



# PERMITTING COUNCIL

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## MEMORANDUM

**To:** Federal Permitting Improvement Steering Council (Permitting Council)  
Agency Chief Environmental Review and Permitting Officers (Agency CERPOs)

**From:** Alexander Herrgott, Permitting Council Executive Director

**Date:** January 12, 2021

**Re:** Ensuring that Permitting Council Member Agencies and Covered Project Sponsors Receive Full Benefit of 2-Year Limitations Period Provided in Title 41 of the Fixing America's Surface Transportation Act (FAST-41)

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FAST-41 places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST-41 covered project. 42 U.S.C. § 4370m-6(a)(1)(A). Section 6 of OMB M-17-14, Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (Jan. 13, 2017) (FAST-41 Guidance), implements this statutory provision and requires Permitting Council member agencies to publish in the *Federal Register* all decisions subject to the FAST-41 2-year limitations period with a note informing the public that the limitations period applies. FAST-41 Guidance Secs. 6.1 & 6.3, at 57.

It has come to the attention of the Permitting Council Executive Director that Permitting Council member agencies generally are not implementing the provisions of the 2017 Guidance related to the 2-year limitations period. Because the 2-year limitations period is an important benefit of FAST-41 coverage that Permitting Council member agencies and covered project sponsors alike are statutorily entitled to receive, Agency CERPOs should ensure that all Permitting Council member agencies fully implement the 2017 Guidance provisions related to the limitations period, and that implementation of the limitations period is provided for in all applicable agency guidance and FAST-41 internal control procedures.

Please contact the Permitting Council Office of the Executive Director with any questions related to the 2-year limitations period or implementation of related 2017 Guidance provisions.

Date: 01/12/2021

*Alexander Herrgott*

Alexander Herrgott  
Executive Director  
Federal Permitting Improvement Steering Council