



Executive Council *on* Infrastructure

ACCELERATING FEDERAL PERMITTING AND ENVIRONMENTAL REVIEW

The federal government's Permitting Dashboard tracks about 60 different permits and reviews that infrastructure projects may require from at least a dozen federal agencies to move forward with construction.¹ Unnecessary delays in getting those approvals cost money for both the public and private sectors. For example, direct costs can go up if the costs of materials, supplies, or labor rise during a delay. There is also a public cost to delaying needed infrastructure improvements—for example, older facilities generate more emissions and often require more frequent and costly repairs. A report by the nonprofit organization Common Good estimated the cost of delaying the start of all U.S. public infrastructure projects by six years to be \$3.7 trillion.²

Building on the FAST Act

In recent years, finding ways to fast-track the process of issuing federal project approvals has been a bipartisan objective. The Obama administration launched the Permitting Dashboard to make the review schedule for high-priority projects transparent to the public. Before that, the Bush administration created a task force to help move complex projects through the permitting process.³ Most recently, President Trump has taken a number of steps to continue this work and implement the FAST Act (P.L. 114-94), which contained several provisions aimed at improving coordination and schedule adherence in permitting decisions.⁴ Executive Order 13807 is perhaps the Trump administration's most notable effort to-date, setting an ambitious new target of two years or less for processing approvals for major infrastructure projects.⁵

Through a mix of executive orders and rulemaking, the administration has made progress on several key bipartisan goals:

- Empowering key decision-makers;
- Continuing to expand the Permitting Dashboard;
- Institutionalizing and expanding the use of the FAST Act permitting reforms; and
- Encouraging further uptake to the Surface Transportation Delivery Program, which allows states to assume some federal environmental review and permitting responsibilities.

What More Can the Federal Government Do?

Increase data collection and transparency: While Executive Order 13807 included a federal commitment to transparency and accountability in environmental reviews and agency decisions—including new cost estimates, continued Permitting Dashboard tracking, a new performance scoring system, mandatory explanations for agency delays, and government-wide assessments of process inefficiencies—these efforts are not all in place. If the administration can successfully implement these measures, they would go a long way in increasing the broader understanding of what can hold up a project and informing any future reform efforts.



Make simultaneous reviews the norm: Executive Order 13807 laid out a general federal commitment to providing environmental review and permit approvals in a “coordinated, consistent, predictable, and timely manner,” setting a goal of completing approvals in two years or less. Meeting such a goal will certainly require simultaneous multiagency reviews. However, there is little evidence thus far that this has yet become common practice.

Complete implementation of other FAST Act permitting provisions: Though implementation is still incomplete, the administration completed two related rulemakings in September, showing some progress. Admittedly, further progress faces a key challenge, namely that great care must be taken to ensure that implementation aligns with new initiatives the administration has introduced by executive order and avoids adding additional bureaucracy to the process.

Appoint a new director of the Federal Permitting Improvement Steering Council (FPISC): The FPISC Executive Director, a presidentially-appointed position, remains unfilled. The continued implementation of the FAST Act and now Executive Order 13807 would benefit greatly from the leadership a new director could provide the interagency council, codified in the FAST Act to improve federal permitting.

Set up the Environmental Review Improvement Fund: The FAST Act’s Title 41 provided the authority—yet to be utilized—to establish a fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews. Funds collected could be made available to cover the expenses of the FPISC or transfer funds to agencies conducting environmental reviews to help make their processes more timely and efficient.

Reopen DOT Order 5610.1D for additional comment before finalizing: In December 2016, DOT provided notice and a 21-day comment period for Order 5610.1D, which would update procedures for considering environmental impacts and implement several key FAST Act permitting provisions. At that time, a number of organizations, including AASHTO and ARTBA, expressed concern at the short comment period and warned that the document could create confusion and slow down project delivery as currently worded. While it appears that DOT has since sought critical feedback from transportation stakeholders on technical concerns with the order as well as a host of other regulatory measures, it is unclear where DOT stands on finalizing the order or how it will align DOT’s procedures for considering environmental impacts with the executive orders and rulemakings issued since the president took office.

Review regulations governing the assumption of NEPA responsibilities by private entities: With increased interest in the potential of public-private partnerships (P3s), federal rulemakings pertaining to the ability of a private partner in a P3 contract to assume NEPA responsibilities, such as in the preparation of NEPA documents, should be reviewed and, where appropriate, amended.

Improve PEL data collection and guidance, particularly for P3 projects: The Planning and Environmental Linkages (PEL) initiative supports a collaborative and integrated approach to transportation decision-making that uses information, analysis, and other products developed during project planning to inform the environmental review process. Additional guidance, case studies, and data collection may help to further disseminate and promote valuable PEL practices.



Extend lessons learned from SHRP2's C19 effort to other areas of transportation and infrastructure: The second Strategic Highway Research Program (SHRP2) has done considerable work in developing solutions to expediting project delivery (C19). This work may be further disseminated across agencies, adapted to other areas of infrastructure, and leveraged through the collaborative network created by the multiagency FPISC.

In sum, clearly more work remains. The administration and Congress can make significant progress if they:

- Judiciously align new procedures with previous permitting initiatives, guidance, and regulatory rulemakings;
- Pursue reasonable changes needed to meet the goal of a two-year process;
- Prioritize full transparency in tracking adherence to permitting schedules and the costs of environmental reviews and their delays, so that both federal agencies and project sponsors may be held accountable;
- Provide the training, support, and resources to agency staff needed to modernize the permitting process and successfully implement new procedures; and
- Ensure, in all actions, that key environmental protections and opportunities for public engagement are not jeopardized or overlooked.

¹ Federal Environmental Review and Authorization Inventory, March 2017. Available at: <https://goo.gl/v1oX8U>.

² Philip K. Howard, "Two Years Not Ten Years," September 2015. Available at: <https://goo.gl/uCbtGi>.

³ NEPA Task Force, "Modernizing NEPA Implementation," September 2003. Available at: <https://goo.gl/igfPhU>.

⁴ Fixing America's Surface Transportation Act, *P.L. 114-94*, December 2015. Available at: <https://goo.gl/yudCPU>.

⁵ Executive Order 13807, *82 Fed. Reg. 40463*, August 2017. Available at: <https://goo.gl/ECv9Pc>.

