

## Insight



# A Look at Infrastructure Permitting Reform Efforts, Past and Present

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## EXECUTIVE SUMMARY

- With infrastructure becoming a primary political focus in 2021, it is worth considering not just the overall funding levels but also opportunities to reform some of the underlying administrative burdens involved in potential projects.
- According to quantified data made available by past reform efforts, the paperwork filings currently involved in many infrastructure permitting processes collectively add up to 30.4 million hours of paperwork and \$1.6 billion in costs annually.
- In the face of those and other burdens, lawmakers should consider further reforms to the infrastructure permitting process – including some recently proposed ideas – to increase agency coordination, accountability, and transparency.

## INTRODUCTION

The political drumbeat for action on the infrastructure front has been building for months, and it will likely intensify this summer. There has long been broad, cross-partisan interest in doing *something* on infrastructure, yet the overall parameters of what a legislative package should look like remain hotly contested. Much of the current debate surrounding President Biden’s American Jobs Plan (AJP)—which the administration advertises as its infrastructure plan—is focused on either the top-line figure of government outlays or which economic activities and public goods truly constitute “infrastructure.” Lacking in that discussion, however, is consideration of one of the most inefficient aspects of building out new infrastructure projects: the unnecessarily cumbersome, opaque, and often wildly costly permitting process. To illuminate potential reforms, this study reviews challenges with the current process by utilizing government data on paperwork requirements to estimate current time and monetary burdens faced by many typical projects. Additionally, it reviews proposals included in recent legislation that serve as helpful examples of reform efforts.

## PAST PROGRAMS AND DATA

The country’s last major infrastructure package, the “Fixing America’s Surface Transportation (FAST)” Act, was signed into law by President Obama on December 4, 2015, after overwhelming [bipartisan approval](#) in both chambers of Congress. Title 41 of the FAST Act, commonly known as the FAST-41 program, established a series of project permitting reforms. Broadly, the FAST-41 [framework](#) seeks to consolidate inter-agency coordination and provide greater accountability for how long agencies can take in determining the permit status

of a project that fits the FAST-41 criteria.

One aspect of the FAST-41 program that helps to illustrate the infrastructure permitting picture is the Permitting Dashboard [website](#). The website consolidates various aspects of inter-agency coordination and permitting procedures into a single resource. For instance, one [aspect](#) of the site “evaluates agency performance and overall progress in processing environmental reviews and authorization decisions.” One part of the Permitting Dashboard that is particularly helpful in better understanding what goes into a project’s approval process is the [Federal Environmental Review and Authorization Inventory \(Inventory\)](#), a database that “includes a brief description, identifies the activities or circumstances that trigger the review, the sectors and project types to which it could be applicable, and the underlying statutes and/or regulations.”

## EXAMINING THE BURDENS INVOLVED

The latest [version](#) of the Inventory database (uploaded 10/2/2020) includes 62 potential permitting requirements facing a project, depending of course on that project’s type. Cross-referencing each Inventory item against Office of Information and Regulatory Affairs (OIRA) [data](#) on information collections (IC), the American Action Forum (AAF) is able to clearly connect 43 of these 62 permit requirements to an IC with a time and cost estimate (see attached). It is important to note here that a given IC can include various forms, reports, etc. and thus multiple Inventory items may all fall under just one IC. Additionally, 32 Inventory items involve specific project types and thus only apply to an even more limited subset of potential projects.

The following dozen unique ICs, however, could apply to all project types:

IC	IC Title	Respondents	Hours	Total Costs
<a href="#">2040-0004</a>	Information Collection Request for National Pollutant Discharge Elimination System (NPDES)	10,297,857	28,221,350	\$1,474,720,430
<a href="#">0710-0003</a>	Application for a Department of Army Permit	80,000	880,000	\$44,932,800
<a href="#">1018-0022</a>	Federal Fish and Wildlife Permit Applications and Reports	53,510	394,967	\$14,810,241
<a href="#">0596-0082</a>	Special Use Administration	171,141	336,461	\$13,701,011
<a href="#">0648-0151</a>	Applications and Reporting Requirements for Incidental Taking of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act	359	215,479	\$10,242,441
<a href="#">1660-0015</a>	Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR-Fs	121,116	150,725	\$30,601,129
<a href="#">2120-0001</a>	Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration	280,298	58,858	\$2,136,387

0596-0249	SF-299 APPLICATION FOR TRANSPORTATION, UTILITY SYSTEMS, TELECOMMUNICATIONS AND FACILITIES ON FEDERAL LANDS AND PROPERTY	6,873	54,984	\$3,172,252
1076-0181	Rights-of-Way on Indian Land	3,200	39,050	\$2,529,621
1018-0167	Eagle Take Permits and Fees	4,318	25,894	\$3,849,362
1024-0144	Native American Graves Protection and Repatriation	448	4,470	\$192,806
0578-0013	Long Term Contracting	5,560	3,085	\$182,201

***“TOTAL COSTS” ESTIMATES COME FROM SUPPORTING DOCUMENTS FOR EACH IC.***

Combined, these ICs include 30.4 million annual hours of paperwork with \$1.6 billion in total costs. The overall burden helps to show the magnitude of compliance burdens in front of those that would undertake new projects. Granted, while these *could* apply to any given project under the FAST-41 program, some of the narrower items may not, especially when considering specific geographic or economic factors. Analyzing the data in a more granular fashion, however, may help to better illustrate the direct impact these requirements may have on a specific infrastructure contractor though.

The precise dynamics underlying some of these ICs provide some notable findings. For example, the average per-response burden in the above ICs ranges from roughly 12 minutes for the “Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration” to 600 hours for the “Applications and Reporting Requirements for Incidental Taking of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act.” The primary reason for the span of time of the latter is that approximately one-third of the responses need to include “PAM/PSO Surveys” that take an estimated 1,540 hours to prepare. For perspective, that equates to roughly three-quarters of a given full-time employee’s work-year.

The cost-per-hour figures in the above ICs range from \$36.30 per hour to \$203.03 per hour, with an overall average of \$70.14 per hour. For reference, according to the latest Bureau of Labor Statistics [data](#), that overall average is roughly equivalent to the mean wage of “Lawyers and Judicial Law Clerks.” It is not necessarily the lawyers involved that drive up these hourly costs, however. The higher end of that range comes, in part, from the apparent “Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR-Fs” requirement that affected property owners “hire a surveyor or engineer at an average cost of \$450 to provide certified elevation data” for each of three specific forms included under the overall IC.

## REFORM PRINCIPLES AND POTENTIAL ACTIONS

The above collection of paperwork items is merely a subset of potential steps in the regulatory process facing a given infrastructure project. Broader requirements beyond individual permits and clearances, such as reviews under the National Environmental Policy Act (NEPA), often [take years](#) due to agency inaction and/or litigation threats. It is, of course, important to examine and refine project plans to ensure they do not cause undue environmental harms, but there is a balance to be struck between those goals and approving projects in an expeditious and efficient manner. Following in the vein of past programs like FAST-41, some key objectives of future reform efforts (either on a stand-alone basis or as part of an infrastructure “package”) should include:

- Coordination. Relevant federal and state agencies unnecessarily collecting and analyzing redundant information does little, if anything, to mitigate harmful outcomes while increasing the time and money involved in approving a project. Efforts to improve coordination can involve: more clearly defining each agency’s role in a given permitting process, establishing better cross-agency information sharing practices so that stakeholders need only submit required data once, and building a more collaborative relationship with relevant stakeholders.
- Accountability. The core point of permits and other government approvals is to preemptively hold potential contractors accountable for potentially harmful outcomes, but it is often overly cumbersome for said contractors to hold the relevant agencies accountable for inappropriate actions or inactions. Establishing a framework that addresses this dynamic can help in terms of better allocation of resources both during and after the process in question.
- Transparency. It can be difficult, if not impossible, to comply with a permitting process if the requisite steps and expectations are not clearly understood by the applying party. Clearly providing greater information on the rules of the road *and* of the rationale behind an agency’s particular decision on a specific item are crucial parts of making the process more transparent.

There are examples of reforms following these principles in recently released surface transportation legislation in both the House and Senate. On May 19, Republican members of the House Transportation and Infrastructure (T&I) Committee rolled out the [Surface Transportation Advanced through Reform, Technology, & Efficient Review \(STARTER\) Act](#). The legislation’s Subtitle B—Acceleration of Project Delivery addresses permitting reforms. Sections 1201 and 1202 address all three of the above objectives in codifying the “[One Federal Decision](#)” (OFD) policy. OFD comes from a 2017 executive order directing agencies to coordinate and produce a single workstream of environmental reviews for a given project as opposed to each relevant agency redundantly undergoing the same process. It also addresses transparency and accountability concerns by setting a clear timetable for agency action in this space. The other sections (1203 through 1209) largely fall into the coordination category by streamlining certain requirements to avoid duplicative efforts across relevant federal and state authorities on a host of specific issues.

On May 22, the Senate Environment and Public Works Committee [announced](#) a bipartisan draft of its ‘Surface Transportation Reauthorization Act of 2021’. The legislation’s Subtitle C—Project Delivery and Process Improvement focuses on procedural reforms. Perhaps the most significant overlap with the STARTER Act is Section 1301’s proposed codification of OFD. There are some differences in the specifics—such as a 200-page limit for Environmental Impact Statements versus a 150-page limit under the STARTER Act—but the provisions largely align on a conceptual basis. Some other notable reform measures include:

- clarifying flexibilities available to the Department of Transportation in coordinating with relevant state authorities (Sections 1303-1306);
- allowing agencies to utilize previously prepared environmental documents in expediting new NEPA reviews (Section 1311); and

- establishing a more streamlined timeframe for [reviews](#) regarding the “consideration of park and recreation lands, wildlife and waterfowl refuges, and historic sites during transportation project development” (Section 1316).

It is unclear how much reforms like these will factor into legislation drafted by House Democrats. In [remarks](#) from May 18, House T&I Chairman Peter DeFazio implied that his Committee would soon introduce its legislation, the Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act. A review of the [major provisions](#) in a version of the bill from the previous Congress, however, suggests that such provisions are not likely to be a core priority of the forthcoming iteration. While it is difficult to know how many of the reforms discussed here will make it into either an eventual surface transportation package or even a broader infrastructure bill such as the AJP, it is still useful to have them in concrete legislative text as examples of potential changes—including some with a bipartisan imprimatur.

## CONCLUSION

“[Infrastructure Week](#)” is giving way to Infrastructure Summer. As the debate continues to take shape, it is important to bring attention to one of the more inefficient aspects of building out new projects: unnecessary red tape in the permitting space. The time required simply to file the required paperwork takes millions of hours and costs billions of dollars. Even after filing for the proper permits, however, prospective builders are often still at the mercy of an opaque, cumbersome process. Some recent limited proposals – that build upon principles established in past reform efforts – show promise in helping to address some of the flaws in the system.