

Comparative Print: Changes in Existing Law for Bill number:

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Summary

- (1) 2 amendments.
- (2) 0 automated notifications.

Current Law(s) being amended

[1. FAST Act](#)

Comparative Print: Changes in Existing Law

1. FAST Act

[As Amended Through P.L. 118–5, Enacted June 3, 2023]

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DIVISION **D**— MISCELLANEOUS

TITLE **XLI**—FEDERAL PERMITTING IMPROVEMENT

Sec. **41001**. DEFINITIONS.

In this title:

(1) **Agency**.— The term “agency” has the meaning given the term in section 551 of title 5, United States Code.

(2) **Agency cerpo**.— The term “agency CERPO” means the chief environmental review and permitting officer of an agency, as designated by the head of the agency under section 41002(b)(2)(A)(iii)(I).

(3) **Authorization**.— The term “authorization” means any license, permit, approval, finding, determination, or other administrative decision issued by an agency and any interagency consultation 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 section 41003(c)(3)(A), a State agency.

(4) **Cooperating Agency**.— The term “cooperating agency” has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or successor regulations).

(5) **Council**.— The term “Council” means the Federal Permitting Improvement Steering Council established under section 41002(a).

(6) **Covered project**.—

(A) **In general**.— The term “covered project” means any activity in the United States that requires authorization or environmental review by a Federal 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, semiconductors, artificial intelligence and machine learning, high-performance computing and advanced computer hardware and software, quantum information science and technology, data storage and data management, cybersecurity, carbon capture, energy storage, 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~~ **\$50,000,000**; and

(III) does not qualify for abbreviated authorization or environmental review processes under any applicable law;

(ii) is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines;

(iii) is—

(I) subject to NEPA;

(II) sponsored by an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), an Alaska Native

Corporation, a Native Hawaiian organization (as defined in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517)), the Department of Hawaiian Home Lands, or the Office of Hawaiian Affairs; and

(III) located on land owned or under the jurisdiction of the entity that sponsors the activity under subclause (II); or

(iv) 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.

(B) Exclusion.— The term “covered project” does not include—

(i) any project subject to section 139 of title 23, United States Code; or

(ii) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).

(C) Inclusion.— For purposes of subparagraph (A), construction of infrastructure for carbon capture includes construction of—

(i) any facility, technology, or system that captures, utilizes, or sequesters carbon dioxide emissions, including projects for direct air capture (as defined in paragraph (6)(B)(i) of section 103(g) of the Clean Air Act (42 U.S.C. 7403(g)); and

(ii) carbon dioxide pipelines.

(7) Dashboard.— The term “Dashboard” means the Permitting Dashboard required under section 41003(b).

(8) Environmental assessment.— The term “environmental assessment” has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or successor regulations).

(9) Environmental document.—

(A) In general.— The term “environmental document” means an environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision.

(B) Inclusions.— The term “environmental document” includes—

(i) any document that is a supplement to a document described in subparagraph (A); and

(ii) a document prepared pursuant to a court order.

(10) Environmental impact statement.— The term “environmental impact statement” means the detailed written statement required under section 102(2)(C) of NEPA.

(11) Environmental review.— The term “environmental review” means 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.

(12) Executive director.— The term “Executive Director” means the Executive Director appointed by the President under section 41002(b)(1)(A).

(13) **Facilitating agency.**— The term “**facilitating agency**” means the agency that receives the initial notification from the project sponsor required under section 41003(a).

(14) **Inventory.**— The term “**inventory**” means the inventory of covered projects established by the Executive Director under section 41002(c)(1)(A).

(15) **Lead agency.**— The term “**lead agency**” means 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).

(16) **NEPA.**— The term “**NEPA**” means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(17) **Participating agency.**— The term “**participating agency**” means an agency participating in an environmental review or authorization for a covered project in accordance with section 41003.

(18) **Project sponsor.**— The term “**project sponsor**” means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project.

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Sec. 41003. PERMITTING PROCESS IMPROVEMENT.

(a) Project Initiation and Designation of Participating Agencies.—

(1) Notice.—

(A) **In general.**— A project sponsor of a covered project shall submit to the Executive Director and the facilitating agency notice of the initiation of a proposed covered project.

(B) **Default designation.**— If, at the time of submission of the notice under subparagraph (A), the Executive Director has not designated a facilitating agency under section 41002(c)(1)(B) for the categories of projects noticed, the agency that receives the notice under subparagraph (A) shall be designated as the facilitating agency.

(C) **Contents.**— Each notice described in subparagraph (A) shall include—

- (i) a statement of the purposes and objectives of the proposed project;
- (ii) 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;
- (iii) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project;
- (iv) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and
- (v) an assessment that the proposed project meets the definition of a covered project under section 41001 and a statement of reasons supporting the assessment.

(D) **Confidentiality.**— Any information relating to Native American natural, cultural, and historical resources submitted in a notice by a project sponsor under subparagraph (A) shall be—

- (i) kept confidential; and

(ii) exempt from the disclosure requirements under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), and the Federal Advisory Committee Act (5 U.S.C. App.).

(2) Invitation.—

(A) In general.— Not later than 21 calendar days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating agency or lead agency, as applicable, shall—

(i) 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

(ii) invite all Federal agencies identified under clause (i) to become a participating agency or a cooperating agency, as appropriate, in the environmental review and authorization management process described in section 41005.

(B) Deadlines.— Each invitation made under subparagraph (A) shall include a 14 calendar day deadline for a response to be submitted to the facilitating or lead agency, as applicable.

(3) Participating and cooperating agencies.—

(A) In general.— An agency invited under paragraph (2) shall be designated as a participating or cooperating agency for a covered project, unless the agency informs the facilitating or lead agency, as applicable, and the Executive Director in writing before the deadline under paragraph (2)(B) 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.

(B) Changed circumstances.— On request and a showing of changed circumstances, the Executive Director may designate an agency that has opted out under subparagraph (A) (ii) to be a participating or cooperating agency, as appropriate.

(4) Effect of designation.— The designation described in paragraph (3) shall not—

(A) give the participating agency authority or jurisdiction over the covered project; or

(B) expand any jurisdiction or authority a cooperating agency may have over the proposed project.

(5) Lead agency designation.—

(A) In general.— On establishment of the lead agency, the lead agency shall assume the responsibilities of the facilitating agency under this title.

(B) Redesignation of facilitating agency.— If the lead agency assumes the responsibilities of the facilitating agency under subparagraph (A), the facilitating agency may be designated as a cooperative or participating agency.

(6) Change of facilitating or lead agency.—

(A) In general.— 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 covered project that indicates that the project should be placed in a different category under section 41002(c)(1)(B).

(B) Resolution of dispute.— The Chairman of the Council on Environmental Quality shall resolve any dispute over designation of a facilitating or lead agency for a particular covered project.

(b) Permitting Dashboard.—

(1) Requirement to maintain.—

(A) In general.— The Executive Director, in coordination with the Administrator of General Services, shall maintain an online database to be known as the “Permitting Dashboard” to track the status of Federal environmental reviews and authorizations for any covered project in the inventory described in section 41002(c)(1)(A).

(B) Specific and searchable entry.— The Dashboard shall include a specific and searchable entry for each covered project.

(2) Additions.—

(A) In general.—

(i) Existing projects.— Not later than 14 days after the date on which the Executive Director adds a project to the inventory under section 41002(c)(1)(A), the Executive Director shall create a specific entry on the Dashboard for the covered project.

(ii) New projects.— Not later than 14 days after the date on which the Executive Director receives a notice under subsection (a)(1), the Executive Director shall create a specific entry on the Dashboard for the covered project, unless the Executive Director, facilitating agency, or lead agency, as applicable, determines that the project is not a covered project.

(iii) Projects other than covered projects.—

(I) In general.— The Executive Director may direct a lead agency to create a specific entry on the Dashboard for a project that is not a covered project and is under review by the lead agency if the Executive Director determines that a Dashboard entry for that project is in the interest of transparency.

(II) Requirements.— Not later than 14 days after the date on which the Executive Director directs the lead agency to create a specific entry on the Dashboard for a project described in subclause (I), the lead agency shall create and maintain a specific entry on the Dashboard for the project that contains—

(aa) a comprehensive permitting timetable, as described in subsection (c)(2)(A);

(bb) the status of the compliance of each lead agency, cooperating agency, and participating agency with the permitting timetable required under item (aa);

(cc) any modifications of the permitting timetable required under item (aa), including an explanation as to why the permitting timetable was modified; and

(dd) information about project-related public meetings, public hearings, and public comment periods, which shall be presented in English and the predominant language of the community or communities most affected by the project, as that information becomes available.

(B) Explanation.— If the facilitating agency or lead agency, as applicable, determines that the project is not a covered project, the project sponsor may submit a further

explanation as to why the project is a covered project not later than 14 days after the date of the determination under subparagraph (A).

(C) Final determination.— Not later than 14 days after receiving an explanation described in subparagraph (B), the Executive Director shall—

- (i) make a final and conclusive determination as to whether the project is a covered project; and
- (ii) if the Executive Director determines that the project is a covered project, create a specific entry on the Dashboard for the covered project.

(3) Postings by agencies.—

(A) In general.— For each covered project added to the Dashboard under paragraph (2), the facilitating or lead agency, as applicable, and each cooperating and participating agency shall post to the Dashboard—

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

(I) the notification submitted under subsection (a)(1);

(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;

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

(V) information on the status of mitigation measures that were agreed to as part of the environmental review and permitting process, including whether and when the mitigation measures have been fully implemented; and

(VI) a description of the status of any litigation 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;

(ii) any document described in clause (i) that is not available by hyperlink on another website; and

(iii) information about project-related public meetings, public hearings, and public comment periods, which shall be presented in English and the predominant language of the community or communities most affected by the project, as that information becomes available.

(B) Deadline.— The information described in subparagraph (A) shall be posted to the website made available by hyperlink on the Dashboard not later than 5 business days after the date on which the Federal agency receives the information.

(4) Postings by the executive director.— The Executive Director shall publish to the Dashboard—

(A) the permitting timetable established under subparagraph (A) or (C) of subsection (c)(2);

- (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 subparagraph (C); and
- (E) any memorandum of understanding established under subsection (c)(3)(B).

(c) Coordination and Timetables.—

(1) Coordinated project plan.—

(A) In general.— Not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b) (2)(A), the facilitating or lead agency, as applicable, in consultation with each coordinating and participating agency, shall establish a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project.

(B) Required information.— The Coordinated Project Plan shall 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.
- (ii) A permitting timetable, as described in paragraph (2), 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.
- (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, to the extent required by applicable law.

(C) Memorandum of understanding.— The coordinated project plan described in subparagraph (A) may be incorporated into a memorandum of understanding.

(2) Permitting timetable.—

(A) Establishment.— As part of the coordinated project plan under paragraph (1), the facilitating or lead agency, as applicable, in consultation with each cooperating and participating agency, the project sponsor, and any State in which the project is located, and, subject to subparagraph (C), with the concurrence of each cooperating agency, shall 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.

(B) Factors for consideration.— In establishing the permitting timetable under subparagraph (A), the facilitating or lead agency shall follow the performance schedules established under section 41002(c)(1)(C), but may vary the timetable based on relevant factors, including—

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;

(iv) the sensitivity of the natural or historic resources that may be affected by the project;

(v) the financing plan for the project; and

(vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

(C) Dispute Resolution.—

(i) **In general.**— The Executive Director, in consultation with appropriate agency CERPOs and the project sponsor, shall, as necessary, mediate any disputes regarding the permitting timetable referred to under subparagraph (A).

(ii) **Disputes.**— If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, 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 to the Executive Director.

(iii) **Final resolution.**— Any action taken by the Director of the Office of Management and Budget in the resolution of a dispute under clause (ii) shall—

(I) be final and conclusive; and

(II) not be subject to judicial review.

(D) Modification after approval.—

(i) **In general.**— The facilitating or lead agency, as applicable, may modify a permitting timetable established under subparagraph (A) only if—

(I) the facilitating or lead agency, as applicable, consults with the Executive Director regarding the potential modification not less than 15 days before engaging in the consultation under subclause (II);

(II) the facilitating or lead agency, as applicable, and the affected cooperating agencies, after consultation with the participating agencies, the Executive Director, and the project sponsor, agree to a different completion date;

(III) the facilitating agency or lead agency, as applicable, or the affected cooperating agency provides a written justification for the modification; and

(IV) in the case of a modification that would necessitate an extension of a final completion date under a permitting timetable established under subparagraph (A) to a date more than 30 days after the final completion date originally established under subparagraph (A), 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 under subparagraph (B), whether to grant the facilitating or lead agency, as applicable, authority to make such modification.

(ii) **Completion date.**— A completion date in the permitting timetable may not be modified within 30 days of the completion date.

(iii) Limitation on length of modifications.—

(I) **In general.**— Except as provided in subclause (II), the total length of all modifications to a permitting timetable authorized or made under this

subparagraph, other than for reasons outside the control of Federal, State, local, or tribal governments, may not extend the permitting timetable for a period of time greater than half of the amount of time from the establishment of the permitting timetable under subparagraph (A) to the last final completion date originally established under subparagraph (A).

(II) Additional extensions.— The Director of the Office of Management and Budget, after consultation with the project sponsor, may permit the Executive Director to authorize additional extensions of a permitting timetable beyond the limit prescribed by subclause (I). In such a case, the Director of the Office of Management and Budget shall transmit, not later than 5 days after making a determination to permit an authorization of extension under this subclause, a report to Congress explaining why such modification is required. Such report shall explain to Congress with specificity 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 the Office of Management and Budget, 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 to which this title applies under section 41010.

(iv) Limitation on judicial review.— The following shall not be subject to judicial review:

(I) A determination by the Executive Director under clause (i)(III).

(II) A determination under clause (iii)(II) by the Director of the Office of Management and Budget to permit the Executive Director to authorize extensions of a permitting timetable.

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

(F) Conforming to permitting timetables.—

(i) In general.— Each Federal agency shall conform to the intermediate and final completion dates set forth in the permitting timetable established under subparagraph (A), or with any intermediate or final completion date modified under subparagraph (D).

(ii) Failure to conform.— If a Federal agency fails to conform with an intermediate or final completion date for agency action on a covered project or reasonably believes the agency will fail to conform with a completion date 30 days before such a completion date, the agency shall—

(I) promptly submit to the Executive Director for publication on the Dashboard an explanation of the specific reasons for failing or reasonably believing the agency will fail to conform to the completion date and a proposal for an alternative completion date;

(II) in consultation with the facilitating or lead agency, as applicable, establish an alternative completion date; and

(III) each month thereafter until the agency has taken final action on the delayed authorization or review, submit to the Executive Director for posting on the Dashboard a status report describing any agency activity related to the project.

(G) Abandonment of covered project.—

(i) **In general.**— 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.

(ii) **Failure to respond.**— If the project sponsor fails to respond to a request described in clause (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.

(iii) **Publication to dashboard.**— On publication of a notice under clause (ii), the completion dates in the permitting timetable shall be tolled and agencies shall be relieved of the obligation to comply with subparagraph (F) until such time as the project sponsor submits to the facilitating or lead agency, as applicable, an updated statement regarding the technical and financial ability of the project sponsor to construct the project.

(3) Cooperating state, local, or tribal governments.—

(A) **State authority.**— If the Federal environmental review is being implemented within the boundaries of a State, the State, consistent with State law, may choose to participate in the environmental review and authorization process under this subsection and to make subject to the process all State agencies that—

(i) have jurisdiction over the covered project;

(ii) are required to conduct or issue a review, analysis, opinion, or statement for the covered project; or

(iii) are required to make a determination on issuing a permit, license, or other approval or decision for the covered project.

(B) **Coordination.**— To the maximum extent practicable under applicable law, the facilitating or lead agency, as applicable, shall coordinate the Federal environmental review and authorization processes under this subsection 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.

(C) Memorandum of understanding.—

(i) **In general.**— Any coordination plan between the facilitating or lead agency, as applicable, and any State, local, or tribal agency shall, to the maximum extent practicable, be included in a memorandum of understanding.

(ii) **Submission to executive director.**— The facilitating or lead agency, as applicable, shall submit to the Executive Director each memorandum of understanding described in clause (i).

(D) **Applicability.**— The requirements under this title shall only apply to a State or an authorization issued by a State if the State has chosen to participate in the environmental review and authorization process pursuant to this paragraph.

(d) Early Consultation.— The facilitating or lead agency, as applicable, shall provide an expeditious process for project sponsors to confer with each 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.

(e) Cooperating agency.—

(1) In general.— A lead agency may designate a participating agency as a cooperating agency in accordance with part 1501 of title 40, Code of Federal Regulations (or successor regulations).

(2) Effect on other designation.— The designation described in paragraph (1) shall not affect any designation under subsection (a)(3).

(3) Limitation on designation.— Any agency not designated as a participating agency under subsection (a)(3) shall not be designated as a cooperating agency under paragraph (1).

(f) Reporting Status of Other Projects on Dashboard.—

(1) In general.— On request of the Executive Director, the Secretary and the Secretary of the Army shall use best efforts to provide information for inclusion on the Dashboard on projects subject to section 139 of title 23, United States Code, and section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) likely to require—

(A) a total investment of more than ~~\$200,000,000~~ \$50,000,000; and

(B) an environmental impact statement under NEPA.

(2) Effect of inclusion on dashboard.— Inclusion on the Dashboard of information regarding projects subject to section 139 of title 23, United States Code, or section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) shall not subject those projects to any requirements of this title.

[Section 41013 is repealed by section 70801(h) of division G of Public Law 117-58.]

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Summary

- (1) 2 amendments.
 - (2) 0 automated notifications.
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