

FAST-41 FOR INFRASTRUCTURE PROJECTS

A coordinated framework for Federal authorizations and environmental reviews

Sponsors of large infrastructure projects may be able to take advantage of a new process to enhance coordination, transparency, predictability, and oversight of the Federal reviews and permitting 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 (FPISC) composed of agency Deputy Secretary-level members and chaired by an Executive Director appointed by the President. The FPISC Executive Director supports the Council in overseeing FAST-41 implementation, enhancing interagency coordination, resolving disputes, and ensuring covered projects are given all benefits provided by the FAST Act.



Environmental review and authorization process improvement. FAST-41 works to improve the permitting process within the structure of existing Federal environmental reviews and authorizations. For example, FAST-41 promotes early consultation and enhanced interagency coordination through the development of a project-specific plan for the completion of environmental reviews and authorizations, including deadlines. 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 database. All FAST-41 covered project environmental review and authorization target completion dates are required to be posted on the Permitting Dashboard. The Dashboard is an online tool to track the status of Federal permitting and reviews to improve coordination, transparency, and accountability.



Funding authority for governance, oversight, and processing. FAST-41 creates a new authority for the Federal government to collect fees, which, if implemented, will allow the FPISC Executive Director to direct resources to critical functions within the interagency review process.

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

FAST-41 established FPISC as an independent oversight council to oversee the cross-agency Federal environmental review and authorization process. FPISC is led by an Executive Director appointed by the President and consists of members from 13 Federal agencies, the Council on Environmental Quality, and the Office of Management and Budget.

- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of 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

FOR MORE INFORMATION

For additional information, visit the Federal Permitting Dashboard at:

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

For questions related to FAST-41 or FPISC, email:

FAST.FortyOne@fpisc.gov

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FAST-41 BENEFITS

Increased visibility and predictability. Agencies must develop a coordinated, project-specific timetable, which sets schedules for all required environmental review and permitting actions. Scheduled and actual timeframes for these actions are publicly displayed and tracked online on the Permitting Dashboard. If a permit



or authorization is delayed, agencies are required to update the schedule at least 30 days before the existing reported completion date, and Federal agencies will not extend the final completion date by more than 30 days without first consulting with the project sponsor.

Enhanced coordination. Agencies must 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. FPISC provides high-level oversight to ensure that Federal agencies adhere to established timetables. Covered projects require reporting to Congress if the total length of modifications to a permitting timetable delays the permitting process by more than 150% of the original schedule. 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. The statute of limitations to challenge any authorizations for covered projects is reduced from six years to two years, and 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 FPISC 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, FPISC 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

Note: Additional sectors may be considered by the 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.