



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240
AUG - 9 2018

9040.1b

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM 10-11

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director s//08/09/2018
Office of Environmental Policy and Compliance

Subject: Determining the Applicable Environmental Review Framework for Infrastructure Projects

PURPOSE

The purpose of this environmental review memorandum (ERM) is to provide guidance to bureaus and offices (Bureau) to identify whether a proposed action falls under the framework of (1) Title 41 of the Fixing America's Surface Transportation Act (FAST-41) (42 U.S.C. § 4370m), (2) Executive Order (E.O.) 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, or (3) Secretarial Order (S.O.) 3355, *Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807*, for preparing project timelines, environmental impacts statements (EIS), and reporting requirements.

BACKGROUND

The Office of Environmental Policy and Compliance (OEPC) provides guidance for the Department of the Interior's (Department) compliance with existing environmental requirements, including statutes and Executive orders, under 112 DM 4. This ERM provides guidance to the Bureaus on determining the applicability of the three listed environmental review frameworks for infrastructure projects and the associated database inputs in the National Environmental Policy Act (NEPA) and Permit Tracking Database (Database) (see ERM 10-09, *Entering Information into the Department National Environmental Policy Act (NEPA) and Permit Tracking Database*).

GUIDANCE

The following guidance provides a series of questions that serve as a checklist to help the Department's NEPA practitioners and managers determine whether one or more environmental review framework, among FAST-41, E.O. 13807, and S.O. 3355, applies to a proposed action.¹

¹ FAST-41, E.O. 13807, and S.O. 3355 each have other requirements and processes to follow. Please refer to the appropriate guidance for additional information.

Does the FAST-41 Framework Apply?

A proposed action is a “covered project” under FAST-41 when Bureau staff can answer yes to all of the following questions:

1. Did the project proponent submit a FAST-41 Initiation Notice?²
2. Does the proposed action require an investment of over \$200 million, or require authorization from more than two Federal agencies (which includes another Bureau) to proceed with construction of the project?³
3. Is the proposed action an infrastructure construction project⁴ that is included in a sector and project type under FAST-41, or has the Federal Permitting and Improvement Steering Council (FPISC) designated it a “covered project” under FAST-41 separately from the criteria identified?⁵

Does the E.O. 13807 and OFD Framework Apply?

A proposed action⁶ is a “major infrastructure project” under E.O. 13807 when Bureau staff can answer yes to the following questions:

1. Was the EIS NOI issued on or after August 15, 2017?⁷
2. Are multiple Federal agency (which includes another Bureau) authorizations needed to proceed with construction of the project?⁸
3. Has the project sponsor identified the reasonable availability of funds sufficient to complete the project?

² Proponent initiation is the dispositive component of this analysis because a proposed action cannot be classified as FAST-41 without it. Each additional consideration listed for determining whether the FAST-41 framework applies is intended to provide context to ensure that the proposed action was properly identified. For more information, visit the FAST-41 Permitting Dashboard: <https://www.permits.performance.gov/tools/becoming-fast-41-covered-project>.

³ That is, another Federal agency needs to make a decision to authorize the project for it to be constructed, versus a coordination requirement where the lead agency ultimately makes the decision under Federal law. This criterion is different from a cooperating agency under NEPA which is jurisdiction by law or expertise.

⁴ See Attachment 1 for the full list of covered FAST-41 sectors and project types.

⁵ Note: A mining project alone is not considered an infrastructure project. If the mining project includes a sector component that is covered by the FAST Act, then that element would need to be considered in determining if the overall project could be covered.

⁶ See Attachment 1 for the full list of covered E.O. 13807 sectors and project types.

⁷ If FAST-41 is applicable, and the NOI was issued on or after August 15, 2017, then it is a FAST-41 project and should be reported as such. E.O. 13807 designates additional projects with NOIs after August 15, 2017 that meet the criteria for E.O. 13807 designation, as reflected in the underlined and bolded text in Attachment 1 for sector and project type, which, if applicable, would need to be looked at for OFD applicability.

⁸ See Footnote 2.

4. Will a single Record of Decision (ROD) be issued? If not, do any of the following exceptions to issuing a single ROD by all authorizing agencies apply?
 - a. The project sponsor requests that agencies issue separate NEPA documents;
 - b. The NEPA obligations of a cooperating or participating agency have already been satisfied; or
 - c. The lead agency determines that a single ROD would not best promote completion of the project's environmental review and authorization process.

Does the S.O. 3355 Framework Apply?

If a DOI Bureau is a lead or-co-lead agency, then the S.O. 3355 environmental review framework applies.

Can More Than One Framework Apply?

1. If FAST-41 and E.O. 13807 both apply, the FAST-41 requirements take precedence and the proposed action should be uploaded into the Database exclusively as a FAST-41 project.
2. The S.O. 3355 EIS page guidelines apply when DOI is the lead, or co-lead, agency for both FAST-41 and E.O. 13807 projects, unless a page waiver is obtained. However, FAST-41 and E.O. 13807 projects are subject to E.O. 13807's two-year timeline, as opposed to S.O. 3355's one-year timeline.

NEPA PROCESSES ASSOCIATED WITH EACH FRAMEWORK

FAST-41, E.O. 13807, and S.O. 3355 are associated with different NEPA processes:

- FAST-41 applies to all covered infrastructure projects requiring an EIS and could apply to some Environmental Assessments (EA);⁹
- E.O. 13807 applies only to major infrastructure projects requiring an EIS;
- S.O. 3355 and its accompanying guidance apply to all Department proposed actions requiring an EIS or an EA, including proposed non-infrastructure projects.

⁹ An EA is unlikely to regularly arise within the context of an infrastructure project that requires more than two Federal agency authorizations and that FPISC designates a "covered project" under FAST-41.

DEFINITIONS

The Department uses the definitions in E.O. 13807 and FAST-41 to determine the infrastructure projects to which they apply. In E.O. 13807, "infrastructure project", "major infrastructure project", and "authorization" are defined, and in the FAST Act, "covered project" is defined.

The definitions are as follows:

Infrastructure project – A project to develop public and private physical assets that are designed to provide or support services to the general public in the sectors contained in the Attachment 1 or any other sector as determined by a majority vote of the FPISC.

Major infrastructure project – An infrastructure project that requires: (1) multiple Federal agency authorizations to proceed with construction, (2) the lead Federal agency to determine to prepare an EIS under the NEPA, and (3) the project proponent has identified the reasonable availability of funds sufficient to complete the project.

Authorization – Any license, permit, approval, finding, determination, or other administrative decision issued by a Federal department or agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of an infrastructure project, including any authorization under FAST-41, 42 U.S.C. 4370m(3).

Covered Project – Any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of FPISC.

Facility or structure construction is a needed project component to be considered an infrastructure project under the FAST-41 and E.O. 13807. The definitions have overlapping criteria but can be different in relation to project applicability.

GENERAL

This memorandum is new and issued as ERM 10-11.

This memorandum establishes internal Department guidelines. It does not create any legal rights, substantive or procedural, enforceable at law by any party.

Attachment

FAST-41 and E.O.
13807 Sectors

FAST-41 or E.O. 13807 Project Type*

Renewable Energy Production and Generation	Biomass Energy Production/Generation
	Federal Hydropower (Federally owned/operated)
	Non-Federal Hydropower - Licenses (hydro) (including Non-Federal Marine and Hydrokinetic Projects)
	Non-Federal Hydropower – Leases (hydro)
	Wind: Federal Offshore; Other Than Federal Offshore
	Hydro-kinetic - Lease on Outer Continental Shelf
	Solar
	Geothermal
	Energy Storage
Conventional Energy Production and Generation	Offshore Oil & Gas (fossil)
	Land-based Oil & Gas – Production/Extraction (fossil)
	Fossil Fuel Power Plant
	Nuclear Power Plant – Construction Permit; Combined (construction and operating) License
	“Rural” Energy Projects (under Rural Utilities Service)
Electricity Transmission	Electricity Transmission
	“Rural” Transmission (under Rural Utilities Service)
Surface Transportation	Highways/Roads
	Railroads
	Public Transportation (transit)
	Bridges
	Weight stations
	Freight
	Ports of Entry (construction/rehabilitation of rail, water port, or road located at a state or U.S. entry point)
Aviation	Airport Development Projects (Aviation programs, commerce and safety, airport development and noise, financing, public airports)
	Air Traffic Facility Replacement or Modernization
	Commercial Space Launch Site Operator License
Ports and Waterways	Liquefied Natural Gas Terminal Facilities – Offshore
	Port expansion or improvement undertakings or projects; (including navigational channels)
Broadband	Land-based, Non-Rural Broadband Infrastructure (Internet)
	Rural Broadband Infrastructure (Internet)
	Offshore Broadband Infrastructure (Internet) (e.g., cable landing station)
Manufacturing	New facilities or expansions involving construction
Pipelines	Interstate Natural Gas Pipelines
	Liquefied Natural Gas Terminal Facilities (Onshore or in State Water) and associated Natural Gas Pipelines
	Land-based Oil & Gas – Production/Extraction
Water Resources	Infrastructure Restoration Activities
	Irrigation and related water supply projects
	Other Water Resource Projects (including restoration activities; (sewer) waste/storm-water infrastructure; Flood Risk Management; Navigation; drinking water infrastructure)

*FAST-41 does not include transportation projects under 23 USC 139, water projects under 33 USC 2348, or Presidential Permit applications. E.O. 13807 Major infrastructure projects include all FAST-41 sector and project types to develop public and private physical assets and provide or support the general public plus the following two specific project types: navigational channels and drinking water infrastructure projects. Both FAST-41 and E.O. 13807 include any other infrastructure construction project, EISs for E.O. 13807, or any NEPA process under FAST-41, as determined by the Federal Permitting Infrastructure Steering Council (FPISC). Additional E.O. 13807 language not included in FAST-41 or FPISC document are bolded and underlined in the table above.