

TITLE 41, FIXING AMERICA'S SURFACE TRANSPORTATION ACT (FAST-41)

Baseline Performance Schedules for Environmental Reviews and Authorizations

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Acknowledgements

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Department of Agriculture



Department of the Army



Department of Commerce



Department of Energy



Department of Transportation



Department of Defense



Federal Energy Regulatory Commission



Department of Homeland Security



Nuclear Regulatory Commission



Department of Housing and Urban Development



Advisory Council on Historic Preservation



Office of Management and Budget



Council on Environmental Quality



Environmental Protection Agency



Department of the Interior

Contents

Executive Summary	iv
About This Report	iv
Supplementation of FAST-41 Data to Create Baseline Performance Schedules	iv
Utilization of this Report	v
Chapter 1 Statutory Requirements	1
Recommended Performance Schedules.....	1
Permitting Dashboard.....	1
Coordinated Project Plan (CPP)	2
Permitting Timetables	2
Chapter 2 FY 2019 Baseline Performance Schedule	4
Background	4
Methodology	5
Considerations during the Development of this Report	7
Chapter 3 Considerations for Permitting Schedules	16
Appendix A: Electricity Transmission Data	18
Appendix B: Pipeline Data	19
Appendix C: Renewable Energy Production	20
Appendix D: USACE Supplemental Data	Error! Bookmark not defined.

List of Tables

Table 1. Sample Size of Environmental Review and Authorization Actions by Sector	5
Table 2. Performance Schedule Data Summary Table for the Electricity Transmission Sector.....	10
Table 3. Performance Schedule Data Summary Table for the Pipelines Sector	11
Table 4. Performance Schedule Data Summary Table for the Renewable Energy Production Sector	12

List of Figures

Figure 1. Baseline Performance Schedule for the Electricity Transmission Sector.....	13
Figure 2. Baseline Performance Schedule for the Pipelines Sector	14
Figure 3. Baseline Performance Schedule for the Renewable Energy Production Sector	15

Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
BLM	Bureau of Land Management
C.F.R.	Code of Federal Regulations
CEQ	Council on Environmental Quality
CERPO	Chief Environmental Review and Permitting Officer
CPP	Coordinated Project Plan
Commerce	Department of Commerce
CWA	Clean Water Act
DOE	Department of Energy
DOI	Department of the Interior
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EO	Executive Order
ESA	Endangered Species Act
FAST-41	Title 41 of the Fixing America's Surface Transportation Act
FERC	Federal Energy Regulatory Commission
OED	Federal Permitting Improvement Steering Council—Office of the Executive Director
FY	Fiscal Year
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NFMS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
OMB	Office of Management and Budget
Permitting Council	Federal Permitting Improvement Steering Council
ROD	Record of Decision
ROW	Right of Way
RHA	Rivers and Harbors Act
SHPO	State Historic Preservation Officer
SUP	Special Use Permit
U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service

Executive Summary

About This Report

This report fulfills the requirements of Section 41008(a) of Title 41 of the Fixing America’s Surface Transportation (FAST-41) Act (and 42 U.S.C. § 4370m-1(c)(1)(C)(i) of FAST-41’s implementing statute), which directs the Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council or FPISC) to consult with members of the Permitting Council¹ to “develop recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects²” established by the Executive Director.

Supplementation of FAST-41 Data to Create Baseline Performance Schedules

FAST-41 requires the average time for completing the most common, federally required environmental reviews or authorizations for all sectors to be calculated based on data from the two previous years. However, the number of FAST-41 covered projects that were completed (16) at the time of data collection for developing this report did not provide adequate data for the Permitting Council Office of the Executive Director (OED) to calculate the time required to complete the major actions for each sector.

The Permitting Council augmented the statutory requirements by supplementing the FAST-41 data on the Permitting Dashboard for the following three covered sectors: electricity transmission, pipeline, and renewable energy production projects. These three sectors comprised 33 of 42 (78 percent) of FAST-41 covered projects in progress, paused, or planned status on the Permitting Dashboard at the time of report development. The limitations on historical baseline of FAST-41 project data did not meet the statutory requirements for developing performance schedules for other covered sectors. Baseline schedules will continue to be created and updated based on FAST-41 Permitting Dashboard data every two years. The methodology for supplementing FAST-41 data to develop these baseline performance schedules is provided in detail in the Methodology section in Chapter 2 of this report.

The performance schedules provided in Figures 1-3 were developed using data for 59 projects that were either covered under FAST-41 or were of a similar size and complexity. These are electricity transmission, pipeline, and renewable energy production projects for which initiating and concluding milestones dates for nine common actions were gathered. The means, medians, maximums, minimums, 25th and 75th percentiles, and the time required from Notice of Intent (NOI) to final action completed were calculated for each sector.

¹ FPISC is comprised of the FPISC Executive Director (serving as the Chair), Department of Agriculture, Department of the Army, Department of Commerce, Department of the Interior, Department of Energy, Department of Transportation, Department of Defense, Environmental Protection Agency, Federal Energy Regulatory Commission, General Services Administration, Nuclear Regulatory Commission, Department of Homeland Security, Department of Housing and Urban Development, Advisory Council on Historic Preservation, White House Office of Management and Budget, and White House Council on Environmental Quality.

² As defined by 42 U.S.C. § 4370m(6)(1).

Utilization of This Report

To the extent possible, FPISC intends for these performance schedules to represent an accurate and reliable baseline for FAST-41 streamlining efforts implemented since 2018, since much of the data represents projects permitted prior to implementation of FAST-41 provisions. For the first time, the baseline performance schedules in this report provide the average time taken for 59 projects from the most common permitting actions for three covered sectors; although these schedules include data collected prior to full implementation of FAST-41, FAST-41 projects were used in the development of the performance schedules where possible. This provides agencies with a quantitative tool that can be used to develop timely and realistic project-specific permitting schedules, per FAST-41.

This report establishes baseline performance schedules that will be reviewed and revised, as needed, at a minimum frequency of every two years. These performance schedules have been developed at a time of particularly unprecedented and evolving Administrative instruction to agencies related to environmental review and authorization of infrastructure projects. Some of these Administrative and agency-specific directives enforce enhanced coordination, modernize data management, institute cross-agency requirements on concurrent reviews, establish new elevation and dispute resolution requirements, and require technology modernization away from a legacy, paper-based system. The performance schedules contained in this report encompassed dates as recent as possible; however, some dates reached back as far as nine years to populate a proper sample size. Additionally, FAST-41 projects are large and complex, and likely have complicated sets of environmental effects that could register at the upper end of schedule averages compared to more routine infrastructure projects. Performance schedules for FAST-41 may not be able to appropriately inform similar projects that are not subject to FAST-41 requirements.

When OED developed the performance schedules contained in this report, available data on the Permitting Dashboard was supplemented with data from previously completed projects to ensure a reliable and sufficiently informative reference set. In the intervening time since environmental review and authorization actions for those projects occurred, policy changes across government and within agencies have significantly altered traditional factors that directly impact permitting timetables. These policy changes presented significant challenges to create a relevant empirical-based data set to instruct an appropriate baseline to sufficiently evaluate agency-wide permitting timetable performance in a manner that avoids measurement against a static and outdated baseline performance schedule. The Executive Director has directed OED to augment the baseline schedule with new informative elements of the Annual Report to Congress (ARC) and the Best Practices (BP) Report to provide a relevant dynamic assessment of agency-wide performance in increasing transparency, accountability, and predictability in the environmental review and authorization process.

Therefore, in addition to other reports and tools, the current performance schedules serve, to the maximum extent practicable and reasonable, as the most reliable and accurate baseline OED can use to measure, monitor, and report program performance. FAST-41 agency-wide implementation and Exec. Order No. 13807, 82 Fed. Reg. 40463 (Aug. 24, 2017) have drastically changed agencies' permitting schedules for covered projects and for major infrastructure projects in the last 24 months. OED is collecting data on target versus actual dates for environmental review and authorization actions as these projects progress under the new environmental review process paradigm. This will allow OED to compare those target and actual dates with the baseline schedules, which can then be reported and included in the ARC to provide a dynamic assessment of actual agency performance to better inform Congress and the public. OED intends to update the performance schedules per FAST-41 based on new data collected, and will make modifications and adjustments accordingly.

Applicability

This report does not supersede, amend, or modify any Federal statute, nor does it supersede the Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ) “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects,” which is available at <https://www.permits.performance.gov/>.

Chapter 1: Statutory Requirements

Recommended Performance Schedules

Title 41 of the Fixing America's Surface Transportation (FAST-41) Act created a new governance structure, set of procedures, and funding authorities designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for certain covered infrastructure projects across a broad range of sectors. It also requires that recommended performance schedules be established with the following requirements (U.S.C. § 4370m-1(c)(1)(C)(ii):

(I) In general. The performance schedules shall reflect employment of the use of the most efficient applicable processes, including the alignment of Federal reviews of projects and reduction of permitting and project delivery time.

(II) Limit.

(aa) In general. The final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed the average time to complete an environmental review or authorization for a project within that category.

(bb) Calculation of average time. The average time referred to in item (aa) shall be calculated on the basis of data from the preceding two calendar years and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under Section 41003(b)(2) [42 U.S.C. § 4370m-2(b)(2)] (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.

(cc) Completion date. Each performance schedule shall specify that any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency.

The Executive Director, in consultation with the Federal Permitting Improvement Steering Council (Permitting Council or FPISC), must then review and revise the recommended performance schedules at least every two years (42 U.S.C. § 4370m-1(c)(1)(C)(iii)).

Permitting Dashboard

A key requirement of FAST-41 is for the lead agency to post permitting timetables on the Permitting Dashboard. The following subsections provide the statutory requirements under FAST-41. As per 42 U.S.C. § 4370m-2(b)(1), "Requirement to Maintain:"

(A) In general. The Executive Director, in coordination with the Administrator of General Services, shall maintain an online database to be known as the "Permitting Dashboard" to

- track the status of Federal environmental reviews and authorizations for any covered project in the inventory described in section 4270m-1(c)(1)(A) of this title.*
- (B) *Specific and searchable entry. The Dashboard shall include a specific and searchable entry for each covered project.*

42 U.S.C. § 4370m-2(b)(2) requires the Executive Director to create a specific entry for each project on the Permitting Dashboard no later than 14 days after the facilitating agency's acceptance of a project sponsor's notice of the initiation of a proposed covered project.

Coordinated Project Plan

In accordance with 42 U.S.C. § 4370m-2(c)(1)(A), within 60 days of the addition of a project to the Permitting Dashboard, the lead agency is required to submit to the Permitting Council's Office of the Executive Director (OED) a Coordinated Project Plan (CPP).

- (A) *In general, not later than 60 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard..., the facilitating or lead agency, as applicable, in consultation with each coordinating and participating agency, shall establish a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project.*

42 U.S.C. § 4370m-2(c)(1)(A) then set out the required information to be contained in each CPP:

- (B) *The Coordinated Project Plan shall include the following information and be updated by the facilitating or lead agency, as applicable, at least once per quarter:*
- (i) *A list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project.*
 - (ii) *A permitting timetable...setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable, State permits, reviews, and approvals must be made.*
 - (iii) *A discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known.*
 - (iv) *Plans and a schedule for public and tribal outreach and coordination, to the extent required by applicable law.*

Permitting Timetables

As stated above, each CPP must contain a permitting timetable. These timetables, prepared by the lead agency in coordination with all cooperating and participating agencies, the project sponsor, and any State in which the project is located, will contain the intermediate and final completion dates for each review or authorization required for the project (42 U.S.C. § 4370m-2(c)(2)(A)). The statute requires agencies to follow performance schedules, but the developed timetable for a particular agency may vary according to the following factors outlined in the statute (42 U.S.C. § 4370m-2(c)(2)(B)):

- (i) *The size and complexity of the covered project;*
- (ii) *The resources available to each participating agency;*
- (iii) *The regional or national economic significance of the project;*

- (iv) *The sensitivity of the natural or historic resources that may be affected by the project;*
- (v) *The financing plan for the project; and*
- (vi) *The extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.*

The data collected from the permitting timetable, as reported by agencies and displayed on the Permitting Dashboard, will be utilized to revise the permitting schedules in the future, if necessary.

Chapter 2: FY 2019 Baseline Performance Schedule

Background

FAST-41 requires the average time for the completion of the most commonly required environmental reviews or authorizations for all sectors to be calculated based on the data from the two previous years.³ However, the number of FAST-41 covered projects that were completed (16) at the time of data collection for developing this report did not provide adequate data for OED to calculate the time required to complete the major actions for each sector.

When this report was developed, 6 of the 10 potential FAST-41 covered sectors had a project on the Permitting Dashboard. The remaining 4 potential sectors did not yet have any FAST-41 projects on the Permitting Dashboard. This includes: (1) surface transportation (due to FAST-41 savings clause⁴), aviation (due to FAST-41 savings clause), broadband (generally due to monetary threshold for FAST-41 eligibility), and manufacturing. As additional data becomes available on the Permitting Dashboard, sector-specific performance schedules will be created and/or updated per FAST-41.

Another data limitation was the lack of available data that included final agency action completion dates, or end dates “on the date of the issuance of a record of decision or other final agency action on the review or authorization.”⁵ Given the limited number of projects in any given sector on the Permitting Dashboard that met these statutory end date requirements for the development of the performance schedules, the minimum sample size established as part of the methodology (sample size minimum is four) was not met for seven of the potential FAST-41 covered sectors.

In order to ensure the performance schedules would be developed as required by statute for the remaining three sectors, and given that at the time of development, the covered sectors comprised 33 of 42 (78 percent) of FAST-41 covered projects, the Permitting Council exceeded the statutory requirements by supplementing the data on the Permitting Dashboard.

This report is the result of a significant data mining effort by all members of the Permitting Council. OED is pleased to present the following performance schedules for renewable energy production, electricity transmission, and pipeline sectors.

³ 42 U.S.C. § 4370m-1(c)(1)(C)

⁴ 42 U.S.C. 4370m(6)(B); Note: while there are currently no identified surface transportation or aviation covered projects due to the savings clause at section 11503(b) of the FAST Act, the Department of Transportation (DOT) is required to post EAs and EISs pursuant to the FAST Act, 23 U.S.C. 139(o), and the DOT Dashboard reporting standards.

⁵ 42 U.S.C 4370m(1)(c)(1)(C)(i)

Methodology

Each sector’s covered projects were analyzed to determine the major environmental reviews and authorizations common to the majority of projects. The following actions were identified as common authorizations for FAST-41 projects:

- National Environmental Policy Act (NEPA),
- National Marine Fisheries Service (NMFS) Magnuson-Stevens Fishery Conservation Management Act (Magnuson-Stevens) essential fish habitat (EFH) consultation,
- NMFS Endangered Species Act (ESA) Section 7 consultation,
- U.S. Fish and Wildlife Service (USFWS) ESA Section 7 consultation,
- National Historic Preservation Act (NHPA) Section 106 consultation
- U.S. Army Corps of Engineers (USACE) River and Harbors Act (RHA) Section 10 /Clean Water Act (CWA) Section 404 permit,
- Bureau of Land Management (BLM) right-of-way permit (ROW),
- U.S. Forest Service (USFS) special use permit (SUP), and
- Federal Energy Regulatory Commission (FERC) certificate of public convenience and necessity for interstate natural gas pipelines.

The table below contains the breakdown of the number of each of the selected actions by sector. A full list of environmental reviews and authorizations can be found in Appendix B.

Table 1. Sample Size of Environmental Review and Authorization Actions by Sector⁶

ACTION	Electricity Transmission	Pipelines	Renewable Energy Production	TOTAL
NEPA	19	20	20	59
Magnuson-Stevens – EFH (NMFS)	0	4	3	7
NMFS ESA	1	5	2	8
USFWS ESA	5	10	7	22
NHPA Section 106	4	11	6	21
USACE Section 10/404	4	11	5	20
BLM ROW	5	4	5	14
USFS SUP	2	2	0	4
FERC Cert. of Public Convenience	N/A	10	N/A	10

OED focused the research effort on the data for the initiating and concluding milestones for each action.

⁶ In the event that FPISC OED could not confirm a date for a specific permitting action, the action was not analyzed in this document. This may account for minor discrepancies that exist between the tables.

For NMFS EFH, NMFS and USFWS ESA, and Section 106, the initiation of review/consultation⁷ (either formal or informal consultation for ESA, and informal review or government-to-government consultation for Section 106) was the beginning milestone, and the completion of consultation/review was the concluding milestone.

For Section 10/404 permits and FERC certificates, the receipt of a complete application was the initiating milestone, and the rendering of a permit decision was the concluding milestone. For BLM ROWs and USFS SUPs, the execution of the Record of Decision (ROD) or Finding of No Significant Impact (FONSI) was the concluding milestone.

When an NOI or initiating milestone was later revised/republished/resubmitted, the revised date was utilized. When an ROD or concluding milestone was republished/resubmitted, the earlier date was used in order to have the highest likelihood of capturing the time the agency was actively reviewing a project and not add to the timeline or create any duplicative reviews required due to project revisions.

In order to maximize the data sample, OED utilized the CEQ master environmental impact statement (EIS) database,⁸ which captures EISs completed by Federal agencies from 2010-2017, to identify projects that met the requirements for a covered project as set out in 42 U.S.C. § 4370m(6)(i)). From the full list of projects, OED identified an initial 1,161 projects for which a notice of availability of a final EIS was published between January 1, 2010, and December 31, 2017, and a completed ROD was issued prior to June 7, 2018, to be considered for addition to the research sample.

From the list of EISs with completed RODs (excluding supplemental EISs and adoptions of one agency's EIS by another), OED randomly selected 30 projects from each sector using an online random number generator. This list was then screened for those projects whose total cost met or exceeded the \$200 million dollar threshold established by 42 U.S.C. § 4370m(6)(i)(II). The 19 electricity transmission, 20 pipeline, and 20 renewable energy production projects that met the screening criteria were then used to create the dataset for this report (a twentieth electricity transmission project above the cost threshold could not be located).⁹

Available records were then reviewed to locate the dates for the selected projects' actions. Permitting Council agencies assisted in locating any missing data through both significant data mining of their own internal agency databases and communication with field level staff, with all dates receiving a final review prior to the dataset being designated as complete.

⁷ For ESA and EFH consultation, this analysis does not distinguish between formal and informal consultations, which involve significantly different timelines. As more data becomes available, future reports and analyses will differentiate between the type of consultations undertaken.

⁸ EIS Timelines—<https://ceq.doe.gov/nepa-practice/eis-timelines.html>.

⁹ Future reports may use a different methodology and dataset, as data quality on the Federal Permitting Dashboard will be improved.

Methodology Considerations during the Development of This Report

In addition to the methodology described above, the following considerations were incorporated in the course of developing the performance schedules contained in this report:

- FPISC currently assesses project risk and timeline uncertainty through intensive and regular review of various workflows such as the FAST-41 Permitting Dashboard, CPPs, baseline schedules, the ARC, and project-specific coordination with Permitting Council member agencies. Some examples of material reviewed by the Permitting Council to perform this assessment include:
 - Application Submissions
 - Pre-NOI Activities
 - Project Development Suspensions or Revisions
 - Additional Mandatory Timelines
 - Dependencies
- The statute requires the starting date for the calculation of permitting schedules to be the date the project is entered on the Permitting Dashboard. However, because the majority of projects utilized for this report were not FAST-41 projects, the NOI for the EIS was used as the initiating action in order to provide a consistent start date for all projects (recognizing that not all FAST-41 projects require an EIS). Furthermore, utilizing the NOI, or other agreed upon initiating milestone, is consistent with other timeline calculation efforts that have been conducted or will be conducted by other agencies in the future (e.g., the CEQ EIS timeline report and compliance with EO 13807¹⁰).
- The USFWS and NMFS ESA data include both formal and informal consultations. The dates for formal consultation were used unless only informal consultation was performed, in which case the latter's dates were utilized. Informal and formal consultations take different lengths of time. In future reports, FPISC may revise this approach as additional data is available.
- For NHPA Section 106 consultation, the time required was calculated utilizing the first known date of consultation initiation, and the final conclusion of the review process.
- For USACE Regulatory Section 10/404 actions, timelines vary widely based on whether proposed impacts to jurisdictional waterbodies associated with the project qualify for a general permit (which is an abbreviated review) or an individual permit. Impacts to waterbodies are determined not by the project sector, but rather the specific physical landscape where the project is proposed, thus making sector-specific time estimates for Section 10/404 actions challenging. In light of this, general timeline estimates, based on permit type, were reviewed instead.
 - For all Section 10/404 actions in FY18 (approximately 56,000), including FAST-41 and non-FAST-41 projects, 85 percent of general permit verifications were made within 60 days or less of the receipt of a complete pre-construction notification. For individual permits, 58 percent of permit decisions were made in 120 days or less from receipt of a complete application. Additional time is generally required for either permit type if consultation/coordination under other laws, such as ESA and/or NHPA is required.

¹⁰ <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/>

Consultation/coordination pursuant to these laws has been required for all FAST-41 projects thereby necessitating additional time for Section 10/404 actions.

- FAST-41 covered projects such as electricity transmission lines and pipelines that qualify for general permits often require the USACE Regulatory Program to verify general permits for dozens or hundreds of waterbody crossings, with separate pre-construction notifications for each crossing submitted by the applicant at different times throughout the environmental review process due to the often evolving project design process, e.g., project re-routing. Therefore, consistent with the data reported to the FAST-41 Permitting Dashboard for Section 10/404 actions for projects that qualify for general permits, the date of the receipt of the first pre-construction notification submitted for the project was used as the initiating date, with the date of verification for the final general permit used as the conclusion date.
- NMFS's Magnuson-Stevens - EFH and ESA Section 7 consultation for the electricity transmission and renewable energy sectors, as well as the USFS SUP for the pipeline sector each had a sample size of less than five. OED recognizes that the utility of averaged data for these actions, given the low sample size on which the data were based, is limited. Therefore they were not included in these performance schedules at this time.
- For the renewable energy sector, the projects in the sample set did not require a USFS SUP, and as a result no recommended performance schedule could be produced for these actions.

In the future, as the number of projects that have been covered and completed under FAST-41 continues to grow, future reports will rely solely on the data pulled from covered projects. Therefore, while this report includes FAST-41 projects where possible, it relies significantly on non-FAST-41 projects to provide a baseline from which the timelines of future FAST-41 projects may be measured. In addition, throughout this and future reports, OED does not alter any statutory time frame, but expects all agencies will look for coordination opportunities that may accelerate the project delivery process.

Data Analysis

Utilizing the full datasets for the three sectors, the mathematical averages (i.e., means), medians, percentiles (25th and 75th), and total times from NOI to final action were calculated in months and years. Based on the data obtained for the 59 projects analyzed for this report, the average EIS completion time from NOI to ROD was 3.31 years (median of 2.96 years) for electricity transmission, 2.42 years (median of 2.08 years) for pipeline, and 2.3 years (median of 1.98 years) for renewable energy production. By comparison, CEQ's 2018 report on timelines for all EISs across the Federal government from 2010-2017¹¹ found the average time required to be 4.5 years, with a median of 3.6 years. The 25th and 75th percentiles calculated the three selected sectors are as follows: 2.34 and 4.05 years for electricity transmission; 1.82 and 2.59 years for pipelines; and 1.39 and 3.08 for renewable energy production. The 2018 CEQ report found the 25th and 75th percentiles for all EISs completed from 2010-2017 to be 2.2 and 6.0 years, respectively.

The tables below contain the mean, median, maximum, minimum, and 25th and 75th percentiles for all actions included in this report.

¹¹ Council on Environmental Quality. "Environmental Impact Statement Timelines." https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timelines_Report_2018-12-14.pdf. December 14, 2018.

Table 2. Performance Schedule Data Summary Table for the Electricity Transmission Sector

ACTION	SAMPLE SIZE	MEAN (YEARS)	MEDIAN (YEARS)	MINIMUM (YEARS)	MAXIMUM (YEARS)	PERCENTILES (YEARS) ¹²	
						25 TH	75 TH
NEPA							
NOI to ROD	19	3.31	2.96	1.50	6.03	2.34	4.05
NOI to DEIS	19	1.74	1.67	0.20	3.43	1.11	2.52
DEIS to FEIS	19	1.09	0.97	0.10	2.26	0.62	1.54
FEIS to ROD	19	0.49	0.39	0.03	1.64	0.18	0.59
USFWS ESA	17	0.70	0.42	0.00	2.23	0.21	1.02
NHPA Section 106	19	3.14	2.67	0.19	6.75	2.16	3.98
USACE Section 10/404 ¹³	7	0.22	0.14	0.00 ¹⁴	0.90	0.02	0.21
BLM ROW	11	4.05	2.78	1.45	10.39	1.71	6.46
USFS SUP	7	6.14	6.90	2.79	9.64	3.31	8.59

¹² Percentile Data not depicted in Performance Schedule graphics (Figures 1-3).

¹³ Timelines exclude dependencies such as ESA and NHPA consultation/coordination.

¹⁴ Utilization of a Nationwide Permit for the USACE 10/404 action resulted in a minimum of 0.0 years since some verifications could be completed in as little as a single day (0.0027 years)

Table 3. Performance Schedule Data Summary Table for the Pipelines Sector¹⁵

ACTION	SAMPLE SIZE	MEAN (YEARS)	MEDIAN (YEARS)	MINIMUM (YEARS)	MAXIMUM (YEARS)	PERCENTILES (YEARS) ¹⁶	
						25 TH	75 TH
NEPA							
NOI to ROD	20	2.42	2.08	1.33	7.83	1.82	2.59
NOI to DEIS	20	1.59	1.34	0.63	6.26	1.18	1.65
DEIS to FEIS	20	0.56	0.46	0.27	1.34	0.34	0.69
FEIS to ROD	20	0.28	0.21	0.08	0.78	0.11	0.40
NMFS ESA	5	0.32	0.25	0.10	0.93	0.13	0.44
USFWS ESA	20	0.50	0.33	0.61	3.17	0.13	0.53
NHPA Section 106	18	2.11	1.98	0.05	5.64	1.05	2.90
USACE Section 10/404 ¹⁷	19	0.82	0.68	0.08	2.68	0.15	1.08
BLM ROW	5	3.47	2.68	0.78	8.46	1.14	6.21
USFS SUP	3	1.00	0.82	0.73	1.44	0.73	1.44
FERC CERTIFICATE	18	1.79	1.74	0.48	4.86	1.28	2.02

¹⁵ For natural gas pipelines, FERC generally issues the NOI during pre-filing, but the project sponsor independently files its application.

¹⁶ Percentile Data not depicted in Performance Schedule graphics (Figures 1-3).

¹⁷ Timelines exclude dependencies such as ESA and NHPA consultation/coordination.

Table 4. Performance Schedule Data Summary Table for the Renewable Energy Production Sector

ACTION	SAMPLE SIZE	MEAN (YEARS)	MEDIAN (YEARS)	MINIMUM (YEARS)	MAXIMUM (YEARS)	PERCENTILES (YEARS)	
						25 TH	75 TH
NEPA							
NOI to ROD	20	2.30	1.98	0.93	5.58	1.39	3.08
NOI to DEIS	20	1.19	0.80	0.32	3.19	0.59	1.71
DEIS to FEIS	20	0.72	0.60	0.21	1.91	0.40	1.04
FEIS to ROD	20	0.40	0.20	0.09	2.39	0.17	0.33
NMFS ESA	0	N/A	N/A	N/A	N/A	N/A	N/A
USFWS ESA	16	0.49	0.60	0.03	0.99	0.11	0.75
NHPA Section 106	17	1.59	0.92	0.07	6.84	0.64	1.84
USACE Section 10/404 ¹⁸	6	1.07	0.17	0.06	5.65	0.07	1.66
BLM ROW	17	3.11	2.61	1.01	9.52	1.50	4.21
USFS SUP	0	N/A	N/A	N/A	N/A	N/A	N/A

Figures 1-3 below represent a visual translation of the data presented in the tables above.¹⁹

¹⁸ Timelines exclude dependencies such as ESA and NHPA consultation/coordination.

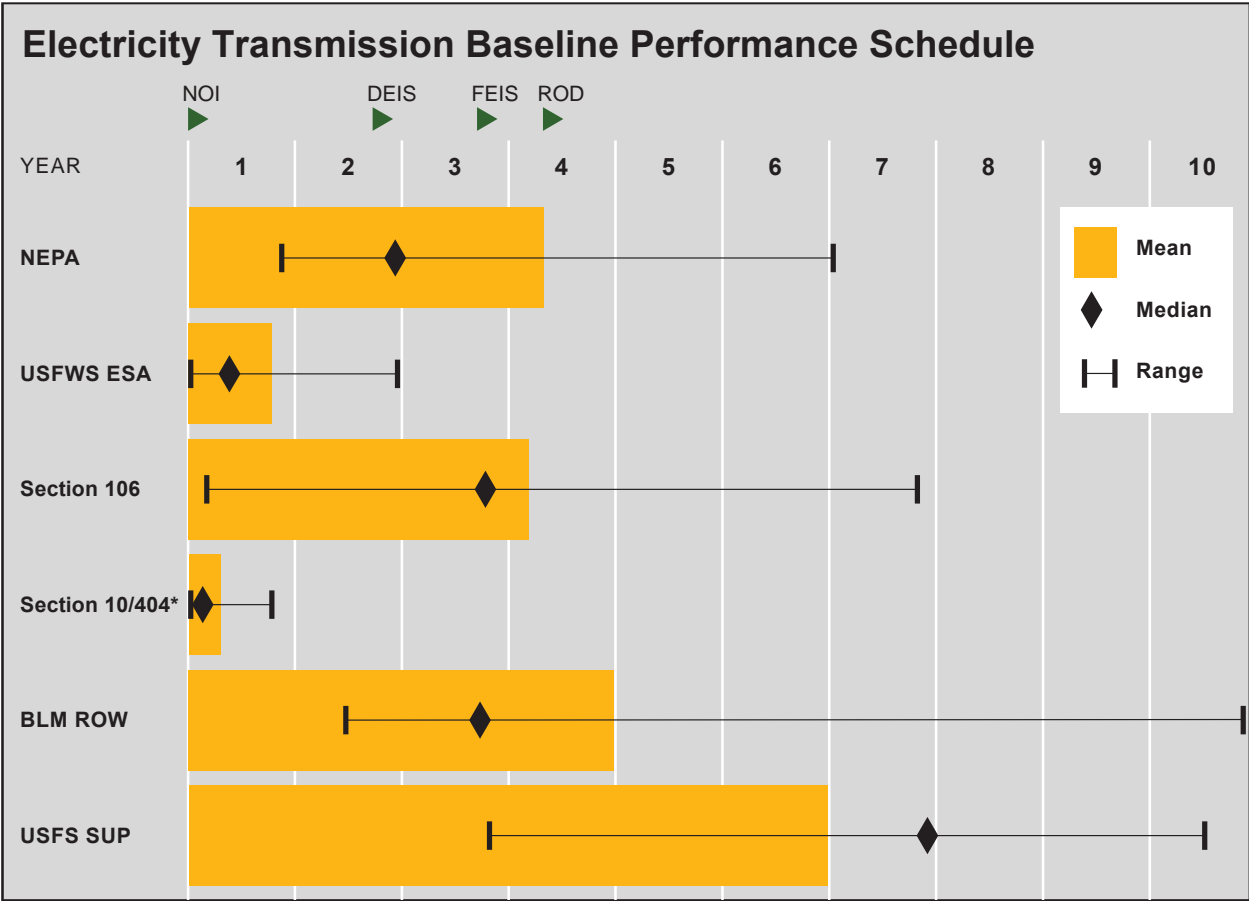


Figure 1. Baseline Performance Schedule for the Electricity Transmission Sector²⁰

* Section 10/404 actions do not account for ESA/NHPA.

²⁰ The graph shows the baseline performance schedule for each action, and is not intended to imply that each environmental review and authorization should begin on the same day as the publication of the Notice of Intent. The baseline performance schedule does not propose the specific timing of each action within the overall project schedule.

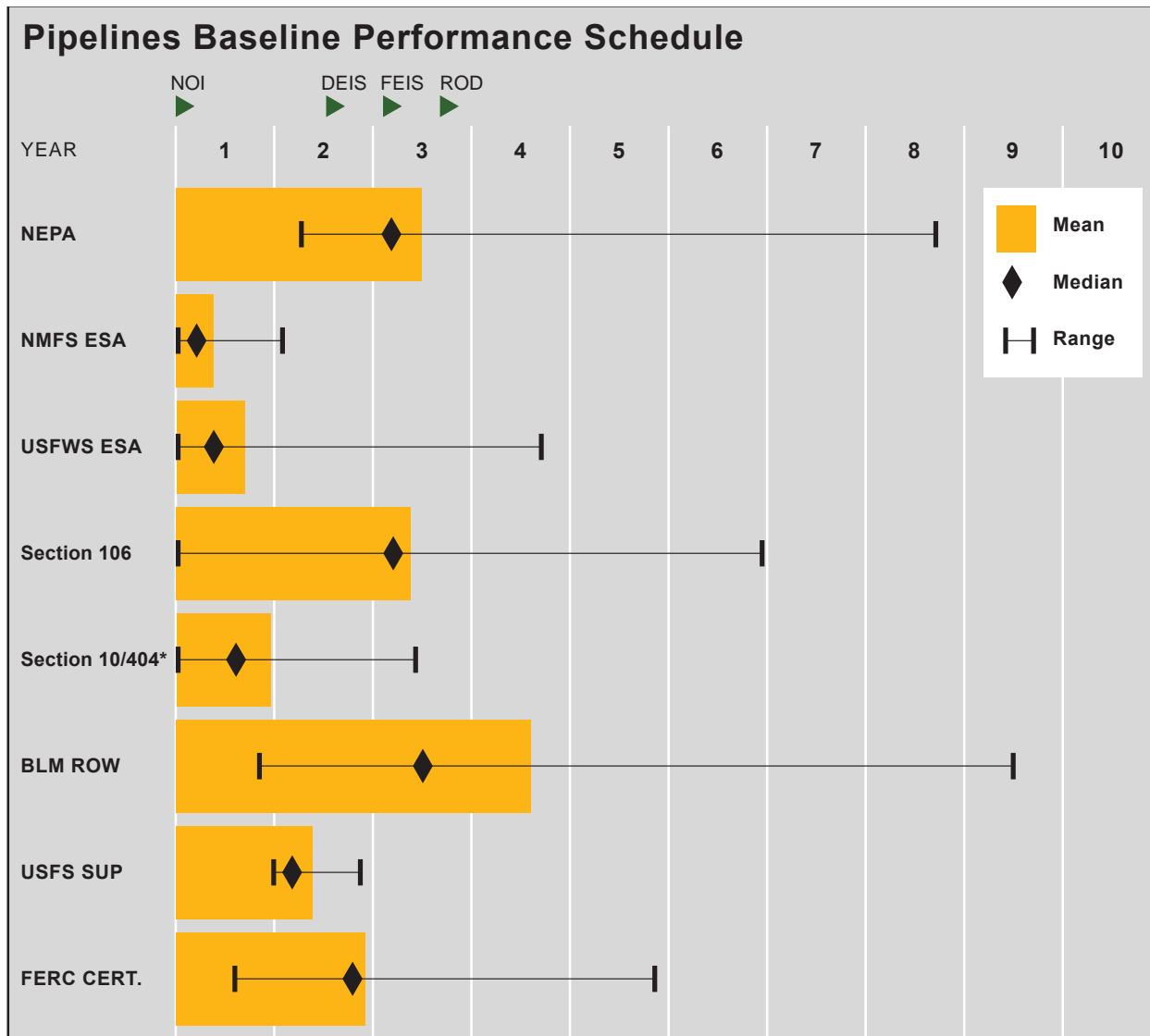


Figure 1. Baseline Performance Schedule for the Pipelines Sector²¹

* Section 10/404 actions do not account for ESA/NHPA.

²¹ The graph shows the baseline performance schedule for each action, and is not intended to imply that each environmental review and authorization should begin on the same day as the publication of the Notice of Intent. The baseline performance schedule does not propose the specific timing of each action within the overall project schedule.

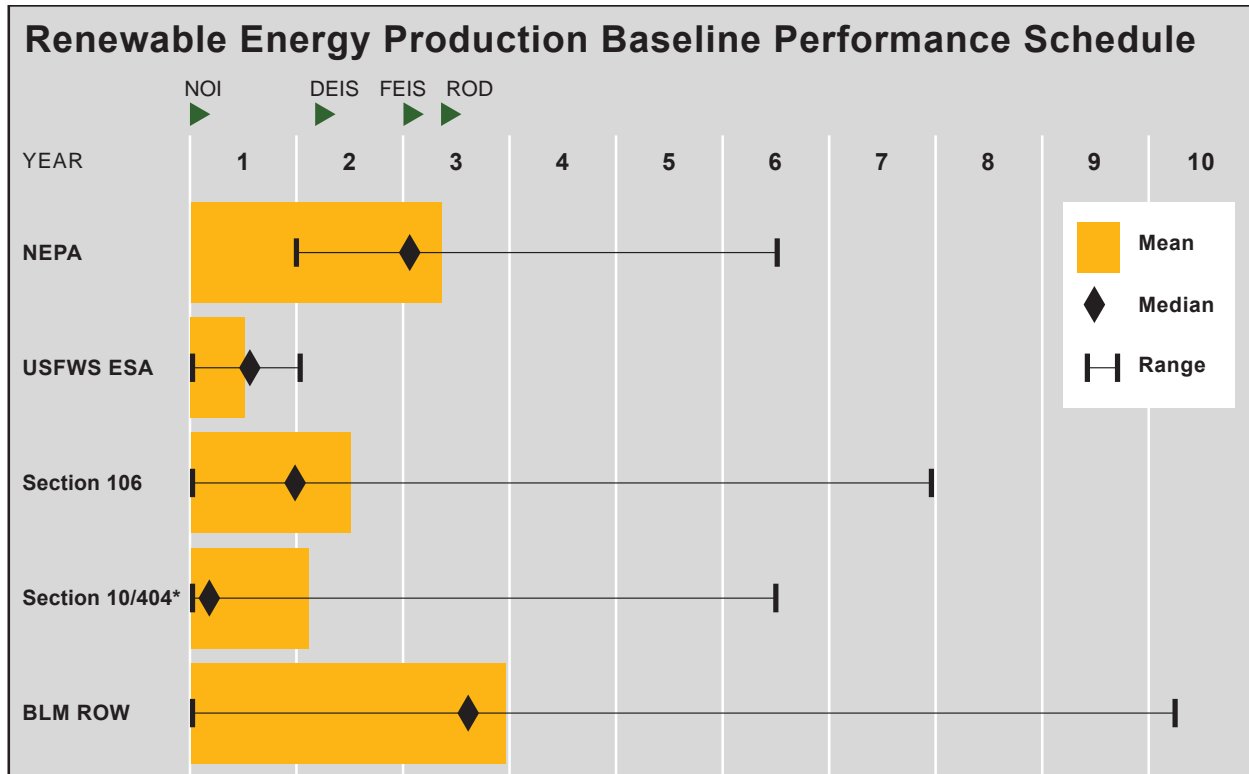


Figure 3. Baseline Performance Schedule for the Renewable Energy Production Sector²²

* Section 10/404 actions do not account for ESA/NHPA.

²² The graph shows the baseline performance schedule for each action, and is not intended to imply that each environmental review and authorization should begin on the same day as the publication of the Notice of Intent. The baseline performance schedule does not propose the specific timing of each action within the overall project schedule.

Chapter 3: Considerations for Permitting Schedules

The permitting timeframes analyzed in this report are influenced by many variables that comprise the (supplemented) baseline performance schedules in this report, and many considerations in their interpretation and utilization. Examples of such major influences and considerations are provided below.

Additional Mandatory Timelines

Agencies may have additional timelines with which they are required to comply. FAST-41 Permitting Timetables are required to be consistent with any other applicable time period established by Federal law, and they must not prevent a cooperating or participating agency from fulfilling an obligation under Federal law (42 U.S.C. § 4370m-2(c)(2)(E)). Two timelines with which many FAST-41 projects may also have to comply are listed below:

- EO 13807²³, issued August 15, 2017, requires major infrastructure projects (projects that require multiple authorizations by Federal agencies prior to proceeding with construction, the lead agency has determined an EIS to be necessary, and for which the project sponsor has identified the reasonable availability of funds sufficient to complete the project) to be, on average, no longer than two years from NOI to ROD, with an extra 90 days allowed for the completion of all authorizing and permitting decisions.
- Department of Interior's Secretarial Order 3355²⁴, also signed in August 2017, sets a timeline of one year from NOI to final EIS for Department of Interior-led EISs; however, FAST-41 and EO 13807 projects are subject to EO 13807's two-year timeline, as opposed to Secretarial Order 3355's one-year timeline.²⁵ These orders highlight the fact that in addition to the requirements of the EO and secretarial order, some agencies have set additional goals for the completion of their permitting decisions; agencies will therefore be working to meet the time frames identified in those policies. As a result, project-specific permitting schedules, as well as future performance schedules, may reflect those policy changes.²⁶

Age of Data

OED recognizes that some of the data utilized for this report is now nine years old, and significant changes have occurred in some agencies' structures and processing procedures in that time. For that reason, the time required to complete the actions included in this report may have changed since 2010.

²³ EO 13807—<https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/>

²⁴ Department of Interior's Secretarial Order 3355—https://www.doi.gov/sites/doi.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for.pdf

²⁵ https://www.doi.gov/sites/doi.gov/files/uploads/erm_10-11_infrastructure_project_nepa_process_applicability_determination_07_30_2018.pdf

²⁶ https://www.doi.gov/sites/doi.gov/files/uploads/erm_10-11_infrastructure_project_nepa_process_applicability_determination_07_30_2018.pdf

Also, as discussed above, there have been significant changes to the overall federal environmental review process for infrastructure projects under FAST-41 and EO 13807. For instance, prior to FAST-41 and EO 13807, it was not uncommon for federal agencies to complete sequential rather than concurrent reviews. Through the FAST-41 and EO 13807 processes, federal agencies are now aiming to conduct concurrent reviews to the maximum extent practicable. The concurrent review process should result in shorter average timelines for the overall environmental review process, but may result in longer average review timelines for some individual actions. For example, in the past it was not uncommon for USACE to receive a permit application after significant actions like Section 106 NHPA and Section 7 consultation or the lead agency's NEPA process were already completed. As such, longer average timelines for some actions for FAST-41 projects as compared to average timelines for those actions under past projects may not necessarily be indicative of a negative result. When agencies are conducting a concurrent review process with the aim of all federal decisions being completed close to the conclusion of the NEPA process, rather than being spread out sequentially over a longer overall period of time, those actions may show as taking longer when seen individually but overall the process takes the same amount of time, or less time, and applicant understanding and satisfaction with the process is higher.

Dependencies

For agencies that have an environmental permitting or review action for a project, but are not the lead agency, they may have to rely on the lead agency to complete a review or study prior to being able to move forward with the processing of its own action. For example, generally, USACE must wait for the lead agency to complete the ESA or Section 106 consultation process before it can complete the Section 10/404 permit review. These dependencies go both ways, as lead agencies often depend on other agencies to complete actions before a permit can legally be issued. For example, FERC cannot issue a license until it receives a 401 Water Quality Certification or a Biological Opinion if formal ESA consultation is necessary. Should the agency be unable to continue its review/permit process without these inter-agency dependencies being satisfied, there may be delays in the review/permit process ranging in magnitude from minimal to significant. The Permitting Dashboard tracks dependencies, so these delays are, and will continue to be, well documented for covered projects moving forward.

Project Development Suspensions or Revisions

The development of large, complex infrastructure projects is a complicated process that very frequently involves delays in project design and potential project redesign as project sponsors gather more information throughout the design process. As a result, project sponsors may ask agencies to pause the review of a project, or may resubmit new project information, requiring the agency to reevaluate potential environmental impacts. The resulting delays may lengthen the time required to complete an environmental review/permit. As was discussed earlier in this report, OED attempted to account for the lack of data for the duration of delays by utilizing the date of the last application submission or request for consultation, and the earliest permit approval or consultation completion date. The Permitting Dashboard now tracks pauses in project and individual action processing, and this data will be considered in future revisions to the performance schedules.

Pre-NOI Activities

As is also noted above and in the 2018 CEQ EIS timeline report, the NOI is not necessarily the beginning of the environmental review/permitting process for Federal agencies. Agencies must do considerable work prior to the NOI's development in order to establish basic project eligibility, identify internal project teams, identify potential cooperating and participating agencies, and gather appropriate scoping/stakeholder contact information, etc. However, data for pre-NOI activities was unavailable as it is not currently tracked by most agencies; therefore, the NOI was used for this report as an initial NEPA milestone.

Application Submissions

While the project sponsor may have initial communication and consultation with a Federal agency (e.g., informal consultation, preliminary CWA jurisdictional determinations, etc.), the responsible agency for permitting actions cannot begin formal review of a project until it receives a complete application from the project sponsor. If the initial application submission is delayed or an incomplete application is submitted, the initiating date for these actions may occur months after the NOI is published.

Appendix A: Electricity Transmission Data

Available online at <https://www.permits.performance.gov/tools/2020-recommended-performance-schedule-data-appendix-a>

Appendix B: Pipeline Data

Available online at <https://www.permits.performance.gov/tools/2020-recommended-performance-schedule-data-appendix-b>.²⁷

²⁷ Please Note: A performance schedule is not recommended for EFH review because the sample size is too low.

Appendix C: Renewable Energy Production

Available online at <https://www.permits.performance.gov/tools/2020-recommended-performance-schedule-data-appendix-c>.

