

**Fixing America's Surface Transportation Act (FAST Act): 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**

**Question 1: Does the FAST Act make the environmental review process in 23 U.S.C. 139 applicable to FRA's railroad projects?**

**Answer 1:** Yes. Section 11503 of the FAST Act (Pub. L. 114-94) added 49 U.S.C. 24201. This section requires FRA to apply the environmental review process in 23 U.S.C. 139 (see Attachment A) to railroad projects to the greatest extent feasible. FRA will update its environmental procedures to incorporate the environmental review process in 23 U.S.C. 139 as appropriate. Project sponsors with specific questions about the application of Section 139 to railroad projects should contact FRA's Office of Program Delivery.

**Question 2: Will the environmental review process in 23 U.S.C. 139 apply to FRA's railroad projects if the environmental review process began before enactment of the FAST Act?**

**Answer 2:** No. Consistent with FAST Act Section 11503 (49 U.S.C. 24201(e)), FRA will not apply the Section 139 environmental review process to any railroad project for which notice of intent to develop an environmental impact statement was published before December 4, 2015, or for which the Secretary approved the funding arrangement under title 49 of the United States Code before December 4, 2015.

**Question 3: Do the 23 U.S.C. 139(l) provisions on the limitation of claims apply to railroad projects?**

**Answer 3:** Yes. However, 49 U.S.C. 24201(a)(4) provides that the limitation on the claims period applicable to railroad projects is 2 years instead of 150 days.<sup>1</sup>

**Question 4: Do the changes to the Section 139 environmental review process apply to all FHWA and FTA projects currently undergoing that process as it existed before the FAST Act?**

**Answer 4:** No. The changes made to 23 U.S.C. 139 by Section 1304 of the FAST Act apply to FHWA and FTA projects for which a notice of intent to develop an environmental impact statement is published after December 4, 2015, and to FHWA and FTA projects for which an applicant submits a request for the Secretary of Transportation to designate a lead agency under 23 U.S.C. 139(e)(4) after December 4, 2015. For information about the applicability of 23 U.S.C. 139 to railroad projects, see Question 1 and 2 above.

---

<sup>1</sup> Section 139(l) prohibits Federal courts from having jurisdiction to hear legal claims for the review of a permit, license, or approval issued by a Federal agency for a highway project, public transportation, and now railroad project if the claims are not filed within the specified period of time after the publication of a notice of limitation of claims in the Federal Register (FR).

**Question 5: Will FHWA, FRA, and FTA provide guidance on how to apply Section 1304 of the FAST Act?**

**Answer 5:** Yes. FHWA, FRA, and FTA will provide additional guidance on applying section 1304 of the FAST Act in the future.

**Question 6: Does the revised Section 139 environmental review process require providing notice of initiation, pursuant to 23 U.S.C. 139(e)(1), for projects evaluated with an environmental assessment or classified as a categorical exclusion?**

**Answer 6:** No. The requirements concerning the process for environmental reviews contained in 23 U.S.C. 139 only automatically apply to projects evaluated with environmental impact statements. FHWA, FTA, and FRA have the discretion to apply the process to other “projects for which an environmental document is prepared pursuant to [NEPA].” 23 U.S.C. 139(b)(1). FHWA will make that determination on a project-by-project basis. In general, FTA and FRA will only apply the process requirements contained in 23 U.S.C. 139 to environmental impact statements.

**Question 7: Do the project development procedures in Title 41 of the FAST Act (Federal Permitting Improvement)<sup>2</sup> apply to FHWA, FTA, or FRA projects?**

**Answer 7:** No. Section 11503(b) exempts programs administered by the U.S. Department of Transportation or its operating administrations under Titles 23, 46, and 49 of the United States Code from the requirements and provisions of Title 41 of the FAST Act. In addition, projects subject to 23 U.S.C. 139, which includes all FHWA, FRA, and FTA projects, are not considered “covered projects” as defined in Title 41 of the Fast Act (Section 41001(6)(B)(i).

However, Section 41003(b)(1) requires the maintenance of an online database for posting project information (the “Permitting Dashboard”). In addition, 23 U.S.C. 139(o) (added by FAST Act Section 1304(j)) requires that the Secretary post FHWA, FRA, and FTA projects evaluated with an environmental impact statement or environmental assessment on the Dashboard within 18 months of enactment of the FAST Act.

---

<sup>2</sup> Title 41 of the FAST Act contains environmental review and permitting process improvement initiatives that apply to Federal agencies other than the U.S. Department of Transportation.