



## Biden Administration Directs Submittal of Agency Action Plans by April 5, 2023 to Improve Infrastructure Permitting Transparency

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### Overview

On March 6, 2023, the Office of Management and Budget (OMB), the Council on Environmental Quality (CEQ) and the Federal Permitting Improvement Steering Council (FPISC) Executive Director released a Memorandum for the Heads of Executive Departments and Agencies on Implementation Guidance for the Biden-Harris Permitting Action Plan (Implementation Guidance) that requires FPISC members, including the Federal Energy Regulatory Commission (FERC),<sup>1</sup> to submit Agency Action Plans for their collective review by April 5, 2023. These Agency Action Plans are to include strategies, processes, milestones and deadlines each agency will use to improve permitting transparency as outlined in the Biden-Harris Permitting Action Plan (Action Plan) released on May 11, 2022.

The Action Plan and recent Implementation Guidance was spurred on by the passage of the *Infrastructure Investment and Jobs Act* (P.L. 117-58; IIJA), and subsequently the *Creating Helpful Incentives to Produce Semiconductors and Science Act* (P.L. 117-167; CHIPS). The IIJA amended Title 41 of the Fixing America's Surface Transportation Act (FAST-41), to permit the FPISC Executive Director to direct lead agencies for National Environmental Policy Act (NEPA) reviews to post projects other than FAST-41 "covered" projects to the Federal Permitting Dashboard (Dashboard) if the Executive Director determines that posting such projects is "in the interests of transparency." The Implementation Guidance, like the Action Plan, centers around utilization of the Dashboard, and explains how FPISC members should add infrastructure projects, or recommend their additions.

The Implementation Guidance expounds upon five key elements of permitting transparency discussed in the Action Plan. These elements are:

1. Accelerating smart permitting through early cross-agency coordination.
2. Establishing clear timeline goals and tracking key project information.
3. Engaging in early and meaningful outreach and communications.
4. Improving responsiveness, technical assistance, and support.
5. Adequately resourcing agencies and using the environmental review process to improve environmental and community outcomes.

A section-by-section summary of the Implementation Guidance, including information on what is to be included in the forthcoming Agency Action Plans, is provided below:

## **Section 1: Accelerating Smart Permitting through Early Cross-Agency Coordination**

*Section 1.1.* This section tasks the FPISC with improving coordination among agencies, facilitating sound and efficient permitting, and resolving issues consistent with climate, economic and equity goals. This facilitation of cross-cutting federal permitting issues will be done for all types of infrastructure projects, not just those covered by Fixing America's Surface Transportation Act (FAST 41; P.L. 114-94). These efforts will include the discussion of strategies to foster early and improved interagency coordination, providing advanced training, support, information-sharing avenues, and identifying and helping address pressing environmental review and permitting issues.

*Section 1.2.* The guidance addresses the role of sector-specific teams created by the Biden-Harris administration to advance the responsible build-out and modernization of U.S. infrastructure through facilitating interagency coordination on siting, permitting, supply chain and related issues. These teams will identify:

- General permitting issues that should be addressed to avoid bottlenecks and facilitate timely review of applications.
- Large, complex or significant projects in their respective sectors that should be considered for addition to the Federal Permitting Dashboard (Permitting Dashboard).
- Strategies to address disputes or complicated issues.
- Any other pertinent issues determined by the teams.

*Section 1.3.* Additionally, the guidance outlines the factors for sector-specific teams to consider when identifying large, complex or significant projects to be recommended to FPISC

for Permitting Dashboard consideration. Such factors include the:

- Size of a project regarding its investment cost, geographic scope and magnitude compared to other projects.
- Complexity of a project, including whether it will require the development of an environmental impact statement or environmental assessment that involves multiple agencies or raise complex issues under relevant statutes.

*Section 1.4.* This section identifies other activities that sector-specific teams should report regularly, which includes initiatives and strategies to address complicated matters, disputes, resource constraints and other issues that warrant FPISC's attention as they arise and on at least a quarterly basis. Additionally, the teams are called upon to address instances of a lack of interagency coordination, staffing limitations, implementation or operational challenges, or legal or policy issues that may hinder the timely delivery of specific infrastructure projects. Moving forward, the teams are expected to report potential mechanisms to advance technical innovation and interoperability, as well as make environmental reviews more efficient and effective.

*Section 1.5.* The guidance outlines what actions agencies should take to accelerate smart permitting through early cross-agency coordination. This section states that agencies should identify approaches to execute their environmental review and permitting responsibilities for infrastructure projects in a manner that seeks to deconflict requirements to prevent bottlenecks, build common undersigning, and contribute effective, efficient, timely, inclusive and sound scoping of projects.

## **Section 2: Establishing Clear Timeline Goals and Tracking Key Project Information**

*Section 2.1.* The Action Plan directs agencies to establish and post project permitting schedules with clear timeline goals that are both ambitious and realistic, contain relevant milestones and meet all requirements in applicable law. This includes efforts to ensure that permitting schedules include the relevant actions and milestone completion dates for each agency, use the most effective and expeditious processes, and include best practices identified in federal, state and tribal reviews for coordination and public engagement.

Regarding establishing permitting schedules, the guidance suggests that agencies consider factors such as the project's overall size and complexity, the project's regional or national economic significance, the project's environmental and climate benefits, the sensitivity of the natural or historic resources that the project may affect, impacts on communities with

environmental justice concerns and the overall cost and financing plan for the project. Such efforts should seek to reduce duplication, enhance effective, efficient, informed decision-making, and avoid or reduce environmental harm.

Lastly, the section concludes by stating that a Chief Environmental Review and Permitting Officer (CERPO) for each agency—including sub-agencies of a department where appropriate—should review and approve each project’s permitting schedule, permitting timetable and related plans for quality assurance.

*Section 2.2.* This section establishes that the following projects must be posted on the Permitting Dashboard:

- FAST-41 Covered Projects: Projects identified as “covered” projects under Title 41 of the Fixing America’s Surface Transportation (FAST) Act.
- Department of Transportation (DOT) Projects: DOT highway, public transportation, railroad and certain multimodal projects that require an environmental assessment or an environmental impact statement.

### **Section 3: Engaging in Early and Meaningful Outreach and Communication with Tribal Nations, States, Territories, and Local Communities**

*Section 3.1.* The Action Plan prioritizes proactive and continuous engagement with the public and Tribal, state, local, and territorial partners to consider the needs of communities during the environmental review and permitting processes. To do this, relevant parties and interests must be identified. This engagement should be tailored to individual communities since engagement needs can vary by community.

The White House recommends dedicating specific staffing and partnering with trusted local messengers for this outreach. For projects with tribal implications, agencies should consult with tribal nations. Agencies should also coordinate with environmental justice and public outreach teams and equip field offices to deliver coordinated outreach to communities.

Finally, agencies should post and maintain information about public engagement opportunities and the status of mitigation measures agreed to as part of the environmental review and permitting process for all projects published on the Permitting Dashboard.

### **Section 4: Improving Responsiveness, Technical Assistance, and Support**

*Section 4.1.* The White House suggests that agencies should post information about their resources, training, tools and opportunities on an accessible public webpage to foster an understanding of requirements and opportunities to engage with the Federal process. Given that the DOT oversees the Permitting Dashboard, agencies should provide DOT with their webpage information and provide updates to ensure the central resource page remains up to date.

Additionally, agencies should seek opportunities to provide jointly developed information and training to help project sponsors, permit applicants, potentially impacted communities, Tribal Nations and other stakeholders navigate the Federal environmental review and permitting processes. These materials should be regionally tailored. Further, the Permitting Council Executive Director can aid in the facilitation of discussions and information sharing among agencies to foster a smooth process with reduced delays.

*Section 4.2.* To minimize duplication and maximize the use of technology for environmental review and permitting-related information collection, agencies should share information collected during the process through the increased development and use of centralized datasets and systems. This would allow cross-agency data-sharing and collaboration with project sponsors, stakeholders and interested parties to identify data needs to facilitate effective and timely reviews. Finally, agencies should consider engaging stakeholders on improving the efficiency and effectiveness of information collection requests.

## **Section 5: Adequately Resourcing Agencies and Using Environmental Review Process to Improve Environmental and Community Outcomes**

*Section 5.1.* With a focus on resource management, Section 5 calls on federal agencies to leverage existing tools to address workforce needs necessary for efficient environmental reviews and permitting processes. Specifically, the Action Plan stresses the funding of liaison positions, reimbursable agreements with permitting agencies or recipients and interagency protocols for permitting-related communication. To mitigate mid-project staffing changes, the Action Plan implores agencies to provide employees with opportunities to garner agency-related expertise and implement retention strategies. Finally, the Action Plan details that the OBM and the Office of Personnel Management (OPM)—alongside the Permitting Council Executive Director—will collaborate to ensure sufficient resources and staffing for agencies.

*Section 5.2.* The Action Plan compels agencies to utilize the environmental review and permitting process to usher in improved environmental and community outcomes. To achieve

the aforementioned goal, the guidance implores agencies to leverage best practices in disclosing such outcomes—including qualitative and quantitative overviews of a given project’s environmental and community effects and adverse impact mitigation efforts. As such, the guidance recommends that agencies use the Permitting Dashboard to distill and communicate project disclosures.

*Section 5.3.* The Action Plan calls on the Permitting Council to utilize the Permitting Dashboard or another platform to disperse information on greenhouse gas emissions related to projects. The guidance details that the CEQ’s recently revised NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, which Akin discussed previously [here](#) and [here](#), may assist in greenhouse gas emissions disclosure. Finally, this section explains that CEQ and OMB intend on issuing further guidance related to greenhouse gas emissions disclosure on the Permitting Dashboard.

## **Section 6: Agency Action Plans**

*Section 6.1.* This section outlines that all agency action plans must include:

- Strategies, processes and deadlines that will oversee the implementation of the Action Plan’s five key elements—including accelerating permitting; establishing clear process timelines; engaging with tribes, states, territories and local communities; boosting agency responsiveness and technical support, and prioritizing agency resources related to environmental reviews and permitting processes.
- Performance mechanisms to ensure adequate progress monitoring.
- Processes for navigating issues, such as schedule delays and disputes.

Additionally, the guidance establishes an April 5, 2023 deadline for agencies to submit finalized action plans.

*Section 6.2.* This section urges agencies to establish and monitor performance measures to inform decision-making related to environmental reviews and permitting processes. Specifically—starting with 2024 action plans—agencies must identify performance goals to ensure expeditious environmental reviews and authorization decisions, boost collaboration and transparency, and improve environmental and community outcomes. Further, agencies are to utilize 2023 agency performance reports to measure progress in 2024 action plans. Finally, the guidance suggests that agencies use information from the Permitting Dashboard to develop the aforementioned performance goals.

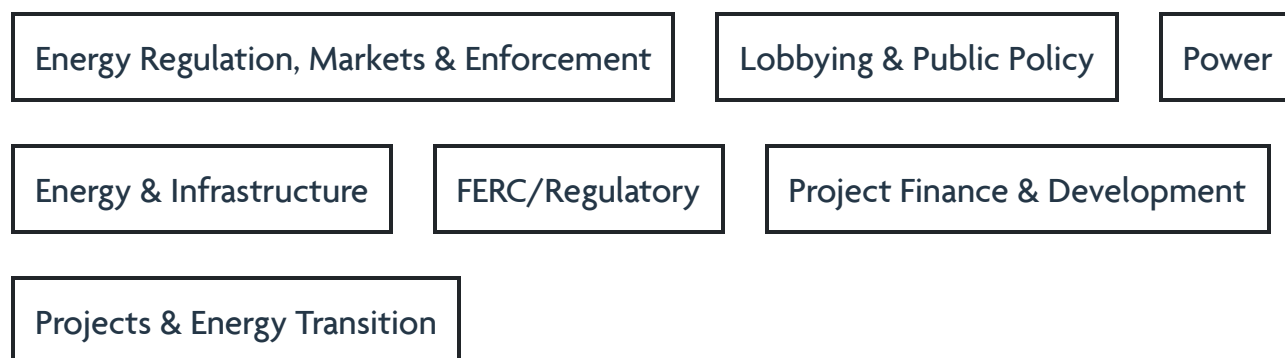
*Section 6.3.* The guidance calls on agencies to publish agency-wide points of contact for environmental review and permitting processes to encourage community engagement. Similarly, this section encourages such points of contact to be made available across agencies. The guidance compels agencies to have such information in place by the end of 2023.

Moreover, the guidance tasks agencies to develop and enact internal issue identification and resolution processes. These efforts should allow for feedback from relevant points of contact and be colored by pertinent project information. Moving forward, such input may be expanded to serve as department-wide issue and dispute resolution procedures.

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<sup>1</sup> The 13 Federal agency FPISC members include designees of the Secretaries of Agriculture, Army, Commerce, the Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development, the Administrator of the Environmental Protection Agency, and the Chairs of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation. 42 U.S.C. § 4170m-1(b)(2)(B).

## Categories



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