



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2017–0600; FRL–9968–25–OA]

### Fast-41 Best Practices: Delegated State Permitting Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** On January 18, 2017, the Federal Permitting Improvement Steering Council, published *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects*, available at <https://www.permits.performance.gov>. In accordance with Section 41006 of the Fixing America’s Surface Transportation Act (FAST-41), the Environmental Protection Agency (EPA) is seeking public comment. Specifically, EPA is seeking feedback on whether any of the best practices are generally applicable on a delegation or authorization-wide basis to permitting under FAST-41.

**DATES:** Comments must be received on or before [INSERT DATE 20 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments and additional materials, identified by docket EPA–HQ–OA–2017–0600 to the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Gentile, Office of Policy, Mail Code 1104-A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: 202-564-3158; email address: [gentile.laura@epa.gov](mailto:gentile.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** FAST-41 seeks to enhance coordination and transparency of Federal environmental reviews and authorizations required prior to construction of covered infrastructure projects. This statute applies specifically to authorizations and environmental reviews which are led by and/or issued by a Federal agency. However, states may choose to participate in the environmental review and authorization process under FAST-41.

This statute only applies to “covered projects” which 42 U.S.C. 4370m(6)(A) defines as:

“The term “covered project” 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.”

FAST-41 required the establishment of the Federal Permitting Improvement Steering Council (FPISC) which is a council that includes a chair and then representatives of certain Federal agencies, the Chairman of the Council on Environmental Quality, and the Director of the Office of Management and Budget. Council agencies include agencies that may be involved in authorization or environmental review of a covered project. The EPA is one such agency and is represented on the FPISC. Pursuant to FAST-41, the FPISC is charged with issuing recommendations on best practices to support the goals of FAST-41. *See, e.g.*, 42 U.S.C. 4370m-1(c)(2)(B). In essence, the best practices are aimed at streamlining and improving the process by which the Federal government undertakes environmental reviews and authorizations for covered projects.

States may voluntarily choose to participate in the FAST-41 process and make subject to the process all State agencies that have jurisdiction, are required to undertake a review or analysis, or are required to make a determination on issuing a permit, license or other approval for a covered project.

#### **CURRENT REQUEST FOR COMMENT**

On January 18, 2017, the FPISC published a document titled, *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects*, which is available online

at <https://www.permits.performance.gov>. This document identifies best practices consistent with the FAST-41 guidelines described in 42 U.S.C. 4370m-1(c)(2)(B). Specifically, these best practices regard:

*42 U.S.C. 4370m-1(c)(2)(B)*

“(i) enhancing early stakeholder engagement, including fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;

(ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;

(iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;

(iv) increasing transparency;

(v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;

(vi) developing and making available to applicants appropriate geographic information systems and other tools;

(vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials; and

(viii) addressing other aspects of infrastructure permitting, as determined by the Council.”

*42 U.S.C. 4370m-1(c)(2)(B).*

Under a number of federal environmental laws, the EPA delegates, approves, or authorizes state governments to issue permits or other authorizations under these laws. The EPA has already taken a number of steps related to best practices for delegated and authorized state permitting programs. These include establishing minimum program requirements for authorized and delegated programs consistent with the underlying statutory obligations.

In addition, the EPA regularly communicates with delegated and authorized programs regarding program implementation and oversight. One example of this is that in 2016, the EPA initiated an agency-wide effort, with the consultation and collaboration of stakeholder associations throughout, to articulate a common set of principles and best practices for promoting the efficiency and effectiveness of delegated, authorized, and approved state permitting programs.

On August 30, 2016, the EPA formally transmitted the final principles and best practices for permitting to the Environmental Council of the States. *See Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs*, available online at [https://www.epa.gov/sites/production/files/2016-10/documents/principles\\_and\\_best\\_practices\\_for\\_oversight\\_of\\_state\\_permitting\\_programs.pdf](https://www.epa.gov/sites/production/files/2016-10/documents/principles_and_best_practices_for_oversight_of_state_permitting_programs.pdf).

These best practices and principles dovetail with the FPISC's best practices.

*42 U.S.C. 4370m-5(a)(1)*

Consistent with the EPA's obligation under 42 U.S.C. 4370m-5(a)(1), the EPA is now seeking public comment to determine whether and the extent to which any of the best practices identified by the FPISC are generally applicable on a delegation- or authorization-wide basis to permitting under FAST-41. This document satisfies EPA's obligation under FAST-41 to solicit public participation on the FPISC best practices.

**Authority:** Pub. L. 114–94, div. D, title XLI, sec. 41006(a)(1), Dec. 4, 2015, 129 Stat. 1758.

Dated: October 25, 2017.

Samantha K. Dravis,

Associate Administrator for Policy.

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