

# Coalition for America's Gateways and Trade Corridors

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Inc.  
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Florida East  
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Transportation Authority  
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Commission  
National Railroad  
Construction and  
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## CAGTC summary of environmental streamlining provisions in Fixing America's Surface Transportation (FAST) Act

### [Public Law 114-94](#)

Title I, Subtitle C, Sec. 1304-1318

#### Background

MAP-21 included project streamlining provisions that allowed for categorical exclusions under the National Environmental Policy Act (NEPA), including the repair of infrastructure damaged during emergencies and projects receiving limited Federal assistance. The Fixing America's Surface Transportation (FAST) Act builds on MAP-21's streamlining and project delivery acceleration provisions. H.R. 22 aims to increase federal agency efficiency and accountability, institutes timelines and public transparency on the status of pending environmental reviews, and makes it more difficult for third parties that did not actively participate in the environmental review process to later make a NEPA challenge.

#### Summary of Reforms

- Authorizes the US Department of Transportation (USDOT) to serve as the lead federal agency on the environmental review process. USDOT can delegate this responsibility to one of its modal administrations. The agency has 45 days to invite other agencies into the process.
- Asks entities to combine the final environmental impact statement and record of decision into a single document to the "maximum extent practicable," and encourages the use of a single environmental review document throughout the environmental review process and among all agencies.
- Combines NEPA and transportation planning processes "to the maximum extent" possible. If an extensive planning process occurs before NEPA has begun, much of the information gathered during this planning process can be used during the NEPA review.
- Prohibits USDOT from reopening any regulatory issues that have been resolved unless significant new information becomes available.
- Requires all agencies involved in the environmental review process to give "substantial weight" to programmatic reviews. [Programmatic reviews delineate responsibilities at the beginning of the environmental review and approval process. They help clarify roles and responsibilities for the many agencies involved in the project review and approval process and strive to eliminate duplication efforts and establish review timeframes and processing options]
- Reduces completion time of categorical exclusions (CEs) by allowing programmatic agreements to process CEs as a group, rather than on a case-by-case basis.
- Expands on MAP-21's multimodal categorical exclusion by allowing any USDOT operating administration to use a categorical exclusion of another operating administration
- Creates a pilot program, available for up to five states, to devolve regulation responsibilities to states. These states could use their own environmental processes in place of NEPA.

#### Section-by-Section Analysis

#### Sec.1304 – Efficient Environmental Reviews for Project Decisionmaking

Authorizes USDOT to serve as the lead agency, or designate a lead agency, in the environmental review process

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Ohio Kentucky Indiana  
Regional Councils of  
Government

Orange County  
Transportation Authority

Oregon Department of  
Transportation

Parsons

Parsons Brinckerhoff

Port of Hueneme

Port of Long Beach

Port of Los Angeles

Port Miami

Port of Oakland

Port of Pittsburgh

Port of Portland, OR

Port of San Diego

Port of Seattle

Port of Stockton

Port Tampa Bay

Port of Vancouver USA

Puget Sound Regional  
Council

RAILCET

SANDAG - San Diego  
Association of  
Governments

Southern California  
Association of  
Governments

Supply Chain  
Innovation Network of  
Chicago- SINC

Tennessee Department  
of Transportation

Washington State  
Department of  
Transportation

West Coast Corridor  
Coalition

Will County Center for  
Economic Development

Xerox State and Local  
Solutions

## Sets Deadlines

USDOT has:

- 45 days to decide whether to initiate the environmental review process (beginning on the day of receipt of a project),
- 45 days to respond to a request to designate a specific modal administration as the lead agency (with option to extend additional 45 days);
- 45 days to identify other agencies that may have an interest in the project and invite them to participate in the environmental review process; and
- 90 days to develop a plan to coordinate the gathering of comments from participating agencies.

## Redefines the term “multimodal project”

Under MAP-21, a multimodal project was defined as “a project that involves the participation of more than one Department of Transportation administration or agency and is either fully or partially funded under Title 23, U.S. Code or under Chapter 53 of Title 49, U.S. Code” Under the FAST Act, a multimodal project is defined as “a project that requires the approval of more than one USDOT operating administration or secretary office.”

## Single NEPA Document

Requires use of a single environmental document prepared under NEPA to be used “to the maximum extent possible and consistent with federal law” during Federal project permitting and review. The lead agency is responsible for developing this document to satisfy the requirements for any Federal approval or other Federal action required for the project, including permits.

## Project Initiation

Once a project sponsor notifies the Secretary of the type of work, termini, and length and general location of a proposed project, the Secretary has 45 days to issue a written response, either initiating the environmental review process or declining the application.

1. If *initiating* the process, the response should include a timeline and expected Federal Register publication date.
2. If *declining* the application, a reason for that decision must be provided.
3. Alternatively, the Secretary can *request additional information* before making a determination.

The lead agency of a project must develop an environmental checklist to identify potential natural, cultural, and historic resources in the project area. The lead agency is also required to provide an opportunity for involvement from all participating agencies and the public during consideration of the range of alternatives. Comments from participating agencies should be limited to areas of expertise.

## Range of Alternatives

The range of alternatives should be developed as early in the process as possible, except under circumstances where “significant new information” becomes available or if the range of alternatives must be modified to fit the NEPA requirements. The lead agency should work to reduce duplication between the evaluation of NEPA alternatives and the evaluation of alternatives in the metropolitan transportation planning process or a state environmental review process. A lead agency can eliminate an alternative if it was considered earlier in the process by another agency or if the Federal lead agency independently reviewed the alternative and rejected it.

## Schedule for Completion Mandatory

Makes the establishment of a schedule for completion of the environmental review process mandatory – it was optional under MAP-21. Financial penalties are tied to the now-required schedule.

## Issue Identification and Resolution

Once an issue has been resolved by the lead agency, with involvement from participating agencies, that issue is put to rest – i.e. it cannot be reconsidered unless significant new information becomes available.

- “Significant new information” is not defined. This could possibly be elaborated on in a rulemaking.

### **Financial Assistance to Affected State and Federal Agencies**

Funds made available under Chapter 53 of title 49 (multimodal projects) can go to any of the agencies participating in the environmental review process. However, funds are only provided to support activities that “directly and meaningfully contribute to expediting and improving permitting and review processes.”

### **Accelerates Decisionmaking in Environmental Reviews**

Modifies Title 23 projects to allow a lead agency to now use errata sheets to modify draft environmental impact statements, rather than rewrite the entire statement, in response to minor comments and corrections or explanation of why the comments do not warrant additional agency response. The FAST Act goes into detail on guidelines for content of errata sheets.

The lead agency should develop a **single document** that includes a final environmental impact statement and a record of decisions, lists exceptions.

*CAGTC Note: This section allows a lead agency to use errata sheets during Title 23 (highway) projects. Section 1304 provides the same allowance to Title 49 projects (multimodal).*

### **Transparency in Environmental Reviews**

Transparency is improved through the creation of an online “dashboard,” which will update the public on the status of projects requiring an environmental assessment or environmental impact statement. Within 18 months of the passage of the FAST Act, the Secretary should make public the status and progress of projects requiring an environmental assessment or environmental impact statement. Participating agencies are encouraged to provide information regarding the status and approval of the project for online publication. A State with delegated authority for NEPA responsibilities must supply the Secretary with project development and compliance status for all applicable projects.

### **Additionally, this section:**

- Repeals Sec. 1319 of MAP-21, Accelerated Decisionmaking in Environmental Review (replaces it with allowance of errata sheets and other language)
- Gives the Secretary one year to complete a rulemaking to implement the provisions allowing for the use of programmatic approaches to conduct environmental reviews. The Secretary should consult with relevant Federal and State agencies, as well as other appropriate entities. The public should have 60 days to comment on this review.

### **Sec.1305 – Integration of Planning and Environmental Review**

#### **Definition of “Planning Product”**

A planning product is defined as “a decision, analysis, study, or other documented information that is the result of an evaluation or decision-making process carried out by an MPO or a State, or as appropriate, during metropolitan or statewide transportation planning.”

- *A lead agency* may adopt or incorporate a reference to a planning product in proceedings relating to any class of action in the environmental review process from an environmental impact statement, environmental assessment, categorical exclusion, or other NEPA document.
- *A cooperating agency* may adopt or incorporate by reference and use a planning product in proceedings’ relating to any class of action in the environmental review process any environmental permit, approval, review, or study required for a project under NEPA.

If a planning product is used, the relevant agencies must identify the agencies involved in the development of this product. The planning document may be used in full or in part and may be adopted at any point during the environmental review process, as appropriate. For example, if a planning product makes a decision regarding whether tolling is necessary to complete a project, that decision may be adopted or incorporated by reference later on in the environmental review process. (Detailed list of planning decisions that may be adopted or incorporated from a planning product are listed in the FAST Act.) The planning product should have been approved within the last five years, developed in consultation with appropriate agencies at all levels of government, and meet the requirements of NEPA.

### **Sec.1306 – Development of Programmatic Mitigation Plans**

## **Programmatic mitigation plans**

Programmatic mitigation plans are required and federal agencies responsible for environmental reviews must give them “substantial weight” when progressing through the NEPA process.

### **Sec.1307 – Technical Assistance for States**

USDOT can provide training and technical assistance to states to help them determine whether certain designated activities can be categorically excluded. A secretary may terminate participation of any State in the program if the State is not carrying out responsibilities assigned to it or if the State has been warned of its failure and has failed to correct its course.

### **Sec.1308 – Surface Transportation Project Delivery Program**

The surface transportation pilot project delivery program ([section 327 of title 23](#)) is amended to allow the Secretary to reassign responsibilities, with respect to one or more highway project within the state under NEPA, to the State. The requirements for such a responsibility remain as if it were the Secretary assuming the role.

### **Sec.1309 – Program for Eliminating Duplication of Environmental Reviews**

A new pilot program gives up to five states the ability to conduct their own environmental reviews and make approvals for projects, either under State environmental laws and regulations or under NEPA requirements. The bill provides a list of procedures a state might use to conduct environmental reviews and sets up an application and decision process to admit states into the pilot program. The Secretary will provide a report to Congress on the program. The pilot program will sunset in year 2027.

### **Sec.1310 – Application of Categorical Exclusions for Multimodal Projects**

Expands on MAP-21’s multimodal categorical exclusion by allowing any USDOT operating administration to use a categorical exclusion of another operating administration. The lead authority of a project must follow the implementing regulations of the other operating administration, as well as determine the proposed multimodal project does not individually or cumulatively impact on the environment in a significant way and extraordinary circumstances do not exist that merit additional analysis and documentation.

### **Sec.1311 – Accelerated Decisionmaking in Environmental Reviews**

Modifies Title 49 to allow a lead agency to use errata sheets to modify draft environmental impact statements, rather than rewrite the entire statement, in response to minor comments and factual corrections or explanation of why the comments do not warrant additional agency response.

The lead agency should develop a single document that includes a final environmental impact statement and a record of decisions, lists exceptions.

*CAGTC Note: This section allows a lead agency to use errata sheets during Title 49 (multimodal) projects. Section 1304 provides the same allowance to Title 23 projects (highway).*

### **Sec.1312 – Improving State and Federal Agency Engagement in Environmental Reviews**

If an agency is receiving federal funding, that agency may request to distribute those funds to other agencies involved in the environmental review process, as long as those funds are used to support activities directly related to expediting and improving permitting and review.

### **Sec.1313 – Aligning Federal Environmental Reviews**

#### **Concurrent Reviews**

Within one year of FAST Act enactment, USDOT, in coordination with the heads of other federal agencies involved in environmental reviews, should develop a process to conduct coordinated and concurrent environmental reviews and permitting. The process should place emphasis on collecting sufficient information early in the review process and achieve early resolution during the NEPA scoring process. Interagency collaboration is mandated.

## **Benchmarks and Reports**

Within one year of enactment of the FAST Act, a program to measure progress on aligning Federal reviews and reducing permitting must be created. A report on the progress made in aligning Federal environmental reviews is due to Congress within two years; a USDOT Inspector General Report is required within three years.

### **Sec.1314 – Categorical Exclusion for Projects of Limited Federal Assistance**

Indexes section 1317 of MAP-21 – *categorical exclusion for projects of limited federal assistance* – to inflation and requires retroactive readjustments.

### **Sec.1315 – Programmatic Agreement Template**

USDOT must establish a programmatic agreement template that can be used by individual projects.

### **Sec.1316 – Assumption of Authorities**

The USDOT Secretary can allow states to assume authority for project designs, plans, specifications, estimates, contract awards, and inspection of projects, on both a project-specific and programmatic basis. Within 18 months, the Secretary should submit a report to Congress exploring recommendations for additional authorities to be assumed by the States, including real estate acquisition and project design.

### **Sec.1317 – Modernization of the Environmental Review Process**

Within one year, a report should be submitted to Congress examining ways to modernize, simplify, and improve NEPA. The report should consider technology, ways to prioritize the use of programmatic environmental impact statements, and methods to encourage cooperating agencies to present analysis in a concise format.

### **Sec.1318 – Assessment of Progress on Accelerating Project Delivery**

An assessment on the various impacts MAP-21, SAFETEA-LU and the FAST Act have had on accelerating project delivery is required within two years of FAST Act enactment. The assessment should evaluate 1) how often the various streamlining provisions allowed under the three bills have been used; 2) which of the provisions have had the greatest impact on streamlining the environmental review and permitting process; 3) how streamlining has affected environmental protection; and 4) how streamlining provisions have improved and accelerated the process for permitting under Federal laws, among other items. The assessment should include a list of best practices and additional recommendations for future streamlining opportunities.