, shall not affect any other appli-

1 cable compliance date under subpara-  
2 graph (A), (B), or (C).

3 “(E) UNEXPECTED CIRCUMSTANCES.—If,  
4 while carrying out a proposed action after the  
5 completion of the NEPA process for that pro-  
6 posed action, a Federal agency or project spon-  
7 sor encounters a new or unexpected cir-  
8 cumstance or condition that may require the re-  
9 evaluation of the proposed action under this  
10 title, the head of the Federal agency with re-  
11 sponsibility for carrying out the NEPA process  
12 for the proposed action shall—

13 “(i) consider whether mitigating the  
14 new or unexpected circumstance or condi-  
15 tion is sufficient to avoid significant effects  
16 that may result from the circumstance or  
17 condition; and

18 “(ii) if the head of the Federal agency  
19 determines under clause (i) that the sig-  
20 nificant effects that result from the cir-  
21 cumstance or condition can be avoided,  
22 mitigate the circumstance or condition  
23 without carrying out the NEPA process  
24 again.

25 “(2) AUTHORIZATIONS AND PERMITS.—

1           “(A) IN GENERAL.—Not later than 90  
2 days after the date described in section  
3 109(3)(B)(ii), the head of a Federal agency  
4 shall issue—

5                   “(i) any necessary permit or author-  
6 ization to carry out the proposed action; or

7                   “(ii) a denial of the permit or author-  
8 ization necessary to carry out the proposed  
9 action.

10           “(B) EFFECT OF FAILURE TO ISSUE AU-  
11 THORIZATION OR PERMIT.—If a permit or au-  
12 thorization described in subparagraph (A) is  
13 not issued or denied within the period described  
14 in that subparagraph, the permit or authoriza-  
15 tion shall be considered to be approved.

16           “(C) DENIAL OF PERMIT OR AUTHORIZA-  
17 TION.—

18                   “(i) IN GENERAL.—If a permit or au-  
19 thorization described in subparagraph (A)  
20 is denied, the head of the Federal agency  
21 shall describe to the project sponsor—

22                           “(I) the basis of the denial; and

23                           “(II) recommendations for the  
24 project sponsor with respect to how to  
25 address the reasons for the denial.

1           “(ii) RECOMMENDED CHANGES.—If  
2           the project sponsor carries out the rec-  
3           ommendations of the head of the Federal  
4           agency under clause (i)(II) and notifies the  
5           head of the Federal agency that the rec-  
6           ommendations have been carried out, the  
7           head of the Federal agency—

8                       “(I) shall decide whether to issue  
9                       the permit or authorization described  
10                      in subparagraph (A) not later than 90  
11                      days after date on which the project  
12                      sponsor submitted the notification;  
13                      and

14                     “(II) shall not carry out the  
15                     NEPA process with respect to the  
16                     proposed action again.”.

17           (b) AGENCY PROCESS REFORMS.—Section 105 of the  
18           National Environmental Policy Act of 1969 (42 U.S.C.  
19           4321 et seq.) (as added by subsection (a)(2)) is amended  
20           by adding at the end the following:

21           “(c) PROHIBITIONS.—In carrying out the NEPA  
22           process, the head of a Federal agency may not—

23                     “(1) consider whether a proposed action or an  
24                     alternative to the proposed action considered by the  
25                     head of the Federal agency, including the design, en-

1 vironmental impact, mitigation measures, or adapta-  
2 tion measures of the proposed action or alternative  
3 to the proposed action, has an effect on climate  
4 change;

5 “(2) with respect to a proposed action or an al-  
6 ternative to the proposed action considered by the  
7 head of the Federal agency, consider the effects of  
8 the emission of greenhouse gases on climate change;

9 “(3) consider an alternative to the proposed ac-  
10 tion if the proposed action is not technically or eco-  
11 nomically feasible to the project sponsor; or

12 “(4) consider an alternative to the proposed ac-  
13 tion that is not within the jurisdiction of the Federal  
14 agency.

15 “(d) ENVIRONMENTAL DOCUMENTS.—

16 “(1) EIS REQUIRED.—In carrying out the  
17 NEPA process for a proposed action that requires  
18 the preparation of an environmental impact state-  
19 ment, the head of a Federal agency shall produce for  
20 the proposed action not more than 1—

21 “(A) environmental impact statement;

22 “(B) if necessary, environmental assess-  
23 ment; and

24 “(C) record of decision.

1           “(2) EIS NOT REQUIRED.—In carrying out the  
2 NEPA process for a proposed action that does not  
3 require the preparation of an environmental impact  
4 statement, the head of a Federal agency shall  
5 produce for the proposed action not more than 1—

6                   “(A) environmental assessment; or

7                   “(B) finding of no significant impact.

8           “(e) CATEGORICAL EXCLUSIONS.—

9                   “(1) IN GENERAL.—Notwithstanding any other  
10 provision of law and subject to paragraph (2), the  
11 head of a Federal agency may, without further ap-  
12 proval, use a categorical exclusion under this title  
13 that has been approved by—

14                           “(A)(i) another Federal agency; and

15                           “(ii) the Council on Environmental Qual-  
16 ity; or

17                           “(B) an Act of Congress.

18           “(2) REQUIREMENTS.—The head of a Federal  
19 agency may use a categorical exclusion described in  
20 paragraph (1) if the head of the Federal agency—

21                   “(A) carefully reviews the description of  
22 the proposed action to ensure that it fits within  
23 the category of actions described in the categor-  
24 ical exclusion; and



1           “(B) considers the circumstances associ-  
2           ated with the proposed action to ensure that  
3           there are no extraordinary circumstances that  
4           warrant the preparation of an environmental  
5           assessment or an environmental impact state-  
6           ment.

7           “(3) EXTRAORDINARY CIRCUMSTANCES.—If the  
8           head of a Federal agency determines that extraor-  
9           dinary circumstances are present with respect to a  
10          proposed action, the head of the Federal agency  
11          shall—

12                 “(A) consider whether mitigating cir-  
13                 cumstances or other conditions are sufficient to  
14                 avoid significant effects of the proposed action;  
15                 and

16                 “(B) if the head of the Federal agency de-  
17                 termines that those significant effects can be  
18                 avoided, apply a categorical exclusion to the  
19                 proposed action.

20          “(f) REUSE OF WORK; DOCUMENTS PREPARED BY  
21          QUALIFIED 3RD PARTIES.—

22                 “(1) IN GENERAL.—In carrying out the NEPA  
23                 process for a proposed action—

24                         “(A) subject to paragraph (2), the head of  
25                         a Federal agency shall—

1           “(i) use any applicable findings and  
2           research from a prior NEPA process of  
3           any Federal agency; and

4           “(ii) incorporate the findings and re-  
5           search described in clause (i) into any ap-  
6           plicable analysis under the NEPA process;  
7           and

8           “(B) a Federal agency may adopt as an  
9           environmental impact statement, environmental  
10          assessment, or other environmental document  
11          to achieve compliance with this title—

12           “(i) an environmental document pre-  
13           pared under the law of the applicable State  
14           if the head of the Federal agency deter-  
15           mines that the environmental laws of the  
16           applicable State—

17           “(I) provide the same level of en-  
18           vironmental analysis as the analysis  
19           required under this title; and

20           “(II) allow for the opportunity of  
21           public comment; or

22           “(ii) subject to paragraph (3), an en-  
23           vironmental document prepared by a quali-  
24           fied third party chosen by the project spon-

1 sor, at the expense of the project sponsor,  
2 if the head of the Federal agency—

3 “(I) provides oversight of the  
4 preparation of the environmental doc-  
5 ument by the third party; and

6 “(II) independently evaluates the  
7 environmental document for the com-  
8 pliance of the environmental document  
9 with this title.

10 “(2) REQUIREMENT FOR THE REUSE OF FIND-  
11 INGS AND RESEARCH.—The head of a Federal agen-  
12 cy may reuse the applicable findings and research  
13 described in paragraph (1)(A) if—

14 “(A)(i) the project for which the head of  
15 the Federal agency is seeking to reuse the find-  
16 ings and research was in close geographic prox-  
17 imity to the proposed action; and

18 “(ii) the head of the Federal agency deter-  
19 mines that the conditions under which the ap-  
20 plicable findings and research were issued have  
21 not substantially changed; or

22 “(B)(i) the project for which the head of  
23 the Federal agency is seeking to reuse the find-  
24 ings and research was not in close geographic  
25 proximity to the proposed action; and

1           “(ii) the head of the Federal agency deter-  
2           mines that the proposed action has similar  
3           issues or decisions as the project.

4           “(3) REQUIREMENTS FOR CREATION OF ENVI-  
5           RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-  
6           TIES.—

7           “(A) IN GENERAL.—A qualified third  
8           party may prepare an environmental document  
9           intended to be adopted by a Federal agency as  
10          the environmental impact statement, environ-  
11          mental assessment, or other environmental doc-  
12          ument for a proposed action under paragraph  
13          (1)(B)(ii) if—

14                 “(i) the project sponsor submits a  
15                 written request to the head of the applica-  
16                 ble Federal agency that the head of the  
17                 Federal agency approve the qualified third  
18                 party to create the document intended to  
19                 be adopted by a Federal agency as the en-  
20                 vironmental impact statement, environ-  
21                 mental assessment, or other environmental  
22                 document; and

23                 “(ii) the head of the Federal agency  
24                 determines that—

1                   “(I) the third party is qualified  
2                   to prepare the document; and

3                   “(II) the third party has no fi-  
4                   nancial or other interest in the out-  
5                   come of the proposed action.

6                   “(B) DEADLINE.—The head of a Federal  
7                   agency that receives a written request under  
8                   subparagraph (A)(i) shall issue a written deci-  
9                   sion approving or denying the request not later  
10                  than 30 days after the date on which the writ-  
11                  ten request is received.

12                  “(C) NO PRIOR WORK.—The head of a  
13                  Federal agency may not adopt an environ-  
14                  mental document under paragraph (1)(B)(ii) if  
15                  the qualified third party began preparing the  
16                  document prior to the date on which the head  
17                  of the Federal agency issues the written deci-  
18                  sion under subparagraph (B) approving the re-  
19                  quest.

20                  “(D) DENIALS.—If the head of a Federal  
21                  agency issues a written decision denying the re-  
22                  quest under subparagraph (A)(i), the head of  
23                  the Federal agency shall submit to the project  
24                  sponsor with the written decision the findings  
25                  that served as the basis of the denial.

1 “(g) MULTI-AGENCY PROJECTS.—

2 “(1) DEFINITIONS.—In this subsection:

3 “(A) COOPERATING AGENCY.—The term  
4 ‘cooperating agency’ means a Federal agency  
5 involved in a proposed action that—

6 “(i) is not the lead agency; and

7 “(ii) has the jurisdiction or special ex-  
8 pertise such that the Federal agency needs  
9 to be consulted—

10 “(I) to use a categorical exclu-  
11 sion; or

12 “(II) to prepare an environ-  
13 mental assessment or environmental  
14 impact statement, as applicable.

15 “(B) LEAD AGENCY.—The term ‘lead  
16 agency’ means the Federal agency selected  
17 under paragraph (2)(A).

18 “(2) AGENCY DESIGNATION.—

19 “(A) LEAD AGENCY.—In carrying out the  
20 NEPA process for a proposed action that re-  
21 quires authorization from multiple Federal  
22 agencies, the heads of the applicable Federal  
23 agencies shall determine the lead agency for the  
24 proposed action.

1           “(B) INVITATION.—The head of the lead  
2           agency may invite any relevant State, local, or  
3           Tribal agency with Federal authorization deci-  
4           sion responsibility to be a cooperating agency.

5           “(3) RESPONSIBILITIES OF LEAD AGENCY.—  
6           The lead agency for a proposed action shall—

7           “(A) as soon as practicable and in con-  
8           sultation with the cooperating agencies, deter-  
9           mine whether a proposed action requires the  
10          preparation of an environmental impact state-  
11          ment; and

12          “(B) if the head of the lead agency deter-  
13          mines under subparagraph (A) that an environ-  
14          mental impact statement is necessary—

15               “(i) be responsible for coordinating  
16               the preparation of an environmental im-  
17               pact statement;

18               “(ii) provide cooperating agencies with  
19               an opportunity to review and contribute to  
20               the preparation of the environmental im-  
21               pact statement and environmental assess-  
22               ment, as applicable, of the proposed action,  
23               except that the cooperating agency shall  
24               limit comments to issues within the special

1 expertise or jurisdiction of the cooperating  
2 agency; and

3 “(iii) subject to subsection (c), as  
4 soon as practicable and in consultation  
5 with the cooperating agencies, determine  
6 the range of alternatives to be considered  
7 for the proposed action.

8 “(4) ENVIRONMENTAL DOCUMENTS.—In car-  
9 rying out the NEPA process for a proposed action,  
10 the lead agency shall prepare not more than 1 of  
11 each type of document described in paragraph (1) or  
12 (2) of subsection (d), as applicable—

13 “(A) in consultation with cooperating  
14 agencies; and

15 “(B) for all applicable Federal agencies.

16 “(5) PROHIBITIONS.—

17 “(A) IN GENERAL.—A cooperating agency  
18 may not evaluate an alternative to the proposed  
19 action that has not been determined to be with-  
20 in the range of alternatives considered under  
21 paragraph (3)(B)(iii).

22 “(B) OMISSION.—If a cooperating agency  
23 submits to the lead agency an evaluation of an  
24 alternative that does not meet the requirements  
25 of subsection (c), the lead agency shall omit the



1 alternative from the environmental impact  
2 statement.

3 “(h) REPORTS.—

4 “(1) NEPA DATA.—

5 “(A) IN GENERAL.—The head of each  
6 Federal agency that carries out the NEPA  
7 process shall carry out a process to track, and  
8 annually submit to Congress a report con-  
9 taining, the information described in subpara-  
10 graph (B).

11 “(B) INFORMATION DESCRIBED.—The in-  
12 formation referred to in subparagraph (A) is,  
13 with respect to the Federal agency issuing the  
14 report under that subparagraph—

15 “(i) the number of proposed actions  
16 for which a categorical exclusion was  
17 issued during the reporting period;

18 “(ii) the length of time the Federal  
19 agency took to issue the categorical exclu-  
20 sions described in clause (i);

21 “(iii) the number of proposed actions  
22 pending on the date on which the report is  
23 submitted for which the issuance of a cat-  
24 egorical exclusion is pending;

1           “(iv) the number of proposed actions  
2           for which an environmental assessment  
3           was issued during the reporting period;

4           “(v) the length of time the Federal  
5           agency took to complete each environ-  
6           mental assessment described in clause (iv);

7           “(vi) the number of proposed actions  
8           pending on the date on which the report is  
9           submitted for which an environmental as-  
10          sessment is being drafted;

11          “(vii) the number of proposed actions  
12          for which an environmental impact state-  
13          ment was issued during the reporting pe-  
14          riod;

15          “(viii) the length of time the Federal  
16          agency took to complete each environ-  
17          mental impact statement described in  
18          clause (vii); and

19          “(ix) the number of proposed actions  
20          pending on the date on which the report is  
21          submitted for which an environmental im-  
22          pact statement is being drafted.

23          “(2) NEPA COSTS.—

24                 “(A) IN GENERAL.—Not later than 1 year  
25                 after the date of enactment of this subsection,

1 the Chair of the Council on Environmental  
2 Quality and the Director of the Office of Man-  
3 agement and Budget shall jointly develop a  
4 methodology to assess the comprehensive costs  
5 of the NEPA process.

6 “(B) REQUIREMENTS.—The head of each  
7 Federal agency that carries out the NEPA  
8 process shall—

9 “(i) adopt the methodology developed  
10 under subparagraph (A); and

11 “(ii) use the methodology developed  
12 under subparagraph (A) to annually sub-  
13 mit to Congress a report describing—

14 “(I) the comprehensive cost of  
15 the NEPA process for each proposed  
16 action that was carried out within the  
17 reporting period; and

18 “(II) for a proposed action for  
19 which the head of the Federal agency  
20 is still completing the NEPA process  
21 at the time the report is submitted—

22 “(aa) the amount of money  
23 expended to date to carry out the  
24 NEPA process for the proposed  
25 action; and

1                   “(bb) an estimate of the re-  
2                   maintaining costs before the NEPA  
3                   process for the proposed action is  
4                   complete.”.

5           (c) LEGAL REFORMS.—Section 105 of the National  
6 Environmental Policy Act of 1969 (42 U.S.C. 4321 et  
7 seq.) (as amended by subsection (b)) is amended by add-  
8 ing at the end the following:

9           “(i) JUDICIAL REVIEW.—

10                   “(1) STANDING.—Notwithstanding any other  
11 provision of law, a plaintiff may only bring a claim  
12 arising under Federal law seeking judicial review of  
13 a portion of the NEPA process if the plaintiff pleads  
14 facts that allege that the plaintiff has personally suf-  
15 fered, or will likely personally suffer, a direct, tan-  
16 gible harm as a result of the portion of the NEPA  
17 process for which the plaintiff is seeking review.

18                   “(2) STATUTE OF LIMITATIONS.—

19                   “(A) IN GENERAL.—Notwithstanding any  
20 other provision of law and except as provided in  
21 subparagraph (B)(ii), a claim arising under  
22 Federal law seeking judicial review of any por-  
23 tion of the NEPA process shall be barred un-  
24 less it is filed not later than the earlier of—

1           “(i) 150 days after the final agency  
2           action under the NEPA process has been  
3           taken; and

4           “(ii) if applicable, an earlier date after  
5           which judicial review is barred that is spec-  
6           ified in the Federal law pursuant to which  
7           the judicial review is allowed.

8           “(B) NEW INFORMATION.—

9           “(i) CONSIDERATION.—A Federal  
10          agency shall consider for the purpose of a  
11          supplemental environmental impact state-  
12          ment new information received after the  
13          close of a comment period if the informa-  
14          tion satisfies the requirements for a sup-  
15          plemental environmental impact statement  
16          under the regulations of the Federal agen-  
17          cy.

18          “(ii) STATUTE OF LIMITATIONS  
19          BASED ON NEW INFORMATION.—If a sup-  
20          plemental environmental impact statement  
21          is required under the regulations of a Fed-  
22          eral agency, a claim for judicial review of  
23          the supplemental environmental impact  
24          statement shall be barred unless it is filed  
25          not later than the earlier of—

1                   “(I) 150 days after the publica-  
2                   tion of a notice in the Federal Reg-  
3                   ister that the supplemental environ-  
4                   mental impact statement is final; and

5                   “(II) if applicable, an earlier date  
6                   after which judicial review is barred  
7                   that is specified in the Federal law  
8                   pursuant to which the judicial review  
9                   is allowed.

10                   “(C) SAVINGS CLAUSE.—Nothing in this  
11                   paragraph creates a right to judicial review.

12                   “(3) REMEDIES.—

13                   “(A) PRELIMINARY INJUNCTIONS AND  
14                   TEMPORARY RESTRAINING ORDERS.—

15                   “(i) IN GENERAL.—Subject to clause  
16                   (ii), in a motion for a temporary restrain-  
17                   ing order or preliminary injunction against  
18                   a Federal agency or project sponsor in a  
19                   claim arising under Federal law seeking ju-  
20                   dicial review of any portion of the NEPA  
21                   process, the plaintiff shall establish by  
22                   clear and convincing evidence that—

23                   “(I) the plaintiff is likely to suc-  
24                   ceed on the merits;

1 “(II) the plaintiff is likely to suf-  
2 fer irreparable harm in the absence of  
3 the temporary restraining order or  
4 preliminary injunction, as applicable;

5 “(III) the balance of equities is  
6 tipped in the favor of the plaintiff;  
7 and

8 “(IV) the temporary restraining  
9 order or preliminary injunction is in  
10 the public interest.

11 “(ii) ADDITIONAL REQUIREMENTS.—  
12 A court may not grant a motion described  
13 in clause (i) unless the court—

14 “(I) makes a finding of extraor-  
15 dinary circumstances that warrant the  
16 granting of the motion;

17 “(II) considers the potential ef-  
18 fects on public health, safety, and the  
19 environment, and the potential for sig-  
20 nificant negative effects on jobs re-  
21 sulting from granting the motion; and

22 “(III) notwithstanding any other  
23 provision of law, applies the require-  
24 ments of Rule 65(c) of the Federal  
25 Rules of Civil Procedure.

1 “(B) PERMANENT INJUNCTIONS.—

2 “(i) IN GENERAL.—Subject to clause  
3 (ii), in a motion for a permanent injunc-  
4 tion against a Federal agency or project  
5 sponsor a claim arising under Federal law  
6 seeking judicial review of any portion of  
7 the NEPA process, the plaintiff shall es-  
8 tablish by clear and convincing evidence  
9 that—

10 “(I) the plaintiff has suffered an  
11 irreparable injury;

12 “(II) remedies available at law,  
13 including monetary damages, are in-  
14 adequate to compensate for the in-  
15 jury;

16 “(III) considering the balance of  
17 hardship between the plaintiff and de-  
18 fendant, a remedy in equity is war-  
19 ranted;

20 “(IV) the public interest is not  
21 disserved by a permanent injunction;  
22 and

23 “(V) if the error or omission of a  
24 Federal agency in a statement re-  
25 quired under this title is the grounds



1 for which the plaintiff is seeking judi-  
2 cial review, the error or omission is  
3 likely to result in specific, irreparable  
4 damage to the environment.

5 “(ii) ADDITIONAL SHOWING.—A court  
6 may not grant a motion described in clause  
7 (i) unless—

8 “(I) the court makes a finding  
9 that extraordinary circumstances exist  
10 that warrant the granting of the mo-  
11 tion; and

12 “(II) the permanent injunction  
13 is—

14 “(aa) as narrowly tailored as  
15 possible to correct the injury; and

16 “(bb) the least intrusive  
17 means necessary to correct the  
18 injury.”.

19 (d) OTHER REFORMS.—Title I of the National Envi-  
20 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
21 is amended by inserting after section 105 (as amended  
22 by subsection (c)) the following:

23 **“SEC. 106. EPA REVIEW.**

24 “(a) DEFINITION OF FEDERAL AGENCY.—In this  
25 section, the term ‘Federal agency’ includes a State that

1 has assumed the responsibility of a Federal agency  
2 under—

3 “(1) section 107; or

4 “(2) section 327 of title 23, United States  
5 Code.

6 “(b) EPA COMMENTS.—The Administrator of the  
7 Environmental Protection Agency (referred to in this sec-  
8 tion as the ‘Administrator’) may comment on a draft or  
9 final submission of an environmental impact statement  
10 from any Federal agency.

11 “(c) TECHNICAL ASSISTANCE.—The Administrator  
12 may, on request of a Federal agency preparing a draft  
13 or final environmental impact statement, provide technical  
14 assistance in the completion of that environmental impact  
15 statement.

16 **“SEC. 107. PROJECT DELIVERY PROGRAMS.**

17 “(a) DEFINITION OF AGENCY PROGRAM.—In this  
18 section, the term ‘agency program’ means a project deliv-  
19 ery program established by a Federal agency under sub-  
20 section (b)(1).

21 “(b) ESTABLISHMENT.—

22 “(1) IN GENERAL.—The head of each Federal  
23 agency, including the Secretary of Transportation,  
24 shall carry out a project delivery program.

25 “(2) ASSUMPTION OF RESPONSIBILITY.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), the head of each Federal agency  
3 shall, on request of a State, enter into a written  
4 agreement with the State, which may be in the  
5 form of a memorandum of understanding, in  
6 which the head of each Federal agency may as-  
7 sign, and the State may assume, the respon-  
8 sibilities of the head of the Federal agency  
9 under this title with respect to 1 or more  
10 projects within the State that are under the ju-  
11 risdiction of the Federal agency.

12           “(B) EXCEPTION.—The head of a Federal  
13 agency shall not enter into a written agreement  
14 under subparagraph (A) if the head of the Fed-  
15 eral agency determines that the State is not in  
16 compliance with the requirements described in  
17 subsection (c)(4).

18           “(C) ADDITIONAL RESPONSIBILITY.—If a  
19 State assumes responsibility under subpara-  
20 graph (A)—

21                   “(i) the head of the Federal agency  
22                   may assign to the State, and the State  
23                   may assume, all or part of the responsibil-  
24                   ities of the head of the Federal agency for  
25                   environmental review, consultation, or

1 other action required under any Federal  
2 environmental law pertaining to the review  
3 or approval of a specific project;

4 “(ii) at the request of the State, the  
5 head of the Federal agency may also as-  
6 sign to the State, and the State may as-  
7 sume, the responsibilities of the head of  
8 the Federal agency under this title with re-  
9 spect to 1 or more projects within the  
10 State that are under the jurisdiction of the  
11 Federal agency; but

12 “(iii) the head of the Federal agency  
13 may not assign responsibility for any con-  
14 formity determination required under sec-  
15 tion 176 of the Clean Air Act (42 U.S.C.  
16 7506).

17 “(D) PROCEDURAL AND SUBSTANTIVE RE-  
18 QUIREMENTS.—A State shall assume responsi-  
19 bility under this section subject to the same  
20 procedural and substantive requirements as  
21 would apply if that responsibility were carried  
22 out by the Federal agency.

23 “(E) FEDERAL RESPONSIBILITY.—Any re-  
24 sponsibility of a Federal agency not explicitly  
25 assumed by the State by written agreement

1 under subparagraph (A) shall remain the re-  
2 sponsibility of the Federal agency.

3 “(F) NO EFFECT ON AUTHORITY.—Noth-  
4 ing in this section preempts or interferes with  
5 any power, jurisdiction, responsibility, or au-  
6 thority of an agency, other than the Federal  
7 agency for which the written agreement applies,  
8 under applicable law (including regulations)  
9 with respect to a project.

10 “(G) PRESERVATION OF FLEXIBILITY.—  
11 The head of the Federal agency may not re-  
12 quire a State, as a condition of participation in  
13 the agency program of the Federal agency, to  
14 forego project delivery methods that are other-  
15 wise permissible for projects under applicable  
16 law.

17 “(H) LEGAL FEES.—A State assuming the  
18 responsibilities of a Federal agency under this  
19 section for a specific project may use funds  
20 awarded to the State for that project for attor-  
21 neys’ fees directly attributable to eligible activi-  
22 ties associated with the project.

23 “(c) STATE PARTICIPATION.—

1           “(1) PARTICIPATING STATES.—Except as pro-  
2           vided in subsection (b)(2)(B), all States are eligible  
3           to participate in an agency program.

4           “(2) APPLICATION.—Not later than 270 days  
5           after the date of enactment of this section, the head  
6           of each Federal agency shall amend, as appropriate,  
7           regulations that establish requirements relating to  
8           information required to be contained in any applica-  
9           tion of a State to participate in the agency program,  
10          including, at a minimum—

11                   “(A) the projects or classes of projects for  
12                   which the State anticipates exercising the au-  
13                   thority that may be granted under the agency  
14                   program;

15                   “(B) verification of the financial resources  
16                   necessary to carry out the authority that may  
17                   be granted under the agency program; and

18                   “(C) evidence of the notice and solicitation  
19                   of public comment by the State relating to par-  
20                   ticipation of the State in the agency program,  
21                   including copies of comments received from that  
22                   solicitation.

23          “(3) PUBLIC NOTICE.—

24                   “(A) IN GENERAL.—Each State that sub-  
25                   mits an application under this subsection shall

1 give notice of the intent of the State to partici-  
2 pate in an agency program not later than 30  
3 days before the date of submission of the appli-  
4 cation.

5 “(B) METHOD OF NOTICE AND SOLICITA-  
6 TION.—The State shall provide notice and so-  
7 licit public comment under this paragraph by  
8 publishing the complete application of the State  
9 in accordance with the appropriate public notice  
10 law of the State.

11 “(4) SELECTION CRITERIA.—The head of a  
12 Federal agency may approve the application of a  
13 State under this section only if—

14 “(A) the regulatory requirements under  
15 paragraph (2) have been met;

16 “(B) the head of the Federal agency deter-  
17 mines that the State has the capability, includ-  
18 ing financial and personnel, to assume the re-  
19 sponsibility; and

20 “(C) the head of the State agency having  
21 primary jurisdiction over the project enters into  
22 a written agreement with the head of the Fed-  
23 eral agency as described in subsection (d).

24 “(5) OTHER FEDERAL AGENCY VIEWS.—If a  
25 State applies to assume a responsibility of the Fed-

1       eral agency that would have required the head of the  
2       Federal agency to consult with the head of another  
3       Federal agency, the head of the Federal agency shall  
4       solicit the views of the head of the other Federal  
5       agency before approving the application.

6       “(d) WRITTEN AGREEMENT.—A written agreement  
7       under subsection (b)(2)(A) shall—

8               “(1) be executed by the Governor or the top-  
9       ranking official in the State who is charged with re-  
10      sponsibility for the project;

11              “(2) be in such form as the head of the Federal  
12      agency may prescribe;

13              “(3) provide that the State—

14                      “(A) agrees to assume all or part of the re-  
15      sponsibilities of the Federal agency described in  
16      subparagraphs (A) and (C) of subsection (b)(2);

17                      “(B) expressly consents, on behalf of the  
18      State, to accept the jurisdiction of the Federal  
19      courts for the compliance, discharge, and en-  
20      forcement of any responsibility of the Federal  
21      agency assumed by the State;

22                      “(C) certifies that State laws (including  
23      regulations) are in effect that—



1           “(i) authorize the State to take the  
2           actions necessary to carry out the respon-  
3           sibilities being assumed; and

4           “(ii) are comparable to section 552 of  
5           title 5, including providing that any deci-  
6           sion regarding the public availability of a  
7           document under those State laws is review-  
8           able by a court of competent jurisdiction;  
9           and

10          “(D) agrees to maintain the financial re-  
11          sources necessary to carry out the responsibil-  
12          ities being assumed;

13          “(4) require the State to provide to the head of  
14          the Federal agency any information the head of the  
15          Federal agency reasonably considers necessary to en-  
16          sure that the State is adequately carrying out the  
17          responsibilities assigned to the State;

18          “(5) have a term of not more than 5 years; and

19          “(6) be renewable.

20          “(e) JURISDICTION.—

21          “(1) IN GENERAL.—The United States district  
22          courts shall have exclusive jurisdiction over any civil  
23          action against a State for failure to carry out any  
24          responsibility of the State under this section.

1           “(2) LEGAL STANDARDS AND REQUIRE-  
2           MENTS.—A civil action under paragraph (1) shall be  
3           governed by the legal standards and requirements  
4           that would apply in such a civil action against the  
5           head of a Federal agency had the head of the Fed-  
6           eral agency taken the actions in question.

7           “(3) INTERVENTION.—The head of a Federal  
8           agency shall have the right to intervene in any ac-  
9           tion described in paragraph (1).

10          “(f) EFFECT OF ASSUMPTION OF RESPONSI-  
11          BILITY.—A State that assumes responsibility under sub-  
12          section (b)(2) shall be solely responsible and solely liable  
13          for carrying out, in lieu of and without further approval  
14          of the head of the Federal agency, the responsibilities as-  
15          sumed under subsection (b)(2), until the agency program  
16          is terminated under subsection (k).

17          “(g) LIMITATIONS ON AGREEMENTS.—Nothing in  
18          this section permits a State to assume any rulemaking au-  
19          thority of the head of a Federal agency under any Federal  
20          law.

21          “(h) AUDITS.—

22                 “(1) IN GENERAL.—To ensure compliance by a  
23          State with any agreement of the State under sub-  
24          section (d) (including compliance by the State with  
25          all Federal laws for which responsibility is assumed

1 under subsection (b)(2)), for each State partici-  
2 pating in an agency program, the head of a Federal  
3 agency shall—

4 “(A) not later than 180 days after the date  
5 of execution of the agreement, meet with the  
6 State to review implementation of the agree-  
7 ment and discuss plans for the first annual  
8 audit;

9 “(B) conduct annual audits during each of  
10 the first 4 years of State participation; and

11 “(C) ensure that the time period for com-  
12 pleting an annual audit, from initiation to com-  
13 pletion (including public comment and re-  
14 sponses to those comments), does not exceed  
15 180 days.

16 “(2) PUBLIC AVAILABILITY AND COMMENT.—

17 “(A) IN GENERAL.—An audit conducted  
18 under paragraph (1) shall be provided to the  
19 public for comment.

20 “(B) RESPONSE.—Not later than 60 days  
21 after the date on which the period for public  
22 comment ends, the head of the Federal agency  
23 shall respond to public comments received  
24 under subparagraph (A).

25 “(3) AUDIT TEAM.—

1           “(A) IN GENERAL.—An audit conducted  
2           under paragraph (1) shall be carried out by an  
3           audit team determined by the head of the Fed-  
4           eral agency, in consultation with the State, in  
5           accordance with subparagraph (B).

6           “(B) CONSULTATION.—Consultation with  
7           the State under subparagraph (A) shall include  
8           a reasonable opportunity for the State to review  
9           and provide comments on the proposed mem-  
10          bers of the audit team.

11          “(i) MONITORING.—After the fourth year of the par-  
12          ticipation of a State in an agency program, the head of  
13          the Federal agency shall monitor compliance by the State  
14          with the written agreement, including the provision by the  
15          State of financial resources to carry out the written agree-  
16          ment.

17          “(j) REPORT TO CONGRESS.—The head of each Fed-  
18          eral agency shall submit to Congress an annual report that  
19          describes the administration of the agency program.

20          “(k) TERMINATION.—

21                 “(1) TERMINATION BY FEDERAL AGENCY.—The  
22          head of a Federal agency may terminate the partici-  
23          pation of any State in the agency program of the  
24          Federal agency if—

1           “(A) the head of the Federal agency deter-  
2 mines that the State is not adequately carrying  
3 out the responsibilities assigned to the State;

4           “(B) the head of the Federal agency pro-  
5 vides to the State—

6                 “(i) a notification of the determina-  
7 tion of noncompliance;

8                 “(ii) a period of not less than 120  
9 days to take such corrective action as the  
10 head of the Federal agency determines to  
11 be necessary to comply with the applicable  
12 agreement; and

13                 “(iii) on request of the Governor of  
14 the State, a detailed description of each re-  
15 sponsibility in need of corrective action re-  
16 garding an inadequacy identified under  
17 subparagraph (A); and

18           “(C) the State, after the notification and  
19 period provided under subparagraph (B), fails  
20 to take satisfactory corrective action, as deter-  
21 mined by the head of the Federal agency.

22           “(2) TERMINATION BY THE STATE.—A State  
23 may terminate the participation of the State in an  
24 agency program at any time by providing to the  
25 head of the applicable Federal agency a notice by

1 not later than the date that is 90 days before the  
2 date of termination, and subject to such terms and  
3 conditions as the head of the Federal agency may  
4 provide.

5 “(l) CAPACITY BUILDING.—The head of a Federal  
6 agency, in cooperation with representatives of State offi-  
7 cials, may carry out education, training, peer-exchange,  
8 and other initiatives as appropriate—

9 “(1) to assist States in developing the capacity  
10 to participate in the agency program of the Federal  
11 agency; and

12 “(2) to promote information sharing and col-  
13 laboration among States that are participating in  
14 the agency program of the Federal agency.

15 “(m) RELATIONSHIP TO LOCALLY ADMINISTERED  
16 PROJECTS.—A State granted authority under an agency  
17 program may, as appropriate and at the request of a local  
18 government—

19 “(1) exercise that authority on behalf of the  
20 local government for a locally administered project;  
21 or

22 “(2) provide guidance and training on consoli-  
23 dating and minimizing the documentation and envi-  
24 ronmental analyses necessary for sponsors of a lo-

1 cally administered project to comply with this title  
2 and any comparable requirements under State law.”.

3 (e) PROHIBITION ON GUIDANCE.—No Federal agen-  
4 cy, including the Council on Environmental Quality, may  
5 reissue the final guidance of the Council on Environmental  
6 Quality entitled “Final Guidance for Federal Departments  
7 and Agencies on Consideration of Greenhouse Gas Emis-  
8 sions and the Effects of Climate Change in National Envi-  
9 ronmental Policy Act Reviews” (81 Fed. Reg. 51866 (Au-  
10 gust 5, 2016)) or substantially similar guidance unless au-  
11 thorized by an Act of Congress.

12 (f) DEFINITIONS.—Title I of the National Environ-  
13 mental Policy Act of 1969 (42 U.S.C. 4331 et seq.) (as  
14 amended by subsection (a)(1)) is amended by adding at  
15 the end the following:

16 **“SEC. 109. DEFINITIONS.**

17 “In this title:

18 “(1) ENVIRONMENTAL ASSESSMENT.—The  
19 term ‘environmental assessment’ has the meaning  
20 given the term in section 1508.9 of title 40, Code of  
21 Federal Regulations (or a successor regulation).

22 “(2) ENVIRONMENTAL IMPACT STATEMENT.—  
23 The term ‘environmental impact statement’ means a  
24 detailed statement required under section 102(2)(C).

25 “(3) NEPA PROCESS.—

1           “(A) IN GENERAL.—The term ‘NEPA  
2 process’ means the entirety of every process,  
3 analysis, or other measure, including an envi-  
4 ronmental impact statement, required to be car-  
5 ried out by a Federal agency under this title be-  
6 fore the agency undertakes a proposed action.

7           “(B) PERIOD.—For purposes of subpara-  
8 graph (A), the NEPA process—

9           “(i) begins on the date on which the  
10 head of a Federal agency receives an appli-  
11 cation for a proposed action from a project  
12 sponsor; and

13           “(ii) ends on the date on which the  
14 Federal agency issues, with respect to the  
15 proposed action—

16           “(I) a record of decision, includ-  
17 ing, if necessary, a revised record of  
18 decision;

19           “(II) a finding of no significant  
20 impact; or

21           “(III) a categorical exclusion  
22 under this title.

23           “(4) PROJECT SPONSOR.—The term ‘project  
24 sponsor’ means a Federal agency or other entity, in-



1 including a private or public-private entity, that seeks  
2 approval of a proposed action.”.

3 (g) CONFORMING AMENDMENTS.—

4 (1) POLICY REVIEW.—Section 309 of the Clean  
5 Air Act (42 U.S.C. 7609) is repealed.

6 (2) SURFACE TRANSPORTATION PROJECT DE-  
7 LIVERY PROGRAM.—Section 327 of title 23, United  
8 States Code, is amended—

9 (A) in subsection (a)(1), by striking “The  
10 Secretary” and inserting “Subject to subsection  
11 (m), the Secretary”; and

12 (B) by adding at the end the following:

13 “(m) SUNSET.—

14 “(1) IN GENERAL.—Except as provided under  
15 paragraph (2), the authority provided by this section  
16 terminates on the date of enactment of this sub-  
17 section.

18 “(2) EXISTING AGREEMENTS.—Subject to the  
19 requirements of this section, the Secretary may con-  
20 tinue to enforce any agreement entered into under  
21 this section before the date of enactment of this sub-  
22 section.”.

23 **SEC. 3. ATTORNEY FEES IN ENVIRONMENTAL LITIGATION.**

24 (a) ADMINISTRATIVE PROCEDURE.—Section  
25 504(b)(1) of title 5, United States Code, is amended—

1           (1) in subparagraph (E), by striking “and” at  
2 the end;

3           (2) in subparagraph (F), by striking the period  
4 at the end and inserting “; and”; and

5           (3) by adding at the end the following:

6           “(G) ‘special factor’ does not include knowl-  
7 edge, expertise, or skill in environmental litigation.”.

8           (b) UNITED STATES AS PARTY.—Section 2412(d)(2)  
9 of title 28, United States Code, is amended—

10           (1) in subparagraph (H), by striking “and” at  
11 the end;

12           (2) in subparagraph (I), by striking the period  
13 at the end and inserting “; and”; and

14           (3) by adding at the end the following:

15           “(J) ‘special factor’ does not include  
16 knowledge, expertise, or skill in environmental  
17 litigation.”.

○