



**PERMITTING COUNCIL**

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**TITLE 41, FIXING AMERICA'S SURFACE TRANSPORTATION ACT (FAST-41)**

**FISCAL YEAR 2021 RECOMMENDED BEST  
PRACTICES FOR PROJECT REVIEW AND  
PERMITTING FOR INFRASTRUCTURE PROJECTS**

**Federal Permitting Improvement Steering Council – Office of the Executive Director**



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## Acknowledgments

The Federal Permitting Improvement Steering Council prepared this report as required by Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.* The Permitting Council includes representatives from the following entities:



Department of Agriculture



Department of the Army



Department of Commerce



Department of Energy



Department of Transportation



Department of Defense



Federal Energy Regulatory Commission



Department of Homeland Security



Nuclear Regulatory Commission



Department of Housing and Urban Development



Advisory Council on Historic Preservation



Office of Management and Budget



Council on Environmental Quality



Environmental Protection Agency



Department of the Interior



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## Acronyms and Abbreviations

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ARC	Annual Report to Congress
BP	Best Practice
CERPO	Chief Environmental Review and Permitting Officer
CFR	Code of Federal Regulations
CPP	Coordinated Project Plan
EO	Executive Order
FAST-41	Title 41 of the Fixing America's Surface Transportation Act
FPISC or Permitting Council	Federal Permitting Improvement Steering Council
FY	Fiscal Year
GAO	U.S. Government Accountability Office
NEPA	National Environmental Policy Act
OED	Office of the Executive Director
U.S.C.	United States Code



# Fiscal Year 2021 Recommended Best Practices for Project Review and Permitting for Infrastructure Projects

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## Introduction

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 is comprised of the Permitting Council Executive Director; 13 Federal agency councilmembers (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 Chairs of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation; and additional councilmembers, the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget.<sup>1</sup> The Permitting Council is charged with improving the timeliness, predictability, transparency, and accountability of the Federal project review and permitting process<sup>2</sup> for FAST-41 "covered" infrastructure projects.<sup>3</sup>

FAST-41 directs the Permitting Council to issue recommendations for best practices (BPs) at least once per year.<sup>4</sup> The Office of the Executive Director (OED) facilitates the development of BPs in each of the following 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.

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<sup>1</sup> 42 U.S.C. § 4370m-1(a) & (b).

<sup>2</sup> The "project review and permitting process" refers to all required reviews and authorizations, including but not limited to those under the National Environmental Policy Act (NEPA).

<sup>3</sup> 42 U.S.C. § 4370m(6).

<sup>4</sup> 42 U.S.C. § 4370m-1(c)(2)(B).

This report contains the Permitting Council’s Fiscal Year (FY) 2021 recommended BPs. Permitting Council member agencies are encouraged to apply these BPs, where appropriate, to all infrastructure project reviews and permitting efforts, not just to FAST-41 covered projects.

Permitting Council Agency Chief Environmental Review and Permitting Officers (CERPOs), who are senior officials from all Permitting Council member agencies, are required to make recommendations to their Permitting councilmembers on ways to improve processes and controls for infrastructure project review and decision making, including implementation of FAST-41 recommended BPs.<sup>5</sup> The Permitting Council Executive Director assesses Permitting Council member agencies’ progress in making improvements consistent with the BPs in the Annual Report to Congress (ARC).<sup>6</sup>

In the FY 2019 ARC, the Permitting Council OED analyzed agency progress toward implementing the FY 2019 BPs and provided key findings, challenges, and recommendations for improvement in six areas:

- (1) Early interagency coordination,
- (2) Identifying and synchronizing environmental review and authorization milestones required for other agencies’ covered project permitting timetable milestones,
- (3) Agency workload forecasting and resource planning and staging,
- (4) Impacts to the schedule outside the Federal government’s control,
- (5) The official start of the environmental review and authorization process, and
- (6) Real-time tracking and risk assessment.

OED considered these findings and recommendations, as well as the Permitting Council member agencies’ self-identified infrastructure-related priorities for FY 2021, as the basis for updating the FY 2021 BPs.<sup>7</sup> In addition, OED hosted workshops with agency CERPOs, designated agency staff focused on Federal infrastructure permitting initiatives, and field staff to refine the FY 2021 BPs. The workshops provided Permitting Council member agencies an opportunity to share their perspectives on how the BPs were working, how they could be improved and made more broadly applicable, and how specific agency priorities could be reflected. Through this process, OED incorporated diverse agency perspectives to align the FY 2021 BPs with the realities of ongoing FAST-41 implementation, including the challenges that agencies face in day-to-day operations. The FY 2021 BPs in this report capture the Permitting Council member agencies’ efforts to improve coordination and efficiency throughout the project review and permitting process and ensure that agency strides toward implementing the BPs will be appropriately highlighted in the FY 2021 ARC.

Table 1 on pages 5-10 of this report describes the FY 2021 recommended BPs for each of the eight categories. Although all BPs are applicable to FAST-41 covered project review and permitting, agencies are encouraged to utilize the recommended BPs to the extent possible when reviewing and issuing permits or authorizations for any infrastructure project. Previous years’ BPs can be found in earlier Best Practices Reports (for FY 2017 through FY 2020) and continue to be applicable unless superseded or modified by the current BPs. OED acknowledges agencies’ longstanding and ongoing efforts and initiatives to improve the Federal project review and permitting process, both before the institution of

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<sup>5</sup> 42 U.S.C. § 4370m-1(c)(3).

<sup>6</sup> See 42 U.S.C. §§ 4370m-1(c)(2)(B) and 4370m-7(a)(2)(A).

<sup>7</sup> The FY 2020 ARC was published in January 2021 and contains additional challenges and recommendations identified by OED, which will inform the development of the FY 2022 recommended BPs.

FAST-41 and in response to previous years' BPs. Agencies are encouraged to continue to report on the progress of these efforts, as they contribute to FAST-41 goals. Additionally, the ARC assessment scale is intended to capture the range of maturity of BP implementation. See the [Best Practice Evaluation](#) section for more details.

For FY 2021, the Permitting Council added two new BPs, updated five BPs, and moved one BP to a new FAST-41 BP category. The Permitting Council also simplified and streamlined BP language for all BPs to improve clarity and consistency.

### **New Best Practices**

- BP ii.1, new for FY 2021, addresses increasing coordination within and across agencies through internal processes and controls. This BP will help Permitting Council member agencies efficiently predict, elevate, and resolve issues quickly – ultimately improving the timeliness of agency project review and permitting processes.
- BP vii.2, new for FY 2021, addresses the development or revision of policies, programmatic agreements, and other agency resources to incorporate new or updated Federal regulations or directives, as well as to further clarify the agencies' requirements, interim steps, and areas of likely overlap with other Federal agencies' processes, such as interagency dependencies.

### **Updated Best Practices**

The Permitting Council updated the language of five BPs to reflect existing agency efforts to enhance the project review and permitting processes.

- BP i.1 was updated to encourage innovative stakeholder engagement practices to reach a broad group of stakeholders and foster improved public engagement during the project review and permitting process.
- Language was added to BP iii.1 to emphasize updating protocols for gathering Tribal input and documenting how Tribal input was considered in agency decision making regarding infrastructure projects. Updating these protocols will increase the quality of consultations and working relationships with Tribal governments.
- BP iv.1 was updated to include cooperating and participating agencies and to emphasize that cooperating and participating agencies' coordination with lead or facilitating agencies is essential in developing complete permitting timetables, project plans, and FAST-41 Coordinated Project Plans (CPP), as applicable.<sup>8</sup>
- Language was added to BP vi.1 to encourage the development and use of resources, including geographic information systems (GIS), to improve communication among agencies, project sponsors, and stakeholders. These resources will help prevent miscommunications or delays by clarifying specific information needs, communicating when information is needed, and addressing and reducing possible risks to project schedules.
- BP vii.1, which addresses training, was revised to include the participation of member agency staff in OED-hosted trainings so that agency staff working on project reviews and permitting are

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<sup>8</sup> 42 U.S.C. § 4370m-2(c)(2)(A) (permitting timetable for covered project must be developed in coordination with participating and cooperating agencies within 60 days of adding covered project to Permitting Dashboard).





aware of and able to utilize OED-offered tools and technical resources that enhance the project review and permitting process.

### **Updated Best Practice Statutory Category**

Former BP ii.1 from the FY 2020 BP Report, which addresses utilizing environmental review and authorization process templates and other materials to assist the project sponsor or applicant in providing the required information in a timely manner, has been moved to BP Category viii, “addressing other aspects of infrastructure permitting,” and is now BP viii.2. After multiple years of application, many agencies have reached full implementation of this BP. Agencies still working to achieve full implementation of this BP can report their progress under Category viii.

BP viii.1 from the FY 2020 BP Report was removed for FY 2021. Some elements of former BP viii.1 related to innovative stakeholder engagement were merged with BP i.1 for FY 2020 to create a single BP related to stakeholder engagement.



## Best Practices

**Table 1: Recommended Best Practices for FY 2021**

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))	
Best Practice (BP)	Intent
<p><b>BP i.1</b> Proactively engage stakeholders and other agencies early in the project review and permitting process, and identify and document measures taken to increase meaningful stakeholder engagement.</p>	<p>Early engagement with stakeholders<sup>9</sup> and other agencies involved in the project review and permitting process will increase its timeliness and effectiveness by encouraging early dialogue on potential issues and opportunities that may be relevant to the project review and permitting process. Early identification of these issues and opportunities can help all parties avoid or mitigate challenges that may cause delay in meeting key project milestones.</p> <p>In implementing this BP, agencies should improve the promotion of opportunities for public engagement and comment on proposed projects, including on the Permitting Dashboard and in other locations, with the goal of increasing the probability that important information from stakeholders is received early in the project review and permitting process. Agency use of virtual stakeholder meetings, improved notification tactics, web-based comment submission, and any other new or innovative approaches to stakeholder engagement should be captured in a stakeholder outreach plan or in the outreach section of the CPP for FAST-41 covered projects.</p>
<p><b>BP i.2</b> Establish and/or utilize pre-review processes to provide project sponsors with an opportunity for early communication on project-specific information with the lead or facilitating agency, other relevant Federal agencies, state agencies, Tribes, and/or local government entities prior to initiation of official review processes (e.g., submission of application or other initiation of the project review and permitting process).</p>	<p>Pre-review processes and early communication increase the predictability and transparency of the project review and permitting process. Pre-review processes provide the project sponsors with an opportunity to communicate potential impacts of a proposed project that may be complex or controversial, or to provide preliminary information to the agencies involved in the project review and permitting process. In implementing this BP, Federal agencies and other government entities will also have an opportunity to communicate information and guidance on their review process and information needs to the project sponsor during early stages of project development. This improved early communication increases the probability that agencies will receive the information needed to complete the project review and permitting process in a timely manner, and decreases the chance that challenges or information learned later in the process will delay the project schedule.</p>

<sup>9</sup> For the purposes of the BPs, “stakeholders” include anyone outside of the Federal agency.



**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))**

**Best practice (BP)**

**BP ii.1** Create or improve agency processes and internal controls to maintain current and accurate timetables and quickly identify, elevate, and resolve issues to continuously improve timeliness of decisions.

**Intent**

This BP addresses increasing coordination within and across agencies through internal processes and controls.<sup>10</sup> Implementation of the BP will help Permitting Council member agencies efficiently navigate the project review and permitting process and predict, elevate, and resolve issues quickly, ultimately improving the timeliness of agency project review and permitting processes.

Examples of internal-facing processes to implement this BP include, but are not limited to:

- Creating and/or improving processes and internal controls for review and approval by all required agency staff involved in the project review and permitting process. This ensures that staff in the chain of command are aware of, and sign off on, appropriate process items to deliver a timely project review and permitting process and, as applicable, compliance with FAST-41 requirements.
- Creating and/or improving elevation procedures to quickly resolve issues in the project review and permitting process.
- Ensuring regular communication between regional/district offices and headquarters.
- Creating and/or improving procedures for communication between agency staff and CERPOs to maintain transparency throughout the project review and permitting process.
- As applicable, ensure internal processes to create and maintain timetables align with FAST-41 requirements, including ensuring the CPP is created within 60 days of a project being posted to the Permitting Dashboard and includes a timetable, developed based on the Recommended Performance Schedules, and following the procedures for timetable modifications outlined in FAST-41 and the Data Management Guide.

Examples of external-facing processes to implement this BP include, but are not limited to:

- Creating and/or improving processes for communication and coordination among lead, facilitating, cooperating, and participating agencies and with the project sponsor to maintain a current and accurate timetable, and to identify issues that require additional coordination between agencies or discussion with the Permitting Council and OED for timely resolution. Regular communication channels within and between agencies involved in the project review and permitting process will ensure that issues are identified early and addressed in an efficient, timely manner.

<sup>10</sup> Internal processes and controls are actions to make appropriate agency staff and leadership aware of relevant steps in the project review and permitting process. Examples of internal processes and controls include following a specific elevation process for project issues or regularly informing the CERPO of project updates.



**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))**

**Best practice (BP)**

**BP iii.1** Develop, update, enhance, and/or utilize mutually acceptable standards and protocols with Tribal governments for gathering and documenting Tribal input and for the identification and treatment of resources that might be affected by infrastructure projects.

**Intent**

This BP will increase the quality of Tribal consultations and will improve working relationships between the Federal government and Tribal governments through the establishment, update, improvement, and/or consistent utilization of agency Tribal consultation policies or consultation agreements or protocols. As part of this BP, agencies should evaluate how to effectively document consideration of Tribal input from consultation in agency decisions on infrastructure projects to ensure that agencies adequately consider Tribal input.<sup>11</sup> To fulfill this BP, Federal agencies may:

- Examine the agency’s existing policy or establish an agency Tribal consultation policy to ensure that the agency’s principles for government-to-government consultation with American Indian Tribal Nations describe how Tribal input will be considered in agency decisions (regarding infrastructure project planning and natural and cultural resource identification and treatment decisions, including those associated with Section 106 of the National Historic Preservation Act). Agencies should also examine the policy to make sure it provides mechanisms for maintaining staff competence in the agency’s policy to ensure consistent application. Agencies should communicate with Tribes regarding how their input will be used in agency decisions, and ensure that the agency’s policy is consistent with Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments,” treaty obligations, and the *Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*.
- Develop, update, and/or utilize a consultation agreement or protocol for one or more project review and permitting processes (or, if the agency chooses, programmatically) with one or more interested Tribal governments. Agencies should also ensure that the consultation agreement or protocol was submitted to the Advisory Council on Historic Preservation in accordance with 36 CFR § 800.2(c)(2)(ii)(E), if applicable.

Participation in the proposed expansion of the Department of Housing and Urban Development’s (HUD) Tribal Directory Assistance Tool (TDAT) to enhance relationships and communication with Tribes throughout the project review and permitting process is another example of the implementation of this BP.

<sup>11</sup> This is intended to capture agencies’ efforts (planned or in progress) to respond to the U.S. Government Accountability Office (GAO) recommendation(s) in the March 2019 *Report to Congress on Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects* (GAO-19-22).



**Category iv “Increasing transparency” (42 U.S.C. § 4370m-1(c)(2)(B)(iv))**

**Best practice (BP)**

**BP iv.1** In developing and maintaining the FAST-41 CPP or project plan, as applicable, facilitating, lead, cooperating, and participating agencies should share information about the project review and permitting process, including all information requirements and dependencies, with each other and the project sponsor and, where applicable, on the Permitting Dashboard. With each update to the FAST-41 CPP or project plan, the facilitating or lead agency, in conjunction with the cooperating and participating agencies, should continue to engage with each other and the project sponsor to identify reasonably foreseeable risks to the schedule and potential strategies to address those risks.

**Intent**

The facilitating or lead agency will work with the cooperating and participating agencies and the project sponsor to identify information needed to create an accurate and realistic project timetable and FAST-41 CPP or project plan, as applicable. This coordination includes determining who needs to provide the information, to whom, and by when, with particular attention to the critical path for the project review and permitting process (e.g., where one Federal agency cannot move forward in its process without information or a decision from another Federal agency). Overall, implementation of this BP should result in fewer delays due to increased clarification and communication about critical path items and relevant information being posted to the Permitting Dashboard in accordance with the FAST-41, as applicable.

For example, information that will ultimately be posted to the Permitting Dashboard per 42 U.S.C. § 4370m-2(b)(3) should also be shared among agencies during the development of the CPP. This information includes: the FAST-41 Initiation Notice; where practicable, the application and supporting documents that have been submitted by a project sponsor for any required environmental review or authorization; and a description of any Federal agency action taken or decision made that materially affects the status of a covered project, such as actions included in the Federal Environmental Review and Authorization Inventory and other Federal actions identified for the project that meet FAST-41 statutory requirements for Federal actions and should be incorporated into the CPP.

As applicable, any modifications to the timetable should follow the requirements included in FAST-41 and the Data Management Guide to avoid last minute changes to the schedule, ensure project sponsors and other agencies involved are aware of any changes, and ensure that the timetables posted on the Permitting Dashboard are accurate and up to date.

**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))**

**Best practice (BP)**

**BP v.1** Institute a continuity plan to address staff changes. The continuity plan should include a process for updating the project sponsor and other agencies involved in the project review and permitting process and the FAST-41 CPP or project plan, as applicable, to ensure continued information flow and to minimize delays that may result in substantive schedule changes.

**Intent**

This BP is intended to facilitate smooth staffing transitions, while avoiding loss of knowledge and delays to the project review and permitting schedule. Agencies should record and maintain project-specific knowledge and key information developed for the project review and permitting process, and should create processes for systematically transferring this information to new staff members. In the event of a staffing change, this documentation will ensure continued progress through the project review and permitting process by facilitating the efficient transfer of the management of the project review and permitting process to new staff. As part of its continuity plan, the agency should create processes for updating the project sponsor and other agencies participating in the project review and permitting process, as well as the FAST-41 CPP or project plan, as applicable, when key staff transitions occur.



**BP v.2** Develop, enhance, and/or use joint coordination procedures among Federal agencies, and with state, Tribal, and local governments with similar authorities.

The intent of this BP is to avoid duplicative or conflicting work done by multiple agencies (e.g., data collection and analysis, joint environmental research and studies), reduce administrative burden, increase predictability, and save time for resource and action agencies through the use of joint coordination procedures. The implementation of joint coordination and synchronization procedures results in a more efficient and effective project review and permitting process.

**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))**

**Best practice (BP)**

**Intent**

**BP vi.1** Develop and provide resources that explain agencies' project review and permitting processes and associated information needs for reference by project sponsors and agencies involved in the project review and permitting process, and identify appropriate GIS and other tools provided by agencies to support informed project reviews.

The intent of this BP is to facilitate meaningful communication among agencies, project sponsors, and stakeholders by making resources available to foster shared understanding of an agency's project review and permitting process and associated information needs. Making these resources available and easily accessible will prevent miscommunications or delays related to an agency's information needs and will increase the transparency of an agency's decision making in the project review and permitting process. Examples of such resources include, but are not limited to: (i) instructions for preparing applications or consultations, including the project sponsor's responsibilities; (ii) information on the agency's decision-making criteria; (iii) information on the types of analysis agencies conduct based on the information provided by project sponsors; and (iv) GIS and other tools that support informed project reviews. Implementation of this BP aligns with the goals of the *Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking*.

**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))**

**Best practice (BP)**

**Intent**

**BP vii.1** Provide training related to the implementation of FAST-41 or to one or more of the BPs, participate in OED-hosted training, or jointly develop and host training with OED. These trainings may be presented to Federal, state, and Tribal governments, and local permitting officials online or in person each year.

Agencies will implement this BP by providing training, individually or in conjunction with OED, specifically related to implementing FAST-41 or one or more of the FY 2021 BPs. Training on FAST-41 implementation will help staff better understand FAST-41 requirements and staff members' roles in the project review and permitting processes. Training on one or more of the Permitting Council's BPs allows staff to identify the benefits and encourage more consistent implementation of the BPs. Agencies may also implement this BP by participating in OED-hosted trainings that similarly serve to clarify FAST-41 and BP implementation processes. Overall, trainings represent an opportunity for agencies to collaborate with each other and with OED to share lessons learned and resolve uncertainties and challenges related to the implementation of FAST-41 processes.



**BP vii.2** Develop or revise policies, handbooks, programmatic agreements, and other agency resources to address where regulatory and policy changes have occurred, or where there are reoccurring misunderstandings between agencies, to improve the efficiency of the project review and permitting process.

This BP addresses the development and/or regular update and revision of policies, programmatic agreements, and other agency resources to incorporate new or updated Federal regulations or directives, and to further clarify the agencies' requirements, interim steps, and areas of likely overlap with other Federal agencies' processes. Implementation of this BP allows agencies to identify critical path dependencies (e.g., where one Federal agency cannot move forward in its process without information or a decision from another Federal agency), to identify and work to revise policy or procedural requirements that impede the project review and permitting process, and to memorialize practices that reduce redundancies and improve coordination. Incorporating process efficiencies and addressing areas of reoccurring risk in internal and external materials will provide agencies with the tools to develop concurred-upon timetables more quickly and accurately, ultimately increasing efficiency and timeliness of project delivery.

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

Best practice (BP)	Intent
<p><b>BP viii.1</b> Identify and share success stories and/or lessons learned during OED-hosted meetings, including Permitting Council or CERPO meetings, training events, or other OED-hosted meetings.</p>	<p>The intent of this BP is to encourage agencies to share information on process improvements for policies and procedures related to the agency’s project review and permitting process. Sharing lessons learned and efficiencies identified by one agency facilitates other agencies’ use or adaptation of those lessons learned to improve the efficiency, transparency, predictability, and accountability in their own project review and permitting processes. Agencies should share lessons as soon as practicable to improve the project review and permitting process. Sharing lessons learned supports implementation of 42 U.S.C. § 4370m–1(c)(3)(C).</p>
<p><b>BP viii.2</b> Develop and/or use project review and permitting process templates, application forms, flow charts, and/or checklists to assist the project sponsor in providing required information in a timely manner.</p>	<p>The intent of this BP is to clarify for project sponsors the information required for the project review and permitting process. Project sponsor use of these templates, application forms, flow charts, and/or checklists will increase the probability that agencies receive the information needed to efficiently and effectively complete the project review and permitting process. These tools can potentially reduce administrative burden by ensuring the project sponsor is aware of the information required, minimizing the need for the agency to follow up with requests for additional information. In implementing this BP, the agency will institute a process to ensure that project sponsors are able to easily access clear descriptions of the information that is needed for an agency to complete its project review, which could include providing the template, application forms, flow charts, and/or checklists on an agency’s website.</p>

## Best Practice Evaluation

Pursuant to 42 U.S.C. § 4370m-7(a)(2), the Permitting Council Executive Director is required to submit an annual report to Congress that, among other things, assesses the performance of each participating agency and lead agency during the previous FY based on the BPs described in 42 U.S.C. § 4370m-1(c)(2)(B), including agency progress in making improvements consistent with those BPs. For the FY 2021 ARC, agencies will submit self-assessments that provide information to OED on their implementation of the FY 2021 BPs for FAST-41 covered projects and any other infrastructure projects. OED will utilize these self-assessments to inform its evaluation of agency progress in making improvements consistent with the BPs.

To ensure that the ARC accurately reflects the entirety of an agency’s progress toward making improvements consistent with the BPs, agencies are expected to submit at least one example per statutory BP category, unless the category does not apply to the agency. If an agency determines that the BP category does not apply, it must submit a brief justification explaining why the BP category is not applicable to the agency. Additionally, OED requests that each agency submission be internally coordinated with the agency’s councilmember and CERPO, as well as with any appropriate communications, legislative affairs, and legal department staff to ensure submissions have been reviewed and approved for publication and possible use in testimony by agency or administration officials. Agencies may also work with OED to identify and report on alternative BPs; these alternative BPs may not be applicable to the full Permitting Council but may reflect agency-specific efforts to increase transparency, timeliness, and coordination throughout the project review and permitting process.

In order to capture the range of agencies’ BP implementation stages in the FY 2021 ARC, OED will assess implementation using the following categories: (1) measurable improvements as a result of implementation; (2) actions taken toward implementation; (3) new initiative put in place; (4) no improvements or no actions taken; and (5) not relevant.<sup>12</sup> This assessment allows for a nuanced evaluation of BP implementation, accurately reflecting agencies’ efforts during the FY. See [Appendix A](#) for additional guidance and for the agency self- assessment template.

In addition to evaluating agency implementation of the BPs, OED employs a data-driven approach to evaluating agency progress toward meeting timeframes

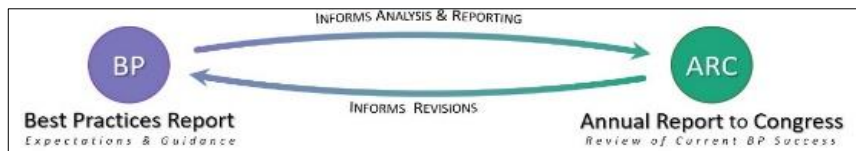


Figure 1: Visual representation of the relationship between the BP Report and ARC.

and assessing risk. OED analyzes data from the Permitting Dashboard to assess the key elements of a project that could indicate if it will fall behind the project’s published schedule. This risk analysis is used to consult with Permitting Council member agencies to identify, prevent, and resolve schedule risks, and is incorporated into the ARC. See Figure 1 for a visual representation of the relationship between the ARC and BP Reports. The following section provides further details on the agency self-assessment process for the FY 2021 ARC.

<sup>12</sup> “Measurable improvements” include quantitative outcomes (e.g., number of updates, events) or qualitative outcomes discussing improvements.



## Appendix A

# Permitting Council Member Agency Self-Assessment

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### *Agency Input to the Annual Report to Congress*

## Background and Instructions

Each year, the Federal Permitting Improvement Steering Council (Permitting Council) Office of the Executive Director (OED) publishes the Annual Report to Congress (ARC) in compliance with Title 41 of the Fixing America's Surface Transportation Act (FAST-41). By statute, this report requires an assessment of each agency's progress in making improvements consistent with the best practices (BPs). OED's assessment in the fiscal year (FY) 2021 ARC will be based on agency self-assessments and collaboration with agencies, project sponsors, and other stakeholders throughout the year. The instructions for self-assessments are as follows.

The FY 2021 BP Report directs each agency's councilmember to provide an accurate assessment of the agency's actions and associated outcomes that meet the intent of all applicable BPs, as certified by each Permitting Council member or their designee. Each agency submission should be internally coordinated with the agency's councilmember and Chief Environmental Review and Permitting Officer (CERPO), as well as with any relevant communications, legislative affairs, and legal department staff. The intent is to ensure that submissions include language ready for publication and possible use in testimony by agency or administration officials. OED highlights examples of agency progress in making improvements consistent with the BPs in the ARC and requests that agencies adhere to the word limits provided for each section below.

In order to capture the range of BP implementation stages in the FY 2021 ARC, OED will assess implementation using a scaled approach, which includes the following categories: (1) measurable improvements as a result of implementation; (2) actions taken toward implementation; (3) new initiative put in place; (4) no improvements or no actions taken; and (5) not relevant. This assessment scale allows for a nuanced evaluation of BP implementation, accurately reflecting agencies' efforts during the FY. If a statutory BP is not relevant or not applicable to an agency, that agency must provide information in their certified submission about why that is the case. Page 16 of this document includes example models for submissions. Ideally, agencies will have examples of BP implementation across more than one project, applied to all efforts, and additional, project-specific examples.

Where agencies are unable to apply a given BP for a statutory category or have identified a specific need for an alternative BP to address a statutory category for the coming year, agencies are encouraged to identify and submit "alternative BPs" to OED for approval. These alternative BPs should reflect where the agencies have implemented process improvements that meet the statutory BP categories but not one of the specific BPs identified in the FY 2021 BP Report. OED will provide additional instructions for submitting an "alternative BP."



OED will provide agencies with the Agency Assessment Template below, which will serve as their Agency Self-Assessment. Please note that the template's exact format is subject to change, but the required reporting information will remain the same. OED requests that agencies complete each of the three required headings: (1) Permitting Council Best Practice Implementation; (2) FAST-41 Project-Specific Permitting Improvements/Outcomes; and (3) Project Review and Permitting Process Improvements (General). Agencies are required to adhere to the word limits provided for each section. OED will not assess any language that exceeds the word limit.



# Agency Assessment Template

## Section 1: Examples of BP Implementation

Each member agency is expected to submit at least one example per statutory BP category. Agencies are welcome, but not required, to submit an example for each individual BP within the statutory categories while adhering to the prescribed word limits and providing only testimony-ready highlights. If an agency determines that the BP category does not apply, it must submit a brief justification explaining why the BP category is not applicable to the agency or will otherwise be assessed as “No improvements or no actions taken” for that category. Agencies may identify positive outcomes from implementing a BP during FY 2021 and/or identify where a BP did not prevent the issue it was intended to prevent and how the agency or Permitting Council may want to address the problem.

Please adhere to a limit of 300 words per BP for this section while thoroughly reflecting your accomplishments and challenges. OED will not assess any language that exceeds 300 words. Agencies should use one text box per BP. Provide links and/or citations as appropriate.

Best Practice Category:	Corresponding Best Practice:

## Section 2: FAST-41 Project Specific Permitting Improvements/Outcomes

This section should highlight examples from specific FAST-41 covered projects. Please include agency innovations, initiatives, successes, and identification and resolution of challenges. Agencies are encouraged to highlight the implementation of recommendations from the [FY 2020 ARC](#), which was issued in January 2021.

Please adhere to a limit of 300 words for this section while thoroughly reflecting your accomplishments and challenges. OED will not assess any language that exceeds 300 words. Provide links and/or citations as appropriate.



**Section 3: Project Review and Permitting Process Improvements (General)**

This section documents the agency's activities in FY 2021 that may be outside the information captured in the two sections above. Examples include challenges addressed, or that could be addressed through actions such as new tracking systems, procedural changes, outreach efforts/information gathering, regulatory changes, and interagency discussions/working groups/agreements/collaboration through the Permitting Council and with other Permitting Council member agencies. Please note that FAST-41 does not limit BP implementation or reporting to FAST-41 covered infrastructure projects. This section provides a space to report any new and unexpected challenges and novel solutions developed by agencies. Addressing challenges that were anticipated, then addressed by existing or new BPs, can be included in sections 1 and 2.

Please provide a narrative for each process improvement in a separate section below. Please adhere to a limit of 300 words for this section while thoroughly reflecting your accomplishments and challenges. OED will not assess any language that exceeds 300 words. Provide links and/or citations as appropriate.



**EXAMPLE FORM**

**SECTION 1. PERMITTING COUNCIL BEST PRACTICE IMPLEMENTATION**

**Template Language**

Best Practice Category [drop down menu]	Corresponding Best Practice [drop down menu]
<p>Agency X identified [insert a brief description of the purpose of BP implementation/specific challenge or opportunity for improvement to be addressed by (proposed) BP implementation]. In FY 2021, Agency X [insert initiatives/actions taken to implement the BP or BP category and what agency staff or other partners were involved]. This led to [identify how the agency initiatives/actions improved the timeliness, predictability, and transparency of applicable project review and permitting processes (e.g., time and money saved by project sponsors or agencies or anecdotal observation of improvements)]. Agency X is [committed to continued action/looking into incorporating lessons learned/taking the following next steps to continue progress or identify/address challenges that came up with BP implementation].</p>	

**Example**

<p>Vii: Creating and distributing training materials useful to Federal, state, Tribal, and local permitting officials</p>	<p>Corresponding Best Practice [drop down menu]</p>
<p>Agency Y identified that early coordination with stakeholders could improve the efficiency of the Section Y process, but sufficient training resources were not available to consultants, applicants, and agency staff. In FY 2021, Agency Y developed a handbook and free online web training targeted at consultants and applicants to develop the understanding and skills needed to interact with and work with stakeholders early in the Section Y process.</p> <p>According to feedback received from attendees, the additional training opportunities and materials have helped increase early coordination with stakeholders. This is expected to result in earlier identification of potential adverse impacts so that agencies and project applicants can consider these potential impacts early in the design process, and work to avoid and minimize any potential adverse impacts as the proposed design evolves.</p> <p>Agency Y plans to solicit feedback from consultants, applicants, agency staff participants, and stakeholders for recommendations on how these materials could be further refined or if any additional information should be included throughout the next FY.</p>	

**SECTION 2. FAST-41 PROJECT SPECIFIC PERMITTING IMPROVEMENTS/OUTCOMES**

**Template**

<p>Project Name</p> <p>Brief description of [proposed] project and Agency X role. In FY 2021, Agency X [insert initiatives/actions taken on this project]. This led to [identify how the agency initiatives/actions improved the timeliness, predictability, and transparency of applicable project review and permitting</p>
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processes (e.g., time and money saved by project sponsors or agencies or anecdotal observation of improvements)]. Agency X is [committed to continued action/looking into incorporating lessons learned/taking the following next steps to continue progress or identify/address challenges that came up].

### Example

#### NEXUS Gas Transmission Project and Texas Eastern Appalachian Lease Project

The Service was able to conclude formal consultation under the Endangered Species Act (ESA) in less than two months on NEXUS Gas Transmission LLC's proposed pipeline in Ohio and Michigan, largely thanks to early and robust discussions between the Service and NEXUS. In this case, NEXUS initiated discussions with the Service early in the process, actively sought and implemented Service recommendations, and drafted detailed and innovative conservation measures. Coordination between the Service, NEXUS, and our partner Council agencies was smooth as a result of early consultation, voluntary avoidance of important resources, and cooperative discussion and analysis.

#### Gateway West Transmission Line Project

The Gateway West project is a proposed interstate transmission line between Idaho and Wyoming, spanning two Service regions and field offices; segments 8 and 9 of the project are covered by FAST-41. The Service's Wyoming Fish and Wildlife Office coordinates our role as a participating agency working with the project's lead agency, the Bureau of Land Management (BLM), to provide reviews under the ESA and other statutes within BLM's mandated timelines. Project meetings include many stakeholders, increasing transparency and allowing engaged agencies and project proponents to build consensus when considering changes to the proposed project to minimize impacts to fish and wildlife resources. The Service continues to work with BLM to facilitate the permitting processes for segments 8 and 9 of this project.

## SECTION 3. PROJECT REVIEW AND PERMITTING PROCESS IMPROVEMENTS (GENERAL)

### Template Language

Brief description of Agency activity that posed a unique challenge or involved a novel solution. In FY 2021, Agency X confronted a new/unexpected challenge in XXXX [or proactively implemented a new XXXX to address the issue of XXXX. Agency X [describe solution/effort to craft a solution/new policy or procedure to address the issue]. This led to [identify how the agency initiatives/actions improved the timeliness, predictability, and transparency of applicable project review and permitting processes (e.g., time and money saved by project sponsors or agencies or anecdotal observation of improvements)]. Agency X expects to continue [or monitor] the effects of [action/policy/procedure] and to modify/improve that [action/policy/procedure] as needed.

**\*\*Alternatively\*\*** Agency X will discontinue the [action/policy/procedure] after implementation and evaluation demonstrated the [action/policy/procedure] was ineffective in improving the timeliness, predictability, and transparency of the project review and permitting process. However, Agency X will devise new strategies to address the challenges of XXXX. The new strategies are XXXX (include if identified).



**Example**

In its revised regulations, the U.S. Fish and Wildlife Service (USFWS) provided a framework and timeline on the ‘request for concurrence and Service’s written response’ portion of the Endangered Species Act consultation process. The USFWS had previously received concerns about timeliness for the consultation process for actions that are not likely to adversely affect listed species or critical habitat, which affected the ability of other Federal agencies to proceed with their environmental reviews and authorizations. Since a Federal agency must provide sufficient information in their request for concurrence in order to “to start the 60-day clock” on the USFWS’ written response, the clock starts upon USFWS receipt of a written request that is consistent with the information requirements. Using this milestone as the triggering milestone on the Permitting Dashboard for either a request for concurrence or formal consultation, as applicable, clarifies for the lead agency, the USFWS, and the public when the lead agency included sufficient information for the USFWS to complete the consultation. It is also a clear trigger to start the Consultation clock, if applicable. This provides both transparency and predictability with a simpler approach.