

FAST-41 FOR INFRASTRUCTURE PERMITTING

A coordinated framework for improving the Federal environmental review and authorization process

Large, complex infrastructure projects in the United States may benefit from a new process designed to enhance coordination, transparency, predictability, and accountability of Federal environmental reviews and authorizations required prior to construction.

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST) Act was signed into law. Title 41 of this Act (42 U.S.C. § 4370m et seq.), referred to as "FAST-41," created a new governance structure, set of procedures, and funding authorities to improve the Federal environmental review and authorization process for covered infrastructure projects.

FAST-41 KEY COMPONENTS

High-level oversight for covered projects. FAST-41 created the Federal Permitting Improvement Steering Council (Permitting Council) composed of representatives at the



agency Deputy Secretary-level and chaired by an Executive Director appointed by the President. The Executive Director supports the Council in overseeing FAST-41 implementation, enhancing interagency coordination, resolving disputes, and ensuring covered projects receive the benefits provided by FAST-41.

Environmental review and authorization process improvement. FAST-41 works to

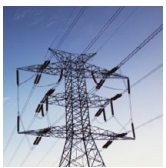


improve the permitting process within the structure of existing Federal environmental reviews and authorizations. FAST-41 calls for the designation of a lead Federal agency and promotes early consultation and enhanced interagency coordination by requiring the development of a project-specific plan and timetable for the completion of environmental reviews

and authorizations. This coordinated project plan may also include approaches and schedules for public and tribal outreach and coordination, as well as discussion of potential avoidance, minimization, and mitigation strategies.

Online Permitting Dashboard. The lead Federal agency for all FAST-41 covered projects is required to post the project environmental review and authorization target completion dates on the Permitting Dashboard. This allows stakeholders to track the status of Federal permitting activities to improve coordination, transparency, predictability, and accountability.

Funding authority for governance, oversight, and processing.



FAST-41 creates a new authority for the Federal government to collect fees from project sponsors, which, if implemented, will allow the Permitting Council's Executive Director to direct resources to critical functions across the Federal environmental review process.

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

FAST-41 established the Permitting Council as an oversight council to oversee the cross-agency Federal environmental review and authorization process. The Permitting Council consists of members from 14 Federal agencies, the Council on Environmental Quality, and the Office of Management and Budget.

- Advisory Council on Historic Preservation
- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of the Interior
- Department of Transportation
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- General Services Administration
- Nuclear Regulatory Commission

FOR MORE INFORMATION

For additional information, visit the Federal Permitting Dashboard at:

<https://www.permits.performance.gov>

For questions related to FAST-41 or the Permitting Council, email:

FAST.FortyOne@fpisc.gov

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FAST-41 BENEFITS

Infrastructure projects covered under FAST-41 will benefit in a number of ways:

Increased visibility and predictability. Agencies must develop and maintain a coordinated, project-specific timetable for all required environmental review and permitting actions. Scheduled and actual timeframes for these actions are publicly displayed and updated quarterly on the Permitting Dashboard. FAST-41 states that the lead Federal agency cannot revise or extend a timetable end date within 30 days of the original end date. FAST-41 also states that a final completion date for an environmental review or authorization must not be extended by more than 30 days without consulting with the project sponsor.



Enhanced coordination. Within 60 days of a project becoming covered under FAST-41, the lead Federal agency must work with other cooperating agencies to develop project-specific plans to document the steps they will take to coordinate public and tribal participation and complete the required environmental reviews and authorizations. Advanced coordination allows for early communication of project goals to the permitting agencies, early discussion of alternatives, and alignment of agency review schedules.

Increased accountability. The Permitting Council provides high-level oversight to ensure that Federal agencies adhere to established timetables. The Permitting Council must report to Congress when the total length of modifications to a permitting timetable delays the permitting process by more than 150% of the original schedule. In addition, an annual report to Congress is required to assess each agency's progress towards implementation of FAST-41 best practices, as well as their compliance with recommended performance schedules for covered projects.

Enhanced legal protections. FAST-41 reduced the statute of limitations to challenge any authorizations for covered projects from six years to two years, and stipulated that National Environmental Policy Act (NEPA) challenges will be reviewed only when filed by a party who submitted a related comment during the project's environmental review. FAST-41 also established guidance for the judicial review of actions seeking temporary restraining orders or preliminary injunction against a covered project.

Dispute resolution. The FAST-41 process provides project sponsors with a permitting timetable that has been coordinated among the relevant agencies. If agencies are unable to agree on the timetable, the Permitting Council's Executive Director will mediate disputes. If no conclusions are made after a total of 60 days, the Office of Management and Budget will make a final decision.



PHOTO CREDITS Opposite page, top to bottom: U.S. Department of Energy; Dave Houseknecht, U.S. Geological Survey; U.S. Department of Energy. This page, top to bottom: U.S. Army Corps of Engineers; Alan Cressler, U.S. Geological Survey.

TO APPLY Participation in FAST-41 is voluntary. If project sponsors believe their project could be eligible, they are encouraged to review the guidance and submit a FAST-41 Initiation Notice at:

<https://www.permits.performance.gov>

COVERED PROJECTS

Projects may be eligible to be covered* under FAST-41 if they:

- involve construction of infrastructure,
- require authorization or environmental review by a Federal agency,
- are subject to the National Environmental Policy Act of 1969 (NEPA),
- are likely to require a total investment of more than \$200 million, and
- do not qualify for an abbreviated environmental review and authorization process.

Projects may also be covered if they are subject to NEPA and, due to their size and complexity, the Permitting Council determines that the FAST-41 coordination process and oversight would be beneficial.

FAST-41 applies to the following sectors:

- Conventional energy production
- Renewable energy production
- Electricity transmission
- Surface transportation
- Aviation
- Ports and waterways
- Water resource projects
- Broadband
- Pipelines
- Manufacturing

Additional sectors may be considered by the Permitting Council.

For the full definition of a covered project, please see Section 3 of the FAST-41 Implementation Guidance at:

<https://www.permits.performance.gov/tools>

* The following project types are not eligible to be covered under FAST-41:

- Any project subject to section 139 of title 23 or section 2348 of title 33
- Programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, U.S.C.