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Executive Office of the President
Office of Management and Budget

Executive Office of the President
Council on Environmental Quality

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MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

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SUBJECT: **Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects**

The Office of Management and Budget and the Council on Environmental Quality are issuing guidance for agencies to carry out responsibilities under Title 41 of the FAST Act (hereinafter "FAST-41").

FAST-41 is consistent with past Administration initiatives to modernize the Federal Government's role in the environmental permitting and review of proposed infrastructure projects, including the use of the Permitting Dashboard (www.permits.performance.gov), which will track covered projects publicly. The statutory requirements of FAST-41 are intended to provide covered projects with the following results:

- Increased predictability through the publication of project-specific permitting timetables and clear processes to modify permitting timetables and resolve issues;
- Increased transparency and accountability over the Federal environmental review and authorization process; and
- Improved early coordination of agencies' schedules and synchronization of environmental reviews and authorizations.

In addition to addressing statutory requirements, this guidance also introduces a framework for tracking covered projects' environmental and community outcomes on the Permitting Dashboard, resulting in increased transparency.

Attachment

Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects

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Section 1. General Information[1]

1.1. What is the context for this guidance?

The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) are issuing this guidance for agencies to carry out responsibilities under Title 41 of the FAST Act (hereinafter "FAST-41").[2]

Administration Initiatives

Since 2011, the Obama Administration has undertaken an ambitious, comprehensive effort to modernize the Federal Government's role in the environmental permitting and review of proposed infrastructure projects. Such activities include an executive order, executive memoranda, and executive actions.[3] Notably:

- An August 2011 presidential memorandum[4] established the Federal Infrastructure Permitting Dashboard (Permitting Dashboard)[5] to track a set of infrastructure projects. The goal of the memorandum was to improve the accountability, transparency, and efficiency of those projects for which Federal agencies prioritized and expedited the environmental permitting and review process.
- A March 2012 Executive Order[6] established the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee) to oversee the progress of a broader set of nationally- or regionally-significant projects to be tracked on the Permitting Dashboard. The Dashboard tracked a set of approximately 43 nationally or regionally significant projects across multiple sectors.
- Pursuant to a May 2013 presidential memorandum,[7] in May 2014, the Steering Committee published the Implementation Plan for the Presidential Memorandum on Modernizing Infrastructure Permitting (the Plan),[8] which identified four strategies and 15 reforms to improve environmental permitting and review processes government-wide. A key strategy in the Plan

[1] Agencies shall implement this Memorandum consistent with applicable law. This Memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

[2] 42 U.S.C. § 4370m-1(c)(1)(D). For projects not subject to FAST-41, certain elements of this guidance and the FAST-41 procedures could be viewed as best practices, where practicable and as appropriate.

[3] OMB has general performance management authority to implement the Federal Government Priority Goals. These goals (commonly referred to as the Cross-Agency Priority Goals, or CAP Goals) were established by the Government Performance and Results (GPRA) Modernization Act (31 U.S.C. § 1120) and are set at the beginning of each Presidential term in consultation with Congress. The current Federal Government Priority Goals focus on areas critical to the country's economy and prosperity, including improvements to the federal environmental permitting and review process for infrastructure projects. Available at: https://www.performance.gov/cap-goals-list?view=public.

[4] PRESIDENTIAL MEMORANDUM—SPEEDING INFRASTRUCTURE DEVELOPMENT THROUGH MORE EFFICIENT AND EFFECTIVE PERMITTING AND ENVIRONMENTAL REVIEW (Aug. 31, 2011), available at https://www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more.

[5] The Dashboard is available at https://www.permits.performance.gov.

[6] EXEC. ORDER NO. 13604—IMPROVING PERFORMANCE OF FEDERAL PERMITTING AND REVIEW OF INFRASTRUCTURE PROJECTS (Mar. 22, 2012), available at https://www.whitehouse.gov/the-press-office/2012/03/22/executive-order-improving-performance-federal-permitting-and-review-infr.

[7] PRESIDENTIAL MEMORANDUM—MODERNIZING FEDERAL INFRASTRUCTURE REVIEW AND PERMITTING REGULATIONS, POLICIES, AND PROCEDURES (May 17, 2013), available at https://www.whitehouse.gov/the-press-office/2013/05/17/presidential-memorandum-modernizing-federal-infrastructure-review-and-pe.

[8] STEERING COMMITTEE ON FEDERAL INFRASTRUCTURE PERMITTING AND REVIEW PROCESS IMPROVEMENT, IMPLEMENTATION PLAN FOR THE PRESIDENTIAL MEMORANDUM ON MODERNIZING INFRASTRUCTURE PERMITTING (May 2014), available at https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/pm-implementation-plan-2014.pdf.

sought to drive continued improvement by expanding use of the Permitting Dashboard to facilitate enhanced interagency coordination and provide public transparency for any infrastructure project that might experience a lengthy Federal environmental permitting and review process given its size, complexity, and significance.

- In September 2015, a joint OMB –CEQ guidance memorandum, Memorandum for Heads of Federal Departments and Agencies: Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects (hereinafter referred to as M-15-20), confirmed the Plan's strategy.[9] Included was a goal to improve environmental and community outcomes, which referred broadly to the full set of natural, community, cultural, and historic resources for which avoidance, minimization, or mitigation may be required as part of a review.
- A November 2015 Presidential Memorandum directed certain agencies to identify opportunities for non-profit and private investors to develop "mitigation bank" restoration areas in advance of development. The memorandum established that banking should generally be made at the landscape or watershed level, not just within individual project sites. This process will likely help reduce permitting timelines.[10]

Statutory Requirements

On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (FAST) Act.[11] Title 41 of the FAST Act (hereinafter "FAST-41") created a new governance structure, set of procedures, and funding authorities designed to improve the timeliness, predictability, and transparency of the Federal[12] environmental review and authorization process for certain covered infrastructure projects across a broad range of sectors.[13] The statutory requirements of FAST-41 are intended to provide covered projects with the following results:

- Increased predictability through the publication of project-specific permitting timetables and clear processes to modify permitting timetables[14] and resolve issues;
- Increased transparency and accountability over the Federal environmental review and authorization process; and
- Improved early coordination of agencies' schedules and synchronization of environmental reviews and authorizations.

In addition to the statutory requirements, OMB and CEQ are introducing a framework for tracking covered project environmental and community outcomes on the Permitting Dashboard, resulting in

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[9] OFFICE OF MANAGEMENT AND BUDGET & COUNCIL ON ENVIRONMENTAL QUALITY, MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES: GUIDANCE ESTABLISHING METRICS FOR THE PERMITTING AND ENVIRONMENTAL REVIEW OF INFRASTRUCTURE PROJECTS (Sept. 22, 2015), available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-20.pdf. On the same day, the Obama Administration released an updated version of the Red Book, a "how-to" guide on synchronization of environmental review, available at https://www.environment.fhwa.dot.gov/strmlng/Redbook_2015.pdf.

[10] PRESIDENTIAL MEMORANDUM—MITIGATING IMPACTS ON NATURAL RESOURCES FROM DEVELOPMENT AND ENCOURAGING RELATED PRIVATE INVESTMENT (November 3, 2015), available at https://www.whitehouse.gov/the-press-office/2015/11/03/mitigating-impacts-natural-resources-development-and-encouraging-related.

[11] Pub. L. 114-94, 129 Stat. 1312 (2015). FAST-41 has been codified in Chapter 55 of Title 42 of the U.S. Code (42 U.S.C. §§ 4370m – 4370m-12).

[12] FAST-41 added the Nuclear Regulatory Commission (NRC) and Federal Energy Regulatory Commission (FERC) to the list of agencies that were previously part of the Administration's infrastructure permitting initiative. For a complete list of affected agencies, see Section 2.1.

[13] 42 U.S.C. §§ 4370m – 4370m-12.

[14] "Permitting Timetables" refer to the project-specific schedules that must be created and published on the Permitting Dashboard. 42 U.S.C. § 4370m-2(c)(2). See Section 4.24 for more information.

increased transparency.[15]

1.2. How does FAST-41 and this guidance affect other ongoing efforts to modernize the Federal Government's role in the environmental permitting and review of proposed infrastructure projects?

FAST-41 and this guidance further advance ongoing Administration efforts to modernize environmental permitting and review for infrastructure. Most notably:

- Any of the "nationally- or regionally-significant projects" identified pursuant to the March 2012 Executive Order that are still pending Federal environmental permitting and review should continue to be tracked on the Permitting Dashboard. Those that meet the definition of a "covered project" under FAST-41 will be required to comply with the procedures and reporting requirements of FAST-41, consistent with other already established Federal laws and regulations (See Section 3 for the definition of covered project and Section 1.6 regarding potential conflicts with existing laws).[16]
- All duties and responsibilities assigned to the former Steering Committee (created by the 2012 Executive Order) will be performed by the statutorily-established Federal Permitting Improvement Steering Council (FPISC or the Council). The former Steering Committee has been dissolved.

1.3. Should one read FAST-41 consistently with other statutes?

Yes. One should read FAST-41 consistently with other Federal requirements. Federal agencies must comply with FAST-41 as well as other Federal requirements (e.g., other environmental laws). FAST-41 does not supersede, amend, or modify any Federal statute, such as the National Environmental Policy Act of 1969 (NEPA), nor does it create a presumption that a covered project will be approved or favorably reviewed by any agency.[17] Further, the Act specifically provides that it should not be interpreted as preempting, limiting, or interfering with any power, jurisdiction, responsibility, or authority that a Federal agency has with respect to carrying out laws (including regulations) applicable to a covered project.[18] FAST-41 should not be read as authority to supersede or modify statutory or regulatory timelines established for the review of projects under the various environmental permitting and review laws and regulations. Finally, the savings provision at 42 U.S.C. § 4370m-11 will control any deadline requirements mentioned in this guidance, as well as their representation on the Dashboard (see, *e.g.*, Section 4.28).

The Act provides that permitting timetables established under the FAST-41 process must be consistent with any other relevant time periods established under Federal law and shall not prevent any FAST-41 cooperating or participating agency from discharging any obligation under Federal law in connection with the project.[19] The implementation of FAST-41 cannot have the effect of limiting the ability of an agency from meaningfully carrying out its obligations under other authorities. Thus, if there is a discrepancy (e.g. timelines) between FAST-41 and the responsibilities of Federal agencies under other laws, then

[15] Although not required by FAST-41, the Administration has committed to tracking environmental and community outcomes on the Permitting Dashboard. See Section 7. This information will be collected pursuant to CEQ's general authorities under Title II of NEPA, particularly 42 U.S.C. § 4344. Note that NRC and FERC were not party to previous Administration efforts and FAST-41 does not require information collection and reporting on environmental and community outcomes. Therefore, the environmental and community outcomes will not be tracked for covered projects for which NRC or FERC are the lead.
[16] See Section 3.1.
[17] 42 U.S.C. § 4370m-6(d); 42 USCS § 4370m-11.
[18] 42 U.S.C. § 4370m-6(e).
[19] 42 U.S.C. § 4370m-2(c)(2)(E).

FAST-41 must be interpreted and applied such that agencies can fully meet their existing obligations under those other laws.[20] In addition, FAST-41 should not be interpreted to require the public disclosure of information that would otherwise be prohibited (e.g., the location of certain sensitive cultural resources).

1.4. Who implements the provisions of FAST-41?

FAST-41 establishes responsibilities for the following parties involved in specific covered projects: [21]

- Project sponsors[22] of covered projects that are pending Federal environmental review or authorization as of March, 2016,[23]
- Project sponsors of new covered projects that submit a FAST-41 Initiation Notice (FIN or Initiation Notice) after March, 2016,[24]
- Federal agencies that serve as facilitating[25] or lead agencies[26] for covered projects,
- Federal agencies that serve as FAST-41 cooperating or participating agencies for covered projects,[27] and
- State agencies that choose to participate in the FAST-41 process for covered projects and have the requirements under FAST-41 apply to the state or an authorization issued by the state.[28]

In addition to the above parties, FAST-41 also establishes new positions with responsibilities for implementing FAST-41 requirements and procedures:

- Federal Permitting Improvement Steering Council, the membership of which consists of Deputy Secretary or equivalent representatives from the agencies listed in 42 U.S.C. § 4370m-1(b) (the Council agencies),
- Executive Director to chair the FPISC, among other responsibilities,[29] and
- Agency Chief Environmental Review and Permitting Officers (agency CERPOs) at each Council agency.

1.5. What is the purpose of this guidance and to which Federal agencies does it apply?

FAST-41 authorizes OMB and CEQ to issue guidance to the Federal agencies "to carry out responsibilities under this title," at the recommendation of the Executive Director, in consultation with the FPISC.[30] Consistent with other efforts, OMB and CEQ are issuing this guidance jointly. The purpose of

[20] For example, in light of its status as an independent and non-promotional regulatory agency pursuant to Section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5841, NRC retains ultimate discretion to establish permitting timetables that are necessary to carry out its statutory obligation to assure adequate protection of the public health and safety under the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, et seq.
[21] See Section 3 of this guidance for further discussion on "covered projects."
[22] FAST-41 defines "project sponsor" as "an entity, including any private, public, or public-private entity, seeking an authorization for a covered project." 42 U.S.C. § 4370m(18). See Section 2.10 for a discussion of project sponsor roles and responsibilities.
[23] 42 U.S.C. § 4370m-1(c)(1)(A)(i).
[24] 42 U.S.C. § 4370m-2(a)(1)(A).
[25] See Section 2.11.
[26] See Section 2.12.
[27] 42 U.S.C. § 4370m-2(a)(3).
[28] 42 U.S.C. § 4370m-2(c)(3).
[29] Section 2.5 provides more information about the duties of the Executive Director.
[30] 42 U.S.C. § 4370m-1(c)(1)(D).

this guidance is to effectuate successful implementation and compliance with FAST-41 statutory requirements. This guidance supersedes M-15-20.[31]

This guidance applies to all Federal agencies that have financing, environmental review, authorization, or other responsibilities for the siting, construction, reconstruction, or commencing operations of a "covered" infrastructure project consistent with other already established Federal laws and regulations.[32] Specific agencies are listed below in Section 2.1.

1.6. When does this guidance take effect?

The guidance takes effect upon issuance and signature by appropriate OMB and CEQ officials. It will be updated periodically to provide further guidance on FAST-41 requirements.

Section 2. Roles and Responsibilities

2.1. Who are the members of the Federal Permitting Improvement Steering Council?

FAST-41 identifies 13 heads of Federal agencies that must designate a member to serve on the Council.[33] Each councilmember must hold a position of deputy secretary (or the equivalent) or higher.[34] The agencies are listed in FAST-41 as follows:

The Secretary of Agriculture
The Secretary of the Army
The Secretary of Commerce
The Secretary of the Interior
The Secretary of Energy
The Secretary of Transportation
The Secretary of Defense
The Administrator of the Environmental Protection Agency
The Chairman of the Federal Energy Regulatory Commission
The Chairman of the Nuclear Regulatory Commission
The Secretary of Homeland Security
The Secretary of Housing and Urban Development
The Chairman of the Advisory Council on Historic Preservation

The Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality are also members of the Council.[35]

The Council is chaired by a presidentially-appointed Executive Director,[36] whose duties are discussed in Section 2.5.

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[31] *See supra* note 9 and accompanying text. This guidance integrates elements of OMB/CEQ Memorandum M-15-20, to the extent that M-15-20 is consistent with FAST-41 (e.g., the environmental and community outcomes described in Section 7). FERC and NRC were not a party to the original guidance and thus are not required to comply with any provisions from M-15-20 that have been incorporated into this guidance that are not otherwise required by FAST-41.
[32] 42 U.S.C. § 4370m(6); § 4370m-2(a)(2)(A)(i). Also see Section 2 of this guidance which outlines the roles and responsibilities for all parties that must follow the guidance and/or are subject to FAST-41.
[33] 42 U.S.C. § 4370m-1(b)(2).
[34] 42 U.S.C. § 4370m-1(b)(2)(A)(ii).
[35] 42 U.S.C. § 4370m-1(b)(3).
[36] 42 U.S.C. § 4370m-1(b)(1).

2.2. Can additional agencies be added to the Council?

Yes. FAST-41 allows the Executive Director to invite "[a]ny other head of a Federal agency . . . to participate as a member of the Council."[37] The Executive Director may invite other agencies that have a role in the environmental review or authorization process for covered projects, but are not specifically listed in the statute. If or when such an agency is added to the Council, FAST-41 and this guidance would apply to that agency as well.

2.3. What are the authorities and responsibilities of the Council?

Table 1 in Appendix A lists the authorities and responsibilities of the Council. Where appropriate, it also lists the specific sections in this document that provide guidance on how the Council should execute these authorities and responsibilities. OMB and CEQ also have authority to issue additional guidance in the future, as necessary to carry out responsibilities under the Act and to effectuate the adoption by agencies of the best practices and recommendations of the Council. If such additional guidance is deemed necessary, it will be included in future guidance documents or future updates to this guidance document, after consulting with Council agencies.

2.4. What are the authorities and responsibilities of the Council agencies?

In addition to participating in the Council as described above, FAST-41 provides the Council agencies with additional authorities and responsibilities necessary to implement the statute. These are summarized in Table 2 of Appendix A.

2.5. What are the authorities and responsibilities of the Executive Director?

FAST-41 creates a presidentially-appointed Executive Director that serves as the Chair of the FPISC. Table 3 in Appendix A summarizes the authorities and responsibilities of the Executive Director.

2.6. What are the responsibilities of the Agency Chief Environmental Review and Permitting Officer?

FAST-41 requires each Council agency head to designate one or more agency CERPOs.[38] This individual must report directly to a Deputy Secretary (or equivalent) or higher.[39] OMB and CEQ recommend that agency CERPOs be designated at the level of Assistant Secretary or Deputy Assistant Secretary (or equivalent) to ensure effective implementation of the statute and related guidance. In particular, an Assistant Secretary or Deputy Assistant Secretary will likely have the required seniority to facilitate successful coordination, as needed, across agency bureaus, modes, program offices, and programs, including programs implemented by states and other entities as a result of delegation of responsibility. A list of agency CERPOs is available on the Permitting Dashboard. If an agency changes its agency CERPO for any reason, it should notify the Executive Director as soon as possible so that the list can be kept up to date.

The responsibilities and authorities of the agency CERPOs are summarized in Table 4 of Appendix A. Although the agency CERPOs are ultimately responsible for each of the CERPO roles in the statute, each agency CERPO may delegate certain responsibilities related to technical support or training to others in

[37] 42 U.S.C. § 4370m-1(b)(2)(B)(xiv).
[38] 42 U.S.C. § 4370m-1(b)(2)(A)(iii)(I).
[39] 42 U.S.C. § 4370m-1(b)(2)(A)(iii)(II).

the agency that are capable of performing the duties in accordance with the statutory requirements.

These responsibilities include:

- Ensuring that information required to be posted on the Permitting Dashboard is posted in a timely manner and kept current[40];
- Designating one or more (but not more than 8) Dashboard Administrators to serve as points of contact and assist staff responsible for data entry on technical issues[41];
- Supervising (or delegating supervision of) Dashboard Administrators and ensuring that their contact information is updated and disseminated to staff using the Permitting Dashboard[42];
- Working with the Executive Director, OMB, and CEQ to periodically review permitting timetable data to ensure that such data is being updated in a timely manner, and to resolve any issues as needed[43];
- Ensuring that relevant staff are provided adequate training on the FAST-41 requirements. For example, training for agency staff should include but is not limited to awareness of FAST-41 procedures, use of the Permitting Dashboard, other IT tools, and best practices for coordinated project planning[44];
- Communicating throughout the agency (including developing a list of field staff points of contact) to ensure FAST-41 requirements and guidance recommendations are met at the project level[45]; and
- Regularly updating the respective agency Council member on implementation and performance.[46]

2.7. What is the role of the Interagency Working Group?

Following the FAST Act's passage, the Interagency Working Group helped advance FAST-41 implementation activities. Moving forward, the Working Group will continue to support the Council in informing policies and best practices, and will regularly report progress to the Council and request direction. The Working Group will also assist OMB and CEQ in drafting and implementing guidance and best practices that have been recommended by the Executive Director, Council, and/or agency CERPOs. Each Council agency should ensure that it has a representative that can actively participate in the Working Group and that has appropriate expertise on agency permitting policies as well as the agency's statutory and regulatory responsibilities.

2.8. What are the roles and responsibilities of OMB under FAST-41?

In addition to serving as a member of the Council and issuing guidance to agencies upon the recommendation of the Executive Director, OMB is responsible for several specific responsibilities under FAST-41, including facilitating resolution of disputes over timetables. The roles and responsibilities of OMB are summarized in Table 5 of Appendix A.

2.9. What are the roles and responsibilities of CEQ under FAST-41?

In addition to serving as a member of the Council and issuing guidance to agencies upon the recommendation of the Executive Director in consultation with the Council, CEQ has several specific

[40] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(B).
[41] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(B).
[42] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(B).
[43] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(B).
[44] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(D).
[45] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(D).
[46] Consistent with and supports agency CERPO responsibility under 42 U.S.C. § 4370m-1(c)(3)(A).

responsibilities under FAST-41, many of which are consistent with CEQ's responsibilities and authorities under NEPA. A summary of CEQ's roles and responsibilities under FAST-41 is included in Table 6 of Appendix A.

2.10. What are the roles and responsibilities of a project sponsor?

FAST-41 defines a project sponsor as "an entity, including any private, public, or public-private entity, seeking an authorization for a covered project."[47] The definition of project sponsor may, therefore, include a Federal agency[48] or a private sponsor that is seeking Federal financing for a project that will require an environmental review or authorization. A project sponsor is not a Federal agency conducting a study or assessment for a Federal project, unless that assessment or study otherwise meets the definition of covered project.

Table 7 of Appendix A includes a summary of roles and responsibilities that apply to project sponsors that wish a project to be determined a covered project for FAST-41 purposes.[49]

2.11. What are the roles and responsibilities of the facilitating agency?

FAST-41 defines a "facilitating agency" as the agency that receives the initial notification from the project sponsor required under 42 U.S.C. § 4370m-2(a).[50] In effect, the facilitating agency serves as the lead Federal point of contact for communications with the project sponsor until a lead agency is established.[51] Facilitating agencies have been designated for many of the project types covered by FAST-41. See Section 3.3 for the designated facilitating agency for each project type.

If, at the time of submission of the Initiation Notice, the Executive Director in consultation with the Council has not designated a facilitating agency for the type of project being proposed, the agency that receives the notice shall be designated as the facilitating agency.[52]

Once the facilitating agency receives an Initiation Notice from a project sponsor, it will begin the procedures required by FAST-41 to determine whether a project is a covered project. On establishment of the lead agency, the lead agency shall assume the responsibilities of the facilitating agency under FAST-41,[53] which are summarized in Table 8 in Appendix A.

On the request of a participating agency or project sponsor, the Executive Director may designate a different agency as the facilitating agency, as applicable, for a covered project, if the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should be placed in a different category under 42 U.S.C. § 4370m-

[47] 42 U.S.C. § 4370m(18).
[48] See also Section 3.7 for a discussion of which Federally-sponsored projects are not covered projects.
[49] FAST-41 gives Federal agencies the authority to issue regulations for fees to reimburse the United States for the reasonable costs of conducting environmental reviews and authorizations for covered projects. 42 U.S.C. § 4370m-8(a). Project sponsors may be required to pay such fees in the future.
[50] 42 U.S.C. § 4370m(13).
[51] In some cases, a project sponsor may also be the facilitating or lead agency. For example, the Bureau of Reclamation may be the lead agency and the project sponsor on a water resource project. In such cases, the agency would fulfill the roles of both project sponsor and the facilitating/lead agency.
[52] 42 U.S.C. § 4370m-2(a)(1)(B).
[53] 42 U.S.C. § 4370m-2(a)(5)(A).

1(c)(1)(B).[54] The Chairman of CEQ resolves any dispute over designation of a facilitating agency for a particular covered project.[55]

Table 8 of Appendix A summarizes the authorities and responsibilities for facilitating agencies under FAST-41.

2.12. What are the roles and responsibilities of the "lead agency"?

"Lead agency" is a defined term from NEPA implementing regulations. FAST-41 uses the term and defines ''lead agency" as the agency with principal responsibility for an environmental review of a covered project under NEPA and parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).[56] Although the NEPA definition of lead agency is specific to the development of environmental impact statements (EIS), FAST-41 expands the term to include the lead agency for any environmental review, including environmental assessments.[57]

On establishment of the lead agency, the lead agency assumes the responsibilities of the facilitating agency, detailed in Section 2.11, above.[58]

The Council agencies were designated facilitating agencies for each project type in a manner that attempted to best align with existing agency statutory requirements and jurisdictional responsibilities. In many, if not most, instances the facilitating agency for a project will also serve as its NEPA lead agency. In those instances where the lead agency is likely to be different from the facilitating agency due to a project's location or potential impacts, the facilitating agency should attempt to identify the lead agency as early as practicable, based on all known information regarding the covered project.

On the request of a participating agency or project sponsor, the Executive Director may designate[59] a different agency as the lead agency, as applicable, for a covered project, if the lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates the project should be placed in a different category under 42 U.S.C. § 4370m-1(c)(1)(B).[60] The Chairman of CEQ resolves any dispute over designation of a lead agency for a particular covered project.[61]

Table 9 of Appendix A summarizes the authorities and responsibilities for lead agencies under FAST-41.

2.13. What is a FAST-41 cooperating agency and what are the roles and responsibilities of a FAST-41 cooperating agency?

[54] 42 U.S.C. § 4370m-2(a)(6)(A). Although not specified in the statute, the Executive Director should consult with the relevant agencies while making such determinations.
[55] 42 U.S.C. § 4370m-2(a)(6)(B).
[56] 42 U.S.C. § 4370m(15). If a covered project has an Environmental Assessment instead of an EIS, the lead agency for FAST-41 purposes should be the agency that would normally be designated as the NEPA lead for an EIS.
[57] When the United States Army Corps of Engineers is the only federal agency with NEPA responsibilities met through an abbreviated authorization process or does not require an EIS, then the Executive Director will identify a different lead agency for purposes of complying with FAST-41.
[58] 42 U.S.C. § 4370m-2(a)(5)(A).
[59] Although not specified in FAST-41, the Executive Director should make this designation after consulting with the relevant Council agencies.
[60] 42 U.S.C. § 4370m-2(a)(6)(A).
[61] 42 U.S.C. § 4370m-2(a)(6)(B).

The term ‘‘cooperating agency’’ under FAST-41 means any agency with (A) jurisdiction under Federal law; or (B) special expertise as described in 40 C.F.R. § 1501.6 (as in effect on the date of enactment of FAST-41).[62] Although the referenced NEPA regulations are specific to the development of EISs, subsequent NEPA guidance and this Act expand the term to include the lead agency for any environmental review, including environmental assessments.

The universe of entities that qualify as cooperating agencies under the FAST Act is different from the universe of NEPA cooperating agencies. CEQ's regulations define "cooperating agency" as "any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal."[63] The NEPA regulations further provide that a state or local agency or tribe may be a cooperating agency by agreement with the lead agency."[64] Through guidance, CEQ has encouraged agencies to extend cooperating agency invitations to tribal government agencies with jurisdiction by law or special expertise.[65]

Under FAST-41, the universe of cooperating agencies is the same as NEPA with respect to Federal agencies (those with jurisdiction or special expertise), but only includes states that choose to participate in the FAST-41 process, which would result in the requirements under FAST-41 applying to the state or an authorization issued by the state. Any coordination plan with state, local and tribal agencies should, to the maximum extent practicable, be included in a memorandum of understanding (MOU) pursuant to 42 U.S.C. § 4370m-2(c)(3)(C). This more limited approach to designating agencies as cooperating for FAST-41 purposes assures that a state, local, or tribal agency that chooses to participate has acknowledged and accepted its assigned authorities and responsibilities as a FAST-41 cooperating agency. Specifically, a FAST-41 "cooperating agency" has a concurrence role for the permitting timetable, a heightened role for modification of schedules and decisions to extend public comment periods, a specific role in alternatives analyses and selection of methodologies for environmental review of the covered project, and a concurrence role in decisions to develop the preferred alternative to a higher level of detail. A state, local, or tribal agency can still be a cooperating agency under NEPA for covered projects without being a cooperating agency subject to FAST-41 requirements.

Table 10 of Appendix A summarizes the authorities and responsibilities for cooperating agencies under FAST-41. See Section 4.15-4.17 below for a discussion of the lead agency's invitation to potential cooperating agencies, as well as agency requirements in response to such invitations.

2.14. What are the roles and responsibilities of participating agencies?

The term "participating agency," as defined by FAST-41, means an agency participating in an environmental review or authorization for a covered project in accordance with 42 U.S.C. § 4370m-2.[66]

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[62] 42 U.S.C. § 4370m(4).
[63] 40 C.F.R. § 1508.5.
[64] *Id*.
[65] *See* Memorandum for Heads of Federal Agencies from Acting Chair George T. Frampton, Jr.: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (July 28, 1999) *available* at https://ceq.doe.gov/nepa/regs/ceqcoop.pdf; Memorandum for the Heads of Federal Agencies from Chairman James Connaughton: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (Jan. 30, 2002) *available* at https://ceq.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html; Memorandum for Tribal Leaders from Chairman James Connaughton: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (Feb. 4, 2002) *available* at https://ceq.doe.gov/nepa/regs/cooperating/cooperatingagenciesdistributionmemo.html.

[66] 42 U.S.C. § 4370m(17).

The statute states that the designation of an agency as a participating agency shall not give the agency authority or jurisdiction over the covered project.[67] Such agencies can become cooperating agencies should project circumstances change.

Participating agency status may be established on a programmatic (i.e., Council agencies may designate a list of agencies that should always be invited as participating agencies for each project type) or project-by-project basis. Participating agencies may also include state, local, or tribal governments that choose to participate.

Table 11 of Appendix A summarizes the authorities and responsibilities for participating agencies under FAST-41.

Section 3. Covered Projects

3.1. What is a "covered project?"

FAST-41 defines a covered project as "any activity in the United States that requires authorization or environmental review by a [f]ederal agency involving **construction** of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the Council that—

(i) (I) is subject to NEPA;
(II) is likely to require a total investment of more than $200,000,000; and
(III) does not qualify for abbreviated authorization or environmental review processes under any applicable law; or

(ii) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require—
(I) authorization from or environmental review involving more than 2 federal agencies; or
(II) the preparation of an environmental impact statement under NEPA."[68]

Throughout this guidance, subsection (i) of the above definition is referred to as the "objective" standard for becoming a covered project[69] and subsection (ii) is referred to as the "discretionary" standard. A project need only meet one of the standards to be considered a covered project. Although a project may not fall under the objective standard of the definition of covered project, it may fall under the discretionary portion of the definition, discussed in Section 3.6, below.

FAST-41 excludes certain projects from the definition of "covered project":

[67] 42 U.S.C. § 4370m-2(a)(4)(A).
[68] 42 U.S.C. § 4370m(6)(A) (emphasis added).
[69] This label refers to the "objective" criteria listed in the statute. Although there is always room for interpretation as to whether a project meets the criteria (i.e., whether the project costs exceed $200 million), if it is determined that the project meets the criteria, it automatically (i.e., objectively) qualifies as a covered project.

"(i) any project subject to section 139 of title 23, United States Code;[70] or
(ii) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348)."[71]

Sections 3.2 through 3.7, below, provide guidance for interpreting elements of the statutory definition of covered project.

3.2. To which sectors of infrastructure projects does FAST-41 and this guidance apply?

FAST-41 applies to covered projects (see Section 3.1 for further discussion), which include a set of infrastructure projects in the sectors identified in 42 U.S.C. § 4370m(6)(A). Unless explicitly excluded from coverage under FAST-41, all of the sectors below are covered by this guidance.[72] These include:

- Renewable Energy Production,
- Conventional Energy Production,
- Electricity Transmission,
- Surface Transportation,
- Aviation,
- Ports and Waterways,
- Water Resource Projects,
- Broadband,
- Pipelines, and
- Manufacturing.[73]

The Council may, at its discretion, add other sectors by a majority vote.[74]

3.3. What are the designated project types and facilitating agencies?

FAST-41 requires the Executive Director, in consultation with the Council, to "categorize the projects in the inventory as appropriate, based on sector and project type."[75] It also requires the Executive Director, in consultation with the Council, to "designate a facilitating agency for each category [i.e., type] of covered projects."[76]

The project types and facilitating agency for each are included in a table on the Permitting Dashboard.

Sector	Type**	Facilitating Agency
Renewable Energy Production	Biomass Energy Production/Generation	USDA
	Federal Hydropower (Federally Owned/Operated)	DOI

[70] In addition to this exclusion, FAST Act Section 11503 provides that, except as expressly provided in Section 41003(f) and subsection (o) of Section 139 of Title 23, the requirements of FAST-41 shall not apply to:
(1) "programs administered now and in the future by the Department of Transportation or its operating administrations under tittles 23, 46, or 49 . . .." or (2) "any project subject to section 2045 of the Water Resources Development Act of 2007." 42 USC § 4370m note.
[71] 42 U.S.C. § 4370m(6)(B).
[72] Also see the list of designated project types included in Section 3.3.
[73] 42 U.S.C. § 4370m(6)(A).
[74] 42 U.S.C. § 4370m(6)(A).
[75] 42 U.S.C. § 4370m-1(c)(1)(A)(ii)(I).
[76] 42 U.S.C. § 4370m-1(c)(1)(B)(i).

	Non-Federal Hydropower - Licenses (including Non-Federal Marine and Hydrokinetic Projects)	FERC
	Non-Federal Hydropower – Leases	DOI
	Wind: Federal Offshore	DOI
	Wind: Other Than Federal Offshore	DOI
	Hydro-kinetic - Lease on Outer Continental Shelf	DOI
	Solar	DOI
	Geothermal	DOI
	Energy Storage	DOE
Conventional Energy Production	Offshore Oil & Gas	DOI
	Land-based Oil & Gas - Production	DOI
	Fossil Fuel Power Plant	First Federal agency to receive the FIN*
	Nuclear Power Plant – Construction Permit	NRC
	Nuclear Power Plant – Combined (Construction and Operating) License	NRC
	"Rural" Energy Projects (under Rural Utilities Service)	USDA
Electricity Transmission	Electricity Transmission	DOE
	"Rural" Transmission (under Rural Utilities Service)	USDA
Surface Transportation^	Highways	DOT
	Roads	
	Railroads	
	Public Transportation	
	Bridges	
	Weight stations	
	Freight	
	Ports of Entry (construction or rehabilitation of a rail, water port, or road located at a state or US entry point)	DHS
Aviation^	Airport Development Projects (aviation programs, commerce and safety, airport development and noise, financing, public airports)^	DOT
	Air Traffic Facility Replacement or Modernization	
	Commercial Space Launch Site Operator License	
Ports and Waterways	Port Expansion or Improvement Undertakings or Projects^	DOT
Broadband	Land-based, Non-Rural Broadband Infrastructure	First Federal agency to receive the FIN*
	Rural Broadband Infrastructure	USDA
	Offshore Broadband Infrastructure (e.g., cable landing station)	DOI

Manufacturing	New Facilities or Expansions Involving Construction	First Federal agency to receive the FIN*
Pipelines	Interstate Natural Gas Pipelines	FERC
	Liquefied Natural Gas Terminal Facilities (Onshore or in State Water) and Associated Natural Gas Pipelines	FERC
	Land-based Oil & Gas - Production	DOI
Water Resources	Infrastructure Restoration Activities Associated with Bureau of Reclamation Water Resources Projects	DOI
	Irrigation and Related Water Supply Projects	DOI
	Other Infrastructure Water Resource Projects (including waste/storm-water Infrastructure; flood risk management; navigation; restoration activities associated with non-Bureau of Reclamation infrastructure)	First Federal agency to receive the FIN*

^ If not excluded by 42 U.S.C. § 4370m(6)(B) or 49 U.S.C. § 24201. See Section 3.7 for further discussion of exclusions from the definition of covered project.
* This is consistent with 42 U.S.C. § 4370m-2(a)(1)(B), which states that "[if], at the time of submission of the notice…, the Executive Director has not designated a facilitating agency… for the categories of projects noticed, the agency that receives the notice…shall be designated as the facilitating agency." This assumes that the project sponsor first contacts an agency that normally has jurisdiction over such project and therefore has the jurisdiction to act as facilitating agency until the appropriate lead agency can be identified.
** Presidential permit applications are excluded.

3.4. How should a covered project's cost be determined?

To qualify as a covered project under the objective standard in the covered project definition (see 42 U.S.C. § 4370m(6)(A)(i)(II) and Section 3.1), the project must be likely to require a total investment of more than $200 million.

For "existing" or "pending" projects, agencies should use their available experience and judgment, in consultation with the project sponsor, in making determinations of a project's expected total cost. An agency may contact the Executive Director to make the determination.

For new projects, the Initiation Notice[77] that a project sponsor must submit to request inclusion as a covered project must indicate whether the project's total investment is likely to be greater than or less than $200 million.[78] The facilitating agency (or lead agency, as appropriate) will review the Initiation Notice and use its experience and judgment to determine whether the size and scope of the project indicates that the project's total investment would indeed be greater than $200 million and meet the definition of covered project, or whether additional supporting information must be provided by the project sponsor. If a rough order of magnitude cost estimate indicates that cost may be close to the objective $200 million threshold – and the project is subject to NEPA and of a size and complexity that would make it likely to benefit from enhanced oversight and coordination, the Council may simply

[77] 42 U.S.C. § 4370m-2(a)(1)(A).
[78] 42 U.S.C. § 4370m-2(a)(1)(C)(v).

choose to include it under the discretionary definition. As stated above, the lead agency may also submit the information to the Executive Director for him or her to review and make a determination.

3.5. What are "abbreviated authorization or environmental review processes"?

The objective standard in the covered project definition (see 42 U.S.C. § 4370m(6)(A)(i)(III) and Section 3.1) states that an activity is a covered project if, among other criteria, it "does not qualify for abbreviated authorization or environmental review processes under any applicable law."

For the purposes of analyzing whether a project meets the objective standard under section 42 U.S.C. § 4370m(6)(A)(i)(III), an activity may be considered a covered project for FAST-41 unless all of its authorizations and its environmental review processes are abbreviated. For example, if one agency has a categorical exclusion (an abbreviated environmental review) that applies to its action related to a project, but another agency must conduct a formal Endangered Species Act (ESA) consultation (not an abbreviated informal consultation), then *all* of that project's environmental reviews and authorizations are not abbreviated. The project would, therefore, meet the definition of covered project if it met the other factors. Conversely, if one agency has a categorical exclusion and the only other agency with an action related to a project had an ESA Not Likely to Adversely Affect Concurrence, all of the project's reviews and authorizations would be abbreviated, and the project would not meet the definition of covered project.

"***Authorization***" is defined by the statute as "any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency or, in the case of a State that chooses to participate in the environmental review and authorization process in accordance with [42 U.S.C. § 4370m-2(c)(3)(A)], a State agency."[79]

- For purposes of implementing this guidance, "other administrative decision[s]," in the FAST-Act context, also include consultations as listed in the Environmental Review and Authorization Inventory (e.g., ESA consultations or consultations under Section 106 of the National Historic Preservation Act that have the involvement of the ACHP), which is available on the Permitting Dashboard.
- An ***abbreviated authorization*** is interpreted as a statutory or regulatory authorization process whereby a project meeting the applicable criteria for that authorization type receives an expedited authorization decision (e.g., within one year) or a simplified process (e.g., United States Army Corps of Engineers General Permits).

"*Environmental review*" is defined as "the agency procedures and processes for applying a categorical exclusion or for preparing an environmental assessment, an environmental impact statement, or other document required under NEPA."[80]

- An ***abbreviated environmental review*** is interpreted to refer to an applicable categorical exclusion for every Federal agency involved and where no extraordinary circumstances exist. It includes categorical exclusions established by Congress or agency administrative process under 40 C.F.R. § 1507.3, and regulatory determinations that are based entirely on programmatic NEPA documents for the type of project involved (for example, United States Army Corps of Engineers general permits).

The Permitting Dashboard[81] contains a list of abbreviated authorizations and environmental reviews that should be consulted when determining whether all of a project's authorization and environmental review

[79] 42 U.S.C. § 4370m(3).
[80] 42 U.S.C. § 4370m(11).
[81] https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/Abbreviated%20Reviews.pdf.

processes are abbreviated. The list is not definitive and an agency should notify OMB or CEQ if it believes that additional, specific abbreviated authorizations or environmental reviews should be added to this list for the purposes of determining whether a project is "covered."

In addition to meeting the objective standard of the definition of covered project discussed above, projects may fall under the discretionary portion of the definition, discussed in Section 3.6.

3.6. What considerations should be given when designating projects on a discretionary basis?

FAST-41 provides the Council discretion to designate as "covered" those projects that are from one of the sectors covered under FAST-41, are not expressly exempt or excluded, but do not meet the objective standard described above (e.g., subject to NEPA; more than $200 million; not all abbreviated). A project may be designated as "covered" if it is subject to NEPA and has the size and complexity that cause the Council[82] to determine that the project would be "likely to benefit from enhanced oversight and coordination," given, for example, the number of agencies involved or whether the preparation of an EIS is required.[83] For the purposes of exercising this discretion:

- Involvement of more than two Federal agencies should be used as a baseline/threshold for consideration, but not as a determinative basis for designation.
- Preparation of an EIS creates a presumption that the project is "complex."
- A project under $200 million is generally not a covered project if the project is already subject to early interagency coordination, transparent public notification processes, and advanced scheduling practices (by the agencies, in coordination with the project sponsor) during project review. Under such circumstances, a project will not be designated as a covered project under 42 U.S.C. § 4370m(6)(A)(ii) unless the project sponsor successfully demonstrates to the Council, in the Initiation Notice, or after providing additional written explanation as described in Section 4.8, that the project review would likely benefit from enhanced oversight and coordination.
- In addition to what FAST-41 requires for the Initiation Notice,[84] sponsors of projects that do not meet the $200 million threshold, but want the Council to designate the project as "covered" under the discretionary standard, must include the following information in the notice:
  - An explanation of how enhanced oversight and coordination will benefit public health, safety and the environment,
  - An explanation of how efficiencies in the review process could be realized through greater oversight and coordination, and
  - A statement describing the desire of the project sponsor to be designated as a covered project based on its knowledge of FAST-41 requirements; ability to pay applicable fees; willingness to participate in good faith in the process; and implications such as project schedule.
- Project sponsors for any projects added on a discretionary basis cannot request a fee waiver.

3.7. What is not considered a "Covered Project"?

The following activities or project types could reasonably be considered "infrastructure"-related, but do not meet some or all elements of the statutory definition and therefore **should not** be considered "covered" for the purposes of 42 U.S.C. § 4370m(6)(A)(i).

[82] OMB, CEQ, and the Executive Director will continue to work with Council agencies to develop a process to determine whether projects are "covered" under the discretionary standard.
[83] 42 U.S.C. § 4370m(6)(A)(ii).
[84] See Section 4.5.

- Any project type excluded by 42 U.S.C. § 4370m.
  - This includes "any project subject to section 139 of title 23,"[85] which is the environmental review process statute for the Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration.
  - This also includes "any project subject to section 2348 of title 33,"[86] namely water resources development projects to be carried out by the Secretary (of the Army), under §2045 of WRDA 2007.
  - Lastly, this includes "programs administered now and in the future by the Department of Transportation [DOT] or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49 United States Code."[87] This exclusion captures DOT highway, rail, transit, aviation, port and multimodal projects, and projects funded under DOT's TIGER and FASTLANE discretionary grant programs.

- Any project that qualifies for abbreviated authorizations or abbreviated environmental reviews for *all* necessary environmental reviews and authorizations (as discussed in Section 3.5).

- Programmatic plans/EISs that do not directly authorize specific, individual (tiered) project reviews.
  - A programmatic EIS that does not enable specific, individual projects to be constructed without subsequent tiered NEPA review would not be covered. Example: Programmatic resource and land-use management plans do not directly authorize specific project reviews, and therefore would not be covered projects.
  - However, any subsequent site-specific projects that tier off of the programmatic EIS may be covered projects.
  - A programmatic plan that authorizes one or more site-specific individual projects that meet the definition of a covered project would be "covered."

- Any "project" in a covered sector that *does not* involve construction of infrastructure. Construction is interpreted to include siting, construction, reconstruction, and commencing operations. For example, the following would not be covered:
  - Natural resource "exploration" activities (land-based and offshore)
  - Geological exploration
  - Offshore renewable site assessments
  - License renewals that do not involve construction such as nuclear power plant operating licenses and nuclear power plant license renewals
  - Offshore oil structure decommissioning-related activities
  - Bureau of Reclamation projects which do not include an authorization to construct

- A notice of proposed rulemaking, a notice of final rule, and other products of the Federal rulemaking process.

- Any Federally-sponsored project in a covered sector where the Federal Government is the primary beneficiary of the construction activity.
  - For example: A Department of Defense project (including those by the Armed Services) on a U.S. military installation that primarily benefits users on the base (e.g., a solar farm wholly inside an Army base that only provides power to the Army).

[85] 42 U.S.C. § 4370m(6)(B)(i).
[86] 42 U.S.C. § 4370m(6)(B)(ii).
[87] 42 U.S.C. § 4370m note (quoting Savings Clause).

- Any Federally-sponsored project where the lead agency will not begin the review or authorization process (environmental or otherwise) until the sponsoring agency receives appropriated funds necessary for construction of the project. Such projects will be added to the inventory once the lead agency receives the appropriated funds or begins the review or authorization process necessary, whichever comes first.

- Presidential actions.

It is possible that the Permitting Dashboard would be made available to agencies that wish to use it to track projects not covered by FAST-41. OMB, CEQ, and the Executive Director may discuss that possibility with agencies going forward. In the event non-covered projects are added to the Dashboard, the Dashboard will make clear that such projects are not covered projects and are not subject to FAST-41 requirements or restrictions.

3.8. What are the anticipated benefits of having a project covered under FAST-41?

- **Enhanced coordination**. When a proposed project becomes covered under FAST-41, the government must quickly identify all agencies likely to be involved with financing, environmental reviews, and authorizations.[88] Agencies are required to develop concurrent (rather than sequential) schedules for their environmental reviews and authorizations to the maximum extent practicable.[89] Project-specific Coordinated Project Plans (CPPs) must be quickly developed to document these schedules and to document the steps agencies will take to coordinate public participation and complete the authorizations and environmental reviews.[90] Advanced coordination has been known to help expedite reviews by allowing early communication of project goals and discussion of potential alternatives with permitting agencies and stakeholders.

- **Enhanced visibility and predictability**. The government will develop a permitting timetable for each covered project,[91] which establishes scheduled dates for all required Federal environmental reviews and authorizations (as well as for state permits, where possible) based on project-specific factors, statutory and regulatory requirements, and historical timeframes for the activities.[92] Scheduled and actual timeframes for government processes are publicly displayed and tracked on the online Permitting Dashboard.[93] If an environmental review or authorization is delayed, agencies are required to update the schedule at least 30 days[94] before the currently reported completion date, and the government will not extend the final completion date by more than 30 days without consulting with the project sponsor.[95]

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[88] § 4370m-2(a)(2)(A).
[89] 42 U.S.C. § 4370m-4(a)(1).
[90] 42 U.S.C. § 4370m-2(c)(1).
[91] 42 U.S.C. § 4370m-2(c)(2).
[92] 42 U.S.C. § 4370m-2(c)(1)(B)(ii) and 42 U.S.C. § 4370m-2(c)(2). FERC's 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.
[93] 42 U.S.C. § 4370m-2(b)(4), https://www.permits.performance.gov/.
[94] Throughout this guidance document, any reference to a number of days relates to calendar days (as opposed to business days) except where otherwise required by statute.
[95] 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III). Note that, because FERC and NRC have independent regulatory commissions, FERC and NRC's environmental review schedules, and modifications thereto, will not be subject to review and oversight by project sponsors or other government offices. FERC and NRC's environmental review schedules will be maintained and updated on the Dashboard to ensure the transparency required by FAST-41.

- **Enhanced accountability**. Covered projects benefit from high-level oversight on the permitting process from the FPISC Executive Director, to ensure that Federal agencies follow FAST-41 processes and adhere to established timeframes. If the government delays the permitting process by more than 150% of the original schedule, it must be reported to Congress.[96] There have been instances when high level visibility and oversight on the permitting process has helped to resolve challenges in Federal permitting and reviews.

- **Enhanced public participation**. Specific timeframes are placed on certain public participation activities, including early coordination for collection of key concerns,[97] public involvement in the development of reasonable alternatives,[98] and the public comment period on the draft EIS.[99] Intentional public participation helps build trust, improve stakeholder buy-in, and reduce the risk of litigation.

- **Enhanced legal protections.** The statute of limitations to challenge any authorizations for covered projects is two years, and future claims pertaining to an environmental review may be brought only if the commenter filed a sufficiently detailed comment and put the lead agency on notice of the issue during the environmental review process.[100]

It should be noted that coverage under FAST-41 does not automatically result in a favorable permit decision by any of the Federal agencies nor results in prioritization of FAST-41 covered projects' reviews over applications already in the agencies' queues.

3.9. Does FAST-41 create a presumption that a covered project will be approved, prioritized, or expedited?

No. Designation of a project as a covered project does not imply Federal endorsement of or support for the project, or "create[] a presumption that a covered project will be approved or favorably reviewed by any agency,"[101] or receive Federal funding.

Therefore, the Permitting Dashboard states explicitly that a project's inclusion on the Permitting Dashboard does not imply Federal endorsement of, or support for, the project; create a presumption that a covered project will be approved, favorably reviewed by any agency, or receive Federal funding; supersede, amend, or modify any Federal statute; or affect the responsibility of any Federal officer to comply with or enforce any statute. In addition, the lead agency for a proposed Federally funded or financed project included on the Permitting Dashboard must inform all project sponsors in writing that the project's inclusion on the Permitting Dashboard does not imply Federal endorsement of, or support for, the project, or create a presumption that the project will be approved, favorably reviewed by any agency, or receive Federal funding. The agency may also provide such information in writing to any other interested parties. FAST-41 also does not include a national prioritization of a posted project. Agencies are expected to complete their processes and provide timeline estimates based on their workloads and how they manage priorities.

Further, the inclusion of a project on the Permitting Dashboard may be reconsidered based on updated information related to, for example, a change in the scope of Federal environmental review and authorization processes that apply to the proposed project. For example, if an agency or the Executive

[96] 42 U.S.C. § 4370m-2(c)(2)(D)(iii).
[97] 42 U.S.C. § 4370m-2(d).
[98] 42 U.S.C. § 4370m-4(b) and § 4370m-4(c).
[99] 42 U.S.C. § 4370m-4(d)(1).
[100] 42 U.S.C. § 4370m-6(a)(1).
[101] 42 U.S.C. § 4370m-6(d)(2).

Director initially determines that a project is a covered project, but the project design or scope is later changed such that it no longer meets the definition (*e.g.*, all the reviews/authorizations become abbreviated, or the project is no longer of a size and complexity that it would benefit from FAST-41 procedures), then the project's inclusion on the Permitting Dashboard may be reconsidered.

The August 2011 Presidential Memorandum[102] that originally established the Permitting Dashboard instructed Federal agencies to prioritize and expedite the environmental permitting and review process for a set of infrastructure projects with significant potential for job creation, and the March 2012 Executive Order[103] expanded use of the Permitting Dashboard to a broader set of nationally- or regionally-significant projects. However, a key purpose of FAST-41 is to provide transparency[104] into an even broader set of infrastructure projects by posting projects on the Permitting Dashboard that are likely to experience complex review processes or require an EIS. FAST-41 covered projects are projects that would benefit from being posted on the Permitting Dashboard and are not considered priority projects (i.e., their authorization and environmental review processes are not prioritized over other projects). FAST-41 covered projects are also not expedited; under FAST-41, agencies are expected to follow the schedules they agree to in the CPPs for covered projects.[105]

Sections 4.22 through 4.36 provides guidance for how such schedules are to be developed, maintained, and modified. Ultimately, Council agencies are responsible for managing internal workflows related to environmental review and authorization activities.

Section 4. Project-Specific Guidance

A. General

4.1. What procedural requirements apply to FAST-41 covered projects?

FAST-41 procedural requirements are intended to improve the environmental review and authorization process for covered projects. These requirements do not supplant or override existing environmental review and authorization requirements; rather, they are meant to harmonize with existing processes and incorporate known best practices to ensure a more transparent, efficient, and predictable process. The table below summarizes these requirements.

Procedural Requirement	***Reference***	***Guidance***
Establishment of a "facilitating" agency to assist in the early stages of the FAST-41 process, before a NEPA lead agency has been identified	*42 U.S.C. § 4370m-1 (c)(1)(B)*	*Section 3.3*
Establishment of performance schedules by project category that must be used in developing the permitting timetable for specific projects; the permitting timetables may vary based on relevant factors specified in the statute	*42 U.S.C. § 4370m-1 (c)(1)(C)*	*Section 4.28*
Transparency of the status of the project and its progression through the environmental review and authorization process through use of the Permitting Dashboard	*42 U.S.C. § 4370m-2(b)*	*Section 5*
Enhanced coordination among Federal agencies, by establishing the role of "participating" agency and a process for identifying	*42 U.S.C. § 4370m-2*	*Section 4.14*

[102] *See supra* note 4.
[103] *See supra* note 6.
[104] 161 Cong. Rec. S.6045, 6063-6064 (July 28, 2015)
[105] See Section 4.31 for an outline of the process for changing the schedules once they have been approved by the relevant agencies.

and inviting agencies to become either FAST-41 cooperating or participating agencies	*(a)(2)-(3)*	
Transparency of agency roles and responsibilities, permitting timetables, potential avoidance, minimization, or mitigation strategies, and public and tribal outreach and coordination efforts through the creation of a CPP for each covered project	*42 U.S.C. § 4370m-2(c)*	*Section 4.23*
Enhanced oversight over the permitting timetable for the covered project by the Executive Director, Council, and agency CERPOs	*42 U.S.C. § 4370m-2(c)(2)*	*Section 4.31*
Encouraged coordination of the Federal environmental review and authorization process with state, tribe, or local government reviews	*42 U.S.C. § 4370m-2(c)(3)*	*Section 4.19*
Allowance for alternative procedures to adopt, incorporate by reference, and use analyses and documentation prepared under state laws and procedures that have substantially equivalent requirements to NEPA (in consultation with CEQ)	*42 U.S.C. § 4370m-4(b)*	*Section 4.37*
Agency coordination and public review in the determination of the range of reasonable alternatives for the project prior to the issuance of a draft EIS	*42 U.S.C. § 4370m-4 (c)(1)-(2)*	*Section 4.40*
Coordination on methodologies to be used in agency analyses for environmental reviews	*42 U.S.C. § 4370m-4(c)(3)*	*Section 4.41*
Authority to develop preferred alternative to a higher level of detail than other alternatives to facilitate development of mitigation measures or concurrent compliance with other laws, provided impartial decision-making and public comment opportunities are protected	*42 U.S.C. § 4370m-4(c)(4)*	*Section 4.42*
Establishment of specific timeframes for comment periods for agencies and for the general public	*42 U.S.C. § 4370m-4(d)*	*Section 4.43*
Additional coordination expectations to address and resolve issues that could result in the delay of the environmental review and authorization process or result in the denial of an approval	*42 U.S.C. § 4370m-4(e)*	*Future guidance, as necessary*
Establishment of a two-year statute of limitation for claims on any authorization issued by a Federal agency for a covered project, if a Federal agency publishes in the Federal Register	*42 U.S.C. § 4370m-6(a)*	*Section 6*
Factors and presumptions related to preliminary injunctions or temporary restraining orders pertaining to the review or authorization of a covered project	*42 U.S.C. § 4370m-6(b)*	*Future guidance, as necessary*
Opportunity to transfer funds from the Environmental Review Improvement Fund to agencies to facilitate timely and efficient environmental reviews and authorizations for a covered project	*42 U.S.C. § 4370m-8(d)(3)*	*Future guidance, as necessary*
Opportunity to transfer funds among agencies to facilitate timely and efficient environmental reviews and authorizations for a covered project	*42 U.S.C. § 4370m-8(f)(1)*	*Future guidance, as necessary*

B. Early Consultation

4.2. What factors should a project sponsor consider when deciding when and whether to submit an Initiation Notice for a potential covered project?

For new projects, the FAST-41 procedures and requirements begin after the project sponsor submits an Initiation Notice.[106]

Federal agencies should be prepared to discuss with a project sponsor of a potential covered project various considerations that may be taken into account when determining whether an Initiation Notice should be submitted. For example, agencies may inform project sponsors that they may consider:

- Whether the proposed project is sufficiently defined to provide the facilitating agency sufficient information to determine whether the project is a covered project,
- Whether the sponsor is ready to begin the NEPA phase of project development – i.e., with respect to securing appropriate sponsor staff to interact with the lead agency, consulting services, and financial resources,
- Whether there is sufficient sponsor leadership attention to the project to help prioritize tasks and assist in any issue resolution,
- Whether the project is technically and/or financially feasible or is still at an early concept phase,[107] and
- The anticipated benefits of having projects covered under FAST-41, as outlined in Section 3.8.

Federal agencies who do not believe they are in a position to discuss such information may direct the project sponsor to the Executive Director.

4.3. What pre-notification coordination is recommended for those interested in submitting a FAST-41 Initiation Notice for a proposed covered project?

The project sponsor and relevant agencies should begin discussions about the proposed project as early as practicable. FAST-41,[108] NEPA, and CEQ's NEPA implementing regulations [109] strongly encourage project sponsors to consult early with Federal and state agencies that will likely be involved with the review of the project in addition to any tribal governments with interests that may be impacted.

FAST-41 provides that "[t]he facilitating or lead agency, as applicable, shall provide an expeditious process for project sponsors to confer with each FAST-41 cooperating and participating agency involved and, not later than 60 days after the date on which the project sponsor submits a request under this subsection, to have each such agency provide to the project sponsor information concerning—

> (1) the availability of information and tools, including pre-application toolkits, to facilitate early planning efforts;
> (2) key issues of concern to each agency and to the public; and
> (3) issues that must be addressed before an environmental review or authorization can be completed."[110]

In other words, FAST-41 requires the availability of two types of early consultation opportunities: providing an "expeditious process" to confer, and providing certain information. The facilitating or lead agency must provide an "expeditious process for project sponsors to confer with each lead, cooperating and participating agency," but the statute does not provide further clarification on what this process must

[106] 42 U.S.C. § 4370m-2(a)(1)(A).
[107] Early-stage projects should request the opportunity to take advantage of the early consultation provisions, described in Section 4.3.
[108] 42 U.S.C. 4370m-2(d).
[109] 40 C.F.R. § 1501.6 (encouraging early agency coordination which, necessarily, must include discussions with project sponsors related to project-specific information).
[110] 42 U.S.C. § 4370m-2(d).

entail. Until more detailed guidance can be developed, agencies should use a common sense interpretation of what an expeditious process might look like. Many agencies, such as FERC, already have early interagency and tribal government coordination procedures that would likely constitute such a process. OMB and CEQ suggest that, at a minimum, each facilitating or lead agency publish a clear description of the expeditious process, and how an interested project sponsor can initiate early consultation.

For agencies with only an abbreviated review or authorization applicable to a covered project, such agency does not need to participate in an early consultation process set by the facilitating or lead agency. Because such agencies already provide an abbreviated authorization decision or a simplified process, the agency does not need to offer or participate in an individual meeting with the project sponsor in order to meet the requirement to confer. Those agencies may follow their established processes for status notification to project sponsors, offer a monthly conference call open to any project sponsor, or provide a phone number or an email address to which project sponsors may submit questions.

In addition to the expeditious process, FAST-41 requires the agencies involved in the project to provide the above-listed information (i.e., tools, issues of concerns, and issues that must be addressed during reviews), if requested, not later than 60 days after the project sponsor requests it. In order to meet this requirement, agencies do not need to develop project specific responses, but may provide the project sponsor with links to information that is already available, to the extent that such links provide the required information. Alternatively, agencies may create a fact sheet in advance that can be modified to respond with information that corresponds to the specific project being proposed (e.g., project type, location, etc.).

For agencies with only an abbreviated review or authorization applicable to the project, each Council agency has been asked to prepare this information ahead of time, as it relates to abbreviated reviews or authorizations, and send it to the Executive Director (or provide a link to such information, if it is already publicly available). The Executive Director will compile this information and make it known to all Council agencies. When the facilitating agency or lead agency is gathering the requested information from the relevant agencies, or coordinating the CPP, such agency may consult this compilation and include the information for agencies with only an abbreviated review or authorization without having to coordinate directly with that agency.

C. Initiation

4.4. How is the FAST-41 process initiated?

Project sponsors of potential covered projects may submit Initiation Notices to apply for inclusion as a covered project under the FAST-41 process. Participation in FAST-41 is voluntary for new projects.[111] If an agency receives an application for an authorization or environmental review for a project that could potentially be a covered project, OMB and CEQ strongly request that the agency notify project sponsors that the project may qualify as a covered project under FAST-41. The process for doing so is described in Section 4.11.

If a project sponsor believes the project meets the definition of a "covered" project (either the objective or discretionary standard as described in Section 3.1) and seeks to initiate the FAST-41 process, the project sponsor should submit an Initiation Notice to the Executive Director and the appropriate facilitating

[111] If a new project meets the definition of a FAST-41 "covered project," but the project sponsor never submits an Initiation Notice, FAST-41 would not apply to that project.

agency.[112] See Appendix D for the Executive Director's contact information. A list of the designated facilitating agencies for each project type can be found in Section 3.3 and is also posted on the Permitting Dashboard.

The Initiation Notice should include specific information about the project that includes the project sponsor's assessment of how the project meets the definition of covered project. (See Section 4.5 for guidance on required content of the Initiation Notice.)

Upon receipt, the facilitating agency (or lead agency, as appropriate) is required to determine whether the information contained in the Initiation Notice is complete[113] and whether the project meets the definition of a covered project.[114] The facilitating agency should review the Initiation Notice in coordination with other potentially affected agencies, or, at a minimum, notify other potentially affected agencies of its intended decision. The facilitating agency may also request assistance from the Executive Director in making such a decision.

The Executive Director must post the project to the Permitting Dashboard no later than 14 days after receipt of a complete notice, unless it is determined that the project is not a covered project.[115] (See Section 4.8.) Therefore, the facilitating agency (or lead agency, as appropriate) should make its determinations as soon as possible after receipt of the Initiation Notice (preferably within 7 days, although not required) to allow sufficient time for the Executive Director to make the required project entry. The facilitating agency should notify the Executive Director of its decision by email. Once a project is posted on the Dashboard, the Executive Director should notify all agencies known to have an environmental review or authorization related to the project.

Acceptance by the facilitating agency of the project as a covered project and the Executive Director's subsequent posting of the project entry on the Dashboard begins the FAST-41 process for the project. If, after the project is posted on the Permitting Dashboard, the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should not be a covered project, the project's inclusion on the Permitting Dashboard will be reconsidered.

4.5. What must the FAST-41 Initiation Notice contain?

Each Initiation Notice must be entitled, "FAST-41 Initiation Notice," and, according to FAST-41, must include the following information:

- A statement of the purposes and objectives of the proposed project;
- A concise description, including the general location of the proposed project and a summary of geospatial information, if available, illustrating the project area and the locations, if any, of environmental, cultural, and historic resources;
- A statement regarding the technical and financial ability of the project sponsor to construct the proposed project;

[112] 42 U.S.C. 4370m-2(a)(1)(A). If, at the time of submission of the Initiation Notice, the Executive Director has not designated a facilitating agency for the type of project being proposed, the agency that receives the Initiation Notice shall be designated as the facilitating agency. 42 U.S.C. § 4370m-2(a)(1)(B).
[113] If the agency is not in a position to provide the necessary evaluation, the agency may send the request to the Executive Director for assistance in determining completeness.
[114] 42 U.S.C. §§ 4370m-2(b)(2)(A)(ii) and 4370m-2(b)(2)(B). Also see 42 U.S.C. § 4370m(6) for definition of covered project.
[115] 42 U.S.C. § 4370m-2(b)(2)(A)(ii).

- A statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and
- An assessment that the proposed project meets the definition of a covered project and a statement of reasons supporting the assessment.[116]

As part of the above FAST-41 requirements, the Initiation Notice must include a statement indicating whether the project is likely to require a total investment greater than $200 million.

4.6. What happens if the facilitating agency determines that the information submitted is incomplete?

The contents of the Initiation Notice as described in Section 4.5 must include sufficiently-detailed information for the facilitating agency to determine whether the project is a covered project and which agencies would need to be invited as FAST-41 cooperating or participating agencies. If the facilitating agency determines that the information submitted is incomplete, then the 14-day deadline for the Executive Director's posting of the project entry will not commence. The facilitating agency should conduct a high-level review of the project sponsor's Initiation Notice within 7 calendar days of receipt, in order to identify any deficiency(ies) that hinder the facilitating agency's ability to determine whether the project is a covered project.[117] The facilitating agency should clearly communicate any such deficiency(ies) to the project sponsor and Executive Director, and allow the project sponsor to address the deficiency within a reasonable time.[118] Once the facilitating or lead agency, as appropriate, has sufficient information (i.e., a complete Initiation Notice), it will determine whether the project is a covered project. The agency's review of the Initiation Notice is separate and distinct from the agency's review of the project sponsor's application for an authorization, and the acceptance of an Initiation Notice does not guarantee that the application will be accepted for review. Furthermore, the ongoing review of the Initiation Notice does not prohibit the lead, FAST-41 cooperating, or participating agencies from working on the environmental review and authorization process under their agency procedures. Specifically, an agency may begin its own separate review process if it receives an application or request to initiate consultation that is complete for purposes of that process, even if the application or request is incomplete for purposes of the coordinated review process under FAST-41.

<u>Alternative Procedures</u>

Upon receiving a complete Initiation Notice, most agencies will be able to conduct an initial high-level review of the Initiation Notice as described above and make an initial determination that the project is or is not a covered project.[119] However, some agencies have a very specific statutory or regulatory review period during which the agency reviews the project to determine whether it is a legitimate project (e.g., NRC's 60-day regulatory review period). This review period is the agency's required procedure for determining whether a project is subject to NEPA. For NEPA purposes, if a project is not sufficiently formed or planned, it is not yet subject to NEPA. Under FAST-41, if a project is not subject to NEPA, it cannot be a covered project.

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[116] See 42 U.S.C. § 4370m-2(a)(1)(C).

[117] FAST-41 does not specifically state a deadline by which the facilitating agency must notify the project sponsor of any missing information. However, in order to provide the Executive Director enough time to post any new covered project within 14 days of receiving a complete Initiation Notice, the facilitating agency should make the determination as quickly as possible.

[118] FAST-41 does not specifically state a deadline by which information must be submitted. Agencies should determine the appropriate amount of time based on the complexity and availability of the missing information.

[119] If the agencies begin coordination and circumstances change such that the project no longer meets the definition of covered projects, then the agencies may change the determination and the project would no longer be covered.

Therefore, in these limited circumstances, the 14-day FAST-41 period would be replaced by the agency's review period. At the end of the statutory or regulatory review period, the agency would determine whether the project was a covered project, and then the FAST-41 procedures (such as the 60-day CPP period) would apply.

This would only apply in instances where an agency has a set statutory or regulatory period during which they determine whether a project is legitimate (i.e., where the agency has not yet determined if a project is ripe for NEPA review). It would not apply to general application procedures. Similarly, this would only apply in instances where the agency cannot determine whether a project is a "covered project" during the 14-day period between the Initiation Notice and when the Executive Director must post the project to the Dashboard because of a specific conflicting statutory or regulatory process.

4.7. Are financial or technical feasibility concerns grounds for determining that a project is not a covered project?

Yes. A facilitating or lead agency may determine that a project is not yet ready for consideration due to financial or technical concerns (for example, engineering feasibility or project eligibility). In those situations, the project may not yet be a "proposal" for NEPA purposes and would not yet be subject to NEPA.[120] Because under the objective and discretionary standards for the definition of a covered project, all covered projects must be subject to NEPA, such a project would not be a covered project.[121]

4.8. What happens if the facilitating agency or lead agency determines the project should not be considered a covered project?

Submission of a complete Initiation Notice does not automatically guarantee that a project will be a covered project. The facilitating or lead agency, as appropriate, may initially determine that the project is not a covered project.[122] In this instance, the project sponsor may submit a further written explanation to the facilitating agency and the Executive Director as to why the project should be considered a covered project. The written explanation must be submitted no later than 14 days after the facilitating or lead agency's determination is communicated to the project sponsor.[123]

The Executive Director will make a final and conclusive determination[124] on the designation within 14 days of receipt of the written explanation from the project sponsor,[125] and will notify the project sponsor of the determination in writing. OMB and CEQ suggest that the Executive Director coordinate with the appropriate facilitating agency or lead agency prior to rendering his or her determination. If the Executive Director determines that the project is a covered project, then, within 14 days, s/he will create a project entry for posting on the Permitting Dashboard.[126]

4.9. What happens if the facilitating agency and lead agency disagree on whether a project is a covered project?

It is possible for lead agencies and facilitating agencies to disagree with each other on the determination of a project as a covered project. In these instances, the Executive Director in consultation with the Council will be responsible for resolving the dispute.

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[120] 40 C.F.R. § 1508.23.
[121] 42 U.S.C. § 4370m(6)(A)(i)(I) and § 4370m(6)(A)(ii).
[122] 42 U.S.C. §§ 4370m-2(b)(2)(A)(ii) and 4370m-2(b)(2)(B).
[123] 42 U.S.C. § 4370m-2(b)(2)(B).
[124] The Executive Director should make this determination after consulting with the relevant Council agencies.
[125] 42 U.S.C. § 4370m-2(b)(2)(C).
[126] 42 U.S.C. § 4370m-2(b)(2)(C)(ii).

4.10. What happens if the Executive Director determines that the project should not be a covered project even after a project sponsor has provided further explanation as to why a project should be covered?

If the Executive Director determines that the project is not a covered project, then the determination is "final and conclusive,"[127] and there is no opportunity for appeal.

4.11. What happens if a project sponsor does not submit an Initiation Notice for a project that looks likely to meet the objective standard for being a covered project? Is the lead agency required to take any action?

FAST-41 does not require the facilitating agency or lead agency to take *any* action if a project sponsor does not voluntarily submit an Initiation Notice to initiate the process. However, when a project looks likely to meet the objective standard for a covered project, OMB and CEQ strongly suggest that the agency that receives the project sponsor's application for agency action requiring environmental review or for Federal authorizations contact the project sponsor to ensure that the project sponsor is aware of the FAST-41 process, the coordination, tracking, costs, and other procedures the statute provides, and that the project is one that could qualify for FAST-41. Project sponsors should be made aware of the FAST-41 process as early as practicable. The agency's communication should explain the potential benefits and costs of having a project covered under FAST-41 (Section 3.8), requirements (including fees, if applicable), and instructions for filing an Initiation Notice. Appendix C contains template text that agencies may use to send to the project sponsor. This text can be incorporated into a letter or email to project sponsors, an automatic docket notice (if applicable), or auto-reply that would normally be sent to sponsors confirming receipt of an application. Absent any project sponsor action, an agency should proceed under its usual regulatory processes.

4.12. What actions must be taken after the project is determined to be a covered project?

Not later than 14 days after the date on which the facilitating or lead agency and Executive Director receive a completed Initiation Notice from the project sponsor, or after the Executive Director has made a final and conclusive determination that the project is a covered project, the Executive Director is required to create a specific entry on the Permitting Dashboard for the covered project.[128] This entry will take the form of a "project page" that is searchable and contains general information about the covered project.[129] The Executive Director will manage the technical aspects of the Permitting Dashboard so that project pages can be created. However, the facilitating or lead agency, as appropriate, should upload the necessary project information onto the Permitting Dashboard.[130] See Section 5.2 for more information about the project specific information.

4.13. What actions are required after a project is added to the Permitting Dashboard?

The posting of the covered project on the Permitting Dashboard triggers a series of actions (with statutory timeframes) for the coordination of the environmental review and authorization of the covered project. In particular, the facilitating agency or lead agency as appropriate, is required, no later than:

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[127] 42 U.S.C. § 4370m-2(b)(2)(C)(i).
[128] 42 U.S.C. § 4370m-2(b)(2)(A)(ii). The Executive Director should also notify all agencies known to have an environmental review or authorization related to the project.
[129] 42 U.S.C. § 4370m-2(b)(1)(B).
[130] 42 U.S.C. § 4370m-2(b)(3).

- 45 days, to:
    - "identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project"[131];
    - invite all relevant Federal agencies to be cooperating or participating agencies, as appropriate[132]; and
- 60 days, to develop a CPP.[133]

Subsection 4(D) below provides guidance on each of these required actions.

D. Interagency Coordination

4.14. What actions must agencies take after the Executive Director creates the entry for a covered project on the Permitting Dashboard?

Not later than 45 days after the date on which the Executive Director creates a project page for a covered project on the Permitting Dashboard, the facilitating agency or lead agency, as applicable, must "identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization or other responsibilities with respect to the proposed project," and "invite all Federal agencies…to become a *participating* agency or a *cooperating* agency, as appropriate, in the environmental review and authorization management process" for the covered project.[134] These FAST-41 requirements do not apply to non-Federal agencies or government entities. However, as it is a best practice to coordinate with such entities to the extent practicable, if the facilitating or lead agency plans to inform a state that the state may voluntarily choose to participate and have the requirements under FAST-41 apply to the state or an authorization issued by the state, the facilitating or lead agency is encouraged to do so as soon as possible, in order to provide enough time to create a comprehensive CPP with all relevant parties.[135] See Section 4.21 for a discussion of adding or deleting a cooperating or participating agency after the initial list of such agencies has been determined.

The facilitating agency or lead agency, as applicable, should use the best available data, including geographic information systems (GIS) tools, the Federal Environmental Review and Authorization and Inventory, existing project data, as well as known agency environmental review and authorization responsibilities, to identify and invite these agencies.

4.15. Which agencies must be invited as FAST-41 cooperating agencies?

The facilitating or lead agency shall invite all Federal agencies "likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project" to become cooperating or participating agencies, as appropriate.[136] As described in the CEQ regulations, a cooperating agency is a Federal agency with jurisdiction under law or special expertise,[137] though states, local agencies, or tribes may by agreement with the lead agency become a cooperating agency, as well.[138]

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[131] 42 U.S.C. § 4370m-2(a)(2)(A)(i).
[132] 42 U.S.C. § 4370m-2(a)(2)(A)(ii).
[133] 42 U.S.C. § 4370m-2(c)(1)(A).
[134] 42 U.S.C. § 4370m-2(a)(2)(A)(i)-(ii) (emphasis added).
[135] Any such outreach should make clear that a non-Federal agency's participation is voluntary.
[136] 42 U.S.C. § 4370m-2(a)(2)(A)(ii).
[137] *See* 40 C.F.R. § 1501.6.
[138] 40 C.F.R. § 1508.5.

Under FAST-41, an invited Federal agency "shall be designated as a participating or cooperating agency for a covered project, unless the agency informs the facilitating or lead agency, as applicable, in writing before the deadline…that the agency—

(i) has no jurisdiction or authority with respect to the proposed project; or
(ii) does not intend to exercise authority related to, or submit comments on, the proposed project."[139]

FAST-41 cooperating agencies have a higher degree of authority, responsibility, and involvement in the FAST-41 process than participating agencies. For this reason, facilitating or lead agencies will need to clearly state what role they are asking an agency to accept.

An agency may refer to CEQ regulations and guidance for assistance on FAST-41 cooperating agency designations due to special expertise. If a Federal agency is a NEPA cooperating agency, then the agency may elect to be designated as either a FAST-41 cooperating agency or a participating agency. If the Federal agency declines becoming a cooperating agency under CEQ's regulations because it does not have jurisdiction by law or special expertise, then the agency can decline to become a FAST-41 cooperating or participating agency if it informs the facilitating or lead agency in writing (e-mail is sufficient) that (1) it has no jurisdiction or authority with respect to the proposed project, and (2) it does not intend to exercise authority related to, or submit comments on, the proposed project. It may also reject being a FAST-41 cooperating agency if it has no information to suggest that it could have jurisdiction or special expertise. If/when such information becomes available, the agency can become a FAST-41 cooperating agency at that time.

On request and a showing of changed circumstances, the Executive Director may designate an agency that had opted out previously to be a FAST-41 participating or cooperating agency, as appropriate.[140] This may occur when it is not evident at the beginning of the process that the Federal agency would have any involvement, or when a change in the project's scope warrants an authorization that was not previously needed.

Regardless of an agency's status as a FAST-41 cooperating or participating agency, an agency is not precluded from becoming a NEPA cooperating agency or commenting on EISs. For example, if a Federal agency has jurisdiction by law, then that agency *must* be designated as a NEPA cooperating agency under CEQ's regulations.[141] A Federal agency with special expertise *may* be designated as a NEPA cooperating agency under CEQ's regulations.[142] Additionally, a Federal agency with jurisdiction by law or special expertise and agencies that are authorized to develop and enforce environmental standards are still required to comment on statements within their jurisdiction, expertise, or authority.[143]

Additional guidance on factors to consider in the designation of cooperating agencies under CEQ regulations may be found in Attachment 1 of the Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (Jan. 30, 2002) *available* at https://ceq.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html. These factors could be helpful in determining whether to invite an agency to become a FAST-41 cooperating agency.

See Sections 2.13 and 2.14, for further discussion of cooperating and participating agencies.

[139] 42 U.S.C. § 4370m-2(a)(3)(A).
[140] 42 U.S.C. § 4370m-2(a)(3)(B).
[141] 40 C.F.R. § 1501.6.
[142] 40 C.F.R. § 1501.6.
[143] 40 C.F.R. § 1503.2.

4.16. What process should the facilitating or lead agency follow to invite the participating and FAST-41 cooperating agencies?

It is recommended that the invitation from the facilitating agency or lead agency be by e-mail or other electronic means for faster delivery. The invitation should be sent to the appropriate contact(s)[144] at each agency (i.e. if an agency may be have several distinct offices involved then the invitation should be sent to the appropriate individuals in each office). The Executive Director's office, OMB, and CEQ will maintain and circulate to Council agencies each quarter an updated agency contact list. The invitation must include a deadline for a response to be submitted to the facilitating or lead agency, as applicable.[145] It is strongly recommended that the response deadline be no more than 7 days after the invitation is received. Although the facilitating or lead agency has 45 days by which to invite the potential FAST-41 cooperating or participating agencies, it is recommended that this be done as soon as possible (preferably 7 days) after posting the project page on the Permitting Dashboard to allow sufficient time for the agencies to respond to the invitation and for all parties to begin the coordination necessary to develop the Coordinated Project Plan, including the permitting timetables, both of which are due 60 days after the project page is posted.[146] In other words, if the facilitating agency waited until Day 45 to invite the FAST-41 cooperating and participating agencies, that would leave agencies with only 15 days to respond, coordinate, and develop a Coordinated Project Plan.

4.17. What should be included in the invitation sent to potential FAST-41 cooperating or participating agencies?

The invitation should include a basic project description and map of the project location. Although not required, the invitation should be tracked to ensure delivery (e.g., delivery confirmation, follow-up calls, read email receipt). As with all correspondence, a copy should be retained in the project file. The project description may be included in scoping materials enclosed with the letter, or a more detailed project description and scoping materials may be provided on the project website with a web address provided in the letter. The invitation should clearly request the involvement of the agency as a FAST-41 cooperating or participating agency and should state the reasons why the project may be of interest to the invited agency.

A facilitating or lead agency, as appropriate, should bear in mind that invited agencies may have obligations under several authorities and, as such, several points of contact. The invitation should identify the lead agencies and describe the roles and responsibilities of a FAST-41 cooperating and/or participating agency under FAST-41. The invitation must specify a deadline for responding to the invitation. As discussed in the previous section, the deadline should give the invited agency sufficient time to respond, but should allow enough time for the facilitating, lead, cooperating, and participating agencies to coordinate and establish the CPP before the 60-day deadline (See Sections 4.22 through 4.36 for information about the CPP).

4.18. What is involved in accepting or declining an invitation to be a cooperating or participating agency?

A Federal agency invited to participate will be designated as a FAST-41 cooperating or participating agency unless the agency declines the invitation by the specified deadline.[147] If a Federal agency chooses

[144] The Executive Director will coordinate with all Council agencies to maintain a current list of appropriate contacts from each agency.
[145] 42 U.S.C. § 4370m-2(a)(2)(B).
[146] 42 U.S.C. § 4370m-2(c)(1)(A).
[147] 42 U.S.C. § 4370m-2(a)(3)(A).

to decline, the agency must do so in writing (electronic or hardcopy), indicating that the agency (1) has no jurisdiction or authority with respect to the proposed project, or (2) does not intend to exercise authority related to, or submit comments on, the proposed project.[148] If the Federal agency's response does not state the agency's position in these terms, then the agency will be treated as a FAST-41 cooperating or participating agency, as appropriate. See Sections 4.20 and 4.21 for additional information. Note that an agency with multiple potential authorities may decline to participate under one authority but accept participation under another authority. Each cooperating/participating agency should specify under which authorities it is accepting or declining so lead agencies have a clear record of which authorizations and environmental reviews are required for the proposed project.

4.19. Can a state, local, or tribal agency become a FAST-41 cooperating or participating agency?

Yes. FAST-41 makes clear that a state may voluntarily become a cooperating or participating agency. FAST-41 provides a state with the opportunity to participate in the environmental review and authorization process under FAST-41 if the Federal environmental review is being implemented within the boundaries of that state and have the requirements under FAST-41 apply to the state or an authorization issued by the state.[149] In discussing cooperation[150] the statute makes clear that a state, consistent with state law, "may choose" to participate in the environmental review and authorization process of the subsection. In light of the direction that the state alone "may choose," the statute then directs, to the maximum extent practicable under applicable law, the facilitating or lead agency, as applicable, to coordinate with state, local and tribal agencies.[151] If a coordination plan is created between the facilitating or lead agency, as applicable, and any state, local or tribal agency, the plan shall, to the maximum extent possible be included in an MOU. Prior to a state entering into an MOU to voluntarily participate in the FAST-41 process as a cooperating agency, the lead agency should explain all the provisions of the MOU. This includes the terms of the MOU, which should also describe the reason for cooperating agency status, identify the specific portions of the covered project and associated timetable that affect the cooperating state, local or tribal agency, and make the agency subject to all requirements of FAST-41 pursuant to 42 U.S.C. § 4370m-2(c)(3)(D).

If the state chooses to participate, consistent with State law, then it can subject to the FAST-41 process all state agencies that 1) have jurisdiction over the covered project, 2) are required to conduct or issue a review, analysis, opinion, or statement for the covered project, or 3) are required to make a determination on issuing a permit, license, or other approval or decision for the covered project. However, such participation is voluntary for the state.

A state, local, or tribal agency can still be a cooperating agency under NEPA for covered projects without being a cooperating agency subject to FAST-41 requirements.

4.20. What if a facilitating or lead agency needs to be changed after initial determination?

"On the request of a participating agency or project sponsor, the Executive Director may designate a different agency as the facilitating or lead agency, as applicable, for a covered project, if the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a

[148] 42 U.S.C. § 4370m-2(a)(3)(A).
[149] 42 U.S.C. § 4370m-2(c)(3)(A).
[150] 42 U.S.C. § 4307m-2(c)(3)(A).
[151] 42 U.S.C. § 4370m-2(c)(3)(B).

covered project that indicates that the project should be placed in a different category under section [4370m-1]](c)(1)(B)."[152]

For facilitating agencies, the current list of facilitating agencies for each project type can be found in Section 3.3 and is listed on the Permitting Dashboard. If new information is identified that would cause the facilitating agency to change for a specific project, the facilitating agency has two options: 1) it may raise the issue to the Executive Director, who would facilitate a discussion with other Council agencies to determine the appropriate facilitating agency, or 2) it could identify the appropriate lead agency for the project and, if that agency agrees to the designation, transfer the facilitating agency responsibilities to the lead agency.

For lead agencies, the facilitating agency would consult with other agencies with potential jurisdiction or expertise related to the project to determine the appropriate lead agency during or before the early coordination meetings for developing a CPP. An agency may look to CEQ regulations and guidance for assistance on FAST-41 lead agency designations.[153] If it becomes appropriate to change the lead agency, agencies should again meet to discuss the appropriate replacement and may look to the process and consider the factors outlined in the CEQ regulations for additional guidance on determining the next lead agency.

In the event of a dispute over designation of a facilitating or lead agency for a particular covered project, "[t]he Chairman of the Council on Environmental Quality shall resolve" it.[154]

4.21. What if a cooperating or participating agency needs to be added or deleted after the initial list of such agencies has been determined?

All reasonable attempts should be made to identify all Federal and non-Federal[155] agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project early in the process, before work on the CPP has begun. However, there may be changes to, or new information about, the covered project that result in a new agency having an action applicable to a covered project, or an existing FAST-41 cooperating or participating agency no longer having jurisdiction over a project. Similarly, other unforeseeable circumstances may arise that would require such a change. In such cases, as soon as it becomes apparent that a change is necessary, the relevant agency should contact the lead agency to work out the best path for joining or exiting the FAST-41 coordination for that project. Similarly, if the lead agency becomes aware of a change in the project that may implicate the authorities of an agency not yet involved in a project, the lead agency should reach out to that new agency, following the invitation procedures described in Sections 4.16 and 4.17.

E. Coordinated Project Plans (CPPs) and Permitting Timetables

4.22. What is a Coordinated Project Plan or CPP?

[152] 42 U.S.C. § 4370m-2(a)(6)(A). Although not specified in FAST-41, the Executive Director should make this designation after consulting with the relevant Council agencies.
[153] 40 C.F.R. § 1501.5.
[154] 42 U.S.C. § 4370m-2(a)(6)(B).
[155] A state only becomes a cooperating or participating agency if the state voluntarily chooses to become one, and the state's official participation should be memorialized in an MOU or other agreement.

A CPP is a "concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project."[156] Where appropriate, the CPP may be incorporated into an MOU between the relevant agencies.[157] While the CPP is not required to be published publicly on the Permitting Dashboard, it must be created amongst the applicable agencies. The permitting timetable, as described below, must be published on the Permitting Dashboard along with the status of compliance with each milestone, within 60 days of when the project page is created on the Permitting Dashboard and based on the information available at that time.[158] The CPP and permitting timetable should be updated at least quarterly by the facilitating or lead agency, as appropriate.[159]

4.23. What information must a CPP contain?

According to FAST-41, the CPP must "include the following information and be updated by the facilitating or lead agency, as applicable, at least once per quarter:

(i) A list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project.[160]

(ii) A permitting timetable . . . setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable State permits, reviews and approvals must be made. [***This is the only portion of the CPP that must be publicly tracked***; See Sections 4.22-4.34.]

(iii) A discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known.

(iv) Plans and a schedule for public and tribal outreach and coordination,[161] to the extent required by applicable law."[162]

In drafting the CPP, agencies should focus on those environmental reviews and authorizations that are complex, require extensive coordination, and/or might significantly impact the project review schedule. The early consultation process (see Subsection 4(B) above) is an ideal tool to identify which of those environmental reviews and authorizations would fall within this category. The CPP should also take into consideration existing MOUs and other agreements between agencies designed to improve coordination during the Federal environmental review and authorization process.

Note that, based on the degree and nature of the information provided in the FAST-41 Initiation Notice, it may not be possible to include detailed information on all required components of the CPP in the initial iteration of the CPP (i.e., the CPP prepared within the 60-day deadline). However, the statute expressly provides for the CPP to be updated quarterly, and the agencies should thus revise the CPP to provide more specific information and milestones over time. The consultation and concurrence requirements that apply to the CPP at the outset also apply to the updates of the CPP. Note, the concurrence is not required to shorten milestone timelines but, rather, only to lengthen them.

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[156] 42 U.S.C. § 4370m-2(c)(1)(A).
[157] 42 U.S.C. § 4370m-2(c)(1)(C).
[158] 42 U.S.C. § 4370m-2(b)(4).
[159] 42 U.S.C. § 4370m-2(c)(1)(B).
[160] This requirement includes any agency that has only an abbreviated review or authorization as its Federal action associated with the project. But see Section 4.25 below for the requirements applicable to such agencies.
[161] This outreach should also include discussions regarding the range of reasonable alternatives discussed below in Section 4.40.
[162] 42 U.S.C. § 4370m-2(c)(1)(B).

In addition, the CPP and permitting timetable requirements may not be practical for projects that were already far along in the environmental review and authorization process when FAST-41 went into effect. Section 4.47 of this guidance discusses how the CPP requirements would apply to these existing or "pending" covered projects.

Finally, 42 U.S.C. § 4370m-2(c)(3)(B) directs Federal agencies to coordinate with states "[t]o the maximum extent practicable under applicable law." Even if a state does not opt in, the Federal agency still has the responsibility to try to coordinate with the state agencies. If the state is not cooperative or forthcoming with milestone information, then the Federal agency may determine it is not practicable to add state milestones to the permitting timetable. If the state agrees to provide milestones but does not opt-in to FAST-41, these milestones may be added to the permitting timetable only to the maximum extent practicable, and, it should be noted in the permitting timetable that the state permitting deadlines are not subject to FAST-41. For example, the permitting timetable should note "[State agency] has not chosen to participate in the FAST-41 process. This authorization is listed for information purposes only, and does not transfer any responsibility to the [state agency] to conform to the permitting timetable."

4.24. Which environmental reviews and authorizations must be included and reported in the covered project's permitting timetable?

FAST-41 requires that a covered project's permitting timetable include "all environmental reviews and authorizations."[163] This includes any "abbreviated" reviews or authorizations. However, the abbreviated review and authorization information required for the permitting timetable will be minimal, as described in Section 4.25 below. The statute also requires the Executive Director to identify the types of environmental reviews and authorizations most commonly involved for each category/type of project.[164] The Federal Environmental Review and Authorization Inventory[165] has been established to meet these requirements.

The inventory contains a list of Federal licenses, permits, approvals, findings, determinations, or other administrative decisions issued by a Federal agency that must be considered for inclusion in the permitting timetable for a covered project. Additional authorizations and environmental reviews may be added to the inventory in the future, as they are identified.

When determining which environmental reviews or authorizations must be included in the permitting timetable for each covered project, the agencies should begin by consulting the Federal Environmental Review and Authorization Inventory, available on the Permitting Dashboard, for a list of potential environmental reviews or authorizations that are likely to apply to that type of project. The Permitting Dashboard also contains information about which agency is responsible for which environmental review(s) or authorization(s).

4.25. Should the CPP, including the project's permitting timetable, include abbreviated reviews and authorizations?

Yes. As noted above, the CPP must contain a "list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project."[166] This requirement includes any agency that has only an abbreviated environmental review or authorization as its Federal action associated with the covered project.

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[163] 42 U.S.C. § 4370m-2(c)(2)(A).
[164] 42 U.S.C. § 4370m-1(c)(1)(A)(ii)(II).
[165] Available at https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory.
[166] 42 U.S.C. § 4370m-2(c)(1)(B)(i).

Similarly, a project's permitting timetable is required to include any "intermediate [if applicable] and final completion dates for action by each participating agency on any Federal environmental review or authorization required for the project."[167] If a project is listed on the Dashboard, then its abbreviated reviews and/or authorizations would be listed as well.

However, if a cooperating or participating Federal agency involved in a project has an abbreviated environmental review or authorization, the responsible agency should notify the facilitating or lead agency, as appropriate, as early as possible that its environmental review or authorization for the project is abbreviated.

Thereafter, that cooperating/participating agency's involvement in subsequent FAST-41 coordination and reporting requirements may be reduced, as appropriate, to reflect its limited involvement. Specifically, FAST-41 requires all participating and FAST-41 cooperating agencies to participate in the development of the CPP and to notify the lead agency of the intermediate and final completion dates associated with its abbreviated environmental review or authorization.[168] An agency with only an abbreviated environmental review or authorization can meet this requirement by participating in the regular FAST-41 coordination procedures with the other agencies, or by providing the facilitating or lead agency with a conservative estimate for intermediate (if applicable) and final completion dates associated with each of its abbreviated environmental reviews and authorizations.[169] For example, an agency could state that a particular abbreviated authorization typically takes 1 month to begin review after receiving the application and 4 months to complete the process. Then, once the agency notifies the facilitating or lead agency that it has an abbreviated environmental review or authorization associated with a particular project, the lead agency can input those estimated intermediate and final completion dates into the CPP and permitting timetable, without further consultation with the agency that has the abbreviated environmental review or authorization.

However, the Executive Director has a duty to report the status of compliance for each permitting timetable on the Permitting Dashboard.[170] Therefore, if the agency with the abbreviated environmental review or authorization is at significant risk of missing the estimated deadline for an interim or final completion date, the agency should notify the Executive Director as soon as practicable. The Executive Director will assume the agencies with abbreviated environmental reviews and authorizations are in compliance unless notified otherwise. Similarly, if an agency identifies any issues within its control and responsibility that could prevent or substantially delay the estimated timeline such that an authorization or environmental review is no longer "abbreviated," the agency must notify the lead agency and participate in the coordination procedures like all other agencies.[171]

4.26. Are Federal financial reviews and milestones required to be included in the permitting timetable and publicly tracked?

No. Only environmental reviews and authorizations (as defined by FAST-41) should be included in the CPP and permitting timetable and tracked on the Permitting Dashboard. As noted in Section 4.14, the

[167] 42 U.S.C. § 4370m-2(c)(2)(A).
[168] 42 U.S.C. § 4370m-2(c)(1)(A) and § 4370m-2(c)(2)(A).
[169] Each Council agency has been asked to provide instructions ahead of time, as to how it wants the lead agency to treat its abbreviated authorizations and environmental reviews. When the lead agency sends out the invitation for cooperating and participating agencies, the invited agency can respond by directing the lead agency to use the estimated time previously provided, or it can choose to participate in the coordination procedures with the other agencies.
[170] 42 U.S.C. § 4370m-2(b)(4)(B).
[171] 42 U.S.C. § 4370m-4(e)(3).

facilitating agency or lead agency shall "identify all Federal and non-Federal agencies and governmental entities likely to have financing . . . responsibilities with respect to the proposed project.[172] However, only Federal agencies must be invited to become FAST-41 cooperating or participating agencies, as appropriate.

In order to maintain the confidentiality, independence, and neutrality of the financial review process, such actions will not be tracked on the Permitting Dashboard. However, as described in Section 4.28, project review teams should account for the extent to which their respective environmental reviews or authorizations are dependent upon a financing decision to promote predictability and transparency within the "project review team."[173] This can be accomplished by including a description of the financial decision and general process in the CPP (the CPP will not be publicly posted on the Dashboard, except for the required project milestones).

4.27. What intermediate and final completion dates should be included in the permitting timetable?

Appendix B of this guidance contains a list of the intermediate and final completion dates that should be identified and published on the Permitting Dashboard, as appropriate,[174] in the project's permitting timetable for each applicable environmental review or authorization. Project review teams are encouraged to track additional milestones in the permitting timetable and on the Permitting Dashboard, as appropriate. For example, a milestone is not required to be tracked if it is not associated with an environmental review or authorization included on the Environmental Review and Authorization Inventory or list of abbreviated environmental reviews and authorizations, or is in addition to the interim and final completion dates required to be tracked for an environmental review or authorization. Such milestones can be added to the permitting timetable, but the project review team may decide whether to track each such milestone publicly. For each milestone added to the permitting timetable on the Permitting Dashboard, the agency inputting the data has the option of "publishing" it on public-facing site, or keeping it private. This feature allows agencies to use the Permitting Dashboard as a project management tool to track internal deadlines such as interagency meetings or review periods for draft documents. If one of these additional or "optional" milestones is not met, the agencies will not be required to follow FAST-41 procedures for modification of a permitting timetable.

4.28. What considerations should be taken into account in establishing a project's permitting timetable?

Once the Executive Director develops the recommended performance schedules established under 42 U.S.C. § 4370m-1(c)(1)(C), project review teams will be required to use the recommended performance schedules as a baseline for setting project-specific permitting timetables, but may vary the permitting timetable based on relevant factors specified in the legislation.[175]

The facilitating or lead agency, as appropriate, should consult with the project sponsor and all FAST-41 cooperating and participating agencies when establishing the project-specific permitting timetable, as

[172] 42 U.S.C. § 4370m-2(a)(2)(A).
[173] For purposes of this guidance, "project review team" means the team of agency staff from the lead, FAST-41 cooperating, and participating agencies that are coordinating the authorizations and environmental reviews for the project.
[174] FERC's 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.
[175] 42 U.S.C. § 4370m-1(c)(1)(C) and § 4370m-2(c)(2)(B).

applicable and consistent with existing law and regulations, and may vary the timetable based on relevant factors, including:[176]

- "the size and complexity of the covered project";
- "the resources available to each participating agency";
- "the regional or national economic significance of the project";
- "the sensitivity of the natural or historic resources that may be affected by the project";
- "the financing plan for the project"; and
- "the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law."[177]

The project's permitting timetable *must* account for intermediate (if applicable) and final completion dates for any environmental review or authorization required for the project.[178] The timetable must also incorporate specified deadlines required by other statutes, regulations, or procedures. The specificity of the milestones could increase over time as the specificity of the information about the project becomes available and can be incorporated into quarterly updates to the CPP.

The permitting timetable *should* provide a complete picture of the regulatory requirements for a project, and give specific focus to those environmental reviews and authorizations that are complex, require extensive coordination, and/or might significantly impact the overall project review schedule.

The permitting timetable *shall* be consistent with statutory, regulatory, or procedural timelines for review[179] and also account for project specific information that may affect those timelines. For example, if there are timelines or deadlines for environmental review or authorizations set out in other laws or regulations, then the permitting timetable should incorporate those other timelines but should still reflect any flexibility in those other laws or regulations taken together with the facts and circumstances of the covered project. Additionally, the timetable *should* include concurrent rather than sequential reviews whenever possible.[180]

The facilitating or lead agency *may* consider additional actions or factors when developing the permitting timetable. Because the actions or factors listed immediately below are not required to be included in the permitting timetable, the status of compliance with such actions or factors do not need to be published on the Permitting Dashboard:

- Information required from the project sponsor at each stage of the process;
- Opportunities for agency review of draft applications and other preliminary information, as appropriate, to help inform agency staff and ensure the project sponsor submits a comprehensive and complete application;
    - Agencies should agree on what constitutes an application submission for agency consideration (as opposed to a draft application) and when it should be submitted to be consistent with applicable laws, regulations, and procedures. The CPP should include a description of the general submission process and requirements.

[176] Until the recommended performance schedules are developed, agencies should use this set of factors in determining each project's permitting timetable.
[177] 42 U.S.C. § 4370m-2(c)(2)(B).
[178] 42 U.S.C. § 4370m-2(c)(2)(A). See also note 174, *supra*, for exception.
[179] 42 U.S.C. § 4370m-2(c)(2)(E).
[180] The principles, processes, and tools identified in the handbook, 2015 Red Book on *Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects*, also known as the "Red Book," provide a useful resource. Available at https://www.environment.fhwa.dot.gov/strmlng/Redbook_2015.asp. Agencies should also make use of any available permit toolkits developed for the sector to provide consistent and predictable timelines. The Resources and Tools tab on the Dashboard provides links to some such toolkits. More links may be added in the future.

    - It is each agency's responsibility to make the determination of whether an application or request for a permit, license, or other approval is complete for that agency's specific review.
- Rounds of inter-agency document reviews to be conducted;
- To the maximum extent practicable, determinations of any significant decisions that will need to be made during the project development phase, regardless of whether such decisions are made by a Federal agency or are related to an environmental review or authorization under the Act (e.g., a siting decision by a state commission); and
- Project planning and development meetings.

Because the actions or factors listed immediately above are not required to be included in the permitting timetable, the status of compliance with such actions or factors do not need to be published on the Permitting Dashboard.

Alternative Procedures

For many projects, the Initiation Notice is likely to be submitted, and the FAST-41 process may begin, before a complete application is filed. This means that, once a project is deemed a covered project and posted on the Dashboard, the agencies will need to start developing the CPP for that project before they have a complete application. Where practicable, the CPP should include estimated milestones for the project sponsor to develop and submit a complete application for the project. It may be difficult for some agencies to provide estimated dates for environmental reviews and authorizations, when it is unclear how long it will take to have a complete application (since many dates are dependent on the completion of the application). Therefore, for purposes of implementing this guidance, a project's permitting timetable may be officially paused in the event of delays outside of government control. Section 4.33 and other sections also describe how agencies can use the Permitting Dashboard to explain when certain estimated milestone dates are dependent on other actions (such as completion of the application). Furthermore, agencies may add a disclaimer on the project page that explains that the initial permitting timetable reflects the agency's best estimates based on past projects, but is likely to vary widely, depending on how long it takes for the agencies to receive a complete application. The disclaimer should also state that, once the application is complete, the project timetable will be updated with more accurate dates. The agencies can then update the CPP and permitting timetable with more accurate dates during the next quarterly update, as required by the statute.

Agencies should use their best efforts, based on experience and past projects to provide an initial permitting timetable within the 60-day CPP deadline. However, some agencies, such as FERC, have early project review and consultation processes with highly variable timelines lasting from months to years, depending on project type, complexity, and conceptual design phase. In such cases, the agency may be unable to estimate the timing of a complete application with any degree of certainty or accuracy, and therefore may be unable to provide completion dates in the permitting timetable for environmental reviews and authorizations associated with the project. In such cases where the agency is absolutely unable to provide an estimated date for the project's complete application in the initial CPP (because of a very structured and highly varied pre-application process such as FERC's), the agency may paste a table into the text of the project page that lists all the milestones for each environmental review and authorization that are dependent on the complete application, and instead of an estimated date, provide an estimate such as "90 days after complete application." Then, once the application is complete, the applicable agency would use the Dashboard data entry feature to fill in specific dates for all the milestones, based on the date the application is complete.

4.29. How is a permitting timetable finalized?

A permitting timetable should be developed and finalized *in consultation with* each FAST-41 cooperating and participating agency, the project sponsor, and any state in which the project is located, and, subject to the dispute resolution procedures outlined in Section 4.30 below, *with the concurrence (i.e., approval) of* each FAST-41 cooperating agency on those portions of the timetable that affect the cooperating agency.[181] To the extent practicable, consultations with the project sponsor should be undertaken in a manner that is transparent to the public.[182] Note that the requirement to consult with the project sponsor or other agencies does not mean that such entities must give their approvals. The consultation's purpose is for the facilitating or lead agency to obtain necessary information about the project schedule, when certain data is expected to become available, and other information necessary to complete the CPP. See Section 4.30 for the process for resolving disagreements regarding the permitting timetable.

As the permitting timetable is being developed and vetted with the relevant entities, an individual with the Editor permission on the Dashboard should populate information in the Data Entry Application. Once the permitting timetable has been agreed upon by all parties, an Approver should publish the finalized timetable to the public-facing website.

User permission roles are outlined in the Permitting Dashboard Data Entry User Guide.[183] These roles in brief are:

- Reader: Ability to view projects;
- Editor: Ability to view, edit, and create projects; and
- Approver: Ability to view, edit, and create projects as well as publish projects for public view. Note that Agency and/or Project Dashboard Administrators [see Section 2.6 for details] will automatically be granted the Approver permission level.

4.30. What if agencies cannot reach agreement on the permitting timetable?

FAST-41 provides cooperating agencies a concurrence role in establishing the permitting timetable, subject to the dispute resolution procedures in 42 U.S.C. § 4370m-2(c)(2)(C). Those dispute resolution procedures require that the "Executive Director, in consultation with appropriate agency CERPOs and the project sponsor," "mediate any disputes regarding the permitting timetable."[184] If there is a dispute over the permitting timetable for a particular project, any agency involved in the dispute may submit a request to the Executive Director for assistance in resolving the dispute. The request should clearly and succinctly summarize the dispute, as well as the parties involved. The Executive Director will then determine the appropriate process for resolving the dispute (e.g., gathering any additional information necessary to understand the dispute, or holding face-to-face meetings or conference calls). To the extent practicable, the Executive Director should give deference to the agency that has primary responsibility over the milestone in dispute, assuming the agency has presented a strong rationale for its milestone and demonstrated a good faith effort throughout the process to reach agreement on the permitting timetable with the other agencies, as well as with the project sponsor.

Further, FAST-41 requires that, "[i]f a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of [OMB], in consultation with the Chairman of [CEQ], shall facilitate a resolution of the dispute and direct the agencies party to the dispute to resolve the dispute by the end of the 60-day period beginning on the date of submission of the dispute

[181] 42 U.S.C. § 4370m-2(c)(2)(A).
[182] For example, a meeting would not need to be made public if the focus of the meeting was on proprietary or sensitive information.
[183] Available at https://cms.permits.performance.gov/documentation.
[184] 42 U.S.C. § 4370m-2(c)(2)(C)(i).

to the Executive Director."[185] Any action taken by the OMB Director during this process is "final and conclusive" and is "not be subject to judicial review."[186]

This procedure applies to disputes over the initial establishment of the permitting timetable and any subsequent disputes that arise in conforming to the permitting timetable.

FAST-41 does not provide a similar process for project sponsors if the project sponsors do not agree with the permitting timetable that has been set by the relevant agencies. In such cases, OMB and CEQ suggest that the project sponsor submit a request to the Executive Director specifically stating its concerns with the permitting timetable. The Executive Director in consultation with the appropriate Council agencies will then determine the appropriate process for resolving the dispute.

4.31. Can a permitting timetable be modified after it is approved and published on the Permitting Dashboard?[187]

Yes. In accordance with FAST-41, "[t]he facilitating or lead agency, as applicable, may modify a permitting timetable . . . only if—

(I) the facilitating or lead agency, as applicable, and the affected [FAST-41] cooperating agencies, after consultation with the participating agencies and the project sponsor, agree[188] to a different completion date; [and]
(II) the facilitating agency or lead agency, as applicable, or the affected [FAST-41] cooperating agency provides a written justification for the modification; and
(III) in the case of a modification that would necessitate an extension of a final completion date under a permitting timetable…to a date more than 30 days after the final completion date originally established…, the facilitating or lead agency submits a request to modify the permitting timetable to the Executive Director, who shall consult with the project sponsor and make a determination on the record, based on consideration of the relevant factors described [at 42 U.S.C. § 4370m-2(c)(2)(B)], whether to grant the facilitating or lead agency, as applicable, authority to make such modification."[189]

As discussed in Section 1.3, FAST-41 requirements must be implemented consistent with existing statutory and regulatory requirements. Therefore, in deciding whether to grant a modification using the procedure outlined above, the Executive Director may not override other statutory or regulatory requirements (e.g., the Executive Director could not deny a modification to a permitting timetable which was necessary to meet other statutory obligations). If the Executive Director (or facilitating or lead agency, as applicable) denies a modification request, and the agency misses the previously agreed to milestone, the provisions summarized in Section 4.36 would apply.

If there are actions outside the control of Federal agencies (or state agencies that have opted to participate in FAST-41 process) that pause the timetable, the permitting timetable may be modified without going through the modification steps in 42 U.S.C. § 4370m-2(c)(2)(D). Additionally, Federal agencies will not

[185] 42 U.S.C. § 4370m-2(c)(2)(C)(ii).
[186] 42 U.S.C. § 4370m-2(c)(2)(C)(iii).
[187] 42 U.S.C. § 4370m-2(c)(2)(D).
[188] Note that, because FERC and NRC have independent regulatory commissions, FERC and NRC's environmental review schedules, and modifications thereto, will not be subject to review and oversight by project sponsors or other government offices. Therefore, the limitations on modifications described in Sections 4.31 – 4.36 would not apply to FERC and NRC. Project sponsors will be informed of schedule changes, and FERC and NRC's environmental review schedules will be maintained and updated on the Dashboard to ensure the transparency required by FAST-41.
[189] 42 U.S.C. § 4370m-2(c)(2)(D)(i).

be considered in non-conformity with the permitting timetable under FAST-41 for reasons outside the control of Federal agencies that delay conformance with the timetable.

4.32. Is there a limit on the length of the modifications?

Yes. Generally, unless it is "for reasons outside the control of Federal, State, local, or tribal governments,"[190] "the total length of all modifications to a permitting timetable… may not extend the permitting timetable for a period of time greater than half of the amount of time" from when it is first established to "the last final completion date" in the original timetable.[191] For example, if an agency issues a data request to a project sponsor, and must modify the timetable because the agency has not yet received the necessary information from the project sponsor within a reasonable amount of time after its request, the modification would be considered "outside the control" of the agency. If multiple agencies encounter concurrent delays in their reviews, the consideration for purposes of this calculation is the impact to the critical path and resulting delay to the "last final completion date."

The Director of OMB, "after consultation with the project sponsor, may permit the Executive Director to authorize additional extensions of a permitting timetable beyond the [above-mentioned] limit."[192] In such a case:

- "[T]he Director of [OMB] shall transmit, not later than 5 days after making a determination to permit an authorization of extension …, a report to Congress explaining why such modification is required." The report must specifically explain "why the original permitting timetable and the modifications authorized by the Executive Director failed to be adequate."
- "The lead or facilitating agency, as applicable, shall transmit to Congress, the Director of [OMB], and the Executive Director a supplemental report on progress toward the final completion date each year thereafter, until the permit review is completed or the project sponsor withdraws its notice or application…."

4.33. What if a modification must be made for reasons outside an agency's control?

Generally, once a permitting timetable is approved and posted on the project page, it can only be changed if "the facilitating or lead agency, as applicable, and the affected cooperating agencies, after consultation with the participating agencies and the project sponsor, agree to a different completion date," and "the facilitating agency or lead agency, as applicable, or the affected cooperating agency provides a written justification for the modification…."[193]

However, if the modification is made for a reason outside the control of Federal, state, local, or tribal[194] governments, then the relevant agency should change the status on the Permitting Dashboard to "paused," and use the Description field (either for the individual action/milestone, or for the project as a whole if the entire project has been paused) to provide an explanation for the pause. This field can also be used to provide a link to an agency project website, which may have more detailed information regarding the status of the project.

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[190] This would be in the event a state, local, or tribal government had volunteered to participate in the FAST-41 process.
[191] 42 U.S.C. § 4370m-2(c)(2)(D)(iii)(I).
[192] 42 U.S.C. § 4370m-2(c)(2)(D)(iii)(II).
[193] 42 U.S.C. § 4370m-2(c)(2)(D). Note that FERC's 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. Similarly, under NRC's regulations at 10 C.F.R. § 51.102(c), the Record of Decision and final milestone applicable to a project is by a vote of the Commissioners. NRC staff has no control over the schedule of the respective Commission votes. Therefore, the date of the vote and Record of Decision may be considered "outside the control" of the NRC.
[194] This would be in the event a state, local, or tribal government had volunteered to participate in the FAST-41 process.

For example, if a project sponsor asks an agency to temporarily stop the Federal review process while the project sponsor makes technical modifications to the design of a project, the lead agency could mark the project as "paused" and add a "change log" in the description field that provides the date of the pause and a note that the Federal review has been suspended at the request of the project sponsor. Then, when the agencies restart the environmental review and authorization process, the lead agency could enter another explanation in the change log with the date and a note that the Federal environmental review and authorization process has resumed. All intermediate and final completion dates can then be amended accordingly without the concurrence of other agencies or the Executive Director. Likewise, in the event of a safety emergency (e.g., damage to a nuclear reactor) or severe natural disaster (e.g., a major hurricane), the relevant agency would not need to consult with other agencies or the project sponsor before making any necessary schedule changes directly resulting from such emergency scenarios.

A similar process would apply if an agency lists a milestone in the permitting timetable that is "dependent" on other milestones (e.g., a consultation period that begins when the application or request to initiate consultation is deemed "complete"), and the milestone upon which the dependent milestone relies is not met (e.g., the application or request to initiate consultation is not deemed complete by that date). When developing the CPP and the permitting timetable for a covered project, agencies will need to estimate when they expect certain milestones to occur. However, sometimes, an agency may not be able to start its review until another agency takes a specific action. Unless and until the Permitting Dashboard is upgraded to be able to separately track actions that are dependent on other actions, agencies should work with the other relevant agencies to provide estimates to be included in the permitting timetable developed during the initial 60 days after the Executive Director makes the specific entry for the project on the Permitting Dashboard. During this time, all agencies can agree on which milestones are "dependent" on other milestones, and can record the dependencies in the CPP. When the milestone is entered onto the Permitting Dashboard during the initial 60-day period, the agency can create a text note in the description field for that milestone that explains the dependency (i.e., "cannot begin until milestone X is complete").

If that "dependent" milestone is missed in the future because some other milestone (i.e., milestone X) was not met, then the relevant agency can make a notation in the description field for that milestone that provides the "written justification" for the change (i.e., milestone X has not yet been completed"). The agency would not need to get agreement from or consult with the other agencies and project sponsor (because all agencies agreed ahead of time that such modification was automatically deemed acceptable). If the project sponsor was not consulted on the "dependent" milestones during the CPP development period, it would need to be consulted at this time.

4.34. Are there limits to when a modification can be made?

Yes. A completion date in the permitting timetable may not be modified within 30 days of the completion date.[195] Therefore, if an agency is at risk of missing the published completion date for reasons outside the control of the agency as discussed in Sections 4.32 and 4.33, the agency should notify the lead agency and Executive Director at least 40 days in advance of the completion date, in order to provide time to agree on a modification with all relevant parties.[196]

4.35. Are agencies required to conform to the permitting timetable, whether as originally proposed or modified?

[195] 42 U.S.C. § 4370m-2(c)(2)(D)(ii).

[196] The 40-day deadline is not required by FAST-41, but provides a common sense process that would leave enough time to modify the completion date before the statutory 30-day "no modifications" period.

Yes. Each Federal agency is required to conform to the applicable completion dates set forth in the permitting timetable established under 42 U.S.C. § 4370m-2(c)(2)(A), or with any such date modified under 42 U.S.C. § 4370m-2(c)(2)(D)[197] consistent with other already established Federal laws and regulations.

4.36. What happens if an agency fails to conform to the permitting timetable?

Agencies should always try to meet the agreed upon completion dates as originally proposed or as modified using the procedures described above. However, if a Federal agency fails to conform to a completion date for agency action on a covered project or is at significant risk of failing to conform with such a completion date, the agency shall take the following actions.

- First, as soon as the agency misses the date or becomes aware that it is at substantial risk of missing the completion date, consult with the facilitating or lead agency, as applicable, to establish an alternative completion date. It may not always be possible to establish an alternative completion date. For example, a completion date may not be modified within 30 days of the completion date; nor may such date be modified without undergoing the consultative process outlined in Section 4.31.
- Second, "[p]romptly submit to the Executive Director for publication on the Permitting Dashboard an explanation of the specific reasons for failing or significantly risking failing to conform to the completion date and a proposal for an alternative completion date."[198] OMB and CEQ recommend that the agency send this explanation and alternative completion date to the Executive Director within 3 business days of the missed completion date or when the agency becomes aware of the risk.
- Third, "[e]ach month thereafter until the agency has taken final action on the delayed authorization or review, submit to the Executive Director for posting on the Permitting Dashboard a status report describing any agency activity related to the project."[199]

F. Coordination of Required Reviews

4.37. How should agencies use existing environmental reviews and related documents?

CEQ's NEPA procedures encourage the adoption of environmental reviews and the incorporation by reference of documents prepared by other Federal agencies, provided that the document meets the criteria laid out in the regulations.[200] FAST-41 further encourages, as appropriate, the adoption of state documents prepared under state laws and procedures that are substantially equivalent to NEPA. On the request of a project sponsor, "a lead agency shall consider and, as appropriate, adopt or incorporate by reference, the analysis and documentation that has been prepared for a covered project under state laws and procedures as the documentation, or part of the documentation, required to complete an environmental review for the covered project, if the analysis and documentation were, as determined by the lead agency in consultation with [CEQ], prepared under circumstances that allowed for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what would have been available had the documents and analysis been prepared by a Federal agency pursuant to NEPA."[201] Once adopted, the document can

[197] 42 U.S.C. § 4370m-2(c)(2)(F).
[198] 42 U.S.C. § 4370m-2(c)(2)(F)(ii)(I)-(II).
[199] 42 U.S.C. § 4370m-22(c)(2)(F)(ii)(III).
[200] 40 C.F.R. §§ 1506.3 and 1502.21.
[201] 42 U.S.C. § 4370m-4(b)(1)(A)(i).

"serve as the documentation required for an environmental review or a supplemental environmental review required to be prepared by a lead agency under NEPA."[202]

FAST-41 gives CEQ authority to issue guidance on how to carry out these provisions.[203] However, unless and until CEQ issues such guidance, agencies should look to the existing NEPA regulations for guidance on how to incorporate state documents by reference.[204]

4.38. How do the enhanced coordination requirements of FAST-41 affect agency obligations under other laws?

One of the goals of FAST-41 is to coordinate the necessary environmental reviews and authorizations for a given project into a single, synchronized process. FAST-41 lays out several methods to achieve this coordination, consistent with the underlying statutes and regulations governing those environmental reviews and authorizations. However, FAST-41 makes clear that these provisions are intended to operate within the parameters of existing law.[205] Thus, the FAST-41 process should be construed in accordance with NEPA and consistent with other applicable law.

4.39. Must agencies conduct their reviews concurrently?

FAST-41 requires agencies, to the maximum extent practicable, to carry out their obligations for the applicable environmental reviews and authorizations required for a covered project in a concurrent rather than sequential manner.[206] Agencies should use the process of developing a CPP, as required by FAST-41, to align environmental review and authorization schedules.[207]

This requirement, however, is not absolute. An agency does not have to carry out its obligations concurrently if doing so would impair the ability of an agency to carry out its statutory obligations. This standard does not refer to matters of convenience or resource availability but instances where an agency would be precluded from meeting statutory obligations if reviews were undertaken concurrently rather than sequentially.

4.40. What does FAST-41 say about the identification of the range of reasonable alternatives in an EIS for the covered project?"

FAST-41 directs agencies to engage FAST-41 cooperating agencies and the public in determining the range of reasonable alternatives for projects requiring EISs.[208] This engagement should be made no later than the commencement of the EIS scoping process.[209] Lead agencies should determine the level and form of this engagement on a case-by-case basis, taking into account factors such as the overall size and complexity of the project. Lead agencies should coordinate with cooperating and participating agencies during development of the CPP and agree on when and in what form the agency and public engagement

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[202] 42 U.S.C. § 4370m-4(b)(1)(B).
[203] 42 U.S.C. § 4370m-4(b)(1)(A)(ii).
[204] 40 C.F.R. § 1502.21.
[205] See Section 1.3 above.
[206] 42 U.S.C. § 4370m-4(a)(1).
[207] Additional resources for conducting concurrent reviews include the 2015 *Red Book on Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects*, available at: https://www.environment.fhwa.dot.gov/strmlng/Redbook_2015.asp.
[208] 42 U.S.C. § 4370m-4(c)(1)(A).
[209] The scoping process is an early and open process in the EIS process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. 40 C.F.R. § 1501.7. It starts with the publication of a notice of intent to prepare an EIS.

will occur. The opportunity for engagement should be publicized and may occur in the form of public workshops or meetings, solicitations of verbal or written input, conference calls, postings on web sites, distribution of printed materials, or any other involvement technique or medium that the Federal lead agency and cooperating and participating agencies agree will effectively engage the public.

Following this engagement process, the lead agency must determine the range of reasonable alternatives.[210] FAST-41 indicates that this shall be completed not later than the completion of the scoping process.[211] In making this determination the lead agency must include all alternatives required to be considered under NEPA.[212] This is consistent with CEQ's NEPA guidance on the scoping process.[213]

This provision does not absolve an agency from considering reasonable alternatives (which are not a variation of the proposal or of any alternatives discussed) raised at a later stage in the process (for example, as a result of public involvement during the draft EIS stage). In these situations the lead agency may need to issue a supplemental EIS, particularly if the new alternative is discovered or developed later and it could not reasonably have been raised during the scoping process.[214]

4.41. What does FAST-41 say about the selection of methodologies to be used and level of detail required in the analysis of alternatives in the environmental review process?

FAST-41 directs lead agencies to determine, in collaboration with each FAST-41 cooperating agency, the methodologies to be used and level of detail required in the analysis of each alternative for a covered project.[215] FAST-41 cooperating agencies must use these methodologies when conducting any required NEPA review for that particular covered project, to the extent consistent with existing law.[216]

The focus of this FAST-41 provision is on the methodologies and level of detail used in NEPA reviews to evaluate the environmental effects of alternatives. This must be distinguished from the methodologies used to meet requirements other than NEPA and that are, therefore, not subject to this provision of FAST-41. For example, FAST-41 does not affect the methodologies and levels of detail for satisfying requirements under the National Historic Preservation Act, the Endangered Species Act, the Clean Water Act, and the Clean Air Act, under which methodologies and levels of detail are established by the applicable requirements set out in those statutes and implementing regulations.[217] Individual agencies

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[210] 42 U.S.C. § 4370m-4(c)(2).

[211] 42 U.S.C. § 4370m-4(c)(1)(A)-(B). Scoping is a process, not an event or a meeting. It continues throughout the planning of an EIS. *See* Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping (April 30, 1981) *available at* https://ceq.doe.gov/nepa/regs/scope/scoping.htm. Scoping should "end" once the issues and alternatives to be addressed in the EIS have been clearly identified. Normally this would occur during the final stages of preparing the draft EIS and before it is officially circulated for public and agency review. CEQ encourages the lead agency to notify the public of the results of the scoping process to ensure that all issues have been identified. The lead agency should document the results of the scoping process in its administrative record. *See* Memorandum for Heads of Federal Agencies: Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34263 (July 28, 1983) *available at* https://ceq.doe.gov/nepa/regs/1983/1983guid.htm.

[212] 42 U.S.C. § 4370m-4(c)(2)(B).

[213] See Memorandum for Heads of Federal Agencies: Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34263 (July 28, 1983) *available at* https://ceq.doe.gov/nepa/regs/1983/1983guid.htm.

[214] CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Question 29b, 46 Fed. Reg. 18026 (Mar. 23, 1981) available at https://ceq.doe.gov/nepa/regs/40/40P1.HTM. See also 40 C.F.R. § 1501.7(c) (An agency shall revise the determinations made during scoping if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts).

[215] 42 U.S.C. § 4370m-4(c)(3)(A).

[216] 42 U.S.C. § 4370m-4(c)(3)(B); 40 C.F.R. 1502.24 (Methodology and Scientific Accuracy).

[217] Note that, for covered project where the United States Army Corps of Engineers is a cooperating or participating agency, the United States Army Corps of Engineers must also evaluate alternatives under Clean Water Act Section 404(b)(1) guidelines. The United States Army Corps of Engineers will combine NEPA and 404(b)(1) to the extent appropriate, but recognizes some agencies may choose to not use 404(b)(1) parameters in their reviews, necessitating the United States Army Corps of Engineers

with oversight or implementation authority over these and similar statutes will determine the methodologies and levels of detail. Lead agencies can consider all methodologies used by Federal agencies in analyzing alternatives. Lead agencies should be mindful, however, that they cannot require cooperating agencies to adopt methodologies required under NEPA reviews for application by a FAST-41 cooperating agency under a different statute. The NEPA process benefits, however, from the lead agency incorporating these other methodologies into the NEPA review, if appropriate and allowed under the law.

For NEPA methodologies regarding the evaluation of environmental effects, the lead agency must work cooperatively and interactively with the relevant FAST-41 cooperating agencies on the particular methodology and level of detail to be used in a particular analysis. Consensus is not required, but the lead agency must consider the views of the FAST-41 cooperating agencies with relevant interests before making a decision on a particular methodology and, in so doing, should bear in mind that the FAST-41 cooperating agency is only required to use those methodologies in NEPA reviews to the extent that it can do so consistent with existing law. Well-documented, widely accepted methodologies that are routine and well established should be well-received and require minimal collaboration. The drafters of the covered project's CPP should establish the timing for deciding how long the collaboration and decision-making period should be, as well as the form of the required collaboration with FAST-41 cooperating agencies in developing the methodologies.[218]

Lead agencies should also take into account the requirements in the CEQ NEPA regulations regarding methodologies and scientific accuracy (40 C.F.R. § 1502.24), their own agency NEPA procedures, and those of cooperating agencies, which may contain additional requirements for methodologies associated with the NEPA review. They should also take into account case law and best practices bearing on the particular methodology (for example, the need to be transparent about assumptions in models; providing explanations of the methodology that are clear and written in plain language so that decision-makers and the public can readily understand it).

4.42. What special allowance does FAST-41 make for the development of preferred alternatives?

Once identified, a preferred alternative may be developed to a higher level of detail than other alternatives to facilitate the development of mitigation measures and concurrent reviews, subject to certain requirements.[219] Whether to develop a preferred alternative to a higher level of detail is at the discretion of the lead agency and with the concurrence of those FAST-41 cooperating agencies with jurisdiction under Federal law.[220] Additionally, the further development of the preferred alternative may not prevent the lead agency from making an impartial decision as to the acceptance of another alternative under review nor shall it prevent the public from commenting on the preferred or other alternatives.[221] The identification of a preferred alternative does not commit the agency to selecting that alternative.

4.43. What does FAST-41 say about the structure of comment periods?

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to conduct a separate analysis. To the extent feasible, such situations should be avoided, and one NEPA analysis should be conducted for each project.

[218] Because this action is not required to be included in the permitting timetable, the status of compliance with the action does not need to be published on the Permitting Dashboard.

[219] 42 U.S.C. § 4370m-4(c)(4).

[220] Id.

[221] 42 U.S.C. § 4370m-4(c)(4)(A). CEQ regulations require that the EIS document rigorously explore and objectively evaluate all reasonable alternatives and devote substantial treatment to each alternative considered in sufficient detail so reviewers may evaluate their comparative merits.

Subject to certain exceptions, FAST-41 directs the lead agency to structure the comment period for a draft EIS such that an agency or the public will have not less than 45 and not more than 60 days following the date on which a notice announcing the availability of the draft EIS is published in the Federal Register.[222] This schedule need not apply if the lead agency, project sponsor, and any FAST-41 cooperating agency agree to a longer deadline, or if the lead agency, in consultation with each FAST-41 cooperating agency, extends the deadline for good cause.[223] Although not defined in the statute, "good cause" for extending the comment period may include, but is not limited to, when the project is particularly large and complex, the analysis in the draft EIS is extensive and complicated, when a project is particularly controversial, or according to law.

Subject to the similar exceptions as for the draft EIS comment period, the length of all other review or comment periods in the NEPA process are to be set by the lead agency at not more than 45 days after the date on which the materials on which comment is requested become available.[224]

G. Pending Projects

4.44. What are "pending covered projects"?

Pending covered projects (also referred to as "existing" projects in this guidance) are those for which an environmental review or authorization was pending before a Federal agency 90 days after December 4, 2015 (date of enactment of FAST-41).[225] As required by the statute, the Executive Director has developed an initial inventory of these projects, which is posted on the Permitting Dashboard.[226]

Unlike other covered projects that are included in the FAST-41 process after the project sponsor submits an Initiation Notice and the facilitating agency or Executive Director determines that the project is a covered project, pending covered projects are automatically included in the FAST-41 process. The guidance in this subsection has been developed to address the requirements associated with these projects.

4.45. How are pending projects different from new projects?

Unlike new projects that can opt-in to the FAST-41 requirements, pending projects that meet the definition of covered projects are automatically subject to FAST-41.[227] Therefore, the sponsors of these projects do not have an opportunity to decide whether or not to follow the FAST-41 process. Sponsors of these projects are also not subject to fees.

Because many of these projects started the applicable environmental review and authorization processes before FAST-41 was enacted, many such projects may be nearing completion of the environmental review and authorization process. The majority of the benefits that result from establishing CPPs and permitting timetables occur early in a project's planning process, when opportunities to synchronize reviews, conduct outreach, and consider up-front mitigation strategies can be maximized. Therefore, consistent with the objectives of FAST-41, these projects should be treated differently to ensure that implementing the FAST-41 process does not have the unintended consequence of delaying and complicating the environmental review and permitting process instead of improving it. Although such

[222] 42 U.S.C. § 4370m-4(d)(1).
[223] 42 U.S.C. § 4370m-4(d)(1)(A)-(B).
[224] 42 U.S.C. § 4370m-4(d)(2).
[225] 42 U.S.C. § 4370m-1(c)(1)(A)(i); 42 U.S.C. § 4370m-9(2).
[226] 42 U.S.C. §§ 4370m-1(c)(1)(A)(i);4370m-2(b)(2)(A)(i).
[227] 42 U.S.C. §§ 4370m-1(c)(1)(A)(i); 4370m-2(b)(2)(A)(i).

projects must still comply with the provisions of FAST-41, Sections 4.46 and 4.47 describe a common sense approach to compliance that acknowledges the unique circumstances of pending projects.

4.46. Must pending projects have a CPP?

Yes. FAST-41 requires a CPP for each covered project.[228] The CPP must include a permitting timetable covering "any Federal environmental review or authorization required for the project."[229] The permitting timetable must be published on the Permitting Dashboard, along with each agency's status of conformity to it, and any modifications to it.[230] However, see Section 4.47 for a discussion of how the CPPs for pending projects may differ from the CPPs for new projects.

4.47. What should be included in the CPPs of these pending projects?

Pending Projects Still Early in the Process: Any project for which a draft environmental assessment (EA) (if applicable), EA, or draft EIS has not yet been released could still benefit from the FAST-41 early coordination procedures. Such projects will, therefore, be required to develop a CPP, including permitting timetable, and post related project information as described above (i.e., the same requirements as for new projects). To the extent information is already available through existing, publicly available documents, the CPP may direct the reader by page numbers or a link to the specific section in that document.

Pending Projects that are Far Along in the Process: If a project has released a draft EA (if applicable), EA, or draft EIS, the project will be required to provide reduced information, as described in the following paragraphs.

If a project is far along in the review process, it is unlikely to benefit from having the agencies retroactively develop a full CPP and permitting timetable. Therefore, intermediate and final completion dates in the permitting timetable should be "forward-looking." If an agency has already published or released a draft EA (if applicable), EA, or draft EIS, the permitting timetable can be limited to future completion date.

For the other information required by FAST-41 to be in the CPP, pending projects that are far along should include the following information:

(i) A list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project.

- If such information is already available in the NEPA document, or other publicly available document, the CPP may direct the reader by page numbers or a link to the specific section in that document.

(ii) A permitting timetable, setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable, State permits, reviews and approvals must be made.

- At a minimum, agencies must include one intermediate (if applicable) and one final completion date for the remaining environmental reviews and authorizations.

(iii) A discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known.

[228] 42 U.S.C. § 4370m-2(c)(1)(A).
[229] 42 U.S.C. § 4370m-2(c)(2)(A).
[230] 42 U.S.C. § 4370m-2(b)(4)(A)-(D).

- If such information is already available in the NEPA document, or other publicly available document, the CPP may direct the reader by page numbers or a link to the specific section in that document.

(iv) Plans and a schedule for public and tribal outreach and coordination, to the extent required by applicable law.

- If such information is already available in the NEPA document, or other publicly available document, the CPP may direct the reader by page numbers or a link to the specific section in that document. Furthermore, if there is additional stakeholder outreach or other information that will be developed in the future, the CPP should include the plan for completing that information or meeting that requirement.

Section 5. Posting Project Information to the Permitting Dashboard

5.1. Who is responsible for posting the permitting timetable to the Permitting Dashboard?

FAST-41 requires the Executive Director to publish:

(A) The permitting timetable
(B) The status of the compliance of each agency with the permitting timetable
(C) Any modifications of the permitting timetable
(D) An explanation of each modification described in (C); and
(E) Any memorandum of understanding established under 42 U.S.C. § 4370m-2(c)(3)(B).[231]

Given the breadth of this effort, the Executive Director may meet this requirement by either posting the information, causing the information to be published by the appropriate agencies, or by otherwise ensuring that such information is published by the appropriate agencies. The lead agency for each covered project should post and update (or ensure that the appropriate agencies post and update) the required information, as necessary. See Appendix B for more information about the completion dates to be included.

5.2. In addition to the permitting timetable, are agencies required to post any other information to the Permitting Dashboard?

Yes. In general, for each covered project added to the Permitting Dashboard, the facilitating or lead agency, as applicable, and each cooperating and participating agency are required to post the following information to the Permitting Dashboard:

"(i) a hyperlink that directs to a website that contains, to the extent consistent with applicable law[232]—

(I) the [FAST-41 Initiation Notice] . . .

(II) (aa) where practicable, the application and supporting documents, if applicable, that have been submitted by a project sponsor for any required environmental review or authorization; or

(bb) a notice explaining how the public may obtain access to such documents;

(III) A description of any Federal agency action taken or decision made that materially affects the status of a covered project;

[231] 42 U.S.C. § 4370m-2(b)(4).
[232] For example, it may not be practicable to post application information that includes confidential business information not appropriate for public posting.

(IV) any significant document that supports the action or decision described in [III]; and

(V) a description of the status of any litigation[233] to which the agency is a party that is directly related to the project, including, if practicable, any judicial document made available on an electronic docket maintained by a Federal, State, or local court; and

(ii) any document described in clause (i) that is not available by hyperlink on another website."[234]

The information described above is required to be posted to the website and made available by hyperlink on the Permitting Dashboard not later than 5 business days after the date on which the Federal agency receives the information.[235]

Section 6. Statute of Limitation (SOL) Provisions

6.1. What is the purpose of FAST-41's statute of limitations provision and its publication requirement?

FAST-41's statute of limitations provision is intended to provide certainty to Federal agencies and project sponsors about the status of legal claims concerning a covered project by establishing a maximum time after which legal proceedings cannot be begun. Building on FAST-41's goal of increasing transparency in Federal decision-making, this provision requires publication in the Federal Register in order to put potential litigants on notice that an authorization is subject to judicial review and the statute of limitations has begun to run. FAST-41's statute of limitations provision should be interpreted to carry out these purposes.

6.2. What actions are subject to the statute of limitations provision (42 U.S.C. § 4370m-6(a)(1)) of FAST-41?

This provision applies to claims "arising under Federal law seeking judicial review of any authorization issued by a Federal agency for a covered project for which an agency has published notice "in the Federal Register of the final record of decision or approval or denial of a permit."[236]

6.3. When does the statute of limitations run?

Claims challenging any authorization must be filed within two years of the date on which notice of the authorization is published in the Federal Register unless a shorter time is specified in the Federal law under which judicial review is allowed.[237] Agencies must specifically state in any such notice that the statute of limitations begins to run from the date of publication of the notice.

6.4. Are there any additional restrictions that apply to challenges pertaining to NEPA reviews for FAST-41 projects in particular?

Yes, an action pertaining to an environmental review would be allowed only if:

1) It "is filed by a party that submitted a comment during the environmental review," and

[233] In order to avoid the release of non-public/privileged information, OMB and CEQ recommend that each agency consult with the Department of Justice before posting any information related to litigation.
[234] 42 U.S.C. § 4370m-2(b)(3)(A)(i)-(ii).
[235] 42 U.S.C. § 4370m-2(b)(3)(B).
[236] 42 U.S.C. §4370m-6(a)(1).
[237] 42 U.S.C. §4370m-6(a)(1)(A).

2) The subject matter of the claim was raised in sufficient detail so as to put the lead agency on notice . . . or the lead agency did not provide a reasonable opportunity for such a comment."[238]

6.5. Must a Federal agency take any action for the two-year statute of limitations to apply?

For the two-year statute of limitations to apply, a Federal agency must publish in the Federal Register. Agencies may invoke the two-year statute of limitations provision by publishing notice of the final agency action and incorporating by reference the decision document. The lead or facilitating agency (or a Federal agency designated by the lead or facilitating agency) may publish in the Federal Register a single notice to inform the public that all, or certain specified, authorizations have been issued for a covered project and that the two-year statute of limitations has begun to run for the issued authorizations.

6.6. Does the two-year statute of limitations apply to authorizations that are not permits?

Yes, 42 U.S.C. § 4370m-6(a)(1) applies to "*any* authorization issued by a Federal agency for a covered project,"[239] and as discussed in Section 3.5, above, the term "authorization" is defined by statute to include a wide variety of actions including license, finding, determination, or other administrative decision.

6.7. If a permit decision is made after a Federal Register publication of the record of decision, may an agency issue another publication in the Federal Register for that permit without extending the statute of limitations for the record of decision and any authorizations covered by the first publication in the Federal Register?

Yes, the statute of limitations starts to run from "publication in the Federal Register of the final record of decision *or* approval or denial of a permit."[240] There may be multiple publications in the Federal Register for a covered project, and where a published notice has already been provided for certain authorizations, a later publication providing notice of a final record of decision on a different but related authorization begins a new statute of limitations for that authorization but will not alter the applicable statute of limitations for the earlier noticed authorizations. Each publication in the Federal Register should be clear and explicit about which record(s) of decision and authorization(s) trigger a new statute of limitations.

6.8. If an authorization that does not result in a record of decision or approval or denial of a permit is made after a Federal Register publication, could a subsequent publication in the Federal Register be issued to establish the beginning of the statute of limitations period?

Yes. The agency would need to issue a Federal Register publication that indicates a final agency action has been taken with respect to the authorization and briefly describe the decision made. If this approach is followed, the agency should be clear and explicit, in the publication of each notice, on which authorizations trigger a new statute of limitations period.

6.9. Can this provision be applied to environmental assessments for covered projects?

Yes, the provision may apply to environmental assessments for covered projects. In these situations, the agency should publish in the Federal Register notice of the final decision on the proposal reviewed through the environmental assessment. The notice should indicate that a final agency action has been made, provide a brief discussion of the decision made with respect to the proposed action, and identify the

[238] 42 U.S.C. § 4370m-6(a)(1)(B)(i)-(ii).
[239] (emphasis added).
[240] (emphasis added).

authorizations made at the time. The notice should incorporate by reference the environmental assessment and the Finding of No Significant Impact (FONSI).

Section 7. Information Collection[241] and Reporting on Environmental and Community Outcomes[242]

In continuing efforts to improve performance of the environmental review process for projects, CEQ and OMB recommend capturing improvements in the quality of and valued added by environmental reviews. Historically, performance improvements have centered around reductions in environmental review and project delivery timeframes, but providing information on all performance dimensions of the environmental review process (for example, cost-effectiveness, timeliness, and quality in terms of value added) tells a more complete story of how the process is operating. The quality of the environmental review process should be measured by considering how a project evolved during the process. In other words, how did the project change from pre-application or scoping to the decision document? Considering one of NEPA's main goals is to foster excellent action by encouraging better decisions,[243] CEQ and OMB encourage the agencies[244] to collect and provide qualitative and quantitative environmental and community outcomes to fulfill Sections 2 and 101 of NEPA.[245]

In a previous Administration effort to improve infrastructure permitting, the Council agencies[246] agreed to develop measures that could help determine whether the permitting process was improving community and environmental outcomes. That effort is consistent with FAST-41 provisions (e.g., the Council must issue recommendations on best practices for increasing transparency and addressing other aspects of infrastructure permitting[247]) and is the baseline for this guidance.

The Permitting Dashboard will be the tool agencies can use to identify individual resource impacts (i.e., indicators) and their broader environmental and community outcomes (i.e., value) in nine general reporting categories, to be completed to the extent the project has impacts falling within the categories. The first year of information collection will be considered the baseline year and treated as a transition year as the agencies become familiar with the tool; the Dashboard may be refined in subsequent iterations as agencies gain experience in tracking indicators and outcomes.

7.1. What are "environmental and community outcomes?"

Environmental and community outcomes are the qualitative and quantitative descriptions of how a project's projected effects change over time and the community-based processes and mitigation measures developed to address those effects. Historically, many of these measures have not been tracked, as cost and time were generally prioritized.

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[241] Agencies are encouraged not to collect more information from the public or project sponsors in order to comply with these reporting activities. However, if additional information is required or requested to be collected, such activities would need to comply with the Paperwork Reduction Act.

[242] Although not specifically required by FAST-41, information on environmental and community outcomes displayed on the Permitting Dashboard will be collected pursuant to Federal agencies' general authorities under NEPA. Cooperating and participating agencies are not required to report effects outside their regulatory authorities though the Federal lead agency is responsible for ensuring the project's environmental and community outcome information is entered.

[243] 40 C.F.R. § 1500.1(c).

[244] Each project team can determine who will be responsible for entering all or individual environmental and community outcome information, but ultimately the lead agency is responsible.

[245] 42 U.S.C. § 4321 and 42 U.S.C. § 4331, respectively.

[246] M-15-20 (Sept. 22, 2015). Note that NRC and FERC were not a party to previous Administration efforts and FAST-41 does not specifically require information collection and reporting on environmental and community outcomes. Therefore, the environmental and community outcomes will not be tracked for covered projects for which these agencies are the lead.

[247] 42 U.S.C. § 4370m-1(c)(2)(B).

Environmental outcomes of a project refer to the resulting effects of a project or an action on ecological (including natural resources), aesthetic, and cultural resources, and on public health. Community outcomes of a project are the resulting effects of a project on community indicators such as employment, public safety, community cohesion, business displacement, community facility displacements, and residential displacement. Outcomes may be positive or negative or neutral, or any combination thereof based upon the degree of subjectivity associated with impacts to each one, depending on the stakeholder group. Outcomes may be an impact change (including trade-offs between impacts) or a public process change.

Contrary to the term "outcomes," the interested agencies are not focused on the specific outcomes or impacts produced by a project solely. For example, the construction of a fire station will very likely have positive community outcomes by improving public safety and accessibility to critical community services. Its construction may have negative environmental impacts depending on its location (for example, impacts on traffic, water quality, air quality, noise). These effects are outcomes of the project itself. However, the reporting (on the Dashboard) should capture whether, over the course of the environmental review and authorization process, a decision was made to avoid, minimize, or mitigate (as defined in 40 C.F.R. § 1508.20) adverse impacts, make trade-offs between impacts, or adjust the public involvement process in some manner. For example, perhaps the project was relocated in an effort to reduce potential adverse noise impacts to a community. In order to accurately track which regulatory processes may have been the driving force for such project revisions, the lead agency should ensure the environmental/community indicator discussion on the Dashboard identifies when another agency's requirements dictated the change.

7.2. What is the objective of this effort?

The objective of this information collection and reporting is to better understand how a project changes regarding environmental and community impacts because of the environmental review process. Specifically, CEQ, OMB and the Council are interested in identifying how impacts and processes[248] are modified in response to agency and community feedback and the project review team's efforts to avoid, minimize, and mitigate impacts. Through the qualitative and quantitative data, the interested agencies aim to identify a more complete view of the environmental review process across projects, as well as identify trends and best practices.

7.3. Determining whether the environmental review and authorization processes improves environmental and community outcomes may require value judgments. How can agencies track outcomes that require value judgments?

The Council recognizes that determining whether the environmental review and authorization processes improve overall environmental and community outcomes may be challenging because it may require value judgments that are subjective to the reporting entity. To address this issue, the guidance focuses on "reporting categories" and key "indicators" or impacts that will serve as a proxy for the outcomes in a particular environmental or community area. CEQ and OMB developed a list of "reporting categories" to frame outcomes discussions.

It is likely that much of the data for the indicators will be qualitative. As such, environmental and community outcomes will be entered on the Dashboard through text boxes, which will allow for the entry of qualitative summaries, through CEQ and OMB recommend including hyperlinks to source documents

[248] Procedural enhancements include public participation opportunities, development of alternatives, development of tools or methods for interagency collaboration (e.g., programmatic agreement or memorandum of understanding), and creation of agreements to address adverse impacts from the project.

and quantifiable data when possible (for example, number of wetland acres avoided, amount of emissions reductions, etc.).

7.4. When does the reporting guidance take effect?

This guidance takes effect upon issuance and applies to all authorization or environmental review processes for covered projects. Agencies should collect and report this information on the Dashboard in an ongoing basis (i.e., not providing the information during project close-out).

7.5. How will this information be collected?

The agencies will access the environmental and community outcomes section through the individual project pages on the Dashboard. Once in the outcomes section, text fields will be present for entering concise descriptions of indicators and outcomes, and hyperlinks (e.g., environmental documents, supporting materials such as technical reports or memorandums, records of decision). Agencies will have discretion in determining the best method for entering the information.

CEQ and OMB have identified the following nine "reporting categories" for environmental and community outcomes of a project:

- Air Quality,
- Climate Change,
- Historic and Cultural Resources,
- Land,
- Procedural Enhancements,
- Social and Economic Impacts (e.g., environmental justice, displacements),
- Water Resources and Wetlands,
- Wildlife and Biological Resources, and
- Other (e.g., public health improvements).

7.6. What are some indicator examples?

Examples of indicators include number of acres of wetlands avoided, air quality improvements, effects on endangered and threatened species, development of interagency cooperation agreements, identification of reasonable alternatives that were not previously considered, and enhancement of public engagement and involvement practices. Indicators can be reported qualitatively or quantitatively or a combination of both.

The initial set of indicators, organized by reporting category, will be found on the Dashboard; the list may be revised in the future based on input received during the baseline year.

7.7. What information should an agency enter for the project?

An agency will have the ability to provide summaries for any of the nine resource category reporting areas at the project level and on an ongoing basis. Additionally, the agency will have the opportunity to provide specific measures (i.e., indicators) by answering following questions on the Permitting Dashboard:

- Considering project development since the project's application or initiation notice, how has the Federal environmental review or authorization process resulted in changes to any of the potential impacts under the nine resource categories (select all that apply)? Please provide a brief explanation/qualitative summary for each resource.

- Avoidance of resources
- Minimization of impacts
- Incorporation of mitigation measures, including compensatory mitigation

The agency responsible for entering information on the Permitting Dashboard should use the comment area to concisely identify the "indicators" triggered by the environmental review or authorization, provide a link(s) to NEPA or other documents that provide the details of the impact or process improvement, and identify the environmental and/or community outcome(s). In some cases, the information may be mostly qualitative, but quantitative data should be included where applicable and when readily available.

7.8. When should the information on an environmental or community outcome be entered?

Although most of the outcomes will not be known until the project is complete, agencies should report or update the information as it becomes available. For example, if as a result of the environmental review and authorization process, an agency and the project sponsor decide to add one or more public meetings during the draft EIS stage that were not originally planned prior to the development of the CPP, then the agency should add this outcome to the Dashboard as a "Procedural Enhancement" when it is confirmed instead of waiting until finalization of the EIS for the project. As another example, if a project is modified as part of the Clean Water Act Section 404 permitting process to reduce its impacts on wetlands, then the agency should add this outcome once the agency or the project sponsor secures the 404 permit. In this instance, it would be appropriate to add the number of acres of wetlands that were avoided as a result of this change or (if applicable) note the nature of the change (e.g., impacting lower quality wetlands instead of pristine wetlands).

7.9. If multiple agencies are involved in the environmental review and authorization process, which one would be responsible for entering the information into the Dashboard?

The Federal lead agency is responsible for entering the information on environmental and community outcomes. However, the lead agency can share this responsibility with other agencies (e.g., cooperating or participating agencies) as appropriate.

7.10. How can the administrative burden of providing this information be reduced for my agency?

Agencies should rely on and use the data or information collected during the Federal environmental review and authorization process (e.g., EIS, supporting technical reports). Agencies need not engage in new analyses or develop studies to obtain the information requested in this guidance. Agencies should rely on links and cross references whenever the information is available, accessible, and in existing sources (for example, the project's EIS).

7.11. What happens if the environmental review and authorization process does not result in any changes to the proposal, its alternatives, or mitigation?

This reporting does not require an agency to make changes to their projects solely for the purpose of reporting. Information suggesting that the Federal environmental review and authorization process did not result in any changes from project application to completion is as valuable as information collected for projects with changes that occurred as a result of the process. For instance, some applicants are aware of Federal requirements and design their projects to incorporate those requirements so no additional changes are needed.

In situations where projects are not modified during the environmental review and authorization process, the agency would report that no changes were made to the project and further explain the position (*e.g.*, early consultation, planning or pre-application activities, or the project complied with all applicable laws and regulations in a succinct manner.

7.12. Is an agency required to monitor the project to validate the information provided for this reporting request?

This guidance does not independently impose a requirement on monitoring after the authorization or environmental review for the project has been approved to validate the information submitted for the report. Although not required, an agency may establish monitoring as a best practice to validate the outcomes from the actions taken. However, there may be laws and other requirements that require the monitoring or other follow-up activities for approved projects. Agencies should follow these requirements as appropriate and applicable. See for example, CEQ Memorandum for Heads of Federal Departments and Agencies: Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact (Jan. 14, 2011).

Appendix A. Summary of Provisions Specific to FAST-41 Parties

Table 1. Provisions Related to the Council

Provision	*Reference*	*Guidance*
Identify, by a majority vote, additional sectors for inclusion in the FAST-41 process	*42 U.S.C. § 4370m(6)(A)*	*Section 3.2*
Identify projects, subject to NEPA, that due to their size and complexity are likely going to benefit from enhanced oversight and coordination and are, therefore, covered projects	*42 U.S.C. § 4370m(6)(A)(ii)*	*Section 3.6*
Each Council agency head must designate a councilmember	*42 U.S.C. § 4370m-1 (b)(2)(A)(i)*	*Section 2.3*
Each Council agency head must designate one or more agency CERPO(s)	*42 U.S.C. § 4370m-1 (b)(2)(A)(iii)*	*Section 2.6*
Consult with the Executive Director on establishment of an inventory of covered projects	*42 U.S.C. § 4370m-1(c)(1)(A)*	*Section 4.44*
Make recommendations to and consult with the Executive Director on facilitating agency designations	*42 U.S.C. § 4370m-1 (c)(1)(B) and § 4370m-1(c)(2)(A)(i)*	*Section 3.3*
Consult with the Executive Director on recommended performance schedules for environmental reviews and authorizations most commonly required	*42 U.S.C. § 4370m-1 (c)(1)(C)(i) and § 4370m-1(c)(2)(A)(i)*	*Future guidance, as necessary*
Consult with the Executive Director on review and revisions of recommended performance schedules	*42 U.S.C. § 4370m-1(c)(1)(C)(iii) and § 4370m-1(c)(2)(A)(i)*	*Future guidance, as necessary*
Consult with the Executive Director on recommendations to OMB and/or CEQ for issuing guidance, as necessary, for agencies	*42 U.S.C. § 4370m-1(c)(1)(D)*	*Section 2.3*
Develop and publish recommendations on "best practices" for a range of permitting activities by December 4, 2016, and no less frequently than annually thereafter	*42 U.S.C. § 4370m-1(c)(2)(B)*	*Future guidance, as necessary*
Meet no less frequently than annually with groups or individuals representing state, tribal, and local governments that are engaged in the infrastructure permitting process	*42 U.S.C. § 4370m-1(c)(2)(C)*	*Future guidance, as necessary*
Each councilmember may provide comments on the performance of his/her agency to be included in the annual Executive Director progress report	*42 U.S.C. § 4370m-7(a)(3)*	*Future guidance, as necessary*

Table 2. Provisions Related to the Council Agencies

Provision	*Reference*	*Guidance*
The heads of the Federal agencies in the Council may	*42 U.S.C.*	*Future guidance, as*

issue regulations (with the guidance of OMB and in consultation with the Executive Director) establishing a fee structure for project sponsors to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects	*§ 4370m-8(a)*	*necessary*
The heads of the Federal agencies in the Council may transfer funds (appropriated to their agencies and not otherwise obligated) to affected Federal agencies for implementing FAST-41	*42 U.S.C. § 4370m-8(f)(1)*	*Future guidance, as necessary*[249]

Table 3. Provisions Related to the Executive Director

Provision	***Reference***	***Guidance***
Chair the Council	*42 U.S.C. § 4370m-1(b)(1)*	*Future guidance, as necessary*
Invite heads of Federal agencies, not specifically identified in FAST-41, to participate as members of the Council	*42 U.S.C. § 4370m-1 (b)(2)(B)(xiv)*	*Section 2.2*
In consultation with the Council, establish an inventory of covered projects that are pending the environmental review or authorization of any Federal agency	*42 U.S.C. § 4370m-1 (c)(1)(A)(i)*	*Section 4.44*
In consultation with the Council, categorize projects in the inventory based on sector and project type	*42 U.S.C. § 4370m-1 (c)(1)(A)(ii)(I)*	*Section 3.3*
In consultation with the Council, identify types of environmental reviews and authorizations most commonly involved for each category	*42 U.S.C. § 4370m-1 (c)(1)(A)(ii)(II)*	*Section 4.24*
Add a covered project to the inventory within 14 days of receiving an Initiation Notice for a project (assuming complete Initiation Notice is received and the project is determined to be a covered project)	*42 U.S.C. § 4370m-1 (c)(1)(A)(iii)*	*Section 4.12*
In consultation with the Council, designate facilitating agencies	*42 U.S.C. § 4370m-1 (c)(1)(B)(i)*	*Section 3.3*

[249] Important principles of appropriations law apply to any transfer of funds. Therefore, any agency should coordinate closely with OMB, including the appropriate OMB Resource Management Office, if that agency considers the possibility of taking any action pursuant to 42 U.S.C. § 4370m-8(f)(1). Furthermore, 42 U.S.C. § 4370m-8(f)(2) provides that appropriations under title 23 of the United States Code, and appropriations for the civil works program of the Army Corps of Engineers, shall not be available for transfer pursuant to 42 U.S.C. § 4370m-8(f)(1).

In consultation with the Council, publish the list of designated facilitating agencies for each category of projects in the inventory on the Dashboard in an easily accessible format	*42 U.S.C. § 4370m-1 (c)(1)(B)(ii)*	*Dashboard*
In consultation with the Council, develop recommended performance schedules for environmental reviews and authorizations most commonly required for each category of project by December 4, 2016	*42 U.S.C. § 4370m-1 (c)(1)(C)(i)*	*Future guidance, as necessary*
In consultation with the Council, review and revise the performance schedules no 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)*	*Future guidance, as necessary*
In consultation with the Council, recommend to OMB or CEQ that guidance be issued, as necessary, for agencies	*42 U.S.C. § 4370m-1 (c)(1)(D)*	*This guidance and future guidance, as necessary*
On a request (from the agency) and showing of changed circumstances, designate an agency that has opted out from exercising authority related to, or submitting comments on, the proposed project to be a participating or FAST-41 cooperating agency, as appropriate	*42 U.S.C. § 4370m-2 (a)(3)(B)*	*Section 4.21*
On request of a participating agency or project sponsor, designate a different agency as the facilitating or lead agency for a covered project, if the facilitating agency, lead agency, or the Executive Director receives new information regarding the scope or nature of the covered project that indicates that the project should be placed in a different category	*42 U.S.C. § 4370m-2 (a)(6)*	*Section 4.20*
In coordination with GSA, maintain the "Permitting Dashboard"	*42 U.S.C. § 4370m-2 (b)(1)(A)*	*Dashboard*
Create a specific project entry to the Dashboard for a pending covered project no later than 14 days after the date on which the Executive Director adds a project to the inventory	*42 U.S.C. § 4370m-2 (b)(2)(A)(i)*	*Section 4.44*
Create a specific entry to the Dashboard for the covered project no later than 14 days after the date on which the Executive Director receives a FAST-41 Initiation Notice unless the facilitating agency, lead agency, or Executive Director determines that the project is not a covered project	*42 U.S.C. § 4370m-2 (b)(2)(A)(ii)*	*Section 4.12*
Make final determinations as to whether a project is a covered project (in instances where there is a dispute between project sponsor and the lead agency)	*42 U.S.C. § 4370m-2 (b)(2)(C)(i)*	*Section 4.9*

Publish on the Permitting Dashboard covered project permitting timetables, status of compliance of each agency with the permitting timetable, modifications to the permitting timetable, explanations for modifications, and MOUs among agencies	*42 U.S.C. § 4370m-2 (b)(4)*	*Section 5.1*
In consultation with appropriate agency CERPOs, and the project sponsor, mediate any disputes regarding permitting timetables	*42 U.S.C. § 4370m-2 (c)(2)(C)(i)*	*Section 4.30*
After consulting with the project sponsors, make a determination on the record whether to grant a facilitating or lead agency's request to extend the final completion date for an environmental review or authorization if the extension is more than 30 days after the final completion date originally established in the permitting timetable	*42 U.S.C. § 4370m-2 (c)(2)(D)(i)(III)*	*Section 4.31*
If authorized by OMB after consultation with the project sponsor, allow extensions of the permitting timetable for a period of time greater than half of the amount of time from the establishment of the permitting timetable to the last final completion date originally established	*42 U.S.C. § 4370m-2 (c)(2)(D)(iii)(II)*	*Section 4.32*
In situations where the Executive Director has granted additional extensions authorized by OMB, receive annual supplemental reports from the lead or facilitating agency, as applicable, on progress toward the final completion date until the permit review is completed or the project sponsor withdraws its notice, application, or other request for a Federal authorization	*42 U.S.C. § 4370m-2 (c)(2)(D)(iii)(II)*	*Section 4.32*
Post on the Dashboard a Federal agency's explanation of the specific reasons for failing or being at significant risking of failing to conform to the completion date in the permitting timetable and proposal for alternative completion date	*42 U.S.C. § 4370m-2 (c)(2)(F)(ii)(I)*	*Section 4.36*
When an agency has failed to conform, post on the Dashboard a Federal agency's monthly status report describing any agency activity related to the project until the agency has taken action on a delayed authorization or review	*42 U.S.C. § 4370m-2 (c)(2)(F)(ii)(III)*	*Section 4.36*
Concerning abandonment of a covered project, publish on the Dashboard a notification from the lead or facilitating agency that the project sponsor has not provided an updated statement regarding the ability of the project sponsor to complete the project	*42 U.S.C. § 4370m-2 (c)(2)(G)(ii)*	*Future guidance, as necessary*
Collect MOUs among facilitating or lead agency and any state, local, or tribal agency on any plans to coordinate reviews	*42 U.S.C. § 4370m-2 (c)(3)(C)(ii)*	*Sections 4.19 & 4.21*

Submit an annual report to Congress detailing the progress accomplished under FAST-41 during the previous fiscal year	*42 U.S.C. § 4370m-7(a)(1)*	*Future guidance, as necessary*
Consult with Council agencies on any regulations establishing a fee structure for project sponsors[250] to reimburse the U.S. for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects	*42 U.S.C. § 4370m-8(a)*	*Future guidance, as necessary*
Use funds deposited into the "Environmental Review Improvement Fund" for the purpose of administering, implementing, and enforcing FAST-41	*42 U.S.C. § 4370m-8(d)(2)*	*Future guidance, as necessary*
With the approval of OMB, transfer amounts in the Fund to other agencies to facilitate timely and efficient environmental reviews and authorizations for covered projects	*42 U.S.C. § 4370m-8(d)(3)*	*Future guidance, as necessary*

Table 4. Provisions Related to the Agency CERPO

Provision	***Reference***	***Guidance***
Advise respective agency councilmember on matters related to environmental reviews and authorizations	*42 U.S.C. § 4370m-1 (c)(3)(A)*	*Section 2.6*
Provide technical support to facilitate efficient and timely processes for environmental reviews and authorizations for covered projects under the jurisdictional responsibility of the agency*	*42 U.S.C. § 4370m-1 (c)(3)(B)*	*Section 2.6*
Support timely identification and resolution of potential disputes within the agency or between the agency and other Federal agencies on FAST-41 matters	*42 U.S.C. § 4370m-1 (c)(3)(B)*	*Section 2.6*
Analyze agency processes, policies, and authorities and recommend improvements to standardize, simplify, and improve their efficiency	*42 U.S.C. § 4370m-1 (c)(3)(C)*	*Section 2.6*
Review and develop training programs for agency staff that support and conduct environmental reviews or authorizations*	*42 U.S.C. § 4370m-1 (c)(3)(D)*	*Section 2.6*
Consult with the Executive Director in mediation of disputes regarding permitting timetables	*42 U.S.C. § 4370m-2 (c)(2)(C)(i)*	*Section 4.30*

* Although the agency CERPOs are ultimately responsible for each of the roles in the table above, each agency CERPO may delegate certain responsibilities related to technical support or training to others in the agency that are capable of performing the duties in accordance with the statutory requirements.

Table 5. Provisions Related to OMB

[250] For purposes of implementing this guidance, this term to be interchangeable with "project sponsor" for purposes of the fees provisions.

Provision	*Reference*	*Guidance*
Facilitate resolution of disputes regarding permitting timetables, in consultation with CEQ	*42 U.S.C. § 4370m-2 (c)(2)(C)(ii)*	*Section 4.30*
Decide whether to permit Executive Director to grant requests for timeline extensions beyond 1.5x total schedule (and submit report to Congress, as necessary)	*42 U.S.C. § 4370m-2 (c)(2)(D)(iii)(II)*	*Section 4.32*
Provide guidance on fee regulations	*42 U.S.C. § 4370m-8(a)*	*Future guidance, as necessary*
Approve funding transfers from the Fund to agencies	*42 U.S.C. § 4370m-8(d)(3)*	*Future guidance, as necessary*

Table 6. Provisions Related to CEQ

Provision	*Reference*	*Guidance*
Consult with lead agency on the adoption or incorporation by reference of state documents in the completion of environmental reviews for specific projects	*42 U.S.C. § 4370m-4 (b)(1)(A)(i)*	*Section 4.37*
Issue guidance to effectuate adoption and/or incorporation by reference of certain NEPA-related documents and analyses	*42 U.S.C. § 4370m-4 (b)(1)(A)(ii)*	*Section 4.37*
Consult with OMB on the resolution of disputes regarding permitting timetables	*42 U.S.C. § 4370m-2 (c)(2)(C)(ii)*	*Section 4.30*
Resolve project-specific disputes over appropriate "facilitating" or lead agency designations for particular projects	*42 U.S.C. § 4370m-2 (a)(6)(B)*	*Section 4.20*
Consult with a lead agency on a determination that analyses and documentation prepared under state environmental impact assessment laws and procedures allowed for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to NEPA	*42 U.S.C. § 4370m-4(b)(1)(A)(i)*	*Section 4.37*

Table 7. Provisions Related to Project Sponsor

Provision	*Reference*	*Guidance*
Submit to the Executive Director and the facilitating agency a complete Initiation Notice for a proposed covered project	*42 U.S.C. § 4370m-2 (a)(1)*	*Section 4.4*
Request a change of facilitating or lead agency, where appropriate	*42 U.S.C. § 4370m-2 (a)(6)(A)*	*Section 4.20*

Submit further explanation as to why the project is a covered project, if the facilitating agency or lead agency, as applicable, determines that the project is not a covered project	*42 U.S.C. § 4370m-2 (b)(2)(B)*	*Section 4.8*
Consult in establishment of permitting timetable for a covered project	*42 U.S.C. § 4370m-2 (c)(2)(A)*	*Section 4.29*
Participate in mediation of permitting timetable disputes with Executive Director and appropriate agencies	*42 U.S.C. § 4370m-2 (c)(2)(C)(i)*	*Section 4.30*
Participate in consultations to modify completion dates in the permitting timetable of a covered project	*42 U.S.C. § 4370m-2 (c)(2)(D)(i)(I)*	*Section 4.31*
Consult with the Director of OMB in determinations to permit the Executive Director to authorize extensions of a permitting timetable beyond the limit prescribed by 42 U.S.C. § 4370m-2(c)(2)(D)(iii)(I)	*42 U.S.C. § 4370m-2 (c)(2)(D)(iii)(II)*	*Section 4.32*
Provide an updated statement regarding the technical or financial ability of the project sponsor to complete the project, upon request from the facilitating or lead agency	*42 U.S.C. § 4370m-2 (c)(2)(G)(i)*	*Section 4.6*
Submit a request to the facilitating or lead agency for early consultation, where applicable	*42 U.S.C. § 4370m-2(d)*	*Section 4.3*
Request the lead agency consider the analysis and documentation that has been prepared for a covered project under state laws and procedures, where applicable	*42 U.S.C. § 4370m-4 (b)(1)(A)(i)*	*Section 4.37*
May agree to longer comment periods on environmental documents (along with the lead agency and any FAST-41 cooperating agency)	*42 U.S.C. § 4370m-4(d)*	*Section 4.43*

Table 8. Provisions Related to the Facilitating Agency

Provision	*Reference*	*Guidance*
Receive project sponsor's Initiation Notice for a proposed covered project	*42 U.S.C. § 4370m-2 (a)(1)(A)*	*Section 4.4*
Make a determination over whether a proposed covered project is a covered project	*42 U.S.C. § 4370m-2(b)(2)(A)(ii)*	*Section 4.4*
Not later than 45 days after the date on which the Executive Director must make a specific entry for the project on the	*42 U.S.C. § 4370m-2 (a)(2)(A)*	*Section 4.14*

Dashboard under 42 U.S.C. § 4370m-2 (b)(2)(A): • Identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project • Invite all Federal agencies identified under 42 U.S.C. § 4370m-2(a)(2)(A)(i) to become a participating agency or a FAST-41 cooperating agency, as appropriate, in the environmental review and authorization management process described in 42 U.S.C. § 4370m-4		
For each invitation made under 42 U.S.C. § 4370m-2(a)(2)(A), include a deadline for a response to be submitted	*42 U.S.C. § 4370m-2 (a)(2)(B)*	*Section 4.16*
On establishment of the lead agency, the facilitating agency relinquishes its responsibilities as facilitating agency	*42 U.S.C. § 4370m-2 (a)(5)(A)*	*Section 2.11*
As appropriate, assume designation as a FAST-41 cooperating or participating agency, if the lead agency assumes the responsibilities of the facilitating agency under 42 U.S.C. § 4370m-2(a)(5)(A)	*42 U.S.C. § 4370m-2 (a)(5)(B)*	*Section 4.15*
If the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should be placed in a different category under 42 U.S.C. § 4370m-1(c)(1)(B), the facilitating agency relinquishes its responsibilities for the covered project	*42 U.S.C. § 4370m-2 (a)(6)(A)*	*Section 4.20*
For each covered project added to the Dashboard under 42 U.S.C. § 4370m-2(b)(2), post to the Dashboard links and documents required under 42 U.S.C. § 4370m-2(b)(3)(A)	*42 U.S.C. § 4370m-2 (b)(3)(A)*	*Section 5.2*

In consultation with each coordinating and participating agency, establish a concise plan (the Coordinated Project Plan or CPP) for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project	*42 U.S.C. § 4370m-2 (c)(1)(A)*	*Section 4.22*
Update the CPP at least quarterly	*42 U.S.C. § 4370m-2 (c)(1)(B)*	*Section 4.22*
As part of the CPP, in consultation with each FAST-41 cooperating and participating agency, the project sponsor, and any state in which the project is located, and, subject to 42 U.S.C. § 4370m-2(c)(2)(C), with the concurrence of each FAST-41 cooperating agency on those dates that affect the cooperating agency, establish a permitting timetable that includes intermediate and final completion dates for action by each participating agency on any Federal environmental review or authorization required for the project	*42 U.S.C. § 4370m-2 (c)(2)(A)*	*Section 4.23*
In establishing the permitting timetable, follow the performance schedules established under 42 U.S.C. § 4370m-1(c)(1)(C), but vary the timetable based on the relevant factors in 42 U.S.C. § 4370m-2(c)(2)(B)(i)-(vi), as appropriate	*42 U.S.C. § 4370m-2 (c)(2)(B)*	*Section 4.28*
Modify the permitting timetable established under 42 U.S.C. § 4370m-2(c)(2) only if the conditions established in 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I)-(III) are met	*42 U.S.C. § 4370m-2 (c)(2)(D)(i)(I-III)*	*Section 4.31*
If a schedule extension is granted pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(iii), transmit to Congress, the Director of OMB, and the Executive Director, a supplemental report on progress toward the final completion date each year thereafter, until the permit review is completed or the project sponsor withdraws its notice or application or other request	*42 U.S.C. § 4370m-2 (c)(2)(D)(iii)*	*Section 4.32*
If a Federal agency cannot conform with a completion date for agency action on a covered project or is at significant risk of failing to conform with such a completion date, consult with the agency to establish an alternative completion date (unless lead agency has been determined, in which case lead agency would consult)	*42 U.S.C. § 4370m-2 (c)(2)(F)(ii)(II)*	*Section 4.36*

If the facilitating or lead agency, as applicable, has a reasonable basis to doubt the continuing technical or financial ability of the project sponsor to construct the covered project, the facilitating or lead agency may request the project sponsor provide an updated statement regarding the ability of the project sponsor to complete the project	*42 U.S.C. § 4370m-2 (c)(2)(G)(i)*	*Section 4.6*
If the project sponsor fails to respond to a request described in 42 U.S.C. § 4370m-2(c)(2)(G)(i) by the date that is 30 days after receiving the request, the lead or facilitating agency, as applicable, shall notify the Executive Director, who shall publish an appropriate notice on the Dashboard	*42 U.S.C. § 4370m-2 (c)(2)(G)(ii)*	*Future guidance, as necessary*
Coordinate, to the maximum extent practicable under applicable law, the Federal environmental review and authorization processes under 42 U.S.C. § 4370m-2(c) with any state, local, or tribal agency responsible for conducting any separate review or authorization of the covered project to ensure timely and efficient completion of environmental reviews and authorizations	*42 U.S.C. § 4370m-2 (c)(3)(B)*	*Section 4.19*
Include any coordination plan with any state, local, or tribal agency, to the maximum extent practicable into an MOU	*42 U.S.C. § 4370m-2 (c)(3)(C)(i)*	*Section 4.19*
Submit to the Executive Director each MOU developed pursuant to 42 U.S.C. § 4370m-2(c)(3)(C)(i)	*42 U.S.C. § 4370m-2 (c)(3)(C)(ii)*	*Section 4.19*
Provide an expeditious process for project sponsors to confer with each FAST-41 cooperating and participating agency involved and, not later than 60 days after the date on which the project sponsor submits a request under 42 U.S.C. § 4270m-2(d), to have each agency provide to the project sponsor the information required by 42 U.S.C. § 4270m-2 (d)(1)-(3)	*42 U.S.C. § 4370m-2(d)*	*Section 4.3*

Table 9. Provisions Related to the Lead Agency

Provision	*Reference*	*Guidance*
May designate a participating agency as a FAST-41 cooperating agency in accordance with 40 C.F.R. part 1501 (or successor regulations)	*42 U.S.C. § 4370m-2(e)(1)*	*Section 4.14*
On the request of a project sponsor, consider and, as appropriate, adopt or incorporate by reference, the analysis and documentation that has been prepared for a covered project under state laws and procedures as the documentation, or part of the documentation, required to complete an environmental review for the covered project, if the analysis and documentation were, as determined by the lead agency in consultation with CEQ, prepared under circumstances that allowed for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to what would have been available had the documents and analysis been prepared by a Federal agency pursuant to NEPA	*42 U.S.C. § 4370m-4 (b)(1)(A)(i)*	*Section 4.37*
If the lead agency adopts or incorporates analysis and documentation described in the row above, the lead agency shall prepare and publish a supplemental document if the lead agency determines that during the period after preparation of the analysis and documentation and before the adoption or incorporation the conditions in 42 U.S.C. § 4370m-4(b)(1)(C)(i)-(ii) are met	*42 U.S.C. § 4370m-4 (b)(1)(C)*	*Section 4.37*
If a lead agency prepares and publishes a supplemental document under 42 U.S.C. § 4370m-4(b)(1)(C), the lead agency shall solicit comments from other agencies and the public on the supplemental document for a period of not more than 45 days, beginning on the date on which the supplemental document is published, unless the conditions in 42 U.S.C. § 4370m-4(b)(1)(D)(i)-(ii) are met	*42 U.S.C. § 4370m-4 (b)(1)(D)*	*Future guidance, as necessary*
Issue a record of decision or finding of no significant impact, as appropriate, based on the document adopted under 42	*42 U.S.C. § 4370m-4 (b)(1)(E)*	*Future guidance, as necessary*

U.S.C. § 4370m-4(b)(1)(A) and any supplemental document prepared under 42 U.S.C. § 4370m-4(b)(1)(C)		
As early as practicable during the environmental review, but not later than the commencement of scoping for a project requiring the preparation of an EIS, engage the FAST-41 cooperating agencies and the public to determine the range of reasonable alternatives to be considered for a covered project	*42 U.S.C. § 4370m-4* (c)(1)(A)	*Section 4.40*
Following participation under paragraph 42 U.S.C. § 4370m-4(c)(1) and subject to subparagraph 42 U.S.C. § 4370m-4(c)(2)(B), determine the range of reasonable alternatives for consideration in any document that the lead agency is responsible for preparing for the covered project	*42 U.S.C. § 4370m-4 (c)(2)(A)*	*Section 4.40*
In determining the range of alternatives under subparagraph 42 U.S.C. § 4370m-4 (c)(2)(A), include all alternatives required to be considered by law	*42 U.S.C. § 4370m-4 (c)(2)(B)*	*Section 4.40*
Determine, in collaboration with each FAST-41 cooperating agency at appropriate times during the environmental review, the methodologies to be used and the level of detail required in the analysis of each alternative for a covered project	*42 U.S.C. § 4370m-4 (c)(3)*	*Section 4.41*
In the lead agency's discretion, and with the concurrence of FAST-41 cooperating agencies with jurisdiction under Federal law, develop a preferred alternative for a project to a higher level of detail	*42 U.S.C. § 4370m-4 (c)(4)*	*Section 4.42*
Establish a comment period of not less than 45 days and not more than 60 days after the date on which a notice announcing availability of the draft EIS is published in the Federal Register unless the conditions in 42 U.S.C. § 4370m-4(d)(1)(A)-(B) are met	*42 U.S.C. § 4370m-4 (d)(1)*	*Section 4.43*
For all other review or comment periods in the environmental review process described in 40 C.F.R. parts 1500 – 1508 (or successor regulations), establish a comment period of not more than 45 days after the date on which the materials on which comment is requested are made available, unless the conditions in 42 U.S.C. § 4370m-4(d)(2)(A)-(B) are met	*42 U.S.C. § 4370m-4 (d)(2)*	*Section 4.43*

With each FAST-41 cooperating and participating agency, work cooperatively in accordance with 42 U.S.C. § 4370m-4(e) to identify and resolve issues that could delay completion of an environmental review or an authorization required for the project under applicable law or result in the denial of any approval under applicable law	*42 U.S.C. § 4370m-4 (e)(1)*	*Future guidance, as necessary*
Make information available to each FAST-41 cooperating and participating agency and project sponsor as early as practicable in the environmental review regarding the environmental, historic, and socioeconomic resources located within the project area and the general locations of the alternatives under consideration	*42 U.S.C. § 4370m-4 (e)(2)(A)*	*Future guidance, as necessary*
Consider new information received after the close of a comment period if the information satisfies the requirements under regulations implementing NEPA	*42 U.S.C. § 4370m-6 (a)(2)(A)*	*Future guidance, as necessary*

Table 10. Provisions Related to the Cooperating Agencies

Provision	***Reference***	***Guidance***
Where appropriate, if the agency (i) has no jurisdiction or authority with respect to the proposed project; or (ii) does not intend to exercise authority related to, or submit comments on, the proposed project, respond to the invitation received pursuant to 42 U.S.C. § 4370m-2(a)(2)(A) in writing before the deadline set under 42 U.S.C. § 4370m-2(a)(2)(B)	*42 U.S.C. § 4370m-2 (a)(3)(A)*	*Section 4.18*
For an agency that has opted out under 42 U.S.C. § 4370m-2(a)(2)(A)(ii), as appropriate, request – with a showing of changed circumstances – from the Executive Director that such agency should be designated a FAST-41 cooperating agency	*42 U.S.C. § 4370m-2 (a)(3)(B)*	*Section 4.15*
For each covered project added to the Dashboard under 42 U.S.C. § 4370m-2 (b)(2), post to the Dashboard the links and documents required by 42 U.S.C. § 4370m-2(b)(3)(A)(i)-(ii) no later than 5 business days after the date on which the agency receives the information	*42 U.S.C. § 4370m-2 (b)(3)(A)-(B)*	*Section 5.2*

Consult with the facilitating or lead agency, as applicable, on the establishment of a CPP for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project	*42 U.S.C. § 4370m-2 (c)(1)(A)*	*Section 4.22*
Consult with the facilitating or lead agency, as applicable, and concur on the permitting timetable that includes intermediate and final completion dates for action by each participating agency on any Federal environmental review or authorization required for a covered project	*42 U.S.C. § 4370m-2 (c)(2)(A)*	*Section 4.29*
In the event that the facilitating or lead agency, as applicable, seeks to modify a permitting timetable established under 42 U.S.C. § 4370m-2(c)(2)(A), agree, as appropriate, to a different completion date with that agency, as appropriate and after consultation with the participating agencies and the project sponsor, and provide a written justification for the modification, as applicable	*42 U.S.C. § 4370m-2 (c)(2)(D)(i)(I)-(II)*	*Section 4.31*
Participate in the early consultation process provided by the facilitating or lead agency and provide the project sponsor with the information outlined in 42 U.S.C. § 4370m-2(d)(1)-(3)	*42 U.S.C. § 4370m-2 (d)*	*Section 4.3*
If appropriate, agree to a longer deadline, if a lead agency prepares and publishes a supplemental document under 42 U.S.C. § 4370m-4(b)(1)(C) and the lead agency seeks to solicit comments from other agencies and the public on the supplemental document for a period of more than 45 days	*42 U.S.C. § 4370m-4 (b)(1)(D)(i)*	*Future guidance, as necessary*
Work with the lead agency, other FAST-41 cooperating agencies, and the public to determine the range of reasonable alternatives to be considered for a covered project	*42 U.S.C. § 4370m-4(c)*	*Section 4.40*
At appropriate times during the environmental review, collaborate with the lead agency in determining the methodologies to be used in the environmental review and the level of detail required in the analysis of each alternative for a covered project	*42 U.S.C. § 4370m-4 (c)(3)(A)*	*Section 4.41*

Use the methodologies referred to in 42 U.S.C. § 4370m-4(c)(3)(A) when conducting any required environmental review, to the extent consistent with existing law	*42 U.S.C. § 4370m-4 (c)(3)(B)*	*Section 4.41*
Provide concurrence, when warranted, if the lead agency seeks to develop the preferred alternative for a project to a higher level of detail than other alternatives	*42 U.S.C. § 4370m-4 (c)(4)*	*Section 4.42*
If appropriate, agree with the lead agency and project sponsor to establish a longer deadline, if a lead agency seeks to establish a comment period of more than 60 days on a draft EIS	*42 U.S.C. § 4370m-4 (d)(1)(A)*	*Section 4.43*
As necessary, consult over decisions to extend the deadline for good cause, if a lead agency seeks to establish a comment period of more than 60 days on a draft EIS	*42 U.S.C. § 4370m-4 (d)(1)(B)*	*Section 4.43*
If appropriate, agree with the lead agency and project sponsor to extend the deadline beyond 45 days for all other review or comment periods in the environmental review process described in 40 C.F.R. parts 1500 – 1508 (or successor regulations)	*42 U.S.C. § 4370m-4 (d)(2)(A)*	*Section 4.43*
Work cooperatively with the lead and each FAST-41 cooperating and participating agency to identify and resolve issues that could delay completion of an environmental review or an authorization required for the project under applicable law or result in the denial of any approval under applicable law	*42 U.S.C. § 4370m-4 (e)(1)*	*Future guidance, as necessary*
Identify, as early as practicable, any issues of concern regarding any potential environmental impacts of the covered project, including any issues that could substantially delay or prevent an agency from completing any environmental review or authorization required for the project; and communicate any such issues to the project sponsor	*42 U.S.C. § 4370m-4 (e)(3)(A)-(B)*	*Future guidance, as necessary*
As the FAST-41 cooperating agency deems appropriate, share with state, tribal, and local authorities best practices involved in review of covered projects and invite input from state, tribal, and local authorities regarding best practices	*42 U.S.C. § 4370m-5(b)*	*Future guidance, as necessary*

Table 11. Provisions Related to the Participating Agency

Provision	*Reference*	*Guidance*
If the agency (i) has no jurisdiction or authority with respect to the proposed project; or (ii) does not intend to exercise authority related to, or submit comments on, the proposed project, provide this in writing in response to the invitation received pursuant to 42 U.S.C. § 4370m-2(a)(2)(A) before the deadline set under 42 U.S.C. § 4370m-2(a)(2)(B)	*42 U.S.C. § 4370m-2 (a)(3)(A)*	*Section 4.18*
For an agency that has opted out under 42 U.S.C. § 4370m-2(a)(2)(A)(ii), as appropriate, make a request, showing changed circumstances, to the Executive Director that such agency should be designated a participating agency	*42 U.S.C. § 4370m-2 (a)(3)(B)*	*Section 4.15*
If appropriate, request that the Executive Director designate a different agency as the facilitating or lead agency, as applicable, for a covered project, if the facilitating or lead agency or the Executive Director receives new information regarding the scope or nature of a covered project that indicates that the project should be placed in a different category under 42 U.S.C. § 4370m-1(c)(1)(B)	*42 U.S.C. § 4370m-2 (a)(6)*	*Section 4.20*
For each covered project added to the Dashboard under 42 U.S.C. § 4370m-2 (b)(2), post to the Dashboard the links and documents required by 42 U.S.C. § 4370m-2(b)(3)(A)(i)-(ii) not later than 5 business days after the date on which the agency receives the information	*42 U.S.C. § 4370m-2 (b)(3)(A)-(B)*	*Section 5.2*
Consult with the facilitating or lead agency, as applicable, on the establishment of a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project	*42 U.S.C. § 4370m-2 (c)(1)(A)*	*Section 4.22*
Consult with the facilitating or lead agency, as applicable, on the establishment of a permitting timetable that includes intermediate and final completion dates for action by each participating agency on any Federal environmental review or authorization required for a covered project	*42 U.S.C. § 4370m-2 (c)(2)(A)*	*Section 4.29*
As appropriate, consult on, and agree to, a different completion date, in the event that the facilitating or lead agency, as applicable, seeks to modify a permitting	*42 U.S.C. § 4370m-2 (c)(2)(D)*	*Section 4.31*

timetable established under 42 U.S.C. § 4370m-2(c)(2)(A) in accordance with the requirements of 42 U.S.C. § 4370m-2 (c)(2)(D)		
Participate in the early consultation process provided by the facilitating or lead agency and provide the information outlined in 42 U.S.C. § 4370m-2 (d)(1)-(3)	*42 U.S.C. § 4370m-2 (d)*	*Section 4.3*
Work cooperatively with the lead and each FAST-41 cooperating and participating agency to identify and resolve issues that could delay completion of an environmental review or an authorization required for the project under applicable law or result in the denial of any approval under applicable law	*42 U.S.C. § 4370m-4 (e)(1)*	*Future guidance, as necessary*
Identify, as early as practicable, any issues of concern regarding any potential environmental impacts of the covered project, including any issues that could substantially delay or prevent an agency from completing any environmental review or authorization required for the project; and communicate such issues to the project sponsor	*42 U.S.C. § 4370m-4 (e)(3)(A-B)*	*Future guidance, as necessary*
Consider new information received after the close of a comment period if the information satisfies the requirements under regulations implementing NEPA	*42 U.S.C. § 4370m-6 (a)(2)(A)*	*Future guidance, as necessary*

Appendix B. Environmental Review and Authorization Milestones to Include in Permitting Timetables

Milestone events may be included in a project's permitting timetable for each environmental review and authorization listed on the Environmental Review and Authorization Inventory. Each required[251] milestone will be entered onto the Permitting Dashboard by the relevant agencies, and the status of compliance with each required milestone will be tracked publicly.[252]

Reviews and Authorizations Other than Those Further Listed Below

1. Initial application received
2. Completed application received*
3. Issuance of decision for permit/approval
4. Notice to proceed*
5. Review terminated with no decision*

* Where applicable, or applicable as a separate step.

National Environmental Policy Act (NEPA) Compliance

Environmental Assessment

1. Determination to prepare an Environmental Assessment (EA)
2. Release for public review*
3. Draft EA or other means of coordinating the development of an EA*[253]
4. Final EA*; and/or
5. Draft proposed Finding of No Significant Impact (FONSI) [254]*
6. Issuance of Final EA* and FONSI or decision to prepare an Environmental Impact Statement (EIS)
7. Issuance of Supplemental EA*
8. Issuance of Supplemental FONSI*

Environmental Impact Statement

1. Issuance of Notice of Intent to prepare an EIS
2. Scoping period initiation
3. Notice of Availability of a Draft EIS published by EPA in the Federal Register
4. Notice of Availability of a Final EIS published by EPA in the Federal Register
5. Notice of Availability of a Supplemental Draft EIS published by EPA in the Federal Register*
6. Notice of Availability of Supplemental Final EIS published by EPA in the Federal Register*
7. Issuance of Record of Decision or combined Final EIS/Record of Decision
8. Issuance of an Amended Record of Decision

*Where applicable or applicable as a separate step.

Formal Endangered Species Act Consultation

Department of the Interior/Fish and Wildlife Service
Department of Commerce/National Oceanographic and Atmospheric Administration

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[251] Agencies may also choose to track milestones that are not required to be tracked by FAST-41.
[252] FERC's 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.
[253] 40 C.F.R. 1501.4(b).
[254] If required by the NEPA procedures.

1. Date of Request for formal consultation received
2. Consultation Initiation Date
3. Final Biological Opinion Issued

Informal Endangered Species Act Consultation

Department of the Interior/Fish and Wildlife Service
Department of Commerce/National Oceanographic and Atmospheric Administration

1. Date of Request for informal consultation received
2. Consultation Initiation Date
3. Concurrence or non-concurrence by FWS/NOAA

Bridge Permit

United States Coast Guard

1. Navigation Data Received
2. Preliminary Navigation Clearance Determination Issued
3. Application Received
4. Application Deemed Complete
5. Publication of Public Notice
6. Permit Decision Rendered

USACE Regulatory Authorization (Section 10 of the Rivers and Harbors Act of 1899/Section 103 of the Marine Protection, Research, and Sanctuaries Act Permit 103/ Section 404 of the Clean Water Act Permit)

United States Army Corps of Engineers

2 Pre-construction Notification (PCN)/Form ENG 4345/Joint Application Form Received
3 PCN/Application Deemed Complete
4 Publication of Public Notice*
5 Final Verification/Permit Decision Rendered
*Where applicable or applicable as a separate step

Nuclear Regulatory Commission (new reactor reviews additional milestones)

Safety and Security Review

1 Date application was tendered
2 Date application was accepted for review (docketed)
3 Final Safety Evaluation Report issued

Appendix C. Template Letter to Project Sponsors on Availability of FAST-41 Process

Dear [***Applicant***],

The purpose of this letter is to notify you that your proposed [**name of project**] project may qualify for new environmental review and authorization processes designed to improve the timeliness, predictability, and transparency of the Federal review of infrastructure projects.

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On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (FAST) Act. Title 41 of the FAST Act[255] (hereinafter FAST-41) created a new governance structure, set of procedures, and funding authorities applicable to/available for a set of major infrastructure projects (i.e., covered projects) across a range of sectors and project types.

FAST-41 defines a covered project as one that requires authorization or environmental review by a Federal agency involving construction of infrastructure for a covered sector, is subject to the National Environmental Policy Act of 1969 (NEPA), is likely to require a total investment of more than $200,000,000, and does not qualify for abbreviated authorizations or environmental review processes for all of its environmental reviews and authorizations. It may also include projects in covered sectors that are subject to NEPA for which, due to their size and complexity, the applicable Federal agencies determine the FAST-41 coordination process and oversight would be beneficial.[256]

Potential outcomes for covered projects under FAST-41include:

- Early identification of all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project.
- Development of a Coordinated Project Plan, including a schedule for public outreach and coordination and plan for completion of all required Federal environmental reviews and authorizations.
- Use of set procedures to agree upon, modify, and resolve issues with project review timelines.
- Greater transparency into the Federal permitting process and schedule through tracking on the Permitting Dashboard.
- Enhanced oversight from the Federal Permitting Improvement Steering Council.
- Potential for adoption of state environmental reviews.
- Limitation of lawsuits on Federal authorizations and environmental reviews to those filed not later than 2 years after the date of publication in the Federal Register of the final record of decision or approval or denial of a permit, and
- Special consideration for the judicial review of actions seeking temporary restraining orders or preliminary injunction against the covered project.

Being designated as a covered project does not, however, guarantee federal approval nor result in agencies prioritizing the review of your project over other projects not listed on the Dashboard.

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[255]The full text of Title 41 can be viewed here: http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter55/subchapter4&edition=prelim

[256] See full definition at 42 U.S.C. § 4370m(6).

Based on the information provided to date, your [**name of project**] project might qualify as a covered project because [**CHOOSE ONE**: it is subject to NEPA, appears likely to require a total investment of more than $200,000,000, and does not appear to qualify for an abbreviated authorization or environmental review process [**or**] it is subject to NEPA and it appears likely that it would benefit from the FAST-41 process due to its size and complexity.]

Should you seek to have [**Name of project**] considered for designation as a covered project under FAST-41, you must submit an Initiation Notice to [**Facilitating/Lead Agency X**] and the Executive Director of the Federal Permitting Improvement Steering Council to have the project considered for designation as a covered project. Instructions on how to submit the Initiation Notice as well as additional information regarding designation of covered projects are attached to this letter and are also available on the Permitting Dashboard at: https://www.permits.performance.gov/tools/interim-notice-initiation-instructions. Unless action is taken toward this end, your project's NEPA review will proceed under normal regulatory procedures and timelines.

Once designated a covered project, the project sponsor is expected to cooperate throughout the Federal environmental review and authorization process by providing the necessary information and documentation and participating in decisions that affect the project review schedule, where appropriate. The project sponsor may opt out of the process at any time upon formal notification to the Executive Director and lead agency.

Lastly, please note that FAST-41 provides agencies the authority to issue regulations establishing fees to reimburse the United States for the reasonable costs of conducting environmental reviews and authorizations for covered projects.[257] At this time, the regulations that will establish these fees are under development, and no fees will be assessed on covered projects before the regulations have been implemented.

If you have any questions or would like to talk further, please contact [**X**] at **[POC X contact information]**.

Thank you,

[***Agency CERPO***]

[257] 42 U.S.C. § 4370m-8(a).

Instructions on How to Submit a FAST-41 Initiation Notice for Potential Covered Projects

A sponsor that seeks to have its project considered for designation as a covered project under FAST-41 must submit a FAST-41 Initiation Notice to the Executive Director and the designated "facilitating" or lead agency for the project type (contact information is available on the Permitting Dashboard). The Initiation Notice must contain the following information:

- **Project Information**: Title, Sector, Type, Location
- **Project Sponsor Name and Contact Information**
- **Statement of the purposes and objectives** of the project
- **Concise description** including general location and/or a summary of geospatial information, if available, and the locations, if any, of environmental, cultural, and historic resources
- **Statement regarding the technical and financial ability** of the project sponsor to construct the proposed project
- **Statement of any Federal Financing, environmental reviews, and authorizations anticipated** to be required; and
- **An assessment that the project meets the definition of a covered project** as defined in Section 41001 of the FAST Act (42 U.S.C. § 4370m(6)) and a statement of reasons supporting the assessment.

The Initiation Notice must include sufficiently-detailed information for the facilitating agency to determine whether the project is a covered project and which agencies need to be invited as participating or FAST-41 cooperating agencies. Details for how to submit the information as well as a list of project types/facilitating agencies can be found on the Permitting Dashboard homepage: www.permits.performance.gov.

Appendix D. Contact Information

Executive Office of the President Contact Information
Any questions regarding implementation or execution of the requirements outlined in this guidance should be directed to the following EOP offices:

Office of Management and Budget
Angela Colamaria
Permitting Team Lead
Angela_F_Colamaria@omb.eop.gov
202-395-3708

Council on Environmental Quality
Ted Boling
Associate Director for NEPA Oversight
Edward_A_Boling@ceq.eop.gov
202-395-0827

Federal Permitting Improvement Steering Council Contact Information

FPISC Executive Director
FAST.FortyOne@fpisc.gov