



BEFORE THE U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

Roundtable on “FAST-41 and the Federal Permitting Improvement Steering Council: Progress
and Next Steps

Statement of Joseph Johnson, Executive Director

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Good morning, Senator Portman, Ranking Member McCaskill, and distinguished members of the Senate Committee on Homeland Security and Governmental Affairs. My name is Joe Johnson and I am the Executive Director at the U.S. Chamber of Commerce working on regulatory reform issues. The Chamber greatly appreciates the Committee’s interest in the vital issue of federal permit streamlining and for the work the Committee did during the 114th Congress that lead to passage of very clear, well-structured legislation that was incorporated as Title 41 of the Fixing America’s Surface Transportation Act (FAST-41).

My statement details the Chamber’s strong support for the federal permit streamlining provisions in FAST-41, our members’ experience with its implementation since passage, and for the next steps to further improve the permitting process you have included in S. 3017, the “Federal Permitting Reform and Jobs Act.”

FAST-41 had strong leadership from its original co-sponsors, Senators Portman and McCaskill and Chairman Johnson, and bipartisan support demonstrated by the prior administration’s immediate implementation of the statute. In light of Congress’s and the current administration’s commitment to modernizing America’s infrastructure by maximizing the use of limited resources, FAST-41 is an important tool to construct the necessary permitting reforms to allow infrastructure projects of all types to move forward expeditiously while still protecting health and the environment. As the Chamber has repeatedly stated, it should never take more than two years to complete all federal permits needed for an infrastructure project.

Background

The 114th Congress passed the “Federal Permitting Improvement Act” as Title 41 of the FAST Act, which was signed into law on December 4, 2015 by President Obama.

FAST-41 established the multi-agency Federal Permitting Improvement Steering Council (“FPISC”), and established a process that involves designation of a lead agency; schedules for

projects; coordination between agencies and states when applicable; dispute resolution mechanisms; and judicial review.

The permit streamlining provisions of FAST-41 bring greater efficiency, transparency, and accountability to the federal permitting review process. Some of the key provisions of FAST-41 include:

- Establishing a permitting timetable, including intermediate and final completion dates for covered projects, i.e. those over \$200 million or subject to multiple agency environmental review requirements so they will benefit from enhanced coordination;
- Designating a Lead Agency to coordinate responsibilities among multiple agencies involved in project reviews to ensure that “the trains run on time;”
- Providing for concurrent reviews by agencies, rather than sequential reviews;
- Allowing state-level environmental reviews to be used where the state has done a competent job, thereby avoiding needless duplication of state work by federal reviewers;
- Requiring that agencies involve themselves in the process early and comment early, avoiding eleventh-hour objections that can restart the entire review timetable;
- Establishing a reasonable process for determining the scope of project alternatives, so that the environmental review does not devolve into an endless quest to evaluate infeasible alternatives;
- Creating a searchable, online “dashboard” to track the status of projects during the environmental review and permitting process;
- Reducing the statute of limitations to challenge a project review from six years to two years; and
- Requiring courts, when addressing requests for injunctions to stop covered projects, to consider the potential negative impacts on job creation if the injunction is granted.

Since the FPISC was established, the Council has been hard at work implementing the permit streamlining provisions of FAST-41. In 2017 the FPISC, the Office of Management and Budget (OMB), and the Council on Environmental Quality (CEQ) jointly issued guidance for federal agencies on how to carry out their duties under FAST-41.¹ The FPISC also issued recommendations to agencies on permit timetables and best practices for agencies to improve their permitting process to meet the requirements of FAST-41.²

FAST-41 implementation highlights

¹ See

<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/Official%20Signed%20FAST-41%20Guidance%20M-17-14%202017-01-13.pdf>.

² See

<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/FPISC%20Best%20Practices-%20FINAL%2001182017%283%29.pdf> and <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/FPISC%20Performance%20Schedules-%20FINAL-%2001182017-final.pdf>.

The rollout of FAST-41 has been a success and an important step in improving the federal permitting process. Nevertheless, a few aspects deserve special recognition. The FPISC 2017 Annual Report to Congress highlights the impressive progress the Council has made in getting the structure of FAST-41 implemented across the participating federal agencies. During 2017, agencies showed significant improvement in fully complying with the FAST-41 Implementation Guidance that was issued in January. Agencies went from 55% compliance in Quarter 2 of 2017 to 92% by Quarter 4.³ It is important to keep in mind that the reforms of FAST-41 are a significant change from the status quo for federal agencies, and therefore that implementation of the framework is a substantial task that will take time. Under this lens, the expeditious manner in which the FPISC, OMB, and CEQ developed and put in place this guidance should be commended.

Members of the U.S. Chamber of Commerce have been supportive of FAST-41 and have also shown support and appreciation for the progress in implementing the framework thus far. A great example of the benefits that FAST-41 brings to the permitting process is the transparency generated by the permit timetable, as implemented according to the best practices guidance. Our members have remarked on how beneficial they find the transparency delivered by the dashboard and project timetable. Knowing an expected schedule for various steps in the permitting process at the beginning is a significant step forward that pays off over the entire life of the project by allowing project sponsors to better coordinate and manage scheduling of contractors, suppliers, and resource needs.

Additionally, many more Chamber members serve as contractors, subcontractors, and suppliers in infrastructure development than as project sponsors or co-sponsors. While they may not be dealing directly with the permit process, they also benefit from the transparency and certainty that a permitting timetable delivers. Simply by reducing the uncertainty of permitting through the timetable, coupled with a Lead Agency and the FPISC coordinating and keeping the process on track, our members who work on covered projects are better able to manage resources, reduce down time and waste, and ultimately, manage workflows better to get more done, hire more employees, and help grow the economy. These are not results that we can easily summarize and boil down to a couple simple metrics, but ultimately they are what matters and the reason why the Chamber and the business community so strongly support permit streamlining.

After releasing best practices guidelines in early 2017 to establish benchmarks for agency performance in creating and managing project permitting timetables, the FPISC reported in its 2017 Annual Report to Congress that covered agency performance had improved dramatically in 2017 and that by the end of the fiscal year, 97% of covered projects had timetables.⁴ This is a significant achievement in a short period of time, and based on the support that the business community has voiced for this step alone, it is important.

³ Federal Permitting Improvement Steering Council – Office of the Executive Director, ANNUAL REPORT TO CONGRESS FOR FISCAL YEAR 2017, p. 1 (April 13, 2018) available at: <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/documentation/42296/fast-41-annual-report-congress-fy-2017.pdf>.

⁴ *Id.*

Not surprisingly, Chamber members are also highly supportive of the prospect of speeding up the permitting process, further limiting uncertainty, and reducing potential delays by shortening the statute of limitations on project review challenges to two years. At present, there are few concrete examples of how these features of FAST-41 have paid dividends in speeding up covered projects, largely because there simply has not been sufficient time since the framework was implemented. However, firms that routinely operate in the industries with covered projects are optimistic that over time FAST-41 will produce a significant reduction in permitting schedules. The interplay of concurrent permit reviews, designating a Lead Agency to maintain timetable adherence, empowering the FPISC to coordinate, and limiting the time to raise judicial challenges to project reviews have the potential to drastically reduce the time it takes to get permits and lower uncertainty as to whether permits will ultimately be approved.

The FPISC recently announced an early success story in streamlining the permit process with FAST-41. The Council announced that they were able to reduce the permitting timetable for the Mid-Barataria Sediment Diversion Project in Louisiana by 22 months. While at present this is only an isolated case study of fully leveraging the permit streamlining process of FAST-41, it is a positive indication that the system works and that we should expect to see the benefits from increased reductions in permitting timetables in the near future.

The early success stories from FAST-41 show that the permit streamlining framework delivers the benefits for which it was designed. An important next step is increasing the number of covered projects to distribute the benefits more widely. As the early implementation results have shown, the process will become better over time as it is refined and becomes more routine for agency permitting staff. There is reason to believe that the process will get better and deliver even greater benefits. Improving the process further and expanding the scope of eligible projects will serve to compound those benefits, help grow the economy, and allow businesses to create more jobs.

Next steps to improve the permitting process

Despite the success of FAST-41 thus far, there remain ways to improve and modernize the federal permitting process. The Chamber strongly supports S. 3017, the “Federal Permitting Reform and Jobs Act,” for the steps it takes to enhance and improve upon the permit streamlining provisions of FAST-41. The key provisions of the bill include:

- Elimination of the seven-year sunset in FAST-41: The sunset creates a perception that FAST-41 is a test case and therefore reduces the incentive for project sponsors to invest the time and effort needed to begin using the process. Eliminating the sunset is likely to encourage more project sponsors to use the process moving forward. Removing the sunset also ensures that the FAST-41 process, a process that works and is improving, can continue and serve as the foundation for additional permitting reforms.

- Expansion of the statutory definition of covered projects: The bill expands the definition of covered projects by removing exclusions in the FAST-41 statutory language. The expansion will open up FAST-41 to a broader range of infrastructure projects, including some important transportation infrastructure projects. While permit streamlining is but one step in modernizing U.S. infrastructure, it is a crucial step. Expanding the range of projects eligible for FAST-41 leverages the existing framework to quickly and efficiently improve infrastructure permitting and help make needed infrastructure expansion and modernization a reality.
- Setting of a two-year goal for permitting covered projects: The bill sets a goal of getting covered projects permitted in two years by requiring agencies to submit a plan for permitting that adheres to this timetable. If agencies cannot meet that goal they must submit reasons as to why it is not possible. The Chamber believes that there is no good reason for why any federal permit should take longer than two years to obtain. Two years is a reasonable time period that would bring the U.S. into parity with our global economic competitors, like Germany, Canada, and Australia.
- Expansion of FPISC's consulting authority by codifying provisions of E.O. 13,807: The bill codifies provisions of E.O. 13,807, which grant the FPISC enhanced consultation authority. This authority allows the FPISC to act as a facilitator to help coordinate agency actions and expands the council's dispute resolution authority.

Once again, the Chamber strongly supports S. 3017 and believes that codifying in statute these key improvements to the permitting process will bring substantial long-term benefits to the U.S. economy.

Conclusion

The Chamber believes that while FAST-41 is still new and work remains in fully implementing it, the benefits are already clear and demonstrate that FAST-41 is the best foundation for permitting reform. Our members are supportive of the process and optimistic that further improvements and refinements in implementation will deliver impressive results with respect to shortening the time it takes to get a permit and adding certainty and transparency to the process.

Looking forward, the improvements in S. 3017 will further enhance the permitting process and are needed in the near term to ensure that future permitting reforms are built on the framework developed under FAST-41. Early successes have shown that the FAST-41 system works. Enhancing the system with the commonsense improvements in S. 3017 will allow a broader range of projects to take advantage of the increased efficiency and transparency in the permitting process and ensure that these advantages continue to be refined and perfected without the clock running out on FAST-41.

In January 2018, the Chamber laid out a four point plan to modernize America's infrastructure (www.letsrebuildamerica.com). Point three includes permitting reform, of which enhancing the usage and effectiveness of FAST-41 is a key component.

We look forward to working with this Committee to ensure we have the necessary tools to modernize America's infrastructure.