



## **Standard Operating Procedure for Adding a New Infrastructure Sector Under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), and Modifying or Removing Previously Added Infrastructure Sectors**

March 31, 2022

### **Background**

On December 14, 2017, the Acting Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) established a standard operating procedure (SOP) entitled “Evaluate Whether to Approve the Addition of a New Sector of Infrastructure under FAST-41” (2017 SOP) that sets forth a process by which the Permitting Council, by majority vote, would approve the addition of a new FAST-41 infrastructure sector not expressly identified in 42 U.S.C. § 4370m(6)(A). On December 10, 2020, the Permitting Council Executive Director replaced the 2017 SOP with a new SOP entitled “Revised Standard Operating Procedure for Adding a New Sector of Infrastructure under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41)” (2020 SOP) to ensure that all Permitting Council votes to add a new FAST-41 infrastructure sector comply with the required public notice-and-comment rulemaking procedures in section 553 of the Administrative Procedure Act (APA), 5 U.S.C. § 553. FAST-41 sectors that have been added by Permitting Council vote now are contained in 40 C.F.R. § 1900.2.

The 2017 and 2020 SOPs addressed the addition of new FAST-41 sectors, but did not expressly contemplate Permitting Council votes to revise or remove sectors previously added by Permitting Council vote.<sup>1</sup> This SOP revises the 2020 SOP to account for Permitting Council modification and removal of FAST-41 infrastructure sectors that were previously added by Permitting Council vote, and to provide additional detail with respect to the process for adding, modifying, and removing previously added FAST-41 infrastructure sectors.

### **Procedure**

- I. Determining whether to pursue a proposal to add, remove, or modify a FAST-41 sector.**
  - A. Any Permitting Council member may propose to add, modify, or remove a FAST-41 infrastructure sector.
  - B. A Permitting Council member that wishes to propose to add, modify, or remove a FAST-41 infrastructure sector should provide the Executive Director a written proposal for the addition, modification, or removal for circulation to the other Permitting Council Members.

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<sup>1</sup> The Permitting Council may not modify or remove the statutorily identified FAST-41 infrastructure sectors at 42 U.S.C. § 4370m(6)(A).



1. The proposal should explain why the member wishes to add, modify, or remove the sector and reference any relevant materials in support of the proposal.
  2. The Executive Director will promptly circulate the proposal to the other Permitting Council members for consideration.
- C. The Executive Director will work with the Permitting Council members to gauge interest in pursuing the proposal, and to solicit any potential variants of the proposal offered for consideration by the Permitting Council members.
- D. The Executive Director will assist any Permitting Council member in refining their proposal(s) to add, modify, or remove a FAST-41 industry sector, including placing any proposal supported by a Permitting Council member on the agenda for discussion during a Permitting Council meeting.
- E. In accordance with the procedures in the Permitting Council Charter, the Permitting Council Executive Director will organize and hold a Permitting Council vote whether to pursue notice-and-comment rulemaking for any proposal to add, remove, or modify a FAST-41 sector that a Permitting Council member wishes to advance.
1. All Permitting Council members who wish to have the Permitting Council vote on whether to pursue notice-and-comment rulemaking for a proposal to add, remove, or modify a FAST-41 sector are entitled to a Permitting Council vote.

## **II. Notice-and-comment rulemaking for adding, removing, or modifying a FAST-41 sector.**

- A. If the Permitting Council votes in favor of pursuing a proposal to add, modify, or remove of a FAST-41 infrastructure sector, the Executive Director will initiate a rulemaking process pursuant to section 553 of the APA.
- B. The specific internal process for undertaking the rulemaking will be determined by the Permitting Council based on the circumstances. At a minimum, the rulemaking process will involve the following.
1. The Executive Director will draft a proposed rule, including a preamble, to add, modify, or remove a FAST-41 infrastructure sector, and circulate the draft to the Permitting Council members for review and input.
  2. The Executive Director will provide an opportunity for the Permitting Council members to discuss the contents of the draft proposed rule prior to submitting



the proposal to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget.

3. After incorporating Permitting Council input, the Executive Director will submit the proposal to OIRA.
4. If OIRA determines that interagency review is necessary, the Permitting Council members will consult with their respective agency staff who are involved in interagency reviews of proposed regulations to ensure that any additional agency review does not cause undue delay, duplicative effort, or inconsistent comments/guidance.
5. The Executive Director will shepherd the proposal through the interagency review and Federal Register publication process.
6. The Executive Director will consult with the Permitting Council members as needed to address any new issues raised during the interagency review process.
7. Unless otherwise agreed, the Executive Director will solicit input from the Permitting Council members with respect to any request received during the public comment period to extend the public comment period.
8. After the close of the comment period, the Executive Director will review all the comments received and provide the substantive comments to the Permitting Council members for consideration. The Executive Director will additionally provide a summary of the substantive comments, and draft preliminary comment responses, for Permitting Council member review and discussion before any permitting Council vote to add, modify, or remove a FAST-41 infrastructure sector.
9. In accordance with the procedures in the Permitting Council Charter, the Executive Director will schedule and hold a Permitting Council vote on whether to add, modify, or remove the FAST-41 infrastructure sector as proposed, or modified based on comments received.
10. If the Permitting Council votes to add, modify, or remove a FAST-41 infrastructure sector, the Executive Director will circulate for Permitting Council member review a draft final rule, including a preamble and draft comment responses, that adds, modifies, or removes the FAST-41 sector, and makes the corresponding amendments 40 C.F.R. part 1900. The Executive Director additionally will provide to the Permitting Council members for review a summary of any changes between the proposed and draft final rule.



11. The Executive Director will provide an opportunity for Permitting Council discussion of the draft final rule to ensure alignment among the Permitting Council members prior to submitting the draft final rule to OIRA.
12. After incorporating Permitting Council input, the Executive Director will submit the draft final rule to OIRA.
13. As appropriate or necessary, the Executive Director and Permitting Council members will work with OIRA and Permitting Council Member agency staff in the same manner as they did for the proposed rule to promulgate the final rule and publish it in Federal Register.

Date: 3/31/2022

A handwritten signature in blue ink, appearing to read "CHP", written over a horizontal line.

Christine Harada  
Executive Director  
Federal Permitting Improvement Steering Council