



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**DOT Has Completed FAST Act
Requirements on Aligning Federal
Environmental Reviews**

OST

Report No. ST2019003

November 6, 2018





DOT Has Completed FAST Act Requirements on Aligning Federal Environmental Reviews

Mandated by the 2015 Fixing America's Surface Transportation Act

Office of the Secretary of Transportation | ST2019003 | November 6, 2018

What We Looked At

Accelerating project delivery has been a longstanding priority for the Department of Transportation (DOT) and is a key part of the most recent reauthorization for surface transportation programs—the Fixing America's Surface Transportation (FAST) Act. The FAST Act includes a number of provisions intended to streamline the environmental review process for transportation projects. In particular, section 1313 of the act requires DOT to undertake several actions to align Federal environmental reviews such as developing a coordinated and concurrent environmental review and permitting process and a checklist to facilitate interagency collaboration. The FAST Act also directs the Office of Inspector General to report on DOT's progress in implementing section 1313 and its associated impact. Accordingly, we initiated an audit to (1) determine DOT's progress in aligning Federal environmental reviews and (2) assess the impact of DOT's actions on accelerating the environmental review and permitting process.

What We Found

DOT has completed all the actions required by section 1313 and has met or exceeded the associated deadlines. However, the impact of those actions is limited because the legislation applies to only a small subset of transportation projects. Specifically, section 1313 generally applies only to transportation projects when there is a major action that significantly affects the quality of the human environment, which requires agencies to initiate an environmental impact statement under the National Environmental Policy Act. Additionally, a statutory provision excludes highway, railroad, transit, and multimodal projects, which are subject to other requirements for streamlining environmental reviews. As a result, section 1313 only covers certain aviation and maritime projects. We identified two current aviation projects and no maritime projects that are subject to this section, and the actions mandated by section 1313 do not impose any additional requirements on the covered projects. Nonetheless, the Department has several other initiatives—based on the FAST Act, prior legislation, and executive action—to streamline environmental reviews for transportation projects.

Our Recommendations

We did not make any recommendations in this report as the data gathered are informational and meant to be responsive to the statutory mandate.

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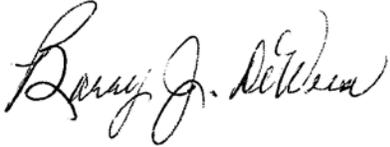
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Memorandum

Date: November 6, 2018

Subject: ACTION: DOT Has Completed FAST Act Requirements on Aligning Federal Environmental Reviews | Report No. ST2019003

From: Barry J. DeWeese
Assistant Inspector General for Surface Transportation Audits 

To: Under Secretary of Transportation for Policy

Accelerating project delivery has been a longstanding priority for the Department of Transportation (DOT) and is a key part of the most recent reauthorization for surface transportation programs—the Fixing America’s Surface Transportation (FAST) Act.¹ The FAST Act includes a number of provisions intended to streamline the environmental review process for transportation projects. In particular, section 1313 of the act requires DOT to undertake several actions to align Federal environmental reviews such as developing a coordinated and concurrent environmental review and permitting process and a checklist to facilitate interagency collaboration.²

In the FAST Act, Congress also directed us to report on DOT’s progress in implementing section 1313 and its associated impact. Accordingly, we initiated an audit to (1) determine DOT’s progress in aligning Federal environmental reviews and (2) assess the impact of DOT’s actions on accelerating the environmental review and permitting process.

We conducted this audit in accordance with generally accepted Government auditing standards. As part of our work, we reviewed Federal laws and DOT’s policies and guidance for conducting environmental reviews. We interviewed officials at DOT’s Office of the Secretary of Transportation (OST), as well as at the Federal Aviation Administration (FAA) and the Maritime Administration (MARAD)—the two agencies affected by section 1313. We analyzed available

¹ Public Law No. 114-94 (December 4, 2015).

² The National Environmental Policy Act (NEPA)—Public Law No. 91-190 (January 1, 1970), as amended—requires Federal agencies to assess the environmental effects of their proposed actions prior to making decisions for which multiple agencies can have substantive review or approval responsibilities.

information to identify the universe of projects subject to section 1313, and reviewed documentation for the two aviation projects that we identified. Exhibit A details our scope and methodology; exhibit B lists the entities we visited or contacted.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions, please contact me at (202) 366-5630, or Jaydeep Borwankar, Program Director, at (202) 493-0970.

cc: The Secretary
DOT Audit Liaison, M-1

Results in Brief

DOT has completed all the actions required by section 1313 and has met or exceeded the associated deadlines.

Section 1313 of the FAST Act tasked the Department with five specific actions to align Federal environmental reviews for certain transportation projects. The first action, to be completed within 90 days of the law's enactment on December 4, 2015, was to develop an environmental review checklist, which DOT published in March 2016. The next two actions, to be completed within 1 year of enactment, were to develop a coordinated and concurrent environmental review and permitting process and establish a performance measurement program, both of which DOT finalized in November 2016. Finally, DOT facilitated annual interagency collaboration sessions beginning in 2016, and issued its first biennial report to Congress in December 2017, which addressed the remaining two actions.

The impact of DOT's mandated actions under section 1313 is limited.

Section 1313 of the FAST Act generally applies to transportation projects when there is a major action that significantly affects the quality of the human environment. However, a statutory provision excludes highway, railroad, transit, and multimodal projects, which are subject to other requirements for streamlining environmental reviews.³ As a result, section 1313 only covers certain aviation and maritime projects. We identified only two current aviation projects and no maritime projects that are subject to this section. Nonetheless, the Department has several other initiatives—based on the FAST Act, prior legislation, and Executive action—aimed at streamlining environmental reviews for transportation projects.

We are not making any recommendations in this report; the data gathered are informational and meant to be responsive to the statutory mandate.

Background

The National Environmental Policy Act (NEPA) provides the framework for Federal environmental reviews and requires Federal agencies to evaluate the potential environmental effects of proposed actions on the human environment. According

³ A provision codified in 49 U.S.C. § 310(g) states that section 1313 does not apply to any project subject to the environmental review requirements in 23 U.S.C. § 139.

to DOT, the environmental review process for complex transportation projects can exceed 10 years, and the median time to complete an environmental impact statement⁴ is more than 4 years.⁵ To reduce the timeframe for delivering projects, Congress has mandated a number of requirements to streamline environmental reviews, such as through the 2003 Aviation Reauthorization Act⁶ and 2005 Surface Transportation Reauthorization Act.⁷ More recently, the FAST Act made a number of changes to streamline the environmental review process for transportation projects across the Federal Government. For example, the act's section 1317 requires DOT to improve its implementation of NEPA.⁸

Additionally, an Executive Order signed by the President in August 2017 created a "one Federal decision" framework to standardize the environmental review process across Federal agencies and established a goal of completing all environmental reviews of major infrastructure projects within 2 years.⁹ DOT and other Federal agencies implemented the Executive Order by signing a memorandum of understanding¹⁰ to facilitate timely reviews and authorization decisions.

DOT's Infrastructure Permitting Improvement Center coordinates the implementation of the Department's various initiatives for accelerating project delivery, enhancing interagency coordination, and applying modern technological tools to expedite the review and permitting process. The Center also manages the Permitting Dashboard, an online tool used by government agencies to track the environmental review and authorization processes for Federal infrastructure projects.¹¹

⁴ NEPA requires Federal agencies to prepare an environmental impact statement for projects when there is a major action that significantly affects the quality of the human environment.

⁵ DOT, *Strategic Plan for FY 2018–2022*, February 2018.

⁶ Public Law 108–176, *Vision 100—Century of Aviation Reauthorization Act*, Title III, § 304(a) (December 12, 2003); codified at 49 U.S.C. § 47171.

⁷ Public Law 109–59, *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*, Title VI, § 6002(a), (August 10, 2005), and as amended; codified at 23 U.S.C. § 139.

⁸ Public Law No. 91-190 (January 1, 1970), and as amended. See also notes 2 and 4.

⁹ Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, August 15, 2017.

¹⁰ Memorandum of Understanding, *Implementing One Federal Decision Under Executive Order 13807*, April 10, 2018.

¹¹ The Permitting Dashboard is maintained by the Federal Permitting Improvement Steering Council as part of a Government-wide effort to improve coordination, transparency, and accountability.

DOT Has Completed All Actions To Align Federal Environmental Reviews as Required by Section 1313 of the FAST Act

Section 1313 of the FAST Act, codified in 49 U.S.C. § 310, requires DOT to undertake five specific actions to align Federal environmental reviews. We determined that the Department has completed all five actions and met the associated deadlines.

Action 1: By March 4, 2016, develop a checklist to help project sponsors identify the relevant environmental issues and the agencies with jurisdiction over the affected natural, cultural, and historic resources.

- In response, DOT created a checklist dated March 3, 2016, and published it on its website. The checklist includes a number of questions to help project sponsors identify potential natural, cultural, and historic resources in the area of a proposed project; identify agencies of jurisdiction and cooperating agencies; develop the information needed for the purpose, as well as alternatives for analysis; and expedite the process by improving interagency collaboration.

Action 2: By December 4, 2016, develop a coordinated and concurrent environmental review and permitting process for transportation projects requiring an environmental impact statement under NEPA.

- In November 2016, DOT described its processes for aligning the environmental review and permitting process.¹² It references the Permitting Dashboard, which facilitates early coordination and the alignment of agency review schedules, and a Federal handbook¹³ that explains how to synchronize the Federal environmental review process with other agencies.

Action 3: By December 4, 2016, establish a program to measure and report on the Department's progress in aligning Federal reviews and reducing permitting and project delivery time.

- In November 2016, DOT described its program, which will use the Permitting Dashboard to collect and analyze project-specific data,

¹² Office of the Assistant Secretary for Transportation Policy, *Coordinated and Concurrent Environmental Review and Permitting Process*, November 23, 2016.

¹³ Federal Highway Administration, *Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects: 2015 Red Book*, September 2015.

establish a baseline, develop measures of alignment progress and project delivery outcomes, and report on progress.¹⁴

Action 4: On an annual basis, facilitate interagency collaboration sessions to coordinate business plans, workload planning, and workforce management. The sessions are intended to facilitate high-quality, efficient, and targeted environmental reviews and permitting decisions.

- Since September 2016, DOT has held multiple interagency collaboration sessions through in-person meetings at both the Federal and regional levels. According to Department officials, the sessions have established an understanding of the successes and challenges agencies encounter when they align Federal environmental reviews.

Action 5: By December 4, 2017, and biennially thereafter, submit a report to Congress that describes DOT's progress in aligning Federal environmental reviews under section 1313, and whether this section's provisions have accelerated the environmental review and permitting process.

- In December 2017, DOT issued its first report to Congress, which summarized the Department's responses to actions 1–4. The report also acknowledged that while anecdotal evidence indicates that alignment efforts are leading to positive outcomes, currently there is insufficient project data to establish a baseline and measure progress.

In addition to the actions listed above, DOT stated that it is committed to streamlining the environmental review process to reduce the timeframe for delivering infrastructure projects and to using the Permitting Dashboard to improve accountability and transparency.¹⁵

The Impact of DOT's Mandated Actions Under Section 1313 Is Limited

DOT's actions to accelerate the environmental and permitting review process, as mandated by section 1313 of the FAST Act, have had a limited impact because the legislation applies to only a small subset of transportation projects. However, the Department has several other initiatives to streamline environmental reviews

¹⁴ Office of the Assistant Secretary for Transportation Policy, *Program to Measure and Report on Progress toward Aligning Federal Environmental Review*, November 23, 2016.

¹⁵ DOT, *Strategic Plan for FY 2018–2022*, February 2018.

for transportation projects, such as those directed by an Executive Order,¹⁶ which also established a goal for the environmental reviews of major infrastructure projects to be completed within 2 years.

Section 1313 of the FAST Act requires DOT to undertake several actions to align Federal environmental reviews for transportation projects, but the law includes two major restrictions:

- A provision in 49 U.S.C. § 310(a) states that coordinated and concurrent environmental reviews are required only when agencies are initiating an environmental impact statement under NEPA. This level of review is only conducted on a few transportation projects, specifically when there is a major action that significantly affects the quality of the human environment.¹⁷ For the vast majority of transportation projects, the NEPA review process results in a categorical exclusion determination for projects that have no significant effect on the human environment, or an environmental assessment to determine whether a project will cause significant environmental effects.
- A provision codified in 49 U.S.C. § 310(g) states that section 1313 does not apply to any project subject to 23 U.S.C. § 139—a statute with similar requirements for streamlining environmental reviews for highway, railroad, transit, and multimodal projects. As a result, section 1313 only covers certain aviation and maritime projects.

Given these restrictions, we identified two aviation projects that are subject to section 1313, specifically: an airfield safety enhancement project at Tucson International Airport in Arizona, and a fourth parallel runway at Charlotte International Airport in North Carolina that are currently in the environmental review phase. We did not identify any maritime projects that are subject to section 1313.

Additionally, DOT's actions to align Federal environmental reviews mandated by section 1313 do not impose any additional requirements upon the covered projects or the responsible Operating Administrations—in this case, FAA and MARAD. For example, DOT developed its environmental review checklist as an optional resource to help project sponsors determine proposal requirements, including permits, approvals, and consultations. Furthermore, FAA's standard business practices already include early coordination and a streamlined review

¹⁶ Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, August 15, 2017.

¹⁷ For example, according to FAA, less than 1 percent of airport projects require an environmental impact statement.

process. As such, FAA officials told us, they do not need to update Agency policies and guidance to comply with section 1313.

Nevertheless, the Department's ongoing efforts—such as those prompted by the 2017 Executive Order—continue to streamline the environmental review process with indications that it is having a positive impact. For example, FAA has set declining annual performance targets so that by fiscal year 2022, it will aim to complete all environmental reviews of major transportation projects within 2 years. The two aviation projects discussed above are already close to meeting this goal, with target completion milestones of 25 and 27 months respectively.¹⁸

Conclusion

Accelerating project delivery by streamlining Federal environmental reviews has been the focus of recent efforts by Congress, the President, and the Department of Transportation. While the impact of the FAST Act's section 1313 is limited, DOT's actions to date show a commitment to improving the environmental review process in order to deliver transportation projects more quickly. As this work is a key strategic priority for DOT, we will continue to monitor the Department's progress in implementing its various initiatives and will conduct additional reviews as appropriate.

Agency Comments and OIG Response

We provided the Department of Transportation with our draft report on September 17, 2018, and received its formal response dated October 16, 2018. DOT's response is included in its entirety as an appendix to this report.

¹⁸ FAA's performance target considers both the environmental impact statement process for projects that significantly affect the quality of the human environment, as well as the environmental assessment process, which is used to determine whether a project will cause significant environmental effects.

Exhibit A. Scope and Methodology

We conducted this performance audit between April 2018 and September 2018 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives were to determine (1) DOT's progress in aligning Federal environmental reviews and (2) assess the impact of DOT's actions on accelerating the environmental review and permitting process. The audit examined DOT's actions to align Federal environmental reviews as mandated by section 1313 of the FAST Act. We evaluated DOT's actions for timeliness and completeness in responding to the section 1313 requirements by reviewing associated reports and deliverables and interviewing agency officials. Our audit scope was limited to OST, FAA, and MARAD as section 1313 exempts highway, railroad, transit, and multimodal projects that are administered by other DOT agencies.

To conduct our work, we reviewed Federal laws, regulations, policies, procedures, and other guidance to understand the requirements for aligning Federal environmental reviews. We used the Permitting Dashboard to identify the universe of projects that initiated environmental impact statements after the FAST Act was enacted on December 4, 2015. To assess the reliability of the project data in the Permitting Dashboard, we reviewed the system's controls and other documentation, such as the notice of intent to prepare an environmental impact statement published in the Federal Register.

To understand DOT's actions to align environmental reviews, we reviewed documentation and interviewed relevant OST officials. We discussed how the coordinated and concurrent environmental review and permitting process was developed and any associated limitations or challenges with its implementation. We also discussed how the environmental review checklist was developed and should be used and how DOT has facilitated the annual interagency collaboration sessions and what they have accomplished. Further, we assessed how DOT developed a program to measure and report on progress toward aligning Federal reviews and reducing permitting and project delivery time. We assessed the content of DOT's biennial report to Congress, how it addressed the section 1313 reporting mandates, how the savings provision was interpreted, and which projects were subject to this provision. We also discussed the extent of OST's coordination with FAA and MARAD to ensure that projects follow the environmental review and permitting process required by section 1313. We interviewed officials at FAA and MARAD to understand the extent to which their

policies and procedures for aligning Federal environmental reviews reflect section 1313 requirements and to identify any associated impact on the environmental review and permitting process.

Exhibit B. Organizations Visited or Contacted

Department of Transportation

Office of the Secretary, Washington, DC

Federal Aviation Administration, Washington, DC

Maritime Administration, Washington, DC

Exhibit C. List of Acronyms

DOT	Department of Transportation
FAA	Federal Aviation Administration
FAST Act	Fixing America’s Surface Transportation Act
MARAD	Maritime Administration
NEPA	National Environmental Policy Act
OIG	Office of Inspector General
OST	Office of the Secretary of Transportation
U.S.C.	U.S. Code

Exhibit D. Major Contributors to This Report

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Appendix. Agency Comments



**U.S. Department
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Under Secretary for Policy

1200 New Jersey Avenue, SE
Washington, DC 20590

Office of the Secretary
of Transportation

October 16, 2018

Subject: INFORMATION: Management Response to the Office of Inspector General (OIG)
Draft Report: DOT's Federal Environmental Reviews

From: Derek Kan 
Under Secretary of Transportation for Policy

To: Barry J. DeWeese
Assistant Inspector General for Surface Transportation Audits

The U.S. Department of Transportation (Department) has invested significant resources to improve the environmental review process, and deliver transportation projects more effectively and efficiently. These actions are having a positive impact, as acknowledged in the OIG draft report. The Department's efforts advance the goals of the past several surface transportation authorizations, including the Fixing America's Surface Transportation (FAST) Act, as well as Executive Order 13807, which created the "One Federal Decision" framework. Highlights of our efforts, many of which are discussed in the draft report, include the following:

- Creating the Infrastructure Permitting Improvement Center to coordinate implementation of initiatives to accelerate project delivery, enhance interagency coordination, and apply technology tools to expedite environmental review and permitting;
- Developing an environmental checklist to assist with the identification of resources that may be impacted by a proposed project;
- Developing a coordinated and concurrent environmental review and permitting process to ensure agencies have the necessary information to conduct their reviews early in project development process;
- Establishing a program to measure and report on progress in aligning Federal reviews and reducing time for project delivery; and
- Facilitating annual interagency collaboration sessions to engage agency staff and ensure high quality, efficient, and targeted environmental reviews and permitting decisions.

The Department is committed to continuously improving the environmental review process to deliver transportation projects more effectively and efficiently. We will continue to build upon these efforts to accelerate project delivery while ensuring good project outcomes for communities and the environment. Our focus is on collaborating with the Administration, Congress, stakeholders, and the public to pursue additional opportunities.

We appreciate the opportunity to respond to the OIG draft report. Please contact Gerry Solomon, Deputy Director, Office of Policy Development, Strategic Planning, and Performance, at (202) 366-1361, with any questions or if you would like to obtain additional details.

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OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

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