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April 25, 2019

This report was prepared by the Federal Permitting Improvement Steering Council (Permitting Council), as required by Title 41 of the Fixing America's Surface Transportation Act (FAST-41) of 2015. The Permitting Council was created to promote efficiency throughout the environmental review and authorization process for infrastructure projects. Through unprecedented, direct, and seamless partnership with Federal agencies, State, local, and tribal governments, as well as the private sector, the Permitting Council is accelerating the delivery of complicated environmental reviews and authorizations for critical infrastructure projects.

This report identifies best practices from the first two years of the Permitting Council's member agencies implementing FAST-41. Implementation of these best practices will take significant strides towards our goal of reducing unnecessary red tape, cost, and delays.

FAST-41 improves the timeliness, predictability, and transparency of the environmental review and authorization process for infrastructure projects. We have made significant progress in reducing the decision-making time for projects, without compromising environmental stewardship.

The best practices detailed in this report serve as a strong foundation as we continue to improve the environmental review and authorization process. For example:

- **Publishing the steps of the environmental review and authorization process early** [BP iv-1]. Identifying and communicating the steps in the review process early to project sponsors offers a clear and coordinated path for completion of the environmental review and authorization process.
- **Creating joint processes or programmatic approaches** [BP v-2]. This eliminates or reduces duplication of effort between Federal agencies by standardizing coordination and compliance procedures.
- **Sharing lessons learned** [BP viii-2]. This reduces the learning curve for agencies by knowing what has worked or not for other agencies when agencies are exploring ways to improve efficiencies in their own process.

In addition to these Best Practices, the Permitting Council will continue to strongly support the adoption and deployment of the following Office of the Executive Director recommended initiatives that will enable agencies to further streamline their processes and promote the efficient and effective use of agency resources:

- Enable the expanded use of non-Federal funds to augment agency appropriations to support accelerated development and review of permit applications and other environmental documents. This provides additional resources to streamline cross-agency coordination and project delivery and defray the cost of an environmental review or authorization.



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- Explore ways to enhance the coordination of environmental reviews and authorizations with State, local, and tribal governments. Federal, State, local, and tribal governments should not be duplicating or unintentionally conflicting with each other.
- Ensure access for non-Federal entities to FAST-41 tools and best practices, as appropriate, and assist with their environmental reviews and authorizations.
- Expand the use of technology such as web tools, online applications and assistance, and geographic information systems (GIS), as appropriate, to increase transparency and efficiency. Most environmental review requirements were established before the advent of the internet; agencies should be incorporating 21st century tools into the review of their 21st century projects.

I want to thank the Permitting Council member agencies for their work. Continued coordination across Federal agencies can accomplish FAST-41's goal of delivering a thorough and streamlined environmental reviews and authorizations to the infrastructure projects on our Permitting Dashboard (<https://www.permits.performance.gov/>).

Sincerely,

Alex Herrgott
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Federal Permitting Improvement Steering Council

RECOMMENDED BEST PRACTICES FOR ENVIRONMENTAL REVIEWS AND AUTHORIZATIONS FOR INFRASTRUCTURE PROJECTS FOR FISCAL YEAR 2019

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

April 2019

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- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of the Interior
- Department of Energy
- Department of Transportation
- Department of Defense
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- General Services Administration
- Nuclear Regulatory Commission
- Department of Homeland Security
- Department of Housing and Urban Development
- Advisory Council on Historic Preservation
- Office of Management and Budget
- Council on Environmental Quality
- Executive Director of the Permitting Council as Chair of the Council

Applicability

Recommendations within this report do not supersede, amend, or modify National Environmental Policy Act (NEPA) or other applicable laws and regulations, and do not alter the responsibility of any government official to comply with or enforce any statute. Nor does this report supersede the Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ) "Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects," which is available at <https://www.permits.performance.gov>.

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Acronyms and Abbreviations

BP	best practice
BPAT	FY 2019 Best Practices Assessment Tool
C.F.R.	Code of Federal Regulations
CPP	coordinated project plan
ERA	environmental review and authorization
FAST-41	Title 41 of the Fixing America's Surface Transportation Act
FPISC-OED	Federal Permitting Improvement Steering Council-Office of the Executive Director
FY	fiscal year
NEPA	National Environmental Policy Act
U.S.C.	United States Code

Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2019

Introduction

Title 41 of the Fixing America's Surface Transportation Act (FAST-41) (42 United States Code [U.S.C.] § 4370m) created a new governance structure, set of procedures, and funding authorities to improve the timeliness, predictability, and transparency of Federal environmental review and authorization (ERA) processes for covered infrastructure projects across a broad range of sectors (Office of Management and Budget and Council on Environmental Quality 2017). Under FAST-41, the Federal Permitting Improvement Steering Council (Permitting Council) publishes a yearly report of best practices.¹ The Permitting Council published its first yearly report on January 18, 2017 (Permitting Council 2017a) and second report on December 1, 2017 (Permitting Council 2017b).

Continuous improvement to the Federal environmental review and authorization process is essential so that the best practices provide assistance to the Permitting Council Agencies (Agencies) and project sponsors as they strive to achieve the intended benefits of the FAST-41 program, including the FAST-41 program goals of transparency, accountability, efficiency, and predictability. This document, therefore, outlines the recommended best practices for Agencies for fiscal year (FY) 2019 for environmental reviews and authorizations for large, complex infrastructure projects by building on the previous Permitting Council reports and process improvements made to date. The Permitting Council encourages innovation that improves the Agencies' environmental review and permitting processes and that intended to reduce the administrative burden for project proponents and sponsors, Agencies, state and local governments, and other stakeholders. Agencies may identify ongoing Agency activities that meet the intent of the best practices. Agencies may also identify innovative, alternative methods of implementing the best practices that meet their intent. Using lessons learned through implementation of BPs for FAST-41 covered projects, implementation and institutionalizing these best practices within and across Agencies will continue to help improve the transparency and accountability of the overall federal environmental review and permitting processes.

Background

FAST-41 directs the Permitting Council to issue recommendations for best practices at least once per year (42 U.S.C. § 4370m-1(c)(2)(B)). The Federal Permitting Improvement Steering Council-Office of the Executive Director (FPISC-OED) facilitates the Permitting Council's development of the

¹ A *best practice* is a method, process, or activity developed through investigation and experience that is believed to be one of the most effective approaches for delivering a particular outcome when applied to a specific condition or circumstance. With proper procedures, checks, and testing, a desired outcome can be delivered with fewer problems and unforeseen complications. Best practices can also be defined as the most efficient (least amount of effort) and effective (best results) way of accomplishing a task, based on repeatable procedures that have proven themselves over time for large numbers of people and are supportive of continuous improvement.

best practices. FAST-41 directs the Permitting Council to issue recommended best practices for each of the following best practice categories:

- (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.

Table 1 below describes the FY 2019 recommended best practices for each of the eight categories.

Table 1: Recommended Best Practices for FY 2019

Recommended Best Practice for Agencies

Category i: “Enhancing early stakeholder engagement, including fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project” (42 U.S.C. § 4370m-1(c)(2)(B)(i))

BP i.1. The lead agency should establish and implement or utilize one or more approaches for proactively engaging stakeholders, before required by statute or regulation, to initiate dialogue on early identification of potential issues. The lead agency may, but is not required to, use past experience to develop an initial list of stakeholder contacts. Lead agencies should solicit involvement of cooperating and participating agencies in the early stakeholder engagement as appropriate and allowed by applicable laws and regulations. **Applicability:** Lead agencies

Intent: Part of the intent of this early stakeholder engagement BP is to ensure information from stakeholders is considered early in the ERA process to avoid Agencies having to reevaluate impacts that would delay the ERA processes being completed. This would improve the efficiency of the ERA process.

Early engagement with stakeholders, conducted before an agency is required to do so by statute or regulation, increases the timeliness and effectiveness of early stakeholder involvement through early dialogue on potential issues and concerns with Agency review of a covered project or program. Stakeholders for the purposes of this BP include anyone outside of the lead agency. The intent of the BP is that Agencies conduct early stakeholder engagement for projects to the extent that sufficient relevant information concerning the project is available to the Agency to do so.

BP i.2. The lead agency should utilize or establish pre-application/pre-official review processes to allow project sponsors/applicants the opportunity to provide/communicate project-specific information to the lead agency and relevant other Federal agencies, Tribes, involved State agencies, and relevant local government entities prior to initiation of official review processes (e.g., submission of application or other initiation of the ERAs). **Applicability:** Lead agencies

Intent: An intent of the BP is, at a minimum, to reveal to Agencies and to project sponsors/applicants unique circumstances or issues that could affect review planning and timelines. Thereby, implementation of this BP will increase predictability and transparency of the ERA processes because the project sponsor/applicants will have a better idea of the ERA processes required for their project before committing their resources to the process. Another intent of this BP is to enable the lead agency and other governmental entities with ERA processes the opportunity to provide early guidance to prospective applicants/project sponsors on the information required for applications or other initiation of ERA processes, as well as to identify in a timely manner potential complex or controversial issues or circumstances that may arise during the review process. This BP also increases the efficiency for Agencies in the ERA processes because these early communications with the project sponsors/applicants can increase the probability that the Agency will get the information it needs to efficiently and effectively complete its ERA processes.

The rationale of this pre-application/pre-official review process is to provide project sponsors with the opportunity to communicate potential impacts of a proposed project that may be complex or controversial or for the project sponsor to provide preliminary information to the Agencies based on experience with similar projects reviewed by those Agencies. The process may also allow governmental entities the opportunity to communicate information on their review process and their own comments to the project sponsor/applicant during early stages of project development.

Category ii: “Ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics” (42 U.S.C. § 4370m-1(c)(2)(B)(ii))

BP ii.1. Develop and/or use ERA process templates, application forms, flow charts, and/or checklists to assist the project sponsor/applicant with providing the required information in a timely manner. **Applicability:** Lead, cooperating, and participating agencies

Recommended Best Practice for Agencies

Intent: An intent of this BP is to clarify the required information for ERA processes to project sponsors/applicants, which will increase the transparency of the ERA processes. If the project sponsors/applicants use these templates, application forms, flow charts, and/or checklists appropriately, then the Agencies will have an increased probability that the Agency will get the information it needs to efficiently and effectively complete its ERA processes.

Agencies will help project sponsors/applicants identify the information that is needed to complete the Agency's ERA process by providing the sponsor/prospective applicant with ERA process templates, application forms, flow charts, and/or checklists. These tools can potentially reduce administrative burden by ensuring the project sponsor/applicant is aware of the information required, thus minimizing the need for the Agency to follow-up with the project sponsor/applicant for additional information. The Agency will implement a process to ensure that the needed information is available to all project sponsors/applicants, which could include providing the template, application forms, flow charts, and/or checklists on an Agency's website.

Category iii: "Improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies" (42 U.S.C. § 4370m-1(c)(2)(B)(iii))

BP iii.1. Develop or utilize mutually acceptable standards and protocols with Federally Recognized Indian Tribes for the identification and treatment of resources that might be affected by infrastructure projects. **Applicability:** Lead agencies

Intent: The intent of this BP is to increase the efficiency and effectiveness of consultations with Federally Recognized Indian Tribes by the Agency either having an Agency tribal consultation policy or having a consultation agreement or protocol, so that Agencies may better understand and fulfill their responsibilities in consultations with Federally Recognized Tribes and improve their working relationship with the Federally Recognized Tribes. This BP focuses on ensuring that the relevant Agency staff consistently implement the Agency's tribal consultation policy, consultation agreements, and/or consultation protocols. Federal agencies would either:

- a. Examine the Agency's existing policy or establish Agency tribal consultation policies to ensure that the Agency's principles for consultation with Federally Recognized Tribes on natural and cultural resource identification and treatment decisions are incorporated, and that the policy ensures relevant Agency staff are competent in the Agency's principles to ensure consistent application of the Agency's tribal consultation policy; ensure that the Agency's policy is consistent with Executive Order 13175, or
- b. Develop, update, or utilize a consultation agreement or protocol for one or more ERAs (or, if the Agency chooses, programmatically) with one or more Federally Recognized Tribes or intertribal organizations during FY 2019. The Agency confirms that a consultation agreement or protocol was developed, updated, or utilized for one or more ERAs (or programmatically) with one or more Federally Recognized Tribes or intertribal organizations and the consultation agreement or protocol was submitted to the Advisory Council on Historic Preservation in accordance with 36 Code of Federal Regulations (C.F.R.) § 800.2(c)(2)(ii)(E).

Category iv: "Increasing transparency" (42 U.S.C. § 4370m-1(c)(2)(B)(iv))

BP iv.1. Provide the project sponsor/applicant and all cooperating and participating agencies of a FAST-41 covered project information about the ERA processes, including all steps, by the time the initial coordinated project plan (CPP) or project management plan is completed. Provide updated schedule to the project sponsor and the other governmental entities with ERA processes when substantive changes occur. Substantive change is when any Agency or the project sponsor does not conduct or complete on time a scheduled activity or milestone upon which another entity is dependent. **Applicability:** Lead agencies

Intent: By providing a good faith effort to communicate all the steps needed for each ERA process and identify the interdependencies of the process steps to project sponsors/applicants, implementation of this BP will increase the transparency, predictability, and accountability of the ERA processes for a project. By identifying the process steps' interdependencies and updating the affected parties of any substantive schedule changes, this BP will increase the efficiency of the ERA processes as each project sponsor/applicant and governmental entities understand interrelationships between the separate steps and are informed when the schedules are changing, which allows for better resource planning. Further project-specific ERA steps could be developed during the ERA processes, such as during NEPA scoping, and may not be identified

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in this initial list developed under this BP.

Agencies will develop a CPP for each FAST-41 covered project and submit the CPP to FPISC-OED. The lead agency under this BP will provide project sponsors/applicants, at least by the date of the initial CPP delivery to FPISC-OED, with information about the ERA process, including all the steps in the ERA processes for that project and the project sponsor's responsibilities within that process. The lead agency will develop this list of steps collaboratively with cooperating and participating agencies with involvement in ERA decisions and ensure the Agencies agree with the list prior to transmittal to the project sponsor/applicant. The lead agency would coordinate with cooperating and participating agencies to develop the list of all steps and identify their interdependencies in the ERA processes for the project as well as roles and responsibilities as part of the initial CPP development process. The intent of this BP is to share this list of all steps with their interdependencies in the ERA processes for the project with the project sponsor early in the ERA process based on information available from the project sponsor and information available from the coordination among the Agencies. The lead agency will make a good faith effort to identify the critical path for the ERA process: for the purposes of this BP, the critical path is defined as the list of activities that must take place as scheduled or else an unrecoverable delay to the completion of the overall ERA process for the project would occur.

Category v: "Reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties" (42 U.S.C. § 4370m-1(c)(2)(B)(v))

BP v.1. For covered projects, institute a process to address ERA staff changes to update the other involved entities on Agency personnel changes and ensure continuity of project-specific knowledge such that a staff change does not result in a substantive schedule change. Substantive change is when any Agency or the project sponsor does not conduct or complete on time a scheduled activity or milestone upon which another entity is dependent. **Applicability:** Lead, cooperating, and participating agencies

Intent: The best time to create accurate records of an ERA process activity is as the activity is occurring and not retroactively. Under this BP Agencies would record project-specific knowledge and key information developed for an ERA process in a timely manner, such that this information could be communicated in a timely manner to Agency staff in the event of a change in the staff involved in the ERA process. Implementation of this BP will increase the efficiency of ERA processes because more staff time would be required to retroactively recreate accurate records versus creating the records as the activity is being conducted, and because the ERA process schedule could be affected if staff involved in the ERA process do not have timely access to key information for the ERA process in the event of staff changes.

Agencies ensure project-specific knowledge including key information developed during the ERA process is recorded and maintained in a timely manner. Such documentation will ensure continued progress of ERA processes by facilitating the ability to transfer efficiently the management of the ERA process(es) to new environmental review staff in the event of foreseeable or unanticipated personnel changes within an Agency, such that a qualified individual could continue the ERA process when a key individual is unavailable for a duration of time that would affect the critical path of the project's ERA processes. To ensure smooth transitions, the Agency updates the project sponsor/applicant and other affected governmental entities participating in the project review of these new Agency staff.

BP v.2. Develop, enhance, and/or use joint processes or programmatic approaches among Federal agencies, and with State, local, and tribal governments with similar authorities, to reduce duplicative actions (e.g., related to data collection and analysis). Joint processes could include joint environmental research and studies. Per 40 C.F.R. §1506.2(b), Agencies should cooperate with State and local agencies to the "fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the Agencies are specifically barred from doing so by some other law." **Applicability:** All agencies

Intent: Implementation of this BP will increase the efficiency of ERA processes, as joint processes or programmatic approaches established/implemented by governmental entities having similar authorities for ERA processes can avoid duplicative or conflicting work being conducted by multiple entities involved in the ERA process (e.g., project sponsor/applicant and/or governmental entities with ERA processes).

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Through implementing this BP, Agencies can reduce administrative burden and avoid conducting duplicative or conflicting actions through coordination on Federal processes among Agencies and coordination of Federal processes with non-Federal government entity processes, including through the development, improvement, or use of programmatic approaches and/or joint processes. These programmatic approaches or joint processes do not necessarily have to be specific to FAST-41 projects but should be applicable to covered projects. Implementation of this BP does not preclude Agencies from developing joint processes or programmatic approaches for non-FAST-41 projects or project types.

Category vi: “Developing and making available to applicants appropriate geographic information systems and other tools” (42 U.S.C. § 4370m-1(c)(2)(B)(vi))

BP vi.1. Make resources available to project sponsors/applicants and stakeholders (e.g., in the form of a resource library) to facilitate knowledge sharing about the Agency’s ERA processes. **Applicability:** Lead, cooperating, and participating agencies

Intent: An intent of this BP is for Agencies to make resources available to project sponsors/applicants to increase clarity of the required information for ERA processes and the understanding of ERA processes to project sponsors/applicants and the public, which will increase the transparency of the ERA processes. By having a consolidated location for information on the Agency’s ERA processes (such as, but not limited to, instructions for applications or consultations, including applicant’s/project sponsor’s responsibilities; information on the Agency’s decision-making criteria; and/or information on the types of analysis Agencies conduct on project sponsor/applicant provided information), Agencies provide transparency to the Agency’s ERA processes for all Agencies and the public, including the project sponsor/applicants. Existing Agency policy and approaches on sensitive or proprietary information remain in effect for all information sharing that may be conducted in implementing this BP.

Category vii: “Creating and distributing training materials useful to Federal, State, tribal, and local permitting officials” (42 U.S.C. § 4370m-1(c)(2)(B)(vii))

BP vii.1. Make training materials (e.g., print, video, and/or presentation materials) about FAST-41 implementation available online or provided in person each year and available to Federal, State, and tribal governments and local permitting officials. The training materials should be related to implementation of FAST-41 or one or more of the Permitting Council’s BPs (e.g., early stakeholder involvement, maintenance and communication of a project-specific ERA review schedule, establishment of common data sets, pre-application). **Applicability:** All agencies

Intent: Under this BP Agencies would make training materials concerning FAST-41 implementation available. When governmental entities staff are trained on FAST-41 implementation, there is more transparency in the ERA processes because they would better understand their roles and responsibilities in the FAST-41 process. Training on the implementation of one or more of the Permitting Council’s BPs will help the governmental entities staff better understand their role in the Agency’s ERA processes and the opportunities for increased transparency, accountability, predictability, and efficiency in the ERA processes that those BPs provide. Agencies will implement this BP by providing training specifically related to implementing FAST-41 or providing training specifically related to implementing one or more FY 2019 BPs that improve the ERA process for infrastructure projects.

Category viii: “Addressing other aspects of infrastructure permitting, as determined by the Council” (42 U.S.C. § 4370m-1(c)(2)(B)(viii))

BP viii.1. Identify measures planned or taken by the Agency in the outreach section of the CPP to increase the probability of reaching the stakeholders for stakeholder engagement (such as, but not limited to: virtual stakeholder meetings, notification tactics, web-based comment submission, and multi-agency utilization of web-based information sources developed for the project). **Applicability:** Lead agencies

Intent: The CPP for each FAST-41 covered project will include a section on stakeholder outreach. Implementation of this BP will involve stakeholder engagement measures that would increase the probability that Agencies receive important information from stakeholders at a time that minimizes the work required to evaluate and incorporate, as appropriate, information into the ERA processes. These measures would improve the efficiency of the ERA processes. Agencies will enact multiple methods of stakeholder engagement to increase the likelihood of reaching a broad range of stakeholders. The extent of the stakeholder

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engagement will conform to the type of decision being considered and the applicable statutory requirements for the Agency and for the covered project.

BP viii.2. Identify and share information on past and planned efforts to improve the ERA processes and performance metrics by Agencies sharing lessons learned during Interagency Working Group meetings and success stories during Permitting Council councilmember meetings. **Applicability:** All agencies

Intent: In implementing this BP, Agencies would share information to encourage process improvement for policies and procedures (including but not limited to performance metrics) related to the Agency's ERA processes, and sharing lessons learned and efficiencies identified by one Agency facilitates other Agencies to use or adapt those lessons learned to improve the efficiency, transparency, predictability, and accountability of their ERA processes. Agencies should consider the implementation of their ERA processes, past and planned efforts to improve their ERA processes, and any lessons learned. This consideration can be done on a project-level basis, which could be done during quarterly updates to CPPs, the conclusion of the ERA process for a FAST-41 covered project, or programmatically. Lessons learned on a project-specific or programmatic basis should be shared in the Working Group meetings. Agencies should share lessons as soon as practicable to improve ERA processes. Sharing of the lessons learned would help to support U.S.C. § 4370m-1(c)(3)(C).

Citations

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