



PERMITTING COUNCIL

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Revised Standard Operating Procedure for Adding a New Sector of Infrastructure under Title 41 of the Fixing America's Surface Transportation Act (FAST-41)

December 10, 2020

On December 14, 2017, the Acting Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) established a standard operating procedure 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 enumerated in 42 U.S.C. § 4370m(6)(A). The 2017 SOP did not contemplate or account for Permitting Council adherence to the required notice-and-comment rulemaking procedures in section 553 of the Administrative Procedure Act (APA), 5 U.S.C. § 553. Accordingly, the 2017 SOP hereby is rescinded and replaced by the following process, which will ensure that all Permitting Council votes whether to add a new FAST-41 sector are appropriately informed by public input.

Procedure

1. In accordance with the procedures in the December 7, 2017 Permitting Council Charter (Permitting Council Charter), the Permitting Council Executive Director will put to a Permitting Council vote a proposal to pursue the addition of a FAST-41 sector.
2. If the Permitting Council votes in favor of pursuing the addition of a FAST-41 sector, the Executive Director will initiate a rulemaking process in compliance with APA requirements to add the FAST-41 sector.
3. After the close of the comment period on any proposed rule to add a FAST-41 sector, the Executive Director will provide all substantive comments received to the Permitting Council Members for review, and, in accordance with the procedures in the Permitting Council Charter, schedule and hold a Permitting Council vote whether to add the FAST-41 sector.
4. In accordance with the procedures with the Permitting Council Charter, the Permitting Council will vote whether to add the FAST-41 sector.
5. If the Permitting Council votes in favor of adding a FAST-41 sector, the Executive Director will issue a final rule in compliance with APA requirements, and codify the new FAST-41 sector at 40 C.F.R. part 1900.

Date: 12/10/2020

Alexander Herrgott

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