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OHIO DEPARTMENT OF TRANSPORTATION  
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September 13, 2022

Mayor Aftab Pureval  
City of Cincinnati  
801 Plum Street, Suite 150  
Cincinnati, OH 45202

Dear Mayor Pureval,

I am writing to thank you and your team at the City for your continued support and input into the efforts to complete the reconstruction of the Brent Spence Bridge Corridor (BSBC) within the City. The City's partnership on this project has been a tremendous benefit to us. Throughout the project development from 2005-present, City staff has engaged and supported our efforts by providing feedback and guidance with respects to the project and specifically how it impacts their transportation network.

FHWA's regulations require that any Federal, State, tribal, regional, and local government agencies that may have an interest in the project must be invited to serve as participating agencies. [23 U.S.C. 139(d)(2)]. The intent of a participating agency's role is to enhance interagency coordination, ensure that issues of concern are identified early, and encourage governmental agencies at any level with an interest in the proposed project to be active participants in the NEPA process. As one of Ohio's most populated metro areas, the City of Cincinnati's input into the BSB project is vital not only for Cincinnati's success, but for ODOT's as well. ODOT's view of the City goes beyond just a participating agency. ODOT considers the City of Cincinnati as a primary stakeholder and a vital partner in the development of this project.

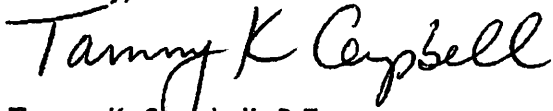
FHWA expects the roles and responsibilities of participating agencies to include:

- Participating in the NEPA process at the start of the NEPA scoping process when participating agency identification occurs and invitations are sent. Agencies should provide input with regard to the development of the purpose and need statement, range of alternatives, methodologies, and the level of detail for the analysis of alternatives. The City was involved in this process beginning in 2005 until 2012 when the NEPA document was approved.
- Carrying out the agencies' obligations under other applicable laws concurrently with the review required under NEPA, unless doing so would impair the ability of the agency to carry out those obligations. (23 U.S.C. 139(d)(7)(A))
- Identifying, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts.
- Providing meaningful and timely input on unresolved issues.
- Reviewing any proposed project schedule provided by the lead agencies and providing either concurrence and/or comments when a schedule is developed as part of the project's coordination plan or when a schedule is developed as part of enhanced technical assistance.
- Reviewing draft environmental documentation as established in the project coordination plan.

To go beyond the traditional role of a participating agency, ODOT is looking for the City's continued cooperation as a true partner in the development of the BSBC project. ODOT's goals for the project are consistent with the City's previously expressed goals to improve pedestrian and bicycles access and safety as well as looking for opportunities for the use of green spaces and reclaimed land. Having the City's thoughts and expertise involved throughout the project development process is vital to the further development and accomplishment of these goals. Whether we are discussing aesthetics or providing thoughts on the selection of the Design-Build team, the City's expertise will help to ensure that this project is poised to meet the City's current and future goals for their community as well as ODOT's.

Again, thank you for your continued support on this vital project.

Sincerely,

A handwritten signature in black ink that reads "Tammy K Campbell". The signature is written in a cursive, flowing style.

Tammy K. Campbell, P.E.  
District 8 Deputy Director

**23 USC 139: Efficient environmental reviews for project decisionmaking and One Federal Decision**  
Text contains those laws in effect on April 17, 2023

**From Title 23-HIGHWAYS**

CHAPTER 1-FEDERAL-AID HIGHWAYS

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## **§139. Efficient environmental reviews for project decisionmaking and One Federal Decision**

(a) **DEFINITIONS.**-In this section, the following definitions apply:

(1) **AGENCY.**-The term "agency" means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) **AUTHORIZATION.**-The term "authorization" means any environmental license, permit, approval, finding, or other administrative decision related to the environmental review process that is required under Federal law to site, construct, or reconstruct a project.

(3) **ENVIRONMENTAL DOCUMENT.**-The term "environmental document" includes an environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) **ENVIRONMENTAL IMPACT STATEMENT.**-The term "environmental impact statement" means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) **ENVIRONMENTAL REVIEW PROCESS.**-

(A) **IN GENERAL.**-The term "environmental review process" means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) **INCLUSIONS.**-The term "environmental review process" includes the process and schedule, including a timetable for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(6) **LEAD AGENCY.**-The term "lead agency" means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(7) **MAJOR PROJECT.**-

(A) **IN GENERAL.**-The term "major project" means a project for which-

(i) multiple permits, approvals, reviews, or studies are required under a Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) the project sponsor has identified the reasonable availability of funds sufficient to complete the project;

(iii) the project is not a covered project (as defined in section 41001 of the FAST Act (42 U.S.C. 4370m)); and

(iv)(I) the head of the lead agency has determined that an environmental impact statement is required; or

(II) the head of the lead agency has determined that an environmental assessment is required, and the project sponsor requests that the project be treated as a major project.

(B) **CLARIFICATION.**-In this section, the term "major project" does not have the same meaning as the term "major project" as described in section 106(h).

(8) **MULTIMODAL PROJECT.**-The term "multimodal project" means a project that requires the approval of more than 1 Department of Transportation operating administration or secretarial office.

(9) **PROJECT.**-

(A) **IN GENERAL.**-The term "project" means any highway project, public transportation capital project, or multimodal project that, if implemented as proposed by the project sponsor, would require approval by any operating administration or secretarial office within the Department of Transportation.

(B) **CONSIDERATIONS.**-In determining whether a project is a project under subparagraph (A), the Secretary shall take into account, if known, any sources of Federal funding or financing identified by the project sponsor, including

any discretionary grant, loan, and loan guarantee programs administered by the Department of Transportation.

(10) **PROJECT SPONSOR.**-The term "project sponsor" means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

(11) **STATE TRANSPORTATION DEPARTMENT.**-The term "State transportation department" means any statewide agency of a State with responsibility for one or more modes of transportation.

**(b) APPLICABILITY.-**

(1) **IN GENERAL.**-The project development procedures in this section are applicable to all projects, including major projects, for which an environmental impact statement is prepared under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) of 1969 and may be applied, as requested by a project sponsor and to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared pursuant to such Act.

(2) **FLEXIBILITY.**-Any authorities granted in this section may be exercised, and any requirements established under this section may be satisfied, for a project, class of projects, or program of projects.

**(3) PROGRAMMATIC COMPLIANCE.-**

(A) **IN GENERAL.**-The Secretary shall allow for the use of programmatic approaches to conduct environmental reviews that-

- (i) eliminate repetitive discussions of the same issues;
- (ii) focus on the actual issues ripe for analyses at each level of review; and
- (iii) are consistent with-
  - (I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
  - (II) other applicable laws.

(B) **REQUIREMENTS.**-In carrying out subparagraph (A), the Secretary shall ensure that programmatic reviews-

- (i) promote transparency, including the transparency of-
  - (I) the analyses and data used in the environmental reviews;
  - (II) the treatment of any deferred issues raised by agencies or the public; and
  - (III) the temporal and spatial scales to be used to analyze issues under subclauses (i) and (ii);
- (ii) use accurate and timely information, including through establishment of-
  - (I) criteria for determining the general duration of the usefulness of the review; and
  - (II) a timeline for updating an out-of-date review;
- (iii) describe-
  - (I) the relationship between any programmatic analysis and future tiered analysis; and
  - (II) the role of the public in the creation of future tiered analysis;
- (iv) are available to other relevant Federal and State agencies, Indian tribes, and the public; and
- (v) provide notice and public comment opportunities consistent with applicable requirements.

**(c) LEAD AGENCIES.-**

**(1) FEDERAL LEAD AGENCY.-**

(A) **IN GENERAL.**-The Department of Transportation, or an operating administration thereof designated by the Secretary, shall be the Federal lead agency in the environmental review process for a project.

(B) **MODAL ADMINISTRATION.**-If the project requires approval from more than 1 modal administration within the Department, the Secretary may designate a single modal administration to serve as the Federal lead agency for the Department in the environmental review process for the project.

(2) **JOINT LEAD AGENCIES.**-Nothing in this section precludes another agency from being a joint lead agency, in accordance with regulations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

(3) **PROJECT SPONSOR AS JOINT LEAD AGENCY.**-Any project sponsor that is a State or local governmental entity receiving funds under this title or chapter 53 of title 49 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

(4) **ENSURING COMPLIANCE.**-The Secretary shall ensure that the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection and that such document is appropriately supplemented if project changes become necessary.

**(5) ADOPTION AND USE OF DOCUMENTS.**-Any environmental document prepared in accordance with this subsection may be adopted or used by any Federal agency making any approval to the same extent that such Federal agency could adopt or use a document prepared by another Federal agency.

**(6) ROLES AND RESPONSIBILITY OF LEAD AGENCY.**-With respect to the environmental review process for any project, the lead agency shall have authority and responsibility-

(A) to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project;

(B) to prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law;

(C) to consider and respond to comments received from participating agencies on matters within the special expertise or jurisdiction of those agencies; and

(D) to calculate annually the average time taken by the lead agency to complete all environmental documents for each project during the previous fiscal year.

**(7) PROCESS IMPROVEMENTS FOR PROJECTS.**-

(A) **IN GENERAL.**-The Secretary shall review-

(i) existing practices, procedures, rules, regulations, and applicable laws to identify improvements to meeting the requirements applicable to projects under this section; and

(ii) best practices, programmatic agreements, and potential changes to internal departmental procedures that would facilitate an efficient environmental review process for projects.

(B) **CONSULTATION.**-In conducting the review under subparagraph (A), the Secretary shall consult, as appropriate, with the heads of other Federal agencies that participate in the environmental review process.

(C) **REPORT.**-Not later than 2 years after the date of enactment of the Surface Transportation Reauthorization Act of 2021, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that includes-

(i) the results of the review under subparagraph (A); and

(ii) an analysis of whether additional funding would help the Secretary meet the requirements applicable to projects under this section.

**(d) PARTICIPATING AGENCIES.**-

(1) **IN GENERAL.**-The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection.

(2) **INVITATION.**-Not later than 45 days after the date of publication of a notice of intent to prepare an environmental impact statement or the initiation of an environmental assessment, the lead agency shall identify any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

(3) **FEDERAL PARTICIPATING AGENCIES.**-Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency-

(A) has no jurisdiction or authority with respect to the project;

(B) has no expertise or information relevant to the project; and

(C) does not intend to submit comments on the project.

(4) **EFFECT OF DESIGNATION.**-

(A) **REQUIREMENT.**-A participating agency shall comply with the requirements of this section.

(B) **IMPLICATION.**-Designation as a participating agency under this subsection shall not imply that the participating agency-

(i) supports a proposed project; or

(ii) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(5) **COOPERATING AGENCY.**-A participating agency may also be designated by a lead agency as a "cooperating agency" under the regulations contained in part 1500 of title 40, Code of Federal Regulations.

(6) **DESIGNATIONS FOR CATEGORIES OF PROJECTS.**-The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

(7) **CONCURRENT REVIEWS.**-Each participating agency and cooperating agency shall-

(A) carry out the obligations of that agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to conduct needed analysis or otherwise carry out those obligations; and

(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

**(8) SINGLE ENVIRONMENTAL DOCUMENT.-**

(A) **IN GENERAL.-**Except as inconsistent with paragraph (7) and except as provided in paragraph (D), to the maximum extent practicable and consistent with Federal law, all Federal authorizations and approvals for a project shall rely on a single environmental document prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) under the leadership of the lead agency.

**(B) USE OF DOCUMENT.-**

(i) **IN GENERAL.-**To the maximum extent practicable, the lead agency shall develop any environmental documents sufficient to satisfy the requirements for any Federal approval or other Federal action related to the project, including authorizations by other Federal agencies.

(ii) **COOPERATION OF PARTICIPATING AGENCIES.-**Other participating agencies shall cooperate with the lead agency and provide timely information to help the lead agency carry out this subparagraph.

(C) **TREATMENT AS PARTICIPATING AND COOPERATING AGENCIES.-**A Federal agency that does not take an approval or take an action for a project, as described in subparagraph (B), shall act with the lead agency to the project to ensure that the agency making the approval or taking the action is treated as being bound by the findings and cooperating agency for the project.

(D) **EXCEPTIONS.-**The lead agency may waive the application of subparagraph (A) with respect to a project if-

(i) the project sponsor requests that agencies issue separate environmental documents;

(ii) the obligations of a cooperating agency or participating agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have already been satisfied with respect to the project; or

(iii) the lead agency determines that reliance on a single environmental document (as described in subparagraph (A)) would not facilitate timely completion of the environmental review process for the project.

**(9) PARTICIPATING AGENCY RESPONSIBILITIES.-**An agency participating in the environmental review process under this section shall-

(A) provide comments, responses, studies, or methodologies on those areas within its special expertise or jurisdiction of the agency; and

(B) use the process to address any environmental issues of concern to the agency.

**(10) TIMELY AUTHORIZATIONS FOR MAJOR PROJECTS.-**

(A) **DEADLINE.-**Except as provided in subparagraph (C), all authorization decisions and approvals for construction of a major project shall be completed by not later than 90 days after the date of the issuance of a record of decision for the major project.

(B) **DETAIL.-**The final environmental impact statement for a major project shall include an adequate level of detail to inform decisions necessary for the role of the participating agencies and cooperating agencies in the environmental review process.

(C) **EXTENSION OF DEADLINE.-**The head of the lead agency may extend the deadline under subparagraph (A) if-

(i) Federal law prohibits the lead agency or another agency from issuing an approval or permit within the period described in that subparagraph;

(ii) the project sponsor requests that the permit or approval follow a different timeline; or

(iii) an extension would facilitate completion of the environmental review and authorization process of the major project.

**(e) PROJECT INITIATION.-**

(1) **IN GENERAL.-**The project sponsor shall notify the Secretary of the type of work, location, and general location of the proposed project (including any additional information that the project sponsor deems to be important to initiate the process for the proposed project), together with a statement of any Federal approvals anticipated to be necessary for the proposed project, for the purpose of informing the Secretary that the environmental review process should be initiated.

(2) **SUBMISSION OF DOCUMENTS.-**The project sponsor may satisfy the requirement under paragraph (1) by submitting to the Secretary any relevant documents containing the information described in paragraph (1), including a draft notice for publication in the Federal Register announcing the preparation of an environmental review for the project.

(3) **REVIEW OF APPLICATION.-**Not later than 45 days after the date on which the Secretary receives notification under paragraph (1), the Secretary shall provide to the project sponsor a written response that, as applicable-

(A) describes the determination of the Secretary-

(i) to initiate the environmental review process, including a timeline and an expected date for the publication in the Federal Register of the relevant notice of intent; or

(ii) to decline the application, including an explanation of the reasons for that decision; or

(B) requests additional information, and provides to the project sponsor an accounting regarding what documentation is necessary to initiate the environmental review process.

**(4) REQUEST TO DESIGNATE A LEAD AGENCY.-**

(A) **IN GENERAL.**-Any project sponsor may submit to the Secretary a request to designate the operating administration or secretarial office within the Department of Transportation with the expertise on the proposed project to serve as the Federal lead agency for the project.

**(B) SECRETARIAL ACTION.-**

(i) **IN GENERAL.**-If the Secretary receives a request under subparagraph (A), the Secretary shall respond to the request not later than 45 days after the date of receipt.

(ii) **REQUIREMENTS.**-The response under clause (i) shall-

(I) approve the request;

(II) deny the request, with an explanation of the reasons for the denial; or

(III) require the submission of additional information.

(iii) **ADDITIONAL INFORMATION.**-If additional information is submitted in accordance with clause (i)(II), the Secretary shall respond to the submission not later than 45 days after the date of receipt.

**(5) ENVIRONMENTAL CHECKLIST.-**

(A) **DEVELOPMENT.**-The lead agency for a project, in consultation with participating agencies and, as appropriate, as appropriate, a checklist to help project sponsors identify potential natural, cultural, and historic resources in the area of the project.

(B) **PURPOSE.**-The purposes of the checklist are-

(i) to identify agencies and organizations that can provide information about natural, cultural, and historic resources;

(ii) to develop the information needed to determine the range of alternatives; and

(iii) to improve interagency collaboration to help expedite the permitting process for the lead agency and participating agencies.

**(f) PURPOSE AND NEED; ALTERNATIVES ANALYSIS.-**

(1) **PARTICIPATION.**-As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

(2) **DEFINITION.**-Following participation under paragraph (1), the lead agency shall define the purpose and need for purposes of any document which the lead agency is responsible for preparing for the project.

(3) **OBJECTIVES.**-The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include-

(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;

(B) supporting land use, economic development, or growth objectives established in applicable Federal, state, local, or tribal plans; and

(C) serving national defense, national security, or other national objectives, as established in Federal, state, local, or tribal plans, or policies.

**(4) ALTERNATIVES ANALYSIS.-**

**(A) PARTICIPATION.-**

(i) **In general.**-As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.

(ii) **COMMENTS OF PARTICIPATING AGENCIES.**-To the maximum extent practicable and consistent with applicable law, each participating agency receiving an opportunity for involvement under clause (i) shall limit the comments of the agency to subject matter areas within the special expertise or jurisdiction of the agency.

(iii) **EFFECT OF NONPARTICIPATION.**-A participating agency that declines to participate in the development of the purpose and need and range of alternatives for a project shall be required to comply with the schedule developed under subsection (g)(1)(B).

**(B) RANGE OF ALTERNATIVES.-**

(i) **DETERMINATION.**-Following participation under subparagraph (A), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

(ii) **USE.**-To the maximum extent practicable and consistent with Federal law, the range of alternatives determined for a project under clause (i) shall be used for all Federal environmental reviews and permit processes required for the project unless the alternatives must be modified-

(I) to address significant new information or circumstances, and the lead agency and participating agencies agree that the alternatives must be modified to address the new information or circumstances;

(II) for the lead agency or a participating agency to fulfill the responsibilities of the agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in a timely manner.

(C) **METHODOLOGIES.**-The lead agency also shall determine, in collaboration with participating agencies, at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project.

(D) **PREFERRED ALTERNATIVE.**-At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process.

(E) **REDUCTION OF DUPLICATION.**-

(i) **IN GENERAL.**-In carrying out this paragraph, the lead agency shall reduce duplication, to the maximum extent practicable, between-

(I) the evaluation of alternatives under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) the evaluation of alternatives in the metropolitan transportation planning process under section 334 or an environmental review process carried out under State law (referred to in this subparagraph as a "State environmental review process")

(ii) **CONSIDERATION OF ALTERNATIVES.**-The lead agency may eliminate from detailed consideration an alternative proposed in an environmental impact statement regarding a project if, as determined by the lead agency-

(I) the alternative was considered in a metropolitan planning process or a State environmental review process by a metropolitan planning organization or a State or local transportation agency, as applicable;

(II) the lead agency provided guidance to the metropolitan planning organization or State or local transportation agency, as applicable, regarding analysis of alternatives in the metropolitan planning process or State environmental review process, including guidance on the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other Federal law necessary for approval of the project;

(III) the applicable metropolitan planning process or State environmental review process included an opportunity for public review and comment;

(IV) the applicable metropolitan planning organization or State or local transportation agency rejected the alternative after considering public comments;

(V) the Federal lead agency independently reviewed the alternative evaluated or approved by the applicable metropolitan planning organization or State or local transportation agency; and

(VI) the Federal lead agency determined-

(aa) in consultation with Federal participating or cooperating agencies, that the alternative to be eliminated from consideration is not necessary for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(bb) with the concurrence of Federal agencies with jurisdiction over a permit or approval required for a project, that the alternative to be eliminated from consideration is not necessary for any permit or approval under any other Federal law.

(g) **COORDINATION AND SCHEDULING.**-

(1) **COORDINATION PLAN.**-

(A) **IN GENERAL.**-Not later than 90 days after the date of publication of a notice of intent to prepare an environmental impact statement or the initiation of an environmental assessment, the lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

(B) **SCHEDULE.**-

(i) **IN GENERAL.**-The lead agency shall establish as part of such coordination plan, after consultation with and the concurrence of each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

(ii) **FACTORS FOR CONSIDERATION.**-In establishing the schedule, the lead agency shall consider factors such as-

(I) the responsibilities of participating agencies under applicable laws;

(II) resources available to the cooperating agencies;

(III) overall size and complexity of the project;

(IV) the overall time required by an agency to conduct an environmental review and make decisions under applicable Federal law relating to a project (including the issuance or denial of a permit or license) and the cost of the project; and

(V) the sensitivity of the natural and historic resources that could be affected by the project.



(iii) **MAJOR PROJECT SCHEDULE.**-To the maximum extent practicable and consistent with applicable Federal law, in the case of a major project, the lead agency shall develop, in concurrence with the project sponsor, a schedule for the major project that is consistent with an agency average of not more than 2 years for the completion of the environmental review process for major projects, as measured from, as applicable-

(I) the date of publication of a notice of intent to prepare an environmental impact statement in the record of decision; or

(II) the date on which the head of the lead agency determines that an environmental assessment is required to a finding of no significant impact.

(C) **CONSISTENCY WITH OTHER TIME PERIODS.**-A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

(D) **MODIFICATION.**-

(i) **IN GENERAL.**-Except as provided in clause (ii), the lead agency may lengthen or shorten a schedule established under subparagraph (B) for good cause.

(ii) **EXCEPTIONS.**-

(I) **MAJOR PROJECTS.**-In the case of a major project, the lead agency may lengthen a schedule under clause (i) for a cooperating Federal agency by not more than 1 year after the latest deadline established for the major project by the lead agency.

(II) **SHORTENED SCHEDULES.**-The lead agency may not shorten a schedule under clause (i) if doing so would impair the ability of a cooperating Federal agency to conduct necessary analyses or otherwise carry out relevant obligations of the Federal agency for the project.

(E) **FAILURE TO MEET DEADLINE.**-If a cooperating Federal agency fails to meet a deadline established under subparagraph (D)(i)(I)-

(i) the cooperating Federal agency shall submit to the Secretary a report that describes the reasons why the deadline was not met; and

(ii) the Secretary shall-

(I) transmit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a copy of the report under clause (i) and

(II) make the report under clause (i) publicly available on the Internet.

(F) **DISSEMINATION.**-A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be-

(i) provided to all participating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

(ii) made available to the public.

(2) **COMMENT DEADLINES.**-The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

(A) For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless-

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(B) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless-

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(3) **DEADLINES FOR DECISIONS UNDER OTHER LAWS.**-In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and publish on the Internet-

(A) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

(B) every 60 days thereafter until such date as all decisions of the Federal agency or agencies of jurisdiction have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) INVOLVEMENT OF THE PUBLIC.-Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law, including a regulation.

**(h) ISSUE IDENTIFICATION AND RESOLUTION -**

(1) COOPERATION.-The lead agency and the participating agencies shall cooperate to identify and resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

(2) LEAD AGENCY RESPONSIBILITIES.-The lead agency shall make information available to the participating agencies as early as practicable in the environmental review process regarding the location of the project, the socioeconomic resources located within the project area, and the general location of the lead agency lands under consideration. Such information may be based on existing data sources, including geographic information systems mapping.

(3) PARTICIPATING AGENCY RESPONSIBILITIES.-Based on information received from the lead agency, participating agencies shall identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts. In this paragraph, issues of concern include any issue that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.

(4) ISSUE RESOLUTION.-Any issue resolved by the lead agency with the concurrence of participating agencies may not be reconsidered unless significant new information or circumstances arise.

**(5) INTERIM DECISION ON ACHIEVING ACCELERATED DECISIONMAKING -**

(A) IN GENERAL.-Not later than 30 days after the close of the public comment period on a draft environmental impact statement, the Secretary may convene a meeting with the project sponsor, the lead agency, participating agencies, and any relevant State agencies to ensure that all parties are prepared to make accelerated decision-making decisions to be made regarding the project.

(B) DEADLINES.-The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies.

(C) FAILURE TO ASSURE.-If the relevant agencies cannot provide reasonable assurance that the conditions described in subparagraph (B) will be met, the Secretary may initiate the issue resolution and referral process described under paragraph (6) before the completion of the record of decision.

**(6) ACCELERATED ISSUE RESOLUTION AND REFERRAL -**

**(A) AGENCY ISSUE RESOLUTION MEETING -**

(i) IN GENERAL.-A Federal agency of jurisdiction, project sponsor, or the chief executive officer of a State in which a project is located may request an issue resolution meeting to be conducted by the lead agency.

(ii) ACTION BY LEAD AGENCY.-The lead agency shall convene an issue resolution meeting under paragraph (i) with the relevant participating agencies and the project sponsor, including the Governor only if the meeting was requested by the Governor, to resolve issues that could-

- (I) delay completion of the environmental review process; or
- (II) result in denial of any approvals required for the project under applicable laws.

(iii) DATE.-A meeting requested under this subparagraph shall be held by not later than 30 days after the date of receipt of the request for the meeting, unless the lead agency determines that there is good cause to extend the time for the meeting.

(iv) NOTIFICATION.-On receipt of a request for a meeting under this subparagraph, the lead agency shall notify all relevant participating agencies of the request, including the issue to be resolved and the date of the meeting.

(v) DISPUTES.-If a relevant participating agency with jurisdiction over an approval required for a project under applicable law determines that the relevant information necessary to resolve the issue has not been obtained and could not have been obtained within a reasonable time, but the lead agency disagrees, the resolution of the dispute shall be forwarded to the heads of the relevant agencies for resolution.

(vi) CONVENTION BY LEAD AGENCY.-A lead agency may convene an issue resolution meeting under this subsection at any time without the request of the Federal agency of jurisdiction, project sponsor, or the Governor of a State.

**(B) ELEVATION OF ISSUE RESOLUTION.-**

(i) IN GENERAL.-If issue resolution is not achieved by not later than 30 days after the date of a relevant meeting under subparagraph (A), the Secretary shall notify the lead agency, the heads of the relevant participating agencies, and the project sponsor (including the Governor only if the initial issue resolution meeting request came from the Governor) that an issue resolution meeting will be convened.

(ii) **REQUIREMENTS.**-The Secretary shall identify the issues to be addressed at the meeting and convene the meeting not later than 30 days after the date of issuance of the notice.

**(C) REFERRAL OF ISSUE RESOLUTION.-**

**(i) REFERRAL TO COUNCIL ON ENVIRONMENTAL QUALITY.-**

(I) **IN GENERAL.**-If resolution is not achieved by not later than 30 days after the date of an issue resolution meeting under subparagraph (B), the Secretary shall refer the matter to the Council on Environmental Quality.

(II) **MEETING.**-Not later than 30 days after the date of receipt of a referral from the Secretary under subclause (I), the Council on Environmental Quality shall hold an issue resolution meeting with the lead agency, the heads of relevant participating agencies, and the project sponsor (including the Governor only if an initial request for an issue resolution meeting came from the Governor).

(ii) **REFERRAL TO THE PRESIDENT.**-If a resolution is not achieved by not later than 30 days after the date of the meeting convened by the Council on Environmental Quality under clause (i)(II), the Secretary shall refer the matter directly to the President.

**(7) FINANCIAL PENALTY PROVISIONS.-**

**(A) IN GENERAL.**-A Federal agency of jurisdiction over an approval required for a project under applicable laws shall complete any required approval on an expeditious basis using the shortest existing applicable process.

**(B) FAILURE TO DECIDE.-**

(i) **IN GENERAL.**-If an agency described in subparagraph (A) fails to render a decision under any Federal law relating to a project that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, or other approval by the date described in clause (ii), an amount of funding equal to the amounts specified in subclause (I) or (II) shall be rescinded from the applicable office of the head of the agency, or equivalent office to which the authority for rendering the decision has been delegated by law by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C)-

(I) \$20,000 for any project for which an annual financial plan is required under subsection (h) or (i) of section 106; or

(II) \$10,000 for any other project requiring preparation of an environmental assessment or environmental impact statement.

(ii) **DESCRIPTION OF DATE.**-The date referred to in clause (i) is-

(I) the date that is 30 days after the date for rendering a decision as described in the project schedule established pursuant to subsection (g)(1)(B);

(II) if no schedule exists, the later of-

(aa) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

(bb) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), or

(III) a modified date in accordance with subsection (g)(1)(D).

**(C) LIMITATIONS.-**

(i) **IN GENERAL.**-No rescission of funds under subparagraph (B) relating to an individual project shall exceed, in any fiscal year, an amount equal to 2.5 percent of the funds made available for the applicable agency office.

(ii) **FAILURE TO DECIDE.**-The total amount rescinded in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 7 percent of the funds made available for the applicable agency office for that fiscal year.

**(D) NO FAULT OF AGENCY.**-A rescission of funds under this paragraph shall not be made if the lead agency for the project certifies that-

(i) the agency has not received necessary information or approvals from another entity, such as the project sponsor, in a manner that affects the ability of the agency to meet any requirements under State, local, or Federal law; or

(ii) significant new information or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application.

**(E) LIMITATION.**-The Federal agency with jurisdiction for the decision from which funds are rescinded pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

**(F) AUDITS.**-In any fiscal year in which any funds are rescinded from a Federal agency pursuant to this paragraph, the Inspector General of that agency shall-

- (i) conduct an audit to assess compliance with the requirements of this paragraph; and
- (ii) not later than 120 days after the end of the fiscal year during which the rescission occurred, submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the reasons why the transfers were levied, including allocations of resources.

(G) EFFECT OF PARAGRAPH.-Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(8) EXPEDIENT DECISIONS AND REVIEWS.-To ensure that Federal environmental decisions and reviews are expeditiously made-

(A) adequate resources made available under this title shall be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are completed on an expeditious basis and that the shortest existing applicable process under that Act is implemented; and

(B) the President shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, not less frequently than once every 120 days after the date of enactment of the MAP-21, a report on the status and progress of the following projects and activities funded under this title with respect to compliance with applicable requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

- (i) Projects and activities required to prepare an annual financial plan under section 106(f);
- (ii) A sample of not less than 5 percent of the projects requiring preparation of an environmental impact statement or environmental assessment in each State.

(i) PERFORMANCE MEASUREMENT.-The Secretary shall establish a program of measures and reports designed toward improving and expediting the planning and environmental review process.

(j) ASSISTANCE TO AFFECTED STATE AND FEDERAL AGENCIES.-

(1) IN GENERAL.-

(A) AUTHORITY TO PROVIDE FUNDS.-The Secretary may allow a public entity receiving financial assistance from the Department of Transportation under this title or chapter 53 of title 49 to provide funds to Federal agencies (including the Department), State agencies, and Indian tribes participating in the environmental review process for the project or program.

(B) USE OF FUNDS.-Funds referred to in subparagraph (A) may be provided only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project or program.

(2) ACTIVITIES ELIGIBLE FOR FUNDING.-Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process; activities directly related to the environmental review process; dedicated staffing; training of agency personnel; information gathering and mapping; and development of programmatic agreements.

(3) USE OF FEDERAL LANDS HIGHWAY FUNDS.-The Secretary may also use funds made available under section 204 <sup>1</sup> for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

(4) AMOUNTS.-Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

(5) CONDITION.-A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

(6) AGREEMENT.-Prior to providing funds approved by the Secretary for dedicated staffing at an affected agency under paragraphs (1) and (2), the affected agency and the requesting public entity shall enter into an agreement that establishes the projects and priorities to be addressed by the use of the funds.

(k) JUDICIAL REVIEW AND SAVINGS CLAUSE.-

(1) JUDICIAL REVIEW.-Except as set forth under subsection (l), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States or in the court of any State.

(2) SAVINGS CLAUSE.-Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

(3) LIMITATIONS.-Nothing in this section shall preempt or interfere with-

(A) any practice of seeking, considering, or responding to public comment; or

(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs.

**(l) LIMITATIONS ON CLAIMS.-**

(1) **IN GENERAL.-**Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation, capital project shall be barred unless it is filed within 150 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is lawfully sought. This subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

(2) **NEW INFORMATION.-**The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 150 days after the date of publication of a notice in the Federal Register announcing such action.

**(m) ENHANCED TECHNICAL ASSISTANCE AND ACCELERATED PROJECT COMPLETION.-**

(1) **DEFINITION OF COVERED PROJECT.-**In this subsection, the term "covered project" means a project-

(A) that has an ongoing environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) for which at least 2 years, beginning on the date on which a notice of intent is issued, have elapsed without the issuance of a record of decision.

(2) **TECHNICAL ASSISTANCE.-**At the request of a project sponsor or the Governor of a State in which a project is located, the Secretary shall provide additional technical assistance to resolve for a covered project any outstanding issues and project delay, including by-

(A) providing additional staff, training, and expertise;

(B) facilitating interagency coordination;

(C) promoting more efficient collaboration; and

(D) supplying specialized onsite assistance.

(3) **SCOPE OF WORK.-**

(A) **IN GENERAL.-**In providing technical assistance for a covered project under this subsection, the Secretary shall establish a scope of work that describes the actions that the Secretary will take to resolve the outstanding issues and project delays, including establishing a schedule under subparagraph (B).

(B) **SCHEDULE.-**

(i) **IN GENERAL.-**The Secretary shall establish and meet a schedule for the completion of any permit, approval, review, or study, required for the covered project by the date that is not later than 4 years after the date on which a notice of intent for the covered project is issued.

(ii) **INCLUSIONS.-**The schedule under clause (i) shall-

(I) comply with all applicable laws;

(II) require the concurrence of the Council on Environmental Quality and each participating agency for the project with the State in which the project is located or the project sponsor, as applicable; and

(III) reflect any new information that becomes available and any changes in circumstances that may result in new significant impacts that could affect the timeline for completion of any permit, approval, review, or study required for the covered project.

(4) **CONSULTATION.-**In providing technical assistance for a covered project under this subsection, the Secretary shall consult, if appropriate, with resource and participating agencies on all methods available to resolve the outstanding issues and project delays for a covered project as expeditiously as possible.

(5) **ENFORCEMENT.-**

(A) **IN GENERAL.-**All provisions of this section shall apply to this subsection, including the financial penalty provisions under subsection (h)(6).

(B) **RESTRICTION.-**If the Secretary enforces this subsection under subsection (h)(6), the Secretary may use a date included in a schedule under paragraph (3)(B) that is created pursuant to and is in compliance with this subsection in lieu of the dates under subsection (h)(6)(B)(ii).

**(n) ACCELERATED DECISIONMAKING IN ENVIRONMENTAL REVIEWS.-**

(1) **IN GENERAL.-**In preparing a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the lead agency modifies the statement in response to comments that are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response, the lead agency may write on errata sheets attached to the statement instead of rewriting the draft statement, subject to the condition that the errata sheets-

(A) cite the sources, authorities, and reasons that support the position of the agency; and

(5) if appropriate, indicate the circumstances that would trigger agency reappraisal or further response.

(2) **SINGLE DOCUMENT.**-To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision, unless-

(A) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

(B) there is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action.

(3) **LENGTH OF ENVIRONMENTAL DOCUMENT.**-

(A) **IN GENERAL.**-Notwithstanding any other provision of law and except as provided in subparagraph (B), to the maximum extent practicable, the text of the items described in paragraphs (4) through (6) of section 1502.10(a) of title 40, Code of Federal Regulations (or successor regulations) of an environmental impact statement for a project shall be 200 pages or fewer.

(B) **EXEMPTION.**-An environmental impact statement for a project may exceed 200 pages if the lead agency establishes a new page limit for the environmental impact statement for that project.

(o) **IMPROVING TRANSPARENCY IN ENVIRONMENTAL REVIEWS.**-

(1) **IN GENERAL.**-Not later than 18 months after the date of enactment of this subsection, the Secretary shall-

(A) use the searchable Internet website maintained under section 41003(b) of the FAST Act-

(i) to make publicly available the status and progress of projects requiring an environmental assessment or an environmental impact statement with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other Federal, State, or local approval required for those projects; and

(ii) to make publicly available the names of participating agencies not participating in the development of a project purpose and need and range of alternatives under subsection (f); and

(B) issue reporting standards to meet the requirements of subparagraph (A).

(2) **FEDERAL, STATE, AND LOCAL AGENCY PARTICIPATION.**-

(A) **FEDERAL AGENCIES.**-A Federal agency participating in the environmental review or permitting process for a project shall provide to the Secretary information regarding the status and progress of the approval of the project for publication on the Internet website referred to in paragraph (1)(A), consistent with the standards established under paragraph (1)(B).

(B) **STATE AND LOCAL AGENCIES.**-The Secretary shall encourage State and local agencies participating in the environmental review permitting process for a project to provide information regarding the status and progress of the approval of the project for publication on the Internet website referred to in paragraph (1)(A).

(3) **STATES WITH DELEGATED AUTHORITY.**-A State with delegated authority for responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pursuant to section 327 shall be responsible for supplying to the Secretary project development and compliance status for all applicable projects.

(p) **ACCOUNTABILITY AND REPORTING FOR MAJOR PROJECTS.**-

(1) **IN GENERAL.**-The Secretary shall establish a performance accountability system to track each major project.

(2) **REQUIREMENTS.**-The performance accountability system under paragraph (1) shall, for each major project, track, at a minimum-

(A) the environmental review process for the major project, including the project schedule;

(B) whether the lead agency, cooperating agencies, and participating agencies are meeting the schedule established for the environmental review process; and

(C) the time taken to complete the environmental review process.

(q) **DEVELOPMENT OF CATEGORICAL EXCLUSIONS.**-

(1) **IN GENERAL.**-Not later than 60 days after the date of enactment of this subsection, and every 4 years thereafter, the Secretary shall-

(A) in consultation with the agencies described in paragraph (2), identify the categorical exclusions described in section 771.117 of title 23, Code of Federal Regulations (or successor regulations), that would accelerate delivery of a project if those categorical exclusions were available to those agencies;

(B) collect existing documentation and substantiating information on the categorical exclusions described in subparagraph (A); and

(C) provide to each agency described in paragraph (2)-

(i) a list of the categorical exclusions identified under subparagraph (A); and

(ii) the documentation and substantiating information under subparagraph (B).

(2) AGENCIES DESCRIBED.-The agencies referred to in paragraph (1) are-

- (A) the Department of the Interior;
- (B) the Department of the Army;
- (C) the Department of Commerce;
- (D) the Department of Agriculture;
- (E) the Department of Energy;
- (F) the Department of Defense; and
- (G) any other Federal agency that has participated in an environmental review process for a project, as determined by the Secretary.

(3) ADOPTION OF CATEGORICAL EXCLUSIONS.-

(A) IN GENERAL.-Not later than 1 year after the date on which the Secretary provides a list under paragraph (1) (C), an agency described in paragraph (2) shall publish a notice of proposed rulemaking to propose any categorical exclusions from the list applicable to the agency, subject to the condition that the categorical exclusion identified under paragraph (1)(A) meets the criteria for a categorical exclusion under section 1508.1 of title 40, Code of Federal Regulations (or successor regulations).

(B) PUBLIC COMMENT.-In a notice of proposed rulemaking under subparagraph (A), the applicable agency may solicit comments on whether any of the proposed new categorical exclusions meet the criteria for a categorical exclusion under section 1508.1 of title 40, Code of Federal Regulations (or successor regulations).

(Added Pub. L. 109–59, title VI, §6002(a), Aug. 10, 2005, 119 Stat. 1857 ; amended Pub. L. 112–141, div. A, title I, §§1305–1309, July 6, 2012, 126 Stat. 533–539 ; Pub. L. 114–94, div. A, title I, §1304(a)–(j)(1), Dec. 4, 2015, 129 Stat. 1378–1385 ; Pub. L. 117–58, div. A, title I, §§11301(a), 11525(h), Nov. 15, 2021, 135 Stat. 525 , 607 )

#### EDITORIAL NOTES

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(3)–(5), (7)(A)(i), (b)(1), (3)(A)(iii)(I), (c)(2), (3), (6)(B), (d)(7)(A), (8)(A), (D)(ii), (f)(4)(B)(ii)(II), (E)(i)(I), (ii)(II), (VI)(aa), (h)(7)(B)(ii)(II)(bb), (8), (k)(2), (m)(1)(A), (n)(1), and (o)(1)(A)(i), (3), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852 , which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of the Surface Transportation Reauthorization Act of 2021 and the date of enactment of this subsection, referred to in subsecs. (c)(7)(C) and (q)(1), are the date of enactment of div. A of Pub. L. 117–58, which was approved Nov. 15, 2021.

The date of enactment of the MAP–21, referred to in subsec. (h)(8)(B), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title.

Section 204 of this title, referred to in subsec. (j)(3), was repealed and a new section 204 enacted by Pub. L. 112–141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 473 , 489.

The date of enactment of this subsection, referred to in subsec. (o)(1), is the date of enactment of Pub. L. 114–94, which was approved Dec. 4, 2015.

Section 41003(b) of the FAST Act, referred to in subsec. (o)(1)(A), is section 41003(b) of Pub. L. 114–94, known as the FAST Act and also known as the Fixing America's Surface Transportation Act, which is classified to section 4370m–2(b) of Title 42, The Public Health and Welfare.

#### CODIFICATION

Section 6002(a) of Pub. L. 109–59, which directed that this section be inserted after section 138 of subchapter I of chapter 1 of this title, was executed by adding this section after section 138 of chapter 1 of this title, to reflect the probable intent of Congress and the amendment by Pub. L. 109–59, §1602(b)(6)(A), which struck out the subchapter I heading preceding section 101 of this title.

#### PRIOR PROVISIONS

A prior section 139, added Pub. L. 90–495, §16(a), Aug. 23, 1968, 82 Stat. 823 ; amended Pub. L. 91–605, title I, §§106(b)(1), 140, Dec. 31, 1970, 84 Stat. 1716 , 1736 ; Pub. L. 94–280, title I, §125, May 5, 1976, 90 Stat. 440 ; Pub. L. 97–134, §10, Dec. 29, 1981, 95 Stat. 1702 ; Pub. L. 97–424, title I, §116(a)(3), Jan. 6, 1983, 96 Stat. 2109 ; Pub. L. 98–229, §8(a), Mar. 9, 1984, 98 Stat. 56 , related to additions to the Interstate System, prior to repeal by Pub. L. 105–178, title I, §1106(c)(2)(A), June 9, 1998, 112 Stat. 136 .

#### AMENDMENTS

**2021-**Pub. L. 117-58, §11301(a)(1), substituted "decisionmaking and Decision Making" in section catchline.

Subsec. (a)(2) to (5). Pub. L. 117-58, §11301(a)(2)(A) to (E), redesignated former pars. (2) and (3) as (4) and (5), respectively. Former pars. (4) and (5) redesignated (1) and (3), respectively.

Subsec. (a)(5)(B). Pub. L. 117-58, §11301(a)(2)(C), substituted "process for and completion of any environmental permit" for "process for and completion of any environmental permit".

Subsec. (a)(6). Pub. L. 117-58, §11301(a)(2)(F), redesignated par. (6) as (8). Former par. (6) redesignated (9).

Subsec. (a)(7). Pub. L. 117-58, §11301(a)(2)(D), added par. (7). Former par. (7) redesignated (10).

Subsec. (a)(8) to (11). Pub. L. 117-58, §11301(a)(2)(A), redesignated pars. (8) to (11) as (3), (4), (5), (10), and (11), respectively.

Subsec. (b)(1). Pub. L. 117-58, §11525(h)(1), inserted "(42 U.S.C. 4321 et seq.)" after "Act of 1968".

Pub. L. 117-58, §11301(a)(3), inserted ", including major projects," after "all projects" and "as requested by a project sponsor and" after "applied,".

Subsec. (c). Pub. L. 117-58, §11525(h)(2), inserted "(42 U.S.C. 4321 et seq.)" after "Act of 1968" wherever appearing.

Subsec. (c)(6)(D). Pub. L. 117-58, §11301(a)(4)(A), added subpar. (D).

Subsec. (c)(7). Pub. L. 117-58, §11301(a)(4)(E), added par. (7).

Subsec. (d)(8). Pub. L. 117-58, §11301(a)(5)(A)(i), substituted "environmental" for "NEPA" in heading.

Subsec. (d)(8)(A). Pub. L. 117-58, §11301(a)(5)(A)(ii), inserted "and except as provided in subparagraph (D)" after "paragraph (7)" and substituted "authorizations" for "permits" and "single environmental document for each kind of environmental document" for "single environmental document".

Subsec. (d)(8)(B)(i). Pub. L. 117-58, §11301(a)(5)(A)(iii), substituted "environmental documents" for "an environmental document" and "authorizations" for "permits issued".

Subsec. (d)(8)(D). Pub. L. 117-58, §11301(a)(5)(A)(iv), added subpar. (D).

Subsec. (d)(10). Pub. L. 117-58, §11301(a)(5)(B), added par. (10).

Subsec. (g)(1)(B)(ii)(IV). Pub. L. 117-58, §11301(a)(6)(A)(i), substituted "time required by an agency to conduct an environmental review and make decisions under applicable Federal law relating to a project (including the issuance or denial of a permit or license) and the cost of" for "schedule for and cost of".

Subsec. (g)(1)(B)(iii). Pub. L. 117-58, §11301(a)(6)(A)(ii), added cl. (iii).

Subsec. (g)(1)(D). Pub. L. 117-58, §11301(a)(6)(B), added subpar. (D) and struck out former subpar. (D). Prior to amendment, text read as follows: "The lead agency may-

"(i) lengthen a schedule established under subparagraph (B) for good cause; and

"(ii) shorten a schedule only with the concurrence of the affected cooperating agencies."

Subsec. (g)(1)(E), (F). Pub. L. 117-58, §11301(a)(6)(C), (D), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (k)(2). Pub. L. 117-58, §11525(h)(3), inserted "(42 U.S.C. 4321 et seq.)" after "Act of 1968".

Subsec. (n)(3). Pub. L. 117-58, §11301(a)(7), added par. (3).

Subsecs. (p), (q). Pub. L. 117-58, §11301(a)(8), added subsecs. (p) and (q).

**2015-**Subsec. (a)(5). Pub. L. 114-94, §1304(a)(1), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: "The term 'multimodal project' means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency."

Subsec. (a)(6). Pub. L. 114-94, §1304(a)(2), added par. (6) and struck out former par. (6). Prior to amendment, text read as follows: "The term 'project' means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary."

Subsec. (b)(3)(A). Pub. L. 114-94, §1304(b)(1), struck out "initiate a rulemaking to" after "shall" in introductory provisions.

Subsec. (b)(3)(B). Pub. L. 114-94, §1304(b)(2), added subpar. (B) and struck out former subpar. (B) which related to programmatic compliance requirements.

Subsec. (c)(1)(A). Pub. L. 114-94, §1304(c)(1), inserted ", or an operating administration thereof designated by the Secretary," after "Department of Transportation".

Subsec. (c)(6)(C). Pub. L. 114-94, §1304(c)(2), added subpar. (C).

Subsec. (d)(2). Pub. L. 114-94, §1304(d)(1), substituted "Not later than 45 days after the date of publication of a notice of intent to prepare an environmental impact statement or the initiation of an environmental assessment, the lead agency shall identify" for "The lead agency shall identify, as early as practicable in the environmental review process for a project,".

Subsec. (d)(8), (9). Pub. L. 114-94, §1304(d)(2), added pars. (8) and (9).



Subsec. (e)(1). Pub. L. 114-94, §1304(e)(1), inserted "(including pay and other compensation) that the project sponsor considers to be important to initiate the process of the environmental review of the general location of the proposed project".

Subsec. (e)(3) to (5). Pub. L. 114-94, §1304(e)(2), added pars. (3) to (5).

Subsec. (f). Pub. L. 114-94, §1304(f)(1) inserted "Alternatives Analysis" and "scoping" in heading.

Subsec. (f)(4)(A). Pub. L. 114-94, §1304(f)(2)(A), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: "As early as practicable during the environmental review process, the lead agency shall provide an opportunity for input from by participating agencies of the public in determining the range of alternatives to be considered for a project."

Subsec. (f)(4)(B). Pub. L. 114-94, §1304(f)(2)(B), designated existing provisions as subpar. (A) under heading, substituted "Following participation under subparagraph (A) for life-cycle cost estimation under paragraph (1)", and added cl. (ii).

Subsec. (f)(4)(E). Pub. L. 114-94, §1304(f)(2)(C), added subpar. (E).

Subsec. (g)(1)(A). Pub. L. 114-94, §1304(g)(1)(A), substituted "Not later than 60 days after the date of publication of a notice of intent to prepare an environmental impact statement or the initiation of an environmental assessment, the lead agency" for "The lead agency".

Subsec. (g)(1)(B)(i). Pub. L. 114-94, §1304(g)(1)(B), substituted "shall establish as part of such coordination plan" for "may establish as part of the coordination plan".

Subsec. (g)(3). Pub. L. 114-94, §1304(g)(2), inserted "and publish on the public information site of Representatives" in introductory provisions.

Subsec. (h)(4). Pub. L. 114-94, §1304(h)(1)(B), added par. (4). Former par. (4) redesignated (5).

Subsec. (h)(5). Pub. L. 114-94, §1304(h)(1)(A), redesignated par. (4) as (5), former par. (5) redesignated (6).

Subsec. (h)(5)(C). Pub. L. 114-94, §1304(h)(2), substituted "paragraph (6)" for "paragraph (a) and (c)".

Subsec. (h)(6). (7). Pub. L. 114-94, §1304(h)(1)(A) redesignated pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (h)(7)(B)(i)(I). Pub. L. 114-94, §1304(h)(3)(A), substituted "is required under subsection (f) or (i) of section 106" for "under section 106(i) is required".

Subsec. (h)(7)(B)(ii). Pub. L. 114-94, §1304(h)(3)(B), added cl. (ii) and struck out former cl. (i). Prior to amendment, text read as follows: "The date referred to in clause (i) is the later of:

"(I) the date that is 180 days after the date on which an application for the public use permit approval is complete; and

"(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)."

Subsec. (h)(8). Pub. L. 114-94, §1304(h)(1)(A), redesignated par. (7) as (8).

Subsec. (j)(1). Pub. L. 114-94, §1304(i)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary may approve a request by the State to provide funds not made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State."

Subsec. (j)(2). Pub. L. 114-94, §1304(i)(2), inserted "activities directly related to the environmental review process," before "dedicated staffing."

Subsec. (j)(6). Pub. L. 114-94, §1304(i)(3), added par. (6) and struck out former par. (6). Prior to amendment, text read as follows: "Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under paragraphs (1) and (2), the affected Federal agency and the State agency shall enter into a memorandum of understanding that establishes the projects and priorities to be addressed by the use of the funds."

Subsecs. (n), (o). Pub. L. 114-94, §1304(j)(1), added subsec. (n) and (o).

2012-Subsec. (b)(2). Pub. L. 112-141, §1305(a)(1), inserted ", and any requirements established under this section may be satisfied," after "exercised".

Subsec. (b)(3). Pub. L. 112-141, §1305(a)(2), added par. (3).

Subsec. (c)(1). Pub. L. 112-141, §1305(b)(1), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (d)(4). Pub. L. 112-141, §1305(c)(1), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: "Designation as a participating agency under this subsection shall not imply that the participating agency-

"(A) supports a proposed project; or

"(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project."  
Subsec. (d)(7). Pub. L. 112–141, §1305(c)(2), added par. (7) and struck out former par. (7). Prior to amendment, text read as follows: "Each Federal agency shall, to the maximum extent practicable—  
"(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to carry out those obligations; and  
"(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner."  
Subsec. (e). Pub. L. 112–141, §1305(d), designated existing provisions as par. (1), inserted par. heading, and added par. (2).  
Subsec. (g)(1)(B)(i). Pub. L. 112–141, §1305(e), inserted "and the concurrence of" after "consultation with".  
Subsec. (h)(4) to (7). Pub. L. 112–141, §1306, added pars. (4) to (7) and struck out former par. (4) which related to issue resolution.  
Subsec. (j)(6). Pub. L. 112–141, §1307, added par. (6).  
Subsec. (l). Pub. L. 112–141, §1308, substituted "150 days" for "180 days" in pars. (1) and (2).  
Subsec. (m). Pub. L. 112–141, §1309, added subsec. (m).

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### IMPLEMENTATION OF PROGRAMMATIC COMPLIANCE

Pub. L. 114–94, div. A, title I, §1304(k), Dec. 4, 2015, 129 Stat. 1386, provided that:

"(1) RULEMAKING.—Not later than 1 year after the date of enactment of this Act [Dec. 4, 2015], the Secretary [of Transportation] shall complete a rulemaking to implement the provisions of section 139(b)(3) of title 23, United States Code, as amended by this section.

"(2) CONSULTATION.—Before initiating the rulemaking under paragraph (1), the Secretary shall consult with relevant Federal agencies, relevant State resource agencies, State departments of transportation, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches.

"(3) REQUIREMENTS.—In carrying out this subsection, the Secretary shall ensure that the rulemaking meets the requirements of section 139(b)(3)(B) of title 23, United States Code, as amended by this section.

"(4) COMMENT PERIOD.—The Secretary shall—

"(A) allow not fewer than 60 days for public notice and comment on the proposed rule; and

"(B) address any comments received under this subsection."

#### EXISTING ENVIRONMENTAL REVIEW PROCESS

Pub. L. 109–59, title VI, §6002(b), Aug. 10, 2005, 119 Stat. 1865, provided that: "Nothing in this section [enacting this section and repealing provisions set out as a note under section 109 of this title] affects any existing State environmental review process, program, agreement, or funding arrangement approved by the Secretary [of Transportation] under section 1309 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (112 Stat. 232; 23 U.S.C. 109 note) as such section was in effect on the day preceding the date of enactment of the SAFETEA–LU [Aug. 10, 2005]."

#### EXECUTIVE DOCUMENTS

#### MEMORANDA OF AGENCY AGREEMENTS FOR EARLY COORDINATION

Pub. L. 112–141, div. A, title I, §1320, July 6, 2012, 126 Stat. 551, provided that:

"(a) **IN GENERAL.**—It is the sense of Congress that—

"(1) the Secretary [of Transportation] and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other and other agencies in early environmental review and project delivery activities at the earliest practicable time to minimize duplication of effort later in the process, head off potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

"(2) such cooperation should include the development of policies and the interpretation of laws that advise planning agencies or project sponsors of studies or other information to enable regulation for later Federal action and early consultation with appropriate State and local agencies and officials.

"(b) **TECHNICAL ASSISTANCE.**—If requested at any time by a State or local planning agency, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process shall, to the extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or local planning agency on accomplishing the early coordination activities described in subsection (d).

"(c) **MEMORANDUM OF AGENCY AGREEMENT.**—If requested at any time by a State or local planning agency, the lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, State, and local governments and other appropriate entities to accomplish the early coordination activities described in subsection (d).

"(d) **EARLY COORDINATION ACTIVITIES.**—Early coordination activities shall include, to the maximum extent practicable, the following:

"(1) Technical assistance on identifying potential impacts and mitigation issues in an integrated fashion.

"(2) The potential appropriateness of using planning products and decisions in later environmental reviews.

"(3) The identification and elimination from detailed study in the environmental review process of the issues that are not significant or that have been covered by prior environmental reviews.

"(4) The identification of other environmental review and consultation requirements so that the lead and cooperating agencies may prepare, as appropriate, other required analyses and studies concurrently with planning activities.

"(5) The identification by agencies with jurisdiction over any permits related to the project of any and all relevant information that will reasonably be required for the project.

"(6) The reduction of duplication between requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and State and local planning and environmental review requirements, unless the agencies are specifically barred from doing so by applicable law.

"(7) Timelines for the completion of agency actions during the planning and environmental review processes.

"(8) Other appropriate factors."

### **DELEGATION OF A REPORTING AUTHORITY**

Memorandum of President of the United States, Jan. 31, 2013, 78 F.R. 8351, provided:  
Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 1306 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, to make the specified reports to the Congress.

You are authorized and directed to notify the appropriate congressional committees and publish this memorandum in the Federal Register.

BARACK OBAMA.

<sup>1</sup> See References in Text note below.