

**Fact Sheet for FAST ACT Section 1304  
Amendments to the 23 USC 139 Efficient Environmental Review Process**

The Fixing America's Surface Transportation Act [P.L. 114-94] or FAST Act was signed into law by President Obama on December 4, 2015. Section 1304 of the FAST Act made a number of changes to the Efficient Environmental Review Process codified at 23 United States Code Section 139 (23 USC 139). Some of these changes are summarized below. The changes apply to projects that have a notice of intent to develop an environmental impact statement (EIS) published after December 4, 2015. The Federal Highway Administration has issued [Questions and Answers on the Applicability of 23 U.S.C. 139 to Federal Highway Administration \(FHWA\), Federal Railroad Administration \(FRA\), & Federal Transit Administration \(FTA\) projects](#), which notes that further guidance will be developed by FHWA, FRA, and FTA.

Note: the requirements of 23 USC 139 remain mandatory only for EISs (23 USC 139 (b)(1)). The requirements listed in 23 USC 139 would only apply to environmental assessments (EAs) if FHWA, or Caltrans as assigned, chose to apply the Efficient Environmental Review Process to a project for which an EA was being prepared.

The FAST Act makes the following changes to the 23 USC 139 Efficient Environmental Review Process:

- The lead agency must now **identify participating agencies no later than 45 days after the date of publication of a notice of intent (NOI)** to prepare an environmental impact statement (EIS) or the initiation of an environmental assessment (EA).
- A **coordination plan must now be established no later than 90 days after the date of publication of an NOI** or the initiation of an environmental assessment.
- A **schedule is now REQUIRED** as part of the coordination plan.
- The lead agency now has the responsibility to consider and respond to comments received from participating agencies on matters within the special expertise or jurisdiction of those agencies.
- To the maximum extent practicable and consistent with federal law, all federal permits and reviews for a project shall rely on a single environmental document prepared under the National Environmental Policy Act (NEPA) under the leadership of the lead agency.
- The lead agency for a project, in consultation with participating agencies, must develop, as appropriate, a checklist to help project sponsors identify potential natural, cultural, and historic resources in the project area.
  - FHWA is developing a checklist for projects subject to 23 USC 139. Until this checklist is available, this requirement can be met through the completion of a Preliminary Environmental Assessment Report (PEAR) or PES Form (for Local Assistance projects).
- To the maximum extent practicable and consistent with federal law, the range of alternatives determined for the project shall be used for all federal environmental reviews and permit processes required for the project unless the alternatives must be modified to address significant new information or circumstances or for the lead agency or participating agency to fulfill the responsibilities of the agency under NEPA in a timely manner.
- The lead agency may eliminate from detailed consideration an alternative proposed in an EIS if, as determined by the lead agency, it meets one of the criteria listed in 23 USC 139 (f)(4)(E)(ii).
- The FAST Act reiterates that errata sheets can be attached to a Draft EIS (DEIS) in-lieu of preparing a traditional Final EIS (FEIS) when the comments received on a DEIS are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response.
- The FAST Act reiterates that to the maximum extent practicable, the lead agency should develop a single document that combines a FEIS and Record of Decision (ROD)(23USC 139(n)(2)), unless:
  - The FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or
  - 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.