



Revising Scope of the Mining Sector of Projects that are Eligible for Coverage Under Title 41 of the Fixing America's Surface Transportation (FAST) Act

Proposed rule: <https://public-inspection.federalregister.gov/2023-20270.pdf>

Docket Number: [Permitting Council 2023-001 / RIN 3121-AA04]

Agency: Federal Permitting Improvement Steering Council

Action: Proposed Rule

Comment Deadline: October 23, 2023. Submit comments via [Federal eRulemaking Portal](#)

Federal Register Page: [Here](#)

Goal:

The Federal Permitting Improvement Steering Council (Permitting Council) proposes to amend its regulations to revise the scope of “mining” as a sector with infrastructure projects eligible for coverage under FAST-41. The proposed modification will help ensure that qualified critical minerals supply chain projects beyond critical minerals mining can obtain FAST-41 coverage.

Method:

The proposed rule solicits feedback from the public and other stakeholders in advance of a final rulemaking. After considering the comments received in response to this proposed rule, the Permitting Council will determine whether to revise the scope of the current mining sector, then vote on any proposed modifications. If a majority of the Permitting Council votes in favor of modification, the Permitting Council will promulgate a final rule amending 40 CFR part 1900 consistent with the adopted modification.

Authority:

The Permitting Council is a unique Federal agency charged with improving the transparency and predictability of the Federal environmental review and authorization process for certain infrastructure projects. The Permitting Council coordinates Federal environmental reviews and authorizations for projects that seek and qualify for FAST-41 coverage.

42 U.S.C. 7401 et seq.

Background:

FAST-41

FAST-41 is a voluntary program and does not mandate or predetermine any substantive result in the permitting process. To qualify for FAST-41 coverage, an infrastructure project in a FAST-41 sector must be:

- located in the United States,
- require environmental review and authorization by a Federal agency, and
- meet one of the four sets of FAST-41 covered project criteria:
 1. The “**objective**” criteria, which states that the project:
 - i. (i) is subject to review under NEPA
 - ii. is likely to require a total investment of \$200 million or more; and

- iii. does not qualify for abbreviated authorization or environmental review processes under any applicable law.
- 2. The “**carbon capture**” criterion, which states that the; project is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines.
- 3. The “**Tribal**” criteria, which states that the project:
 - i. is subject to NEPA;
 - ii. sponsored by an Indian Tribe (as defined in 25 U.S.C. 5304), an Alaska Native Corporation, a Native Hawaiian organization (as defined in section 20 U.S.C. 7517), the Department of Hawaiian Home Lands, or the Office of Hawaiian Affairs; and
 - iii. Located in whole or in part on lands owned or under the jurisdiction of the project sponsor.
- 4. The “**discretionary**” criteria, which states that the project:
 - i. is subject to NEPA; and
 - ii. may benefit from the enhanced oversight and coordination provided by FAST–41 due to its size and complexity.

Projects where the Department of Transportation is the sole lead agency under NEPA, and projects that are subject to authorization under Department of the Army’s Project Acceleration Procedures pursuant to 33 U.S.C. 2348, are not FAST–41 covered.

Applicants must prepare a FIN to seek eligibility for FAST-41. Any project sponsor credibly seeking Federal authorization for a project that requires \$200 million or more in investment will have the information required to submit a project FIN readily available, and preparing and submitting a project FIN should require only a few hours of effort.

The FAST–41 statute only requires the project sponsor to formulate and send to the Permitting Council Executive Director 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.

Mining under FAST-41

The Permitting Council voted to designate “mining” as a FAST–41 sector on January 4, 2021. The definition of “mining” finally adopted by the Permitting Council was broad, and encompassed “the process of extracting ore, minerals, or raw materials from the ground” except

for oil and gas extraction. 40 CFR 1900.1. Accordingly, any infrastructure project in the “mining” sector—including any critical minerals mining project—currently can become a FAST–41 covered project, provided that the project qualifies.

Overview:

The Administration has called for the application of all current best practices for improving communication and coordination with state regulators, Tribes, and stakeholders, including industry, affected communities, environmental justice leaders, and labor unions, in reviewing and authorizing critical minerals projects. The Permitting Council believes that Federal resources should be targeted, to the maximum extent practicable, toward the pool of projects that are most likely to deliver on the Administration’s critical minerals priorities and in line with publicly stated mining reform principles.

The Permitting Council proposes to refine the FAST–41 mining infrastructure sector to:

- i. **limit the scope of potentially covered mining projects to those involving critical minerals extraction**(as defined by section 7002 of the Energy Act of 2020 and listed by the Director of the U.S. Geological Survey at 87 FR 10381)
- ii. **critical mineral supply chain activities, including critical mineral beneficiation, processing, and recycling.**

Doing so would enable sponsors of qualified critical minerals mining, beneficiation, processing, and recycling projects to seek the same benefits of FAST–41 coverage that are currently available to qualified projects in the statutorily identified FAST–41 sectors.

Projected Outcome:

Revising the FAST–41 mining sector could result in:

- reduced costs for any critical minerals mining and supply-chain project sponsor that obtains FAST–41 coverage for its project
- reduced costs for the Federal agencies with review and permitting responsibilities for the covered project, by virtue of the:
 - potentially improved timeliness, predictability, and transparency in the process;
 - associated increased Federal agency coordination; and
 - reduced duplication of Federal and project sponsor effort.

Since the enactment of FAST–41 in 2015, a total of 71 projects have become covered projects; generally, only the largest projects in a given sector become FAST–41 covered projects. Based on historical experience implementing the current mining sector and the other FAST–41 sectors, and the fact that only a portion of project sponsors, including mining project sponsors, that seek FAST–41 coverage succeed in obtaining it, *the Permitting Council anticipates that the proposed modification to the FAST–41 mining sector will result in the submission of 15 or fewer additional project FINs, and likely 10 or fewer additional covered projects.*

The proposed modifications to the FAST–41 mining sector will not directly increase or decrease the costs to agencies of complying with the substantive provisions of FAST–41. The additional

economic cost associated with the proposed modifications to the FAST–41 mining sector, if any, would be negligible.

There are no notable impacts under the Unfunded Mandates Reform Act, Federalism (E.O. 13132), Civil Justice Reform (E.O. 12988), Paperwork Reduction Act (44 U.S.C. 3501 et seq.), NEPA, or Energy Supply (E.O. 13211).

Other Summaries:

- [Permitting Dashboard](#)