



Transportation Project Delivery Provisions

Infrastructure Investment and Jobs Act Advisory Services Policy Brief #3

Although the Infrastructure Investment and Jobs Act (IIJA) is rightly touted as a generational investment in our nation's infrastructure, it also conveys some important policies that will inform the environmental review process for projects funded through that investment. This Advisory Services Policy Brief discusses the key provisions within the IIJA that affect project delivery – specifically those that inform the environmental reviews under the National Environmental Policy Act (NEPA) and permits, approvals and authorizations under other federal environmental laws.

Key provisions discussed in this brief include:

- One Federal Decision that requires a single decision document for complex environmental studies.
- Other NEPA-related changes covering projects in the right-of-way, early utility relocation, and others
- Changes to NEPA Assignment that extend the duration of agreements between States and USDOT.
- Section 4(f) approvals for projects affecting parks, historic sites, and wildlife refuges
- Interagency Infrastructure Permitting Improvement Center, an office in the Office of the Secretary is made permanent.

About HDR's Advisory Services

The Advisory Services team has over 250 management consultants with premium, strategic advice that is rooted in the practical, solid-state service that our infrastructure clients around the world have come to expect. We have expertise in funding and finance, economics and decision analysis, strategic planning and policy, sustainability and resiliency, strategic communications and business improvement.

Advisory Services professionals review infrastructure policy developments and prepare summaries of key provisions to help keep our clients informed of the changing landscape in Washington, D.C.

The Return of One Federal Decision and Two-Year Timelines

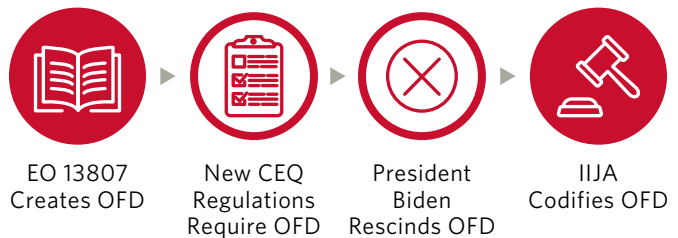
In August 2017, then President Trump issued Executive Order (EO) 13807 “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” The most notable policy in that EO was the One Federal Decision (OFD) policy that mandated that federal agencies coordinate on a project schedule to complete the environmental reviews for complex projects within two years, limit the document length of the studies to 200 pages or less, issue a single record of decision (ROD) under NEPA, and complete permits within 90 days of the ROD. One Federal Decision had a mixed reaction with some hailing the imperative to adhere to a schedule and force cooperation among federal agencies, while others complained of the one-size fits all approach that ignores the unique challenges inherent in all large, complex projects. The Trump Administration doubled down on the OFD policy by including it in the updated NEPA regulations issued by the Council on Environmental Quality in 2018. In January 2019, newly inaugurated President Biden rescinded the EO that created OFD and immediately undertook a new rule-making to undo and revise the NEPA regulations issued during the Trump Administration. Fast forward to November 2021 and Congress puts OFD back in play!

The IIJA tackles OFD and time limits in two places. First, in codifying OFD as part of the Efficient Environmental Reviews for Project Decision-making (23 U.S.C. 139) for highway, transit and rail projects. Additionally, the IIJA requires two-year performance schedules in the federal permitting process established by Section 41001 of the Fixing America’s Surface Transportation Act. This is also known as FAST-41 and applies to most other infrastructure sectors that aren’t surface transportation or Army Corps of Engineers civil works projects.

For transportation projects, Section 11301 of the IIJA amends Section 139 of Title 23 to incorporate the principles of OFD for “major infrastructure projects.” These “major infrastructure projects” are defined as having multiple federal approvals, reasonably available funds, aren’t covered by FAST-41, and typically require an environmental impact statement¹. The principles of OFD that apply to these newly defined “major infrastructure projects” include page limits (200 maximum for EIS), and time limits (2-year timeline to complete ROD and permit within 90 days). Missed milestones require justification and are annually reported to Congress.

Beyond project-level process changes, the IIJA places additional reporting requirements on the Department of Transportation, including an annual report on the average timeline to complete environmental documents, and establish a performance monitoring system to evaluate how well schedules for environmental reviews are followed or met.

The IIJA also makes permanent the Federal Permitting Improvement Steering Council created by FAST-41, allowing the Permitting Council to continue working with other infrastructure sectors and supporting accelerated project delivery through enhanced agency coordination and transparency.



Conditions for a “Major Infrastructure Project” Under 23 U.S.C. 139 as Amended by the IIJA

Multiple Approvals
Are multiple federal agencies involved with permitting approvals?
Reasonably Available Funds
Will the project move to construction soon after NEPA?
Not Covered by FAST-41
FAST-41 excludes projects that are subject to 23 U.S.C. 139, effectively excluding all transportation projects
Requires an EIS
The more complex the process, the more opportunities for delay
EA with Sponsor Request
Complex EAs may benefit from added coordination

¹ The statute allows for EAs to be classified as “major infrastructure projects” upon request of the project sponsor.

Other Environmental Review Changes

In addition to codifying OFD, the IIJA makes other changes to environmental review requirements for transportation projects:

- Federal Land projects (e.g., those occurring on National Park Service, Fish and Wildlife Service, Forest Service lands, and others) may now use FHWA's environmental procedures rather than relying on the land management agency's procedures.
- If a project that meets the requirements of a categorical exclusion (CE) occurring in an operational right of way (as defined by the FHWA/FTA/FRA) requires approval from a federal agency, that agency must act within 45 days of receiving an application for approval. Notably, this applies regardless of whether there is federal funding for the project, meaning that even if a project is not subject to NEPA, as long as it would qualify for a CE, the federal agency must adhere to the 45-day timeline.
- States may now use state funds to pay for utility relocation necessary to implement a transportation project before completing the environmental study for the whole project. This authority is similar to the corridor preservation authority in that state funds are expended at risk prior to the completion of NEPA, but provided certain conditions are met, those funds may be reimbursed once NEPA is completed.
- The Categorical Exclusion that covers projects with "limited federal assistance" is modified to increase the dollar threshold of federal assistance from \$5 million to \$6 million and increases the overall project cost threshold from \$30 million to \$35 million while still indexing the thresholds to inflation.

Changes to NEPA Assignment

The Surface Transportation Delivery Program, otherwise known as NEPA Assignment, allows the Secretary of USDOT to "assign" the federal responsibilities under NEPA and other environmental laws to states for highway, rail and certain multimodal projects. That assignment is carried out through a Memorandum of Understanding with a statutorily defined time horizon – three years for agreements authorizing only CE determinations, and five years for agreements that cover CEs, EAs and EISs (full program assignment). States with NEPA Assignment have argued that those time horizons were too short, and Congress listened – extending the duration for CE agreement renewals to five years and ten years for full program agreements.

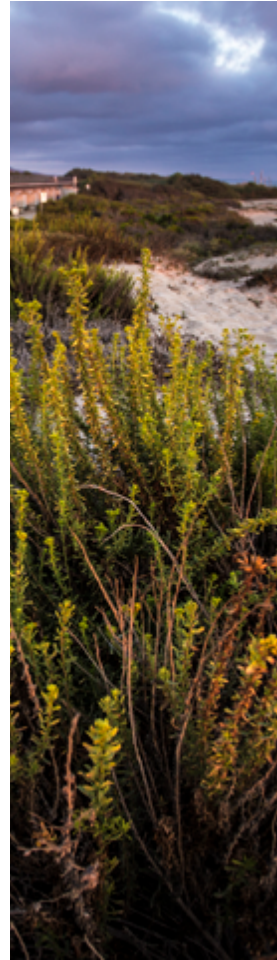
Changes to the Section 4(f) Process

Section 4(f) is a federal requirement that transportation projects avoid or minimize harm to parks, refuges and historic sites. Section 11316 of the IIJA amends the cooperation and coordination requirements of Section 4(f) by establishing a 30-day deadline for comments from the Departments of Interior, Housing and Urban Development, and Agriculture on Section 4(f) evaluations. Under this new authority, if the agencies do not provide comments within 45-days, USDOT may assume a lack of objection and proceed with the action. Notably, this authority does not affect the responsibility of USDOT to consult under Section 106 of the National Historic Preservation Act.

Establishing deadlines for commenting by agencies will help projects adhere to schedules – particularly if they are held to a two-year target for EISs. However, despite the presumed lack of objection if no comments are provided within 45 days, the need to coordinate with non-federal officials with jurisdiction on properties subject to Section 4(f) may still require long lead times.

Interagency Infrastructure Permitting Improvement Center

For several years, USDOT has operated an Infrastructure Permitting Improvement Center (IPIC) in the Office of the Secretary. USDOT established the IPIC as part of its efforts to modernize the federal permitting process during the Obama administration and was a complementary piece of the efforts led by the Federal Infrastructure Permitting Improvement Steering Council. Until now, the IPIC was authorized by annual appropriations, and not authorized in statute. The IIJA rectifies that by authorizing the IPIC and establishing statutorily defined responsibilities including developing online tools to track project schedules (i.e. Permitting Dashboard), developing and tracking metrics for timeliness of environmental reviews and permitting decisions, developing best practices for environmental reviews, and providing technical assistance. This last responsibility may be the most impactful for sponsors as the IPIC can serve as a liaison to other parts of the Department and with other federal agencies to help move critical projects (as determined by the Department) forward.





What This Means and How We Can Help

The changes to the project delivery process will again require FHWA/FTA/FRA to update the environmental procedures – while also awaiting additional changes to NEPA regulations from the Council on Environmental Quality. There will be some additional churn in the project delivery space as these new requirements are implemented and future requirements are established.

The Global Advisory Services Team has the experience and understanding of the federal environmental review and approval process to help clients position their projects for success despite the perpetually changing requirements. Our principals have supported clients at the local, state, and federal level and have worked on developing and implementing environmental process changes from both the public and private side of the project.

HDR's Advisory Services blend deep infrastructure knowledge with insightful business management expertise to develop tailored solutions. Our experts help plan, procure, develop, manage, operate and finance projects and programs. Our management consultant professionals create value by leveraging our unparalleled technical expertise of planners, engineers, researchers, policy experts, senior executive advisors, and data scientists to produce performance improvements.

Our approach integrates technical and business professionals who generate sustainable solutions with a rich understanding of challenges. As a trusted advisor, we help clients make lasting, positive change. We value our client relationships over the long term. Our experts provide services in:

- Funding and Finance
- Strategic Planning and Policy
- Economics and Decision Analysis
- Sustainability and Resiliency
- Strategic Communications
- Management and Business Improvements

Our Environmental Policy leaders stand ready to help our clients understand how the IJIA may influence their project development processes and provide strategic advice on how best to leverage these new authorities.

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