

Recommended Performance Schedules for Environmental Reviews and Authorizations for FAST-41 Covered Infrastructure Projects

Executive Director, Federal Permitting Improvement Steering Council (FPISC)

Completed pursuant to FAST-41; 42 U.S.C. § 4370m-1(c)(1)(C)

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Acknowledgements

This Recommended Performance Schedule Report was prepared as required by Title 41 of the Fixing America’s Surface Transportation Act (FAST-41) of 2015 by the Executive Director, Federal Permitting Improvement Steering Council (FPISC or Council) in consultation with the Council agencies:

Department of Agriculture
Department of the Army
Department of Commerce
Department of the Interior
Department of Energy
Department of Transportation
Department of Defense
Environmental Protection Agency
Federal Energy Regulatory Commission
Nuclear Regulatory Commission
Department of Homeland Security
Department of Housing and Urban Development
Advisory Council on Historic Preservation
Office of Management and Budget
Council on Environmental Quality

Applicability

This report does not supersede, amend, or modify any Federal statute. Nor does this report supersede the Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ) “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects,” which is available at <https://www.permits.performance.gov>.

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Executive Summary

This report represents an initial effort to develop recommended performance schedules for covered infrastructure projects as required by Title 41 of the Fixing America's Surface Transportation Act (FAST-41). 42 U.S.C. § 4370m-1(c)(1)(C). As required by FAST-41, the Federal Permitting Improvement Steering Council (FPISC or Council) Executive Director in consultation with the Council must develop recommended performance schedules for most commonly required reviews and permitting for covered projects (defined at 42 U.S.C. § 4370m1(c)(1)(C)).

The Federal agencies represented on the Council are responsible for conducting reviews and permitting for Covered Projects in compliance with a wide range of laws and implementing regulations. In time, the recommended performance schedules will suggest intermediate and final completion dates for those environmental reviews and authorizations most commonly required for each category of covered projects using the criteria established by the statute. For now, given the unavailability of data from the prior two years for calculating average review times, this first report provides a generic permitting timetable for covered projects based on the requirements of FAST-41.

Going forward, the Executive Director will collect data derived from implementation of the Coordinated Project Plans (CPPs), particularly the permitting timetables.¹ FPISC commits to developing recommended performance schedules meeting the statutory criteria, and in particular based on the required two years of data needed to calculate the average time to complete review and permitting actions, not later than 2 years from date of this report, consistent with 42 U.S.C. § 4370m-1(c)(1)(C)(iii).

¹ Permitting timetables can be found online at the Permitting Dashboard website:
<https://www.permits.performance.gov>

1. Background and Statutory Requirements for Recommended Performance Schedules

In December 2015, the FAST Act was signed into law with bipartisan support. FAST-41 created a new governance structure, set of procedures, and funding authorities designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for certain covered infrastructure projects across a broad range of sectors. The law directs the Executive Director, in consultation with the Council, to “develop recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects” established by the Executive Director (42 U.S.C. § 4370m-1(c)(1)(C)(i)). The “Federal Environmental Review & Authorization Inventory” provides a list of commonly required reviews and permitting that will potentially need a performance schedule.² The requirements for the recommended performance schedules are set out in 42 U.S.C. § 4370m-1(c)(1)(C)(ii):

(ii) Requirements.

(I) In general. The performance schedules shall reflect employment of the use of the most efficient applicable processes, including the alignment of Federal reviews of projects and reduction of permitting and project delivery time.

(II) Limit.

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

(bb) Calculation of average time. The average time referred to in item (aa) shall be calculated on the basis of data from the preceding 2 calendar years and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under section 41003(b)(2) [42 USCS § 4370m-2(b)(2)] (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.

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

² Federal Environmental Reviews and Authorizations Inventory (October 1, 2016) is available at: <https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory-excel>

The Executive Director, in consultation with the Council, must review and revise the recommended performance schedules “[n]ot later than 2 years after the date on which the performance schedules are established” and “not less frequently than once every 2 years thereafter . . .” 42 U.S.C. § 4370m-1(c)(1)(C)(iii).

2. FAST-41 Performance Schedule

A key element of FAST-41 is the requirement to post permitting timetables on the Permitting Dashboard. Over time, the collection of data derived from implementation of the permitting timetables will contribute to development of recommended performance schedules for reviews and permitting or authorizations most commonly required for each category of covered project. The subsequent subsections provide the statutory requirements under FAST-41.

A. Entry on Dashboard – 14 days (42 U.S.C § 4370m-2(b)(2)(A)(ii))

“New projects, not later than 14 days after the date on which the Executive Director receives a notice . . . , the Executive Director shall create a specific entry on the Dashboard for the covered project, unless the Executive Director, facilitating agency, or lead agency, as applicable, determines that the project is not a covered project.”

B. Coordinated project plan (CPP) – 60 days (42 U.S.C. § 4370m-2(c)(1)(A))

“In general, not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard . . . , the facilitating or lead agency, as applicable, in consultation with each coordinating and participating agency, shall establish a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project.”³

C. Factors for Consideration – to vary schedule to make project specific permitting timetable (42 U.S.C. § 4370m-2(c)(2)(B))

“Factors for consideration, in establishing the permitting timetable [as part of the CPP], the facilitating or lead agency shall follow the performance schedules . . . , but may vary the timetable based on relevant factors, including--

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;

³ Federal Energy Regulatory Commission’s (FERC) regulations at 18 C.F.R. § 3c.2(b) prohibit FERC staff from divulging Commission action dates. Accordingly, FERC staff is not required to provide milestones for Commission authorizations or records of decision on environmental reviews. As independent regulatory commissions, FERC and Nuclear Regulatory Commission (NRC) environmental review schedule, and modifications thereto, will not be subject to review and oversight by project sponsors or other government offices. Therefore, limitations on modifications to permitting timetables do not apply to FERC and NRC. FERC and NRC’s environmental review schedule will be maintained and updated on the Dashboard to ensure the transparency required by FAST-41.

- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.”⁴

D. Consistency with Other Time Periods (42 U.S.C. § 4370m-2(c)(2)(E))

“Consistency with other time periods. A permitting timetable . . . shall be consistent with any other relevant time periods established under Federal law and shall not prevent any cooperating or participating agency from discharging any obligation under Federal law in connection with the project.”

E. Completion Date (42 U.S.C. § 4370m-1(c)(1)(C)(ii)(II)(cc))

“Completion date. Each performance schedule shall specify that any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency.” However, this timeframe does not supersede, amend, or modify any existing Federal statutory timelines. Also, the “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects”⁵ provides additional information to help identify when an application is considered complete.

3. Generic Model Permitting Timetable

Figure 1 provides a generic model permitting timetable for covered projects based on the requirements of FAST-41 reflecting the requirement that “any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency” (42 U.S.C §4370m-1(c)(1)(C)(ii)(cc)). The specificity and accuracy of the recommended performance schedules will improve as data derived from implementation of the CPPs, including permitting timetables, is collected and analyzed for each category of covered infrastructure projects as required by 42 U.S.C. §4370m-1(c)(1)(C)(i). Figure 1 provides the generic model permitting timetable with the following significant milestones defined:

- (i) The project is determined to be covered and is posted to the Permitting Dashboard within 14 days after the Executive Director receives the FAST-41 Initiation Notice;
- (ii) The Coordinated Project Plan (CPP) is completed within 60 days after the project is posted to the Permitting Dashboard; and

⁴ The requirements of FAST-41 generally apply to Federal agencies, although there are provisions for the participation of state, local, and tribal governments. In particular, states may voluntarily opt-in to FAST-41 and have the requirements apply to the State or an authorization issued by the State.

⁵ See section 4.28 of “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects”, available at the Permitting Dashboard: <https://www.permits.performance.gov>

- (iii) The Agency decision on the environmental review/authorization is completed within 180 days after all information needed to complete the environmental review/authorization is in possession of the agency.

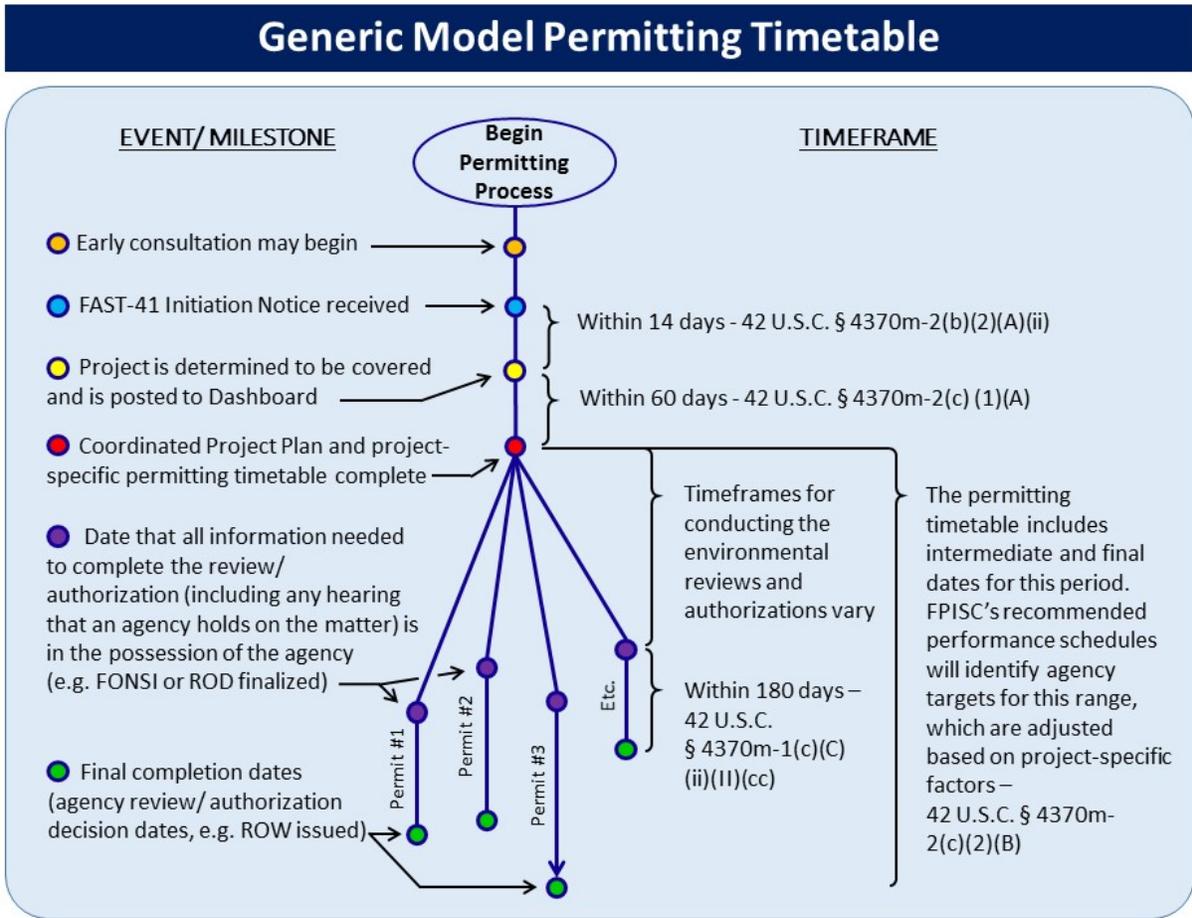


Figure 1

4. Future Recommended Performance Schedules and Conclusions

The generic model permitting timetable as presented in this report provides a pragmatic, baseline timetable based on FAST-41 requirements. It highlights statutory milestones as well as statutorily-authorized variations. Over time, the data derived from permitting timetables for the Covered Projects, will contribute to the development of recommended performance schedules for reviews and permitting most commonly required for each category of covered projects. Information gathered from the current 32 covered projects posted to the Permitting Dashboard will provide a good start in the short-term as implementation of FAST-41 progresses.

FAST-41 Implementation aims to lead to advances in the permitting for covered projects, in compliance with the laws and regulations that protect our Nation’s environmental and cultural resources. The Federal Government’s review and permitting responsibilities are a cornerstone of America’s efforts to harmonize its economic and environmental aspirations, and FAST-41 is a key component.