

Attachment #1

FAST-41 and EO 13807

Standard Operating Procedure for Implementation at EPA

1.0 Purpose

This Standard Operating Procedure (SOP) describes EPA’s internal roles and responsibilities under both Title 41 of Fixing America’s Surface Transportation Act (FAST-41)¹ and Executive Order 13807 (“Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”), also referred to as “One Federal Decision” or OFD, in the environmental permitting and review of proposed infrastructure projects. This SOP is intended to improve the internal management of EPA and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the Agency, its officers or employees, or any other person.

2.0 Scope and Applicability

This SOP applies only to EPA’s activities related to implementation of FAST-41 and EO 13807. It does *not* supersede any other existing guidance for permitting or the agency’s NEPA review process, and it does not affect the process of cooperating or participating under NEPA.

This SOP should be followed in conjunction with “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects” (FAST-41 Guidance), available at <https://www.permits.performance.gov/tools>.

Specifically, this SOP outlines procedures for EPA internal coordination and action related to the following:

- When to Become a Cooperating or Participating Agency
- Serving as a Cooperating Agency
- Updating the FAST-41 Permitting and OFD Dashboard
- Elevation / Dispute Resolution Procedure
- Agency Reporting

This SOP also includes a list of contacts in the Headquarters and Regional Offices (Appendix A); a template for responses to invitations to cooperate or participate on projects (Appendix B);

¹ 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. Sections 4370m - 4370m-12).

and an illustrative example of EPA's workload approach to determine cost of completing permit reviews (Appendix C).

3.0 Agency Roles and Responsibilities

- 3.1 Council Member** – By statute, EPA shall assign one Council Member, who fulfills a policy/consultation role within the Federal Permitting Improvement Steering Council² (Council or FPISC). EPA's Council Member must hold a position of deputy secretary (or equivalent, e.g., deputy administrator or assistant administrator) or higher.³ If EPA changes its Council Member, the agency should notify the Executive Director as soon as possible (see p. 64, Appendix A, FAST-41 Guidance).
- 3.2 Chief Environmental Review and Permitting Officer (CERPO)** – By statute, the CERPO shall facilitate successful coordination, as needed, across EPA's programs and regions, and advise the agency's Council Member on matters related to environmental review and authorizations. The CERPO will provide regular updates to the Council Member on FAST-41 and EO 13807 implementation and performance; communicate across the EPA program offices and programs; and work with the Council's Executive Director, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) to ensure that timetable data and the Permitting Dashboard are updated in a timely manner. If EPA changes its CERPO, the agency should notify the Executive Director as soon as possible (see p. 68, Appendix A, FAST-41 Guidance).
- 3.3 HQ (OP) Staff Lead** - EPA has internally established an OP Staff Lead to coordinate with HQ Program Specialists, Regional Points of Contact (POCs), the CERPO and the Council to ensure national consistency in EPA's implementation of FAST-41 and EO 13807. The HQ Staff Lead will undertake the following:
- 3.3.1 Work with FAST-41 and EO 13807 HQ Program Specialists (Section 3.4) and Regional POCs (Section 3.6) to distribute general guidance and direction from the Council; develop responses to any agency-wide inquiries from the Council; share requests for review and input from the Council; and develop responses to invitations to serve as a cooperating/participating agency and any subsequent status or key staffing changes.

² 42 U.S.C. Section 4370m-1(b)(2)

³ 42 U.S.C. Section 4370m-1(b)(2)(A)(ii)

- 3.3.2 Coordinate with HQ Program Specialists and Regional POCs, as appropriate, to identify and track EPA actions and due dates for all FAST-41 and EO 13807.
- 3.3.3 Represent EPA at staff-level FAST-41 and EO 13807 meetings scheduled by the Council.
- 3.3.4 Keep the CERPO, HQ Program Specialists and Regional POCs apprised of any new relevant news, guidance, and general updates from the Council.
- 3.3.5 Serve as a key point of contact, in addition to the CERPO, with counterparts at other agencies regarding FAST-41 and EO 13807.

3.4 HQ Program Specialists – EPA has internally established four HQ Program Specialists who work with respective Program and Regional offices responsible for issuing permits or conducting environmental review for FAST-41 and EO 13807 projects. Program Specialists are in the Office of Air and Radiation (OAR), Office of Water (OW), Office of Land and Emergency Management (OLEM) and Office of Policy (OP). The FAST-41 and EO 13807 Team, led by OP, comprises the four HQ Program Specialists and the OP Staff Lead (see Section 3.3). HQ Program Specialists will undertake the following:

- 3.4.1 Serve as advisor to OP regarding program-specific permitting implementation and policy issues related to FAST-41 and EO 13807.
- 3.4.2 Work with OP to develop responses to broad, agency-wide inquiries and information requests from the Council, and invitations from other agencies to serve as a cooperating/participating agency on FAST-41 and EO 13807 projects. In preparing responses to inquiries, coordinate with and solicit input from respective program and regional office counterparts, as appropriate, and provide responses to OP Staff Lead.
- 3.4.3 Identify and track relevant EPA action/due dates for all FAST-41 and EO 13807 projects and, in the event of any anticipated delays, promptly notify the OP Staff Lead.
- 3.4.4 Keep senior program management apprised of any relevant FAST-41 and EO 13807 guidance and general updates.

3.5 Dashboard Administrators – EPA has two Dashboard Administrators, who are in OAR and OW. By statute, EPA must have at least one Dashboard Administrator who has write-access to the Permitting Dashboard (Dashboard), is responsible for posting information in a timely manner, and works with agency staff to ensure that information is kept current.

3.6 Regional Points of Contact (Regional POCs) – EPA has internally established a POC within each Regional Office who is responsible for coordinating with regional staff and management, HQ Program Specialists, and the OP Staff Lead, as appropriate, on any FAST-41 or EO 13807 inquiries and projects. Regional POCs will be responsible for the following:

- 3.6.1 Serve as the principal point of contact for the OP Staff Lead, HQ Program Specialists and regional staff/management on FAST-41 and EO 13807.
- 3.6.2 Work with the OP Staff Lead to provide responses to invitations from other agencies inviting EPA to serve as a cooperating or participating agency under FAST-41, and responses to agency-wide inquiries and requests for information from the Council. OP will be responsible for transmitting EPA’s responses on behalf of the agency.
- 3.6.3 Serve as the principal point of contact in the Region for information about status of projects where EPA is a cooperating or participating agency, or delegate a regional staff person (Regional Staff) to serve this role.
- 3.6.4 Alert the OP Staff Lead about any FOIA requests and Congressional inquiries related to FAST-41 or EO 13807 projects.
- 3.6.5 As requested by the OP Staff Lead, participate in project-specific calls and discussions with the Council.
- 3.6.6 Keep senior regional management apprised of any relevant FAST-41 or EO 13807 guidance or general updates.

4.0 Procedure

4.1 Invitations to Cooperate or Participate on a Project under FAST-41 or EO 13807

- 4.1.1 The following steps apply only to handling invitations to cooperate or participate on a project. These steps do not apply to the process that EPA follows in cooperating or participating under NEPA.
- 4.1.2 For covered projects where EPA is identified as an entity likely to be responsible for an environmental review or authorization, the CERPO and/or the OP Staff Lead will receive an invitation from the Facilitating/Lead agency to become a cooperating or participating agency⁴, approximately 45 days after the project has been added to the Dashboard.
- 4.1.3 If a Region should receive one of these invitations directly from a Facilitating/Lead agency, the Regional POC should send it to the OP Staff Lead as soon as possible (within 1-2 days following receipt) for response. OP will respond on behalf of the agency to all invitations to cooperate or participate.
- 4.1.4 The CERPO or OP Staff Lead will then forward the invitation to the HQ Program Specialists and the appropriate Regional POC and will specify a deadline for response. The HQ Program Specialist and Regional POC will work within their respective offices, as appropriate, to review information provided by the Facilitating/Lead agency, confirm whether EPA is likely to have any permitting authorizations, and prepare a proposed response.
- 4.1.5 The Regional POC and HQ Program Specialist will work together to provide a coordinated proposed response to the OP Staff Lead, using the template provided in Appendix B. The OP Staff Lead will share the proposed response with the CERPO for review.
- 4.1.6 If the regional/program recommendation differs from the subsequent CERPO decision, the OP Staff Lead will discuss any differences with the region / program, and reevaluate as appropriate, prior to sharing with the Facilitating/Lead agency. The OP Staff Lead will share the reevaluated proposed response with the CERPO for final review and approval before transmitting to the Facilitating/Lead agency, with a copy to the Regional POC.
- 4.1.7 For projects where EPA chooses to cooperate or participate on a project, the Regional POC will provide the name of a regional person who will serve as the point of contact on the project. The point of contact may be the Regional POC or designee (Regional Staff).

⁴ 42 U.S.C. Section 4370m-2(a)(2)(A)

4.2 When to Become a Cooperating or Participating Agency Under FAST-41 or EO 13807

4.2.1 EPA shall become either a participating or cooperating agency for all covered projects based on its commenting authority under NEPA, jurisdiction by law, and/or special expertise. Being a cooperating agency is a higher threshold and entails greater involvement and responsibility. Specifics are described below:

4.2.2 **Participating Agency:** By default, the EPA will become a participating agency for all FAST-41 or EO 13807 projects because, under Section 309 of the Clean Air Act, EPA reviews and comments on draft EISs.

As a participating agency, EPA has the opportunity for early engagement and coordination, but would not necessarily have jurisdiction by law or authority over projects.

4.2.3 **Cooperating Agency:** In lieu of becoming a participating agency, EPA will become a cooperating agency for any project where the agency is responsible for a permit authorization (i.e., the agency has jurisdiction by law), is a cooperating agency under NEPA, or is otherwise determined to have relevant special expertise.

4.2.4 For any projects where EPA is serving as a participating agency, and later becomes a cooperating agency under NEPA, we will request that the lead agency elevate our status to cooperating under FAST-41. Additionally, for any covered projects where EPA is not serving as a cooperating agency under NEPA but later determines that it has relevant special expertise, EPA will request to become a cooperating agency under NEPA as well.

4.2.5 As a cooperating agency, EPA will have 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.

4.3 Serving as a Cooperating Agency

- 4.3.1 As a cooperating agency, EPA will need to coordinate with the Facilitating/Lead agency to help develop the Coordinated Project Plan (CPP), concur on the permitting timetable, and enter project milestone information for its permitting authorization into the public Dashboard.
- 4.3.2 The Regional POC/Regional Staff POC (see Section 4.1.7) will coordinate with the HQ Program Specialist to provide information to the Facilitating/Lead agency about EPA authorizations/permit issuance for the project. EPA will inform the lead agency of the data and information needed from the lead agency or proponent to support the authorization/permit and will provide a schedule of when data/information must be received, and when reviews and approvals must be made.

4.4 Updating the Permitting Dashboard

- 4.4.1 For projects where EPA is responsible for a permit authorization under FAST-41 or EO 13807, milestones and the party responsible for those milestones for that authorization should be entered and regularly updated on the Dashboard. The HQ Dashboard Administrators or Lead agency will be responsible for updating the Dashboard. The Regional POC or Regional Staff, in coordination with the respective HQ Program Specialist, will be responsible for providing project-specific information for any necessary updates.
- 4.4.2 For each project in which EPA is a cooperating agency under FAST-41 or EO 13807, Regional Staff will work with the respective Lead agency to determine a process for updating the Dashboard. This process is likely to differ from project to project. The Lead agency may prefer to update the Dashboard directly, or may prefer that EPA make the updates.
- 4.4.3 If EPA's permit authorization/issuance is likely to be delayed from the approved schedule posted on the Dashboard, the Regional POC or Regional Staff will work with the HQ Program Specialist to provide information for the Dashboard update, including an explanation for the delay or anticipated delay, and a proposal for an alternative completion date.

4.5 Agency Elevation & Dispute Resolution Procedures

- 4.5.1 Any disputes arising with either the lead agency or another cooperating or participating agency during the project planning and environmental review process shall be immediately elevated to the first Senior Executive Service (SES) level with authority and jurisdiction within the lead Region (or HQ) for the issue in conflict. Upon learning of the dispute, the first level SES member will consult with the OP Staff Lead immediately to determine if it is likely the dispute will/will not be resolved and/or is likely to cause a milestone to be missed or extended. The first-level SES/OP Staff Lead consultation will make a determination to involve the CERPO and/or Dashboard Administrator, and whether to recommend further Elevation Procedures.
- 4.5.2 EPA will implement this section consistent with any dispute resolution process established in an applicable law, regulation, or legally binding agreement to the maximum extent permitted by law.
- 4.5.3 If unable to resolve the dispute, the matter shall be elevated in writing simultaneously to the RA, AA and CERPO by the lead SES annotated in paragraph 4.5.1 and within 15 business days schedule and provide a brief to include the background, details on the dispute, and recommendations.
- 4.5.4 In the event that the RA, AA, and CERPO are unable to agree on and execute resolution, the issue shall be raised to the FAST-41 Council member for a decision within 10 business days. The Council member, at his or her discretion, may consult with the Deputy Administrator and/or Administrator, CEQ, the Executive Director of FPISC, and OMB.
- 4.5.5 Each step described above shall include active engagement with the lead agency or cooperating/participating agency with whom the dispute involves. Any agency action added to and tracked on the permitting dashboard shall be monitored by the office with the authority and jurisdiction over the action. That lead office must confirm to the OP staff at 90-, 60- and 30-day out intervals that the action is on track to be completed. If, and as soon as, the lead office determines that it will be unable to complete an action milestone on time, that lead office must work with the lead agency to modify the permitting schedule. If too late to adjust the date, the lead office must follow the dispute elevation process described above for the purpose of adequate notification.

An explanation of the root cause for the delay along with mitigative and corrective measures to be implemented shall be provided.

4.6 Agency Reporting

- 4.6.1 EPA will be required to track compliance with EO 13807 through the accountability system currently under development with OMB. EPA will be required to estimate its costs for environmental reviews and authorizations for each major infrastructure project using an OMB-approved methodology. While awaiting OMB guidance on the development of an accountability system, EPA has developed an illustrative example of how the manager in charge of an environmental review or authorization may be able to estimate the cost of that environmental review or authorization (Appendix C). As these cost estimations are only for environmental reviews and authorizations for projects covered by EO 13807, they would not be indicative of the total costs for all of these activities and budgets for these activities should continue to be determined through existing processes.
- 4.6.2 The OP Staff Lead is responsible for assimilated agency reporting and as such will frequently require input from regional and program office staff accordingly in the fulfillment of this obligation.

4.7 Responding to General Inquiries from the Council

- 4.7.1 The OP Staff Lead is responsible for managing EPA's response to agency-wide inquiries and requests regarding FAST-41 or EO 13807 projects from the FAST-41 Council. Examples include requests to review draft guidance and requests to provide input into the Council's annual best management plan report.
- 4.7.2 The OP Staff Lead will work with the appropriate Program Specialist(s) and Regional POC, who will solicit input from program and regional counterparts, as appropriate.
- 4.7.3 HQ Program Specialists and Regional POCs will provide input to the OP Staff Lead, who will work with them to develop a response for CERPO review.
- 4.7.4 The OP Staff Lead will share the proposed response with the CERPO for final review and approval. Upon approval, EPA's response will be transmitted to the Council by the OP Staff Lead.

5.0 Definitions

- **Authorizations** - Authorizations include any license, permit, approval, finding, determination, or other administrative decision to site, construct, reconstruct, or commence operations of a covered project administered by a Federal agency.
- **Abbreviated Authorization** – An “abbreviated authorization” is a “statutory or regulatory authorization process whereby a project that meets applicable criteria for that authorization type receives an expedited authorization decision (e.g., within one year) or a simplified process (e.g., U.S. Army Corps of Engineers General Permit).”⁵
- **Permitting Dashboard (Dashboard)** - Online tool to track the federal government’s environmental review and authorization process of FAST-41 projects (www.permits.performance.gov).
- **Facilitating Agency and Lead Agency** - Responsible in part for contacting other agencies relevant to the project and facilitating development of a Coordinated Project Plan. The terms Facilitating Agency and Lead Agency may be used interchangeably, and the agency fulfilling that role may change once a determination is made as to which agency is the Facilitating/Lead agency. EPA is not expected to be either a Facilitating or Lead Agency for any covered project.⁶
- **Cooperating Agency** - An agency that has jurisdiction under federal law, or special expertise, or that will be exercising authority related to the proposed project (e.g., the agency is issuing a permit, is involved in preparation of a portion of the EIS or has specific review editorial responsibilities for portions of the EIS). An agency that is a cooperating agency under FAST-41 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.”⁷ (see Table 10, Appendix A of the FAST-41 Guidance).
- **Participating Agency** – An agency participating in an environmental review or authorization for a covered project, as defined by the statute⁸. As described by the

⁵ OMB and CEQ, Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (Jan. 13, 2017).

⁶ See Memorandum from Richard Kidd, Executive Director, FPISC, to Cynthia Giles, Council Member, FPISC, Jan. 15, 2017.

⁷ OMB and CEQ, Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (Jan. 13, 2017).

⁸ Section 4370m-2.

guidance⁹, FAST-41 participating agencies would not necessarily have authority or jurisdiction over covered projects. Such agencies can become cooperating agencies should project circumstances change.

- **Coordinated Project Plan (CPP)** - A CPP is a plan for coordinating public and agency participation in, and completion of, any required federal environmental review and authorization of the project. While the CPP is not required to be made publicly available on the Dashboard, it must be created amongst applicable agencies. The permitting timetable must be published on the Dashboard, along with a status of compliance with each milestone. (see Section 4E of the FAST-41 Guidance).

6.0 List of Acronyms

CPP	Coordinated Project Plan
CERPO	Chief Environmental Review and Permitting Officer
CEQ	Council on Environmental Quality
EIS	Environmental Impact Statement
FAST-41	Title 41 of the Fixing America's Surface Transportation Act
FPISC	Federal Permitting Improvement Steering Council
HQ	(EPA) Headquarters
NEPA	National Environmental Policy Act
OAR	Office of Air and Radiation
OFA	Office of Federal Activities
OLEM	Office of Land and Emergency Management
OMB	Office of Management and Budget
OP	Office of Policy
OW	Office of Water

⁹ Table 11, Appendix A of the FAST-41 Guidance