

SUCCESSES IN STEWARDSHIP



FHWA FAST Act Guidance Accelerates Surface Transportation Project Environmental Review Processes

The Fixing America's Surface Transportation Act (FAST Act) was signed into law by President Barack Obama on December 4, 2015, authorizing over \$305 billion in funding for surface transportation projects from Fiscal Year (FY) 2016 to FY 2020. The FAST Act also established or expanded statutory provisions to accelerate the project delivery and environmental review processes of surface transportation projects. This includes implementing best practices to expedite complex infrastructure projects while meeting requirements under environmental laws and regulations and providing opportunities for public engagement.

To leverage the effectiveness of new FAST Act provisions, the Federal Highway Administration (FHWA) Office of Project Development and Environmental Review has developed a number of resources to inform Federal and State practitioners about applicable provisions to procedures laid out in the National Environmental Policy Act (NEPA) and other environmental laws and regulations. Below are summaries of these resources. Full versions are available in the [Environmental Review Toolkit](#).

Changes Affecting Parks, Wildlife, Historic Sites, and Certain Bridges

Questions and Answers (Q&As) Related to Parks, Recreation Areas, Wildlife, and Waterfowl Refuges, and Historic Sites

This reference document highlights specific FAST Act provisions regarding parks, recreation areas, wildlife and waterfowl refuges, and historic sites. These Q&As are applicable to FHWA, the Federal Transit Administration (FTA), and the Federal Railroad Administration (FRA), and provide guidance on when agencies should apply and rely on statutory provisions in FAST Act Sections 1301, 1302, 1303, 11502, and 11504, for exemptions from the U.S. Department of Transportation (DOT) Act of 1966 Section 4(f) regulations.

Treatment of Certain Bridges under Preservation Requirements Memorandum

This memorandum highlights FAST Act exemptions for certain bridges under preservation requirements. Specifically,

What Did the FAST Act Change for Project Delivery?

The FAST Act builds on the authorities and requirements established in previous transportation bills and certain FHWA initiatives, to help accelerate the project delivery and environmental review processes for surface transportation projects.

The FAST Act established, made amendments to, or expanded on transportation laws and regulations, and provided guidance on environmental and historic preservation laws and regulations.

Section 4(f) of the DOT Act of 1966 is amended by Section 1303 of the FAST Act to exempt those concrete and steel bridges or culverts built after 1945 from individual review under Section 4(f) that are exempt from review of Section 106 of the National Historic Preservation Act (NHPA) of 1966. The Advisory Council on Historic Preservation (ACHP) issued a Program Comment in November 2012 that identifies a process to exempt, within a State, post-1945 concrete and steel bridges and culverts from individual historic review requirements under Section 106 of NHPA. To take advantage of this exemption, an FHWA State Division Office must comply with the [ACHP Program Comment](#).

Changes Affecting the Environmental Review Process for Certain Highway, Transit, and Rail Projects

[Q&A on the Applicability of 23 United States Code \(U.S.C.\) 139 to FHWA, FRA, and FTA Projects](#)

This document clarifies how the FAST Act changes the applicability of the environmental review process established in 23 U.S.C. 139 for certain highway, transit, and rail projects. One of these modifications, specified in Section 11503 of the FAST Act, created 49 U.S.C. 24201, which requires FRA to use the environmental review process laid out in 23 U.S.C. 139 (to the extent possible) for all railroad projects.

The changes for FRA projects only apply if the Environmental Impact Statement's (EIS) notice of intent (NOI) was published or funding was approved by DOT after December 4, 2015. These changes also apply to FHWA and FTA projects where an EIS NOI was published or an applicant filed a request to designate a lead agency after December 4, 2015. FHWA, FTA, and FRA environmental review documents will reflect these changes. Finally, the Q&As discuss the reasons why project procedures in Title 41 of the FAST Act for Federal permitting improvement do not apply to FHWA, FTA, or FRA projects. The agencies developed [an in-depth Q&A on changes to 23 U.S.C. 139 relating to FHWA, FRA, and FTA projects](#) that will be available in the Toolkit soon.

Changes Affecting CE Assignment and Project Delivery Programs

[Q&As Regarding Changes to the CE Assignment and the NEPA Assignment Programs](#)

This memorandum highlights new statutory provisions in the FAST Act that amend the Categorical Exclusion (CE) Assignment (23 U.S.C. 326) and Surface Transportation Project Delivery Programs (23 U.S.C. 327) (Sections 1307 and 1308). States may request technical assistance to enter the CE Assignment Program and the FHWA-initiated termination provisions allow for more time to correct non-compliance. The Fast Act provides clarification on State and FHWA roles and responsibilities, including provisions for auditing and FHWA-initiated termination. Provisions laid out in these sections are effective as of October 1, 2015, and FHWA will ensure that all new agreements or renewed agreements comply with these new provisions. Section 1307 does not apply to Programmatic Categorical Exclusion (PCE) Agreements developed between FHWA Division Offices and State DOTs.

Changes Affecting the Federal Assistance Limits for CE Projects

[CEs for Projects of Limited Federal Assistance](#)

This memorandum acts on the FAST Act Section 1314 requirement that FHWA and FTA adjust the monetary limits for "CEs for Projects of Limited Federal Assistance" annually for inflation. Adjustments will be made based on the [Consumer Price Index](#) prepared by the U.S. Department of Labor. As the last monetary limits for this purpose were set in the Moving Ahead for Progress in the 21st Century Act of 2012, FHWA and FTA provide updated limits for 2016 in this memorandum. Previously, CEs were established for federally-funded projects that receive less than \$5,000,000 of Federal funds; or with a total estimated cost of no more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. The new 2016 adjustments alter these limits to \$5,179,656.40 and \$31,077,938.40, respectively.

Changes Affecting PCE Agreements

[Memorandum on Programmatic CE Agreements](#)

Section 1315 of the FAST Act directs FHWA to revise its regulations on PCE Agreements, allowing State DOTs to make CE determinations, for actions listed in regulation as well as for actions that meet the definition of a CE on behalf of FHWA.

Transportation Laws and Regulations Affected by the FAST Act

U.S. Code: Title 23 – Highways

- 138: Preservation of parklands
- 139: Efficient environmental reviews for project decisionmaking
- 168: Integration of planning and environmental review
- 169: Development of programmatic mitigation plans
- 326: State assumption of responsibility of categorical exclusions
- 327: Surface transportation project delivery program
- 330: Program for eliminating duplication of environmental reviews

U.S. Code: Title 49 – Transportation

- 304: Application of categorical exclusions for multimodal projects
- 24201: Efficient environmental reviews

U.S. Department of Transportation (DOT) Act of 1966

- Section 4(f)

This memorandum states that while FHWA updated the PCE Agreement template to address these statutory changes, use of the template is not mandatory. Any template may be used for a PCE Agreement if it includes the required information in 23 Code of Federal Regulations (CFR) 771.117(g).

[A Practitioner's Guide to FHWA Programmatic Agreements for CE](#)

This guide is intended to give NEPA practitioners a good understanding of the statutory requirements established in Section 1315 of the FAST Act. It provides information on three approaches for PCE Agreements, considerations before developing an agreement, and required and optional content in a PCE Agreement (e.g., whereas clauses, parties, approvals, and re-evaluations). The guide also identifies benefits of developing a PCE including: (1) specifying roles and responsibilities of those involved; (2) standardizing coordination and compliance procedures; (3) facilitating the development of relationships with greater trust; and (4) allowing staff and resources to be focused and effective.

[2016 Model PCE Agreement](#)

NEPA practitioners can refer to this model programmatic agreement when developing their own PCE Agreements. Some elements of the model may be transferable to other agreements.

Changes Affecting Pollinator Habitat and Vegetation Management

[Improving Habitat for Pollinators](#)

On March 25, 2016 FHWA Administrator Gregory Nadeau issued the Administrator's Memorandum: "Improving Habitat for Pollinators" to FHWA Divisions and other field offices recognizing past and current contributions to advance regional and State efforts to expand and improve pollinator habitat on transportation assets across the Nation. It describes how Section 1415 of the FAST Act, "Administrative Provisions to Encourage Pollinator Habitat and Forage on Transportation Rights-of-Way," amends 23 U.S.C. 319 and 23 U.S.C. 329 and directs FHWA, when carrying out any program under title 23, U.S.C., to encourage the following:

- Integrating vegetation management practices on roadsides and other transportation rights-of-way, including reduced mowing; and
- Developing habitat and forage for Monarch butterflies, other native pollinators, and honey bees through plantings of native forbs and grasses, including noninvasive, native milkweed species that can serve as migratory way stations for butterflies and facilitate migrations of other pollinators.

Changes Affecting Nesting Swallows and At-Risk Bridges

[Interim Guidance for Implementing FAST Act Section 1439: Elimination of Barriers to Improve At-Risk Bridges](#)

FHWA developed this guidance in collaboration with the Migratory Bird Program at the U.S. Fish and Wildlife Service to provide information on the required procedures for implementation of Section 1439 of the FAST Act. Section 1439 provides a temporary authorization, between April 1 and August 31 of each year, for the "take" of nesting swallows on certain bridge construction projects. Regulation defines "take" as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." To take such actions, a construction project must be eligible for funding under title 23, U.S.C., and have any component condition rated 3 or less as defined by the National Bridge Inventory General Condition Guidance. To facilitate and provide careful guidance on the implementation of FAST Act Section 1439, this document provides information on applicable swallow species, definitions of National Bridge Inventory General Condition Guidance ratings, procedural requirements and recommendations (i.e., notification before and after taking, measures to minimize impacts), and contacts.

Upcoming Rulemaking and Guidance

For more information on the environmental review and permitting expediting provisions in the FAST Act, refer to the FAST Act and the [FAST Act: Key Provisions for Project Delivery webinar slides](#). Future rulemaking and guidance will be issued to address updates to 23 CFR 771 and 774 (Section 1304) as well as the establishment of the Pilot Program for eliminating duplication of environmental reviews (Section 1309).

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Look What's New!

- The Center for Environmental Excellence by the American Association of State Highway and Transportation Officials [launched](#) a Programmatic Agreement (PA) Roadmap and a PA Tracking Tool.
- The newsletter celebrated its 15th anniversary in August! Check out the [infographic](#) we put together to commemorate past issues.

Successes in Stewardship is a Federal Highway Administration newsletter highlighting current environmental streamlining and stewardship practices from around the country. [Click here](#) to subscribe, or call (617) 494-3719 for more information.