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FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

40 CFR Chapter IX

[FPISC Case 2020-001; Docket No. 2020-0018; Sequence No. 1]

RIN 3121-AA01

Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation Act

AGENCY: Federal Permitting Improvement Steering Council.

ACTION: Proposed rule.

SUMMARY: The Federal Permitting Improvement Steering Council (Permitting Council) proposes to add mining as a sector with infrastructure projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). Current FAST-41 sectors include renewable and conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, and manufacturing. The addition of mining as a FAST-41 sector would allow a qualified mining infrastructure project to become a FAST-41 covered project. FAST-41 coverage does not predetermine the outcome of any Federal decision making process, but is intended to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization processes for covered infrastructure projects.

DATES: Please send your comments on this proposal to the Permitting Council Office of the Executive Director on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by FPISC Case 2020-001, or RIN 3121-AA01, by any of the following methods:

- Federal eRulemaking Portal:
http://www.regulations.gov. Follow the instructions for sending comments.
- Mail: Federal Permitting Improvement Steering Council, Office of the Executive Director, 1800 G St. NW, Suite 2400, Washington, DC 20006, Attention: RIN 3121-AA01.

Instructions: Please submit comments only and cite FPISC Case 2020-001 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: John G. Cossa, General Counsel, Federal Permitting Improvement Steering Council,

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Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact this individual during normal business hours or to leave a message at other times. FIRS is available 24 hours a day, seven days a week. You will receive a reply to a message during normal business hours.

SUPPLEMENTARY INFORMATION: Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. 4370m *et seq.*, established the Federal Permitting Improvement Steering Council (Permitting Council), which comprises the Permitting Council Executive Director; 13 Federal agency council members (including the designees of the Secretaries of Agriculture, Army, Commerce, Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development, the Administrator of the Environmental Protection Agency, and the Chairmen of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation); and additional council members, the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB). 42 U.S.C. 4170m-1(a) & (b). The Permitting Council and the procedural provisions of

FAST-41 can improve the timeliness, predictability, and transparency of the Federal environmental review and authorization processes for “covered” infrastructure projects. See 42 U.S.C. 4370m-2, 4370m-4. The FAST-41 statute provides that infrastructure projects in the following 10 sectors are eligible for FAST-41 coverage: (1) renewable energy production; (2) conventional energy production; (3) electricity transmission; (4) surface transportation; (5) aviation; (6) ports and waterways; (7) water resource projects; (8) broadband; (9) pipelines; and (10) manufacturing. 42 U.S.C. 4370m(6) (A). FAST-41 authorizes the Permitting Council to designate additional sectors by majority vote of the Permitting Council members.

To qualify for FAST-41 coverage, an infrastructure project in a FAST-41 sector must be located in the United States and require environmental review and authorization by a Federal agency. *Id.* A project also must: (i) be subject to review under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*; (ii) be likely to require a total investment of \$200 million or more; and (iii) not qualify for abbreviated authorization or environmental review processes under any applicable law. 42 U.S.C. 4370m(6) (A) (i). Alternatively, a project in a FAST-41 sector could qualify for FAST-41 coverage if: (i) it is

subject to NEPA; and (ii) in the opinion of the Permitting Council, the size and complexity of the project make it likely to benefit from the enhanced oversight and coordination provided by FAST-41, including projects likely to require environmental review and authorization from multiple agencies or projects for which the preparation of an environmental impact statement (EIS) is required. 42 U.S.C. 4370m(6) (A) (ii). Projects that are subject to the Department of Transportation's procedures for Efficient Environmental Reviews for Project Decisionmaking pursuant to 23 U.S.C. 139, and projects subject to the Department of the Army's Project Acceleration Procedures pursuant to 33 U.S.C. 2348, cannot become FAST-41 covered projects. 42 U.S.C. 4370m(6) (B); see also 49 U.S.C. 24201 (Requiring Department of Transportation to apply its Efficient Environmental Reviews for Project Decisionmaking procedures to certain railroad projects, thereby precluding those projects from FAST-41 coverage). The Permitting Council applies the FAST-41 covered project eligibility requirements consistent with OMB M-17-14, *Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects* (FAST-41 Guidance), issued jointly by CEQ and OMB on January 17,

2017 pursuant to 42 U.S.C. 4370m-1(c) (1) (D).¹

The Permitting Council proposes to add mining to the list of FAST-41 sectors identified in 42 U.S.C. 4370m(6) (A). This addition would enable sponsors of qualified mining projects to seek the same FAST-41 coverage currently available to qualified projects in the statutorily identified FAST-41 sectors. After considering the comments received in response to this proposed rule, the Permitting Council will vote on the proposal to include mining as a FAST-41 sector. If a majority of the councilmembers vote in favor of including mining, the Permitting Council will promulgate a final rule at 40 CFR part 1900 that adds mining as a FAST-41 sector. The Permitting Council seeks public comment on this proposal and will address all substantive comments that it receives in response to this proposal in the *Federal Register* notice for any final rule.

Designating mining as a FAST-41 sector is not a determination that any particular mining project will qualify as a FAST-41 covered project and does not predetermine the outcome of the Federal decision making process with respect to any covered project. FAST-41 is a

¹ Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-14.pdf>.

voluntary program governed by the eligibility criteria in 42 U.S.C. 4370m(6) and the procedural requirements of 42 U.S.C. 4370m-2 and 4370m-4. To become a FAST-41 covered project, a mining project sponsor, like project sponsors in the other FAST-41 sectors, must first demonstrate that its project meets the criteria for coverage pursuant to 42 U.S.C. 4370m(6) by submitting a notice of the initiation of a proposed covered project (also known as a FAST-41 Initiation Notice or "FIN") to the Permitting Council Executive Director and the appropriate facilitating or lead agency. 42 U.S.C. 4370m-2(a)(1). Within 14 days of receiving the FIN, the Permitting Council Executive Director must create an entry for the project on the Permitting Dashboard,² which means that the project is a FAST-41 covered project, unless the Executive Director or the facilitating or lead agency determines that the project does not meet the statutory covered project criteria. 42 U.S.C. 4370m-2(b)(2)(A)(ii).

Substantively, FAST-41 provides for timely Federal agency review, enhanced interagency coordination, predictability, and accountability in the Federal decision making process for covered projects, and certain legal

² Available at <https://www.permits.performance.gov/>.

protections. Participation in the FAST-41 program can provide covered project sponsors with increased certainty of timely Federal action in accordance with publicly available project-specific permitting timetables. 42 U.S.C. 4370m-2; see Permitting Dashboard at <https://www.permits.performance.gov/>. FAST-41 provides for early coordination of agencies' schedules and synchronization of environmental reviews and related authorizations without altering the substance or scope of those Federal agency efforts. 42 U.S.C. 4370m(4) (Coordination of required reviews). It provides mechanisms for resolving interagency disputes and disputes involving the project sponsor. 42 U.S.C. 4370m-2(c)(2)(C) (Dispute resolution). FAST-41 further ensures agency accountability and transparency by providing clear processes and notice requirements for altering project permitting milestones and timetables. 42 U.S.C. 4370m-2(c)(2)(D) (Modification after approval). The statute also provides certain legal protections, such as a two-year limitations period for claims related to agency authorizations for covered projects, and specific criteria for granting injunctive relief. 42 U.S.C. 4370m-6 (Litigation, judicial review, and savings provision).

FAST-41 does not mandate or predetermine any

substantive result in the permitting process. The provisions of FAST-41 do not supersede or alter any internal procedure or decision making authority of any Federal agency or official. See 42 U.S.C. 4370m-6(d)(2); *id.* 4370m-6(d)(i) (FAST-41 does not supersede, amend, or modify any Federal statute or affect the responsibility of any Federal agency officer to comply with or enforce any statute); *id.* 4370m-6(e)(i) (“Nothing in this section preempts, limits, or interferes with . . . any practice of seeking, considering, or responding to public comment”); *id.* 4370m-6(e)(ii) (“Nothing in [FAST-41] preempts, limits, or interferes with . . . any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.”); see also *id.* 4370m-11 (NEPA is not amended by FAST-41).

Accordingly, designating mining as a FAST-41 sector will not grant any permit, authorization, or approval for a covered project. See 42 U.S.C. 4370m-6(d)(2) (“Nothing in [FAST-41] . . . creates a presumption that a covered project will be approved or favorably reviewed by any agency”).

The Permitting Council has twice voted on proposals to include mining as a FAST-41 sector. On May 14, 2019, the Permitting Council voted in favor of a proposal to add as a FAST-41 sector mining projects that involve construction of infrastructure for extraction of locatable minerals, leasable minerals, and saleable minerals located on Federal lands. On January 15, 2020, the Permitting Council voted in favor of a refined proposal to add as a FAST-41 sector only "non-energy mining" because, in the Permitting Council's view, it was unnecessary to extend duplicative FAST-41 coverage to mining projects that were eligible for coverage under the statutory FAST-41 sectors, such as the conventional energy sector. The January 2020 vote also expanded the scope of the proposed sector to cover non-energy mining on non-Federal as well as Federal lands, and to include mining for critical minerals. The Permitting Council has determined that it would be appropriate to solicit and consider public comments on this topic before adding mining as a FAST-41 sector.

Specifically, the Permitting Council proposes to designate all mining as a FAST-41 sector. This proposed designation includes mining on and off federally managed lands, mining of federally managed and non-Federally managed minerals, and mining of any mineral, ore, or raw

material extracted from the ground, regardless of whether such mineral, ore, or raw material is used for energy production, manufacturing, or any other purpose. Oil and gas exploration and production are not included in the proposed FAST-41 mining sector.

The FAST-41 statute does not provide or imply that a project must fall within only one FAST-41 sector. Indeed, a number of projects currently covered under FAST-41 are eligible for coverage under a number of FAST-41 sectors. For example, a project involving a natural gas pipeline and a coastal liquefied natural gas export facility could be covered under the statutory "conventional energy production," "pipelines," or "ports and waterways" sectors. A natural gas pipeline project could be covered under either the "conventional energy production" or "pipelines" sectors. Likewise, a uranium mining project could be covered under either the "conventional energy production" or the proposed "mining" sector described herein. As with the other FAST-41 sectors, the Permitting Council will decide at the time of coverage which sector is most appropriate for the specific project proposed. See FAST-41 Guidance at 19-21.

The purpose of this proposed rule, like the Permitting Council's previous vote on the proposal to add "non-energy

mining," is to ensure that any qualified mining sector projects that are not part of a statutory FAST-41 sector have the option to become FAST-41 covered projects. Accordingly, the Permitting Council proposes to add "mining" as a FAST-41 sector. The Permitting Council also proposes to define "mining" for the purpose of 42 U.S.C. 4370m(6) (A) as the process of extracting ore, minerals, or raw materials from the ground. As a result, projects (i) "that involve the construction of infrastructure," (ii) to extract ore, minerals, or raw materials from the ground, and (iii) that meet the other "covered project" criteria of 42 U.S.C. 4370m(6) will be eligible for FAST-41 coverage.

The Permitting Council continues to believe that, like the other FAST-41 sectors, mining, including non-energy mining, is an important infrastructure sector. Mining projects also can involve the construction of significant infrastructure, involve substantial investment, and, in certain circumstances, necessitate extensive Federal review and authorization. Accordingly, like qualified projects from the statutory FAST-41 sectors, mining projects that satisfy the other requirements of 42 U.S.C. 4370m(6) could benefit from the enhanced interagency coordination and permitting timeline predictability provided by FAST-41 coverage. Extending FAST-41 coverage to qualified mining

projects is consistent with Executive Order (E.O.) 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, 82 FR 40463 (Aug.14, 2017) and E.O. 13817, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals, 82 FR 60,835 (Dec. 20, 2017).

I. ECONOMIC ANALYSIS

Adding mining as a sector with infrastructure projects eligible for coverage under FAST-41 could result in improved timeliness, predictability, and transparency associated with the projects that ultimately become FAST-41 covered projects, and for the Federal agencies participating in the FAST-41 process for those covered projects. See Permitting Council, FAST-41 Annual Report to Congress for FY 2019, and related documents, *available at* <https://www.permits.performance.gov/fpisc-content/fast-41-annual-report-congress-fy-2019>. However, quantifying any potential economic benefits that might result from adding mining as a FAST-41 sector is speculative. Simply providing the option of FAST-41 coverage to qualified mining projects does not indicate how many, if any, mining project FINs will be submitted to the Permitting Council for coverage or how many projects ultimately will be covered. Nor does it

guarantee that any economic benefits would result from such coverage, particularly given that the permitting and environmental review requirements and permitting timetables for each covered project are unique.

Although the Permitting Council cannot predict how many mining projects may become covered projects, the number will be small. The eligibility criterion for FAST-41 coverage is selective; only the largest projects that are the most prepared for Federal review may become covered projects. See 42 U.S.C. 4370m(6) (definition of "covered project" including \$200 million project value threshold or alternative permitting complexity requirement); 4370m-2(c)(1)(A) & (B)(ii), 4370m-2(c)(2)(A) (sponsors must provide agencies with information sufficient to create a comprehensive and complete project permitting timetable within 60 days of initial project coverage); FAST-41 Guidance, Sec. 3 (project description must be sufficient at the outset to facilitate appropriate level of analysis under NEPA and interagency coordination on all required permits/authorizations). Since FAST-41's enactment in 2015, a total of 52 projects have been covered. Of these projects, only 20 were covered as the result of successfully submitted FINs that met the FAST-41 coverage criteria. The remaining 34 projects were statutorily

covered as pending projects immediately after the enactment of FAST-41 pursuant to 43 U.S.C. 4370m-1(c)(1)(A)(i) and 4370m-2(b)(2)(A)(i). The 20 successfully submitted FINs include one conventional energy production project, one electricity transmission project, two pipeline projects, one ports and waterways project, 13 renewable energy production projects, and two water resource projects.

Adding mining as a FAST-41 sector likely will result in only a small number of new covered projects through 2022. Since the enactment of FAST-41 in 2015, the Permitting Council has received fewer than five FINs for projects that involve mining that may potentially have been eligible for coverage under the statutory FAST-41 sectors (e.g., conventional energy). But all of these FINs either were rejected for failing to meet other FAST-41 eligibility criteria or were withdrawn by the project sponsor for other reasons. The Permitting Council anticipates receiving very few - likely 10 or fewer - additional project FINs through 2022 as a result of adding mining as a FAST-41 sector, particularly given that the FAST-41 program is currently scheduled to sunset in 2022 (42 U.S.C. 4370m-12). Moreover, based on historical experience, only a portion of the newly submitted FINs likely will become covered projects. It is therefore unlikely that adding mining to the 10 statutory

FAST-41 sectors will result in the coverage of a substantial number of new projects.

Designating mining as a FAST-41 sector could result in reduced costs for any mining project sponsor that obtains FAST-41 coverage for its project and for the Federal agencies with review and permitting responsibilities for the covered project by virtue of potentially improved timeliness, predictability, and transparency, associated increased Federal agency coordination, and reduced duplication of Federal and project sponsor effort. However, these benefits are difficult to quantify, particularly given that the Federal permitting and environmental review requirements and the permitting timetable for each project are unique and vary widely from project to project. Because the Permitting Council does not know in advance how many projects will be covered as FAST-41 mining projects, what the permitting or environmental review requirements might be for any potential future covered mining project, or what opportunities might exist to coordinate any Federal agency reviews that might be necessary for any such covered mining project, it is impossible to predict with any specificity what, if any, economic benefit might broadly accrue as a result of designating mining as a FAST-41 sector.

The proposal to add mining as a FAST-41 sector will

not directly increase or decrease the costs to agencies of complying with the substantive provisions of FAST-41, although there will be costs to the Permitting Council associated with any additional project that might become a covered project.

FAST-41 does not impose any regulatory requirements on covered project sponsors; FAST-41 implementation obligations fall primarily on the government. However, because FAST-41 is a voluntary program, sponsors of mining projects potentially eligible for FAST-41 coverage would incur some costs associated with seeking FAST-41 coverage. These costs associated with a request to be a covered project likely will be small. Seeking FAST-41 coverage involves formulating and submitting a project FIN, which is expected to take only a few hours. See 42 U.S.C. § 4370m-2(a)(i)(C). Because the Permitting Council anticipates receiving few additional project FINs as a result of adding mining as a FAST-41 sector, and the burden associated with preparing a FIN is minimal, the additional economic cost associated with adding mining as a FAST-41 sector, if any, would be negligible, and likely would be counterbalanced by the benefits of FAST-41 coverage.

II. PROCEDURAL MATTERS

A. Regulatory Planning and Review (E.O. 12866) and

Improving Regulation and Regulatory Review (E.O. 13563)

This action is a significant regulatory action that was submitted to OMB for review.

B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This proposed rule is expected to be an E.O. 13771 deregulatory action. A discussion of the potential economic benefits of this proposed rule can be found in the rule's economic analysis.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq.

Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises. The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for regulatory proposals that are subject to the notice and comment rulemaking requirements of 5 U.S.C. 503 if the proposal would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the Permitting Council certifies that the proposal

to provide the option of FAST-41 coverage for qualified mining projects that are not already eligible for FAST-41 coverage under any of the statutory FAST-41 sectors will not have a significant economic impact on a substantial number of small entities.

As explained in the Economic Analysis section of this proposal, the Permitting Council anticipates that the addition of mining as a FAST-41 sector will result in the submission of 10 or fewer mining project FINs, at least some of which, based on the Permitting Council's past experience with project FINs that involve mining, likely will not become FAST-41 covered projects. Though the Permitting Council does not conduct an analysis of the business structures of FAST-41 project sponsors to determine whether they are small entities, it is possible that at least some of the 10 or fewer project sponsors that submit FINs for mining projects could be small entities. The Permitting Council reviewed the Small Business Administration size standards for small businesses across the mining industry, and, depending on the nature of the minerals mined, the threshold for small North American Industry Classification System (NAICS) Sector-21 mining entities ranges from below 250 employees (for anthracite, or uranium-radium-vanadium ore mining) to below 1,500

employees (for underground bituminous coal mining and gold mining). The small entity threshold for other forms of hardrock and "other" mining projects falls within this range. However, because 10 or fewer entities likely will be affected, the Permitting Council does not anticipate that adding mining as a FAST-41 sector will affect a substantial number of small entities.

Nor will adding mining as a FAST-41 sector significantly or disproportionately impose costs on any small entity that is affected by the rule. The requirements for submitting a project FIN are simple and not burdensome. The FAST-41 statute only requires the project sponsor to formulate and send to the Permitting Council and the lead or facilitating agency a project FIN that contains: (1) a statement of the purpose and objectives of the project; (2) a description of the general project location; (3) any available geospatial information about project and environmental, cultural, and historic resource locations; (4) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project; (5) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and (6) an assessment that the proposed project meets the definition

of a covered project pursuant to 42 U.S.C. 4370m(6) (A) with supporting rationale. 42 U.S.C. 4370m-2(a) (1) (A) & (C). Any project sponsor credibly seeking Federal authorization and environmental review for a project that requires \$200 million or more in investment will have the information required to submit a successful project FIN readily available, and preparing and submitting a project FIN should require only a few hours of effort. FAST-41 contains no pre-FIN requirements (although project sponsors are free to consult the Permitting Council with any questions about the FAST-41 program and FIN preparation or submission), and there are no regulations implementing FAST-41 that impose any additional requirements on the project sponsor. The lead or facilitating agency (and in some instances, the Executive Director) will review the FIN in accordance with sections 4.4-4.12 of the FAST-41 Guidance to determine whether the project is a FAST-41 covered project. See Fast-41 Guidance at 30-34. If the project is a covered project, FAST-41 imposes no requirements or obligations on the project sponsor that are additional to those imposed by the substantive Federal authorization or environmental review statutes that otherwise apply to the project. As explained in the Economic Analysis section of this proposal, any potential economic benefits that might accrue to a covered

project sponsor by virtue of the project's FAST-41 covered status are speculative and project-specific. Accordingly, adding mining as FAST-41 sector will not significantly affect a substantial number of small entities, and the RFA does not apply.

C. Congressional Review Act

The proposed rule is not a "major rule" as defined under 5 U.S.C. 804(2) because it will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The proposal will not have an annual effect on the economy of \$100 million or more.

D. Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501 et seq.

The proposed rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA is not required. The proposed rule also is not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule

contains no requirements that apply to small governments, nor does it impose obligations upon them.

E. Federalism (E.O. 13132)

This action does not have federalism implications under E.O. 13132. The proposed rule will not have a substantial direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the levels of government. The proposal affects only the eligibility of mining project proponents to participate in the voluntary FAST-41 program; it will not affect the obligations or rights of states or local governments or state or local governmental entities.

F. Civil Justice Reform (E.O. 12988)

This proposal complies with section 3(a) of E.O. 12988, which requires agencies to review all rules to eliminate errors and ambiguity and to write all regulations to minimize litigation. This rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

III. PAPERWORK REDUCTION ACT

The proposed rule does not involve an agency request for information, nor does it require an information response subject to Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*). The proposal would not alter any of the other FAST-41 eligibility criteria or implementation of FAST-41, and does not change the information collected from project sponsors seeking FAST-41 coverage. The proposal could result in a small increase in the number of project sponsors submitting FINs to the Permitting Council.

IV. NATIONAL ENVIRONMENTAL POLICY ACT

NEPA requires agencies to consider the reasonably foreseeable environmental consequences of major Federal actions significantly affecting the quality of the human environment. The proposed rule does not make any project-level decisions and does not authorize any activity or commit resources to a project that may affect the environment. Furthermore, under FAST-41 all eligible covered projects are subject to NEPA review (42 U.S.C. 4370m(6) (A)).

FAST-41 focuses on facilitating interagency coordination and agency accountability for meeting self-imposed environmental review and permitting timetables and providing certain legal protections for covered projects. The statute expressly does not supersede NEPA or affect any internal procedure or decision-making authority of any agency. See 42 U.S.C. 4370m-6(d) (2); 42 U.S.C. 4370m-6(d) (i) (FAST-41 does not supersede, amend, or modify any

Federal statute or affect the responsibility of any Federal agency officer to comply with or enforce any statute); 42 U.S.C. 4370m-6(e) (i) ("Nothing in this section preempts, limits, or interferes with . . . any practice of seeking, considering, or responding to public comment"); 42 U.S.C. 4370m-6(e) (2) ("Nothing in [FAST-41] preempts, limits, or interferes with . . . any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program."); 42 U.S.C. 4370m-11 (providing that FAST-41 does not amend NEPA). Because FAST-41 coverage does not alter or affect the discretion of any agency to approve or deny any permit or authorization for any project, extending potential FAST-41 eligibility to otherwise qualified mining projects does not make any mining project more or less likely to be permitted, authorized, or constructed, or any environmental effect that may be associated with such a project to occur. See 42 U.S.C. 4370m-6(d) (2) ("Nothing in [FAST-41] . . . creates a presumption that a covered project will be approved or favorably reviewed by any agency").

V. EFFECTS ON THE ENERGY SUPPLY (E.O. 13211)

This proposed rule is not a significant energy action for the purposes of E.O. 13211 because it will not have any discernible effect on the energy supply. As noted above, qualified energy-related mining projects such as coal and uranium are eligible for coverage under FAST-41's "conventional energy production" sector. The only additive effect of the proposal would be to make mining projects that are unrelated to energy production (and not covered under other statutory FAST-41 sectors) eligible for coverage under FAST-41.

Adding mining as a FAST-41 sector will not extend FAST-41 coverage to any specific project—energy related or otherwise—nor will it permit or authorize any mining project. Qualified applicants must first seek and obtain FAST-41 coverage. Participation in the FAST-41 program does not alter any agency's existing discretion to approve or deny project permits or authorizations, and does not make ultimate project authorization more or less likely. Accordingly, the proposal to add mining as a FAST-41 sector will not affect the supply, distribution, or use of energy, and is not a "significant energy action" for the purpose of E.O. 13211.

List of Subjects in 40 CFR Part 1900

Critical infrastructure, Infrastructure, Mines,
Mineral resources, Permitting, Reporting and recordkeeping
requirements, Underground mining.

Nicholas Falvo,

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Federal Permitting Improvement Steering Council.

For the reasons stated in the preamble, under the
authority of 42 U.S.C. 4370m *et seq.*, FPISC proposes to add
chapter IX to title 40 of the Code of Federal regulations
as set forth below:

CHAPTER IX-FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

1. Add chapter IX to read as follows:

PART 1900-FEDERAL PERMITTING IMPROVEMENT

Sec.

1900.1 Definitions.

1900.2 FAST-41 Sectors.

Authority: 42 U.S.C. 4370m *et seq.*

1900.1 Definitions.

For the purposes of this part, the following terms shall
have the meaning indicated:

FAST-41 means Title 41 of the Fixing America's Surface Transportation Act, 42 U.S.C. 4370m *et seq.*

Federal Permitting Improvement Steering Council or *Permitting Council* means the Federal agency established pursuant to 42 U.S.C. 4370m-1(a).

Mining means the process of extracting ore, minerals, or raw materials from the ground. *Mining* does not include the process of extracting oil or natural gas from the ground.

1900.2 FAST-41 Sectors.

Pursuant to 42 U.S.C. 4370m(6) (A), the Federal Permitting Improvement Steering Council has added the following sectors to the statutorily defined list of FAST-41 sectors:

- (a) Mining.

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