

Permit Reform

ISSUE TYPE	Regulatory (Federal)	KEY DATES	Dec. 4, 2019 – The President signs the FAST Act into law, includes permit reform provisions
AGENCY	Congress/Administration		Aug. 15, 2017 – White House issues Executive Order to hasten the environmental permitting process
STATUS	Active/Tracking		Feb. 12, 2018 – White House infrastructure plan proposes multiple streamlining measures
DIVISION IMPACT	All		Apr. 9, 2018 – 12 federal agencies sign memorandum of understanding to implement Executive Order
INTERESTED PARTIES	All	MOST RECENT ACTION	Jan. 9, 2019 - The REBUILD Act is introduced

Summary

Permitting regulations can cause significant delays in the construction of transportation projects; a Common Good study found delays can more than double project costs. The length and expense of permitting reviews can lead to years-long delays, preventing the completion of projects with benefits far outweighing their costs and hindering improvements that could increase system fluidity. The inefficiencies of the federal permitting process have been recognized by Congress and the Administration alike, and both have made strides for improvement.

The Moving Ahead for Progress in the 21st Century (MAP-21) Act, signed into law in 2012, called for, among other things, guidance for a lead agency for multimodal projects in the environmental review process and identification of opportunities for project sponsors to assume Federal National Environmental Policy Act (NEPA) responsibilities.

In 2012 the White House established the Federal Infrastructure Projects Dashboard which contains major projects subject to federal review and is a tool for interested parties to track the environmental review and authorization processes for large infrastructure projects.

The Fixing America's Surface Transportation (FAST) Act of 2015 made additional strides toward permit streamlining, including calling for coordinated interagency project management and expanding the 2012 Dashboard. The FAST Act also created the

National Surface Transportation and Innovative Finance Bureau within the U.S. Department of Transportation (USDOT), and housed various federal financing and funding programs to ensure expeditious consideration of projects.

In Oct. 2018, the Federal Highway Administration (FHWA), Federal Railroad Administration and the Federal Transit Administration (FTA) issued a final rule implementing environmental streamlining provisions from both MAP-21 and the FAST Act that streamline regulations across the three agencies to allow for more consistent and efficient permitting of surface transportation projects. Specifically, the rule extends current flexibility allowed to highway and transit projects to also be applied to railroad projects. USDOT announced in Nov. 2018 that it completed the FAST Act requirements to streamline environmental reviews of certain maritime and aviation projects covered under section 1313. This section required USDOT to align certain environmental reviews through coordinated and concurrent processes in addition to creating a checklist to facilitate collaboration.

While the FAST Act's additional improvements were intended to further expedite project delivery, there has been some confusion in administrative offices about their implementation. A March 2017 audit by the Office of Inspector General at USDOT found that many permitting initiatives required by MAP-21 were delayed or needed revision in order to comply with the FAST Act.

Building upon the provisions in MAP-21 and the FAST Act, President Trump has also issued Executive Orders (EOs) dealing with permit reform. A Jan. 2017 EO directed the Council on Environmental Quality (CEQ) to review projects and determine if they should be considered for expedited treatment, identifying them as “High Priority Infrastructure Projects.” In Aug. 2017, President Trump issued another EO, requiring that one agency be assigned as the lead in the environmental review process and setting a two-year goal for completion of all reviews.

In response to the Aug. 2017 EO, the CEQ published a list of initial actions it will take to hasten the environmental review process for infrastructure projects. Those actions include: collaboration with the Office of Management Budget as well as the Federal Permitting Improvement Steering Council to develop a “one federal decision” process; work with other relevant agencies to identify projects that could be considered high-priority infrastructure projects; and review existing procedural provisions of the process to identify changes and updates needed to clarify the regulations. In April 2018, 12 federal agencies (including USDOT) signed a memorandum of understanding to implement the EO.

On Feb. 12, 2018, President Trump published a “Legislative Outline for Rebuilding Infrastructure in America.” In addition to a proposed investment program, the document also included multiple suggestions intended to streamline the permitting process, including: extending the FAST Act streamlining provisions to rail projects and shortening the statute of limitations for legal challenges on rail projects from two years to 150 days; establishing a “one agency, one decision” environmental review structure; instructing the CEQ to issue regulations to streamline the NEPA process; and allowing for advanced acquisition and preservation of rail rights-of-way before NEPA is complete. It also sought to delegate more authority to states by expanding NEPA assignment to other agencies beyond just FHWA and FTA and

broadening the NEPA assignment program to include other determinations.

While both the President and various federal departments have taken steps to continue streamlining the project delivery process, Congress continues to weigh in as well. Congressman Calvert (R-CA) introduced the Reducing Environmental Barriers to Unified Infrastructure and Land Development (REBUILD) Act in Jan. 2019. The bill would streamline infrastructure permitting by allowing all states to review NEPA compliance instead of federal agencies, expanding upon a Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) pilot program that allowed only a limited number of states to do so.

Potential Impact to Intermodal Freight Transportation

Following are some potential impacts of permit streamlining reforms on intermodal freight transportation:

Impact 1:

Many of the permitting reforms have not been fully implemented, leaving the industry in a holding pattern.

Impact 2:

Establishing concurrent rather than sequential reviews and coordinating between agencies could result in a quicker permitting process, particularly for large, multimodal projects which traditionally require the approval of multiple modal administrations.

Impact 3:

A faster permitting review process could reduce total project costs, which in turn could result in the ability to fund more projects.

Impact 4:

Permitting costs and delays diminish the incentive for private sector investments in infrastructure projects, posing a barrier to public-private partnerships.