

Federal Permitting Improvement Steering Council

Standard Operating Procedure

Evaluate Whether to Approve the Addition of a New Sector of Infrastructure under FAST-41

PURPOSE

The Federal Permitting Improvement Steering Council (the Council) establishes this standard operating procedure to set forth a process by which the Council, by majority vote, would approve the addition of a new sector of infrastructure not expressly enumerated under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), Pub. L. No. 114-94, § 41001(6)(a) (Dec. 4, 2015) (codified at 42 U.S.C. § 4370m(6)(A)).

DEFINITIONS

1. The "Chair," as defined at 42 U.S.C. § 4370m-1(b)(1), means the Executive Director, who shall be appointed by the President and serve as Chair of the Council.
2. A "Cooperating agency," as defined at 42 U.S.C. § 4370m(4), means any agency with jurisdiction under Federal law or special expertise as described in 40 C.F.R. § 1501.6 (as in effect on December 4, 2015).
3. The "Council," as defined at 42 U.S.C. § 4370m (5), means the Federal Infrastructure Permitting Improvement Steering Council established under 42 U.S.C. § 4370m-1(a) and is composed of the Chair and Council members.
4. The "Council members," as defined at 42 U.S.C. §§ 4370m-1(b), are the Chair, members designated by the head of each agency considered under 42 U.S.C. § 4370m-1(b)(2)(B), the Chairman of the Council on Environmental Quality, and the Director of the Office of Management and Budget under 42 U.S.C. § 4370m-1(b)(3).
5. A "Covered project" as defined at 42 U.S.C. § 4370m(6), means 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 the Council that—
 - (i)
 - (I) is subject to NEPA;
 - (II) is likely to require a total investment of more than \$200,000,000; and
 - (III) does not qualify for abbreviated authorization or environmental review processes under any applicable law; or
 - (ii) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require—
 - (I) authorization from or environmental review involving more than 2 Federal agencies;

or

(II) the preparation of an environmental impact statement under NEPA.

Does not include—

- (i) any project subject to 23 U.S.C. § 139;
 - (ii) any project subject to 33 U.S.C. § 2348; or
 - (iii) except as expressly provided in 42 U.S.C. 4370m–2(f) and 23 U.S.C. § 139(o), the requirements and other provisions of FAST-41 does not apply to programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49, United States Code.
6. A “Facilitating agency,” as defined at 42 U.S.C. § 4370m(13), means the agency that receives the initial notification from the project sponsor required under 42 U.S.C. § 4370m-2(a).
 7. A “Lead agency,” as defined at 42 U.S.C. § 4370m(15), means the agency with principal responsibility for an environmental review of a covered project under NEPA and 40 C.F.R. Parts 1500-1508 (or successor regulations).
 8. “NEPA” means the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.)
 9. A “Participating agency,” as defined at 42 U.S.C. § 4370m(17), means an agency participating in an environmental review or authorization for a covered project in accordance with 42 U.S.C. § 4370m-2.
 10. A “Quorum” means a number greater than 50 percent of the Chair and Council members or their designees.

PROCEDURE

The Council shall use the following procedure when it initiates or receives a request to add a new sector of covered projects not expressly enumerated under 42 U.S.C. § 4370m(6)(A).

1. Requests

- a. **General.** A Council member seeking to add a new sector must submit a request to the Chair that the Council consider the addition of a new sector of covered projects not expressly enumerated under FAST-41. All requests shall be submitted to the Chair at Fast.FortyOne@fpisc.gov. The Chair will transmit all such requests to all Council members.
- b. **Contents.** Each request submitted under Section 1.a shall include:
 - i. The requestor’s name, contact information and a brief description of the requestor’s agency;
 - ii. A brief description of the sector that is the subject of the request;

- iii. A statement of the purpose and objective for including the sector under FAST-41;
 - iv. A description of the typical types of infrastructure activities within the sector that require construction and whether the activities typically require a total investment of \$200,000,000 or more;
 - v. An explanation of the public benefit of addition of the sector;
 - vi. A description of the authorizations and environmental reviews that are typically required for activities within the sector prior to decision-making for the construction, including whether the actions are subject to NEPA;
 - vii. A list of the federal, state, local and tribal entities that have responsibility for the authorizations and environmental reviews required for infrastructure activities prior to decision-making for the construction;
 - viii. Information on whether most activities within the sector are subject to abbreviated federal authorization or environmental review processes under any applicable law or other Federal permitting streamlining efforts; and
 - ix. Information on any expected conflicts among or between Federal agencies, state and local government, the project sponsor, or other stakeholders that may arise from the addition of the sector.
- c. **Supplemental Information.** After receiving a request under Section 1.a, the Chair (in coordination with relevant Council agencies) may request additional information, including outreach to any relevant stakeholders representing a wide variety of viewpoints (i.e. industry groups, environmental groups, and private companies), that may inform the Council's decision to consider the addition of a new sector of covered projects under FAST-41.
- d. **Information Supplied by the Chair.** After receiving a request under Section 1.a, the Chair, in coordination with relevant Council members, shall prepare a list of the federal agencies that potentially would serve as facilitating agencies, lead agencies, cooperating agencies, and participating agencies on typical projects in the sector that is the subject of the request.

2. Transmittal

- a. **General.** The Chair shall gather all relevant information submitted, collected, and prepared under Section 1 and transmit the information to the Council members.
- b. **Supplemental Information.** Each Council member will have four (4) weeks from the date of transmittal to review the information transmitted under Section 2.a and communicate to the Chair whether the Council would benefit from additional information. Upon receipt of a request for supplemental information, the Chair will gather, or request one or more Council members to gather information pertinent to the request. The Chair will then transmit the additional information to the Council members within two (2) weeks from the receipt of the request for supplemental information.

3. Council Meetings

- a. **General.** The Council will meet upon the request of the Chair, in person or by remote participation, to discuss and vote on any request submitted under Section 1.a, no earlier than four (4) weeks after transmittal under Section 2.a or two (2) weeks of transmittal of supplemental information under Section 2.b.
 - b. **Notice of Meetings.** The Chair shall transmit date, time, and location of the meeting to the Council members at least seven (7) business days before each meeting.
4. **Remote Participation.** Council members (or their designees) may participate in Council meetings by teleconference. Council members (or their designees) who participate in a meeting by such means shall be considered present for all purposes, including for the presence of a quorum.
5. **Decision-Making.** The decision (yea or nay) regarding the addition of a new sector shall require the majority vote of a quorum of the Council members.
6. **Proxy.** A Council member may designate a substitute to participate in a Council meeting for purposes of voting on a decision regarding a request submitted under Section 1.a. A person designated to substitute for the Council member at the Council meeting shall present the Council with credentials of authority by letter, or other form of appointment acceptable to the Council, stating the scope or limitations of the individual's voting authority.
7. **Adjournment of a Meeting.** If a quorum is not present at a Council meeting, the Chair shall adjourn and reschedule the Council meeting.
8. **Record of Action.** The Chair shall create a record of actions and transmit that record of the decision of the Council to the Council members on or before the effective date of the decision.
9. **Effective Date.** Unless otherwise specified by the Council, Council actions with regard to the request shall take effect when adopted and remain in effect until superseded.

GENERAL

1. **Amendment.** The majority vote of a quorum must approve any decision to amend, suspend, revoke, or waive this standard operating procedure
2. **Limitation.** These procedures set out internal operating policies and processes for the Council. They are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, the Council, the Chair, a Council member, or the Departments, agencies, entities, officers, employees, or agents thereof, or any other person.

12/14/2017
DATE

Acting Executive Director
Federal Permitting Improvement Steering Council