



Summary — The American Energy Act of 2011

Overview

The American Energy Act of 2011 seeks to enhance the national and energy security of the United States and to protect the domestic economy from energy price shocks and other drags on the competitiveness and well being of American businesses.

The Act establishes a streamlined program for the permitting of a wide variety of energy projects. These refinements would avoid unnecessary delays and the excessive costs they impose on the development of energy projects in the United States. The Act also removes several long-recognized barriers under Federal law to ensure timely action by Federal agencies on permit applications and other requests related to energy projects. The Act creates new, expedited schedules for the review of agency actions by the courts and seeks to preserve the ability of Federal agencies to exercise discretion in its pursuit of policy priorities and the management of limited agency resources.

The Act also recognizes that vital energy resources are contained on Federal lands and that the United States would be a more secure and more prosperous nation if the Department of Interior provided greater access to those resources. The new programs and procedures created by the Act will promote enhanced development of domestic sources of energy, both conventional and renewable. This will significantly decrease the country's dependence on foreign sources of energy, but still ensure that 90 percent of Federal lands are not utilized for energy production activities.

Section by Section Summary

Section 1. Short Title

This Act is called the American Energy Act of 2011.

Section 2. Definitions

This section defines a “Priority Energy Project” as a project or facility in the United States or territorial waters whose operation results in the production of a domestic supply of energy or the generation of electricity. This is intended to apply to a wide variety of projects, both conventional and renewable.

Section 3. Applicability

This section provides that the Act applies to all Federal laws and Federal agencies that have jurisdiction over some portion of a Priority Energy Project.

Section 4. Administrative Record

This section seeks to ensure that the administrative record compiled for purposes of a permit application review or other Federal action is sufficiently consolidated and, after an appropriate period of time, closed so as to avoid the waste of time and resources by agency staff in juggling multiple records and in conducting open-ended evidentiary proceedings.

Section 5. Regulatory Certainty

This section seeks to provide certainty for permit applicants and avoiding unnecessary delays caused by changing rules and requirements. It states that the rules and regulations regarding a permit application that are in place the day the application is submitted will remain in effect for purposes of reviewing and granting/denying that application. A permit applicant can waive this requirement and consent to new rules if it so desires.

Section 6. Deadline for Consideration of Applications for Permits

This section imposes firm deadlines on agencies for considering completed permit applications. This is intended to avoid permit applicants from being held in limbo as to when an agency might act on their permit application. However, it does allow an agency to defer action on a completed permit application so long as the agency identifies the specific steps needed for the permit to be issued and gives the permit applicant up to two years to satisfy those requirements.

Section 7. Deadline for Decision on Agency Appeals

This section imposes clear deadlines on agencies to act on appeals, providing certainty for permit applicants and others as to when the agency will act.

Section 8. Judicial Review

This section establishes exclusive jurisdiction for the review of agency actions with respect to a Priority Energy Project in the circuit in which the project is located. However, for actions involving agency delay, the court most familiar with federal administrative law, the D.C. Circuit, is granted exclusive jurisdiction. This is intended to avoid time-consuming disputes and uncertainties over venue.

This section includes several provisions to ensure that the reviewing court (and any agency action required on remand) operates as expeditiously as possible. It also establishes firm deadlines for appeals and awards attorneys fees and other litigation expenses to prevailing parties (excluding those representing the Priority Energy Project) so as to discourage frivolous litigation and profiteering.

Finally, this section establishes modified procedures regarding citizen suits and court settlements in order to preserve the ability of an agency, consistent with the authority delegated to it by Congress, to exercise discretion in establishing policy priorities and in using limited agency resources to fulfill its statutorily-prescribed duties in an efficient and timely manner.

Section 9. State Consultation

This section grants Federal agencies the authority to coordinate and, where appropriate, delegate to State agencies to ensure the timely and efficient discharge of its responsibilities. Federal agencies are authorized to provide financial and other resources to State agencies to facilitate their discharge of any delegated responsibilities.

Section 10. Lead Agency

This section establishes the Federal Energy Regulatory Commission (FERC) as the “lead agency” for Priority Energy Projects involving multiple Federal agency jurisdictions. As lead agency, FERC assumes a coordinating role in facilitating permit applications, setting a master schedule for deadlines for agency action, and taking other actions as necessary to avoid undue delays and duplicative requirements for Priority Energy Projects.

Section 11. Project Finance

This section extends the time frame between the granting of the final permit that a Priority Energy Project requires to commence construction and the actual commencement of construction. This extension is warranted because of the massive amounts of financing and capital that must be raised for a typical energy project, and the inability of project developers to begin raising capital until a final permit is issued.

Section 12. Energy Project Mobilization

This section contains a series of provisions designed to compliment the other streamlining measures in the Act. This includes measures to expedite review under the National Environmental Policy Act, avoid jurisdictional disputes between the Environmental Protection Agency and the Army Corps of Engineers in the administration of the Clean Water Act, and assisting downwind states in complying with the Clean Air Act’s National Ambient Air Quality Standards.

Section 13. Domestic Energy Exploration and Production

This section seeks to enhance the national and energy security of the United States and insulate the domestic economy from energy price shocks and other disruptions by maximizing the development of domestic energy resources. This includes expanding certain provisions of the Energy Policy Act of 2005 regarding the development of oil shale, tar sands, and other strategic unconventional fuels, opening the Arctic National Wildlife Refuge to resource exploration, removing barriers for the continued development of shale gas through hydraulic fracturing, and allowing the use of Yucca Mountain as a geologic repository for the disposal of radiological material.

This section also restores to Congress the authority to set aside any portions of Federal lands for preservation under the Antiquities Act of 1906 and establishes a new requirement for the Secretary of Interior to lease up to 10 percent of all Federally-owned land for a broad spectrum of energy production activity, including both conventional and renewable energy projects. The provision would allow the Secretary to ensure that the remaining 90 percent of Federally-owned land are not subject to energy production activities should he or she determine that outcome is consistent with statutory obligations and policy.

Finally, this section imposes several new requirements on Federal agencies regarding energy-related regulation and rules, including requiring Congressional approval for all regulations with an annual effect on the economy of \$100 million or more or those that involve significant new cost increases or impacts on competitiveness or employment. Additionally, Federal agencies must prepare statements explaining any adverse impacts of new Federal rules on the nation's energy supply.