



January 2018

HIGHWAY AND TRANSIT PROJECTS

Evaluation Guidance Needed for States with National Environmental Policy Act Authority

Why GAO Did This Study

Since 2005, over 30 provisions have been enacted in law to speed up the delivery of highway and transit projects, mainly by streamlining the NEPA review process. NEPA requires federal agencies to evaluate the potential environmental effects of proposed projects on the human environment. These project delivery provisions included new categorical exclusions to streamline the review process, and a provision allowing DOT to assign federal NEPA approval authority to states.

Congress included provisions in statute for GAO to assess the use of these provisions and whether they have accelerated project delivery. This report examines: (1) which project delivery provisions were used by state DOTs and selected transit agencies and the reported effects, and (2) the extent to which DOT has assigned NEPA authority to states and the reported effects, among other objectives. GAO surveyed all state DOTs and interviewed federal and state DOT officials and 11 selected transit agencies GAO determined were likely to have been affected by the provisions, and analyzed information from NEPA assignment states.

What GAO Recommends

FHWA should offer and provide guidance or technical assistance to NEPA assignment states on developing evaluation methodologies, including baseline time frames and timeliness measures. DOT partially concurred with the recommendation, saying it would clarify environmental review start times. GAO continues to believe further evaluation guidance is needed, as discussed in the report.

View [GAO-18-222](#). For more information, contact Susan Fleming at (202) 512-2834 or flemings@gao.gov.

HIGHWAY AND TRANSIT PROJECTS

Evaluation Guidance Needed for States with National Environmental Policy Act Authority

What GAO Found

The Department of Transportation's (DOT) Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) are responsible for National Environmental Policy Act (NEPA) compliance on highway and transit projects. Project sponsors that receive federal funds, typically a state DOT or transit agency, develop documents necessary for NEPA compliance for FHWA and FTA to evaluate and approve. Project sponsors prepare an environmental impact statement (EIS) when a project will have a significant environmental impact, or an environmental assessment to determine if a project will have a significant impact. Projects that fit within a category of activities pre-determined to have no significant impact (such as repaving a road) can receive a categorical exclusion, and an EIS or environment assessment is generally not needed. GAO found:

- State DOTs and selected transit agencies reported using provisions enacted in law to speed up the delivery of highway and transit projects, and while state DOTs reported that a number of provisions they used sped up delivery of highway projects, the effects on transit projects were less clear. For example, according to GAO's survey responses, 10 of 17 provisions that mainly created new "categorical exclusions" were used by 30 or more state DOTs and generally sped up projects. The provision state DOTs and transit agencies most often reported using was one that authorizes parkland or a historic site to be used for a transportation project if that project has a minimal impact on the environment. A majority of the 11 transit agencies GAO reviewed were not clear whether provisions they used sped up project delivery because these agencies did not track how long it took projects to complete the NEPA process, among other reasons.
- DOT assigned NEPA authority to six states: Alaska, California, Florida, Ohio, Texas, and Utah. Under agreements with FHWA, state DOTs calculate time savings by comparing NEPA completion times before (the baseline) and after assuming the authority. Only California and Texas have reported results; California reported that it reduced EIS review time 10 years from a 16-year baseline. However, these reported time savings are questionable because the comparisons do not consider other factors, such as funding, that can affect timelines. In establishing baselines, both states have also faced challenges, such as how many and which projects to include. California reported to its legislature that its baseline may not be meaningful because of the relatively small sample of five projects, but nevertheless presents these data on its web site as evidence of "significant" time savings.

FHWA does not review the states' timeliness measures and time savings estimates, but has broad authority to offer guidance and technical assistance, which can include helping states develop sound evaluation methodologies and baselines. FHWA officials stated that they provide general technical assistance, but that no state has requested help developing evaluation methodologies. Offering and providing such assistance could help ensure that states considering applying for NEPA assignment base their decisions on reliable information, and that FHWA and Congress have reliable information to assess whether NEPA assignment results in more efficient environmental reviews.

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Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
CTA	Chicago Transit Authority
DOT	Department of Transportation
EIS	environmental impact statement
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
MAP-21	Moving Ahead for Progress in the 21st Century Act
MOU	memorandum of understanding
MTA	New York Metropolitan Transportation Authority
NEPA	National Environmental Policy Act of 1969
PAPAI	Project and Program Action Information
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SEPTA	Southeastern Pennsylvania Transportation Authority
state DOT	state department of transportation
TrAMS	Transit Award Management System

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January 30, 2018

The Honorable John Barrasso
Chairman
The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The National Environmental Policy Act of 1969 (NEPA)—which requires federal agencies to evaluate the potential environmental effects of proposed projects on the human environment—has been identified by critics as containing time-consuming requirements and praised by proponents for, among other things, helping protect the environment and bringing public participation into the government’s decision making. The Department of Transportation’s (DOT) Federal Highway Administration (FHWA) through its division offices in each state and the Federal Transit Administration (FTA) through its 10 regional offices are the federal agencies responsible for NEPA compliance on highway and transit projects, respectively. Project sponsors—typically a state department of transportation (state DOT) or a local transit agency—receive FHWA and FTA grant funds, oversee the construction of highway and transit projects, develop the documents on which FHWA and FTA base their evaluations of environmental effects, and collaborate with federal and state stakeholders. In short, project sponsors generally prepare the documents necessary for NEPA compliance, while the federal agencies must ultimately approve the documents. In this report we refer to these activities collectively as “environmental review” or “NEPA review.”

We have previously reported that environmental review is one of a number of factors affecting the time frame for completing transportation

projects (delivery).¹ The past three surface transportation reauthorizations—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005; the Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012; and the Fixing America’s Surface Transportation Act (FAST Act) in 2015—contain a number of provisions, called “project delivery provisions”—aimed at accelerating the delivery of highway and transit projects, mainly by streamlining the NEPA review process.² These provisions include, for example, the *NEPA Assignment Authority* provision, which provides authority for the relevant DOT administration, under certain circumstances, to assign federal NEPA authority to states and thereby eliminate the federal approval role with respect to individual projects.³ In this case, FHWA and FTA are the relevant DOT administrations to assign NEPA authority to states for highway and transit projects, respectively.

MAP-21 and the FAST Act included provisions for GAO to assess, among other things, whether project sponsors have used the project delivery provisions and the extent to which the provisions have sped up the delivery of highway and transit projects.⁴ This report:

- identifies provisions aimed at accelerating the delivery of highway and transit projects that were included in the last three surface transportation reauthorizations;
- examines which provisions were used by state DOTs and selected transit agencies and the provisions’ reported effects, if any, on accelerating the delivery of projects; and
- evaluates the extent to which DOT has assigned NEPA authority to states and the reported effects.

¹GAO, *Highway Projects: Some Federal and State Practices to Expedite Completion Show Promise*, [GAO-12-593](#) (Washington, D.C.: Jun. 6, 2012).

²Pub. L. No. 109-59, 119 Stat. 1144 (2005), Pub. L. No. 112-141, 126 Stat. 405 (2012), Pub. L. No. 114-94, 129 Stat. 1312 (2015).

³This program is authorized in 23 U.S.C. § 327 and is called the “Surface Transportation Project Delivery Program.”

⁴Pub. L. No. 112-141 § 1323, 126 Stat. 405, 553-554 (2012), Pub. L. No. 114-94 § 1318, 129 Stat. 1312, 1404-1405 (2015).

In addition, in appendix I, we identify available information on the number and percentage of the different types of NEPA reviews and the costs of conducting NEPA reviews.

To address the first objective, we reviewed the past three surface reauthorizations to identify highway and transit project delivery provisions and categorized these provisions. To determine states' use and reported effects of the provisions on highway projects, we surveyed state DOTs within all 50 states, the District of Columbia, and Puerto Rico. We had a 100 percent response rate. Based on the survey results, we conducted follow-up interviews with officials from 10 state DOTs to discuss their perceived effects of the provisions in greater detail. We selected these state DOTs to include geographically diverse states and states that reported varying levels of use of the provisions and effects. To determine use and the perceived effects of the provisions applicable to selected transit projects, we selected 11 transit agencies and interviewed officials at those agencies. We selected these agencies based primarily on the number of times they issued a notice of intent to prepare an environmental impact statement (EIS) in the *Federal Register* from 2005 through 2016 to identify those transit agencies that may have experience preparing EISs or some another NEPA review and experience using transit project delivery provisions. We also considered other factors, such as ridership and geographic location, to select the 11 transit agencies. The results of the states' and transit agencies' interviews are not generalizable.

To evaluate the extent to which DOT has assigned NEPA authority to states, and the effects states have reported from assuming NEPA authority, we identified the states that have been assigned NEPA authority, based on information from FHWA, and interviewed state DOT officials in those states. However, we did not include one of these states because that state did not assume NEPA authority until November 2017. For the states we included, we interviewed state DOT officials and reviewed relevant documentation including memorandums of understanding and analyses the state DOTs conducted on NEPA assignment authority, such as methodologies for calculating NEPA assignment time savings. In addition, we interviewed FHWA officials about procedures to oversee the performance of NEPA assignment states and interviewed FHWA division officials from those states. We compared FHWA's procedures to oversee NEPA assignment states

against standards for information and communication contained in *Standards for Internal Control in the Federal Government*.⁵

To determine available information on the number and percentage of the different NEPA reviews and costs of conducting NEPA reviews for highway and transit projects, we reviewed relevant publications, documents, and analyses, and discussed these with FHWA and FTA officials.

For all objectives, we interviewed agency officials and stakeholders involved in highway and transit projects including FHWA, FTA, and relevant transportation and environmental organizations. We conducted this performance audit from August 2016 to January 2018 in accordance with generally accepted government auditing standards. 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. For more information on our objectives, scope, and methodology, see appendix II.

Background

FHWA and FTA fund and oversee highway and transit projects, respectively. FHWA funds highway projects through formula grants to state DOTs, provides technical expertise to state DOTs, and conducts oversight of highway projects through its division offices in each state. FTA funds a variety of transit programs through formula and competitive grants and conducts oversight of transit projects' planning and design through 10 regional offices. Completing major highway and transit projects involves complex processes that depend on a wide range of stakeholders conducting many tasks. Project sponsors—the state DOTs and local transit agencies—are the entities that develop the environmental review documents to be approved by the federal agencies. Examples of highway projects that may undergo environmental review are bridge construction or roadway repaving, and examples of transit projects include extension of light rail lines or construction of passenger ferry facilities. Project sponsors that do not use federal funds for a project

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

generally do not need to meet NEPA requirements, but may still need to satisfy state or local environmental review requirements.⁶

As we have previously reported, highway projects typically include four phases, and transit projects also follow similar processes.⁷

1. *Planning*: Project sponsors assess the need for a project in relation to other potential transportation needs.
2. *Preliminary design and environmental review*: Project sponsors identify potential transportation solutions based on identified needs, the potential environmental and social effects of those solutions, a project's cost, and construction location. They then analyze the effect, if any, of the project and potential alternatives on the environment. Based on the analysis as well as public input the preferred alternative is selected.
3. *Final design and right-of-way acquisition*: Project sponsors finalize design plans and, if necessary, acquire private real property for the project right-of-way and relocate any affected residents and businesses.
4. *Construction*: Project sponsors award construction contracts, oversee construction, and accept the completed project.

In the preliminary design and environmental review phase, many activities are to be carried out by the project sponsor pursuant to NEPA and other federal laws.⁸ NEPA's two principal purposes are to ensure (1) that an agency carefully considers detailed information concerning significant environmental impacts and (2) that environmental information is available to public officials and citizens before decisions are made and actions are

⁶There are numerous state and local laws that projects must comply with. For example, several states, including California and North Carolina, have laws roughly equivalent to NEPA. [GAO-12-593](#).

⁷[GAO-12-593](#).

⁸Agencies also use the NEPA framework to meet other environmental review requirements, such as requirements under the Endangered Species Act, the Clean Water Act, and the National Historic Preservation Act. Federal resource agencies, such as the U.S. Army Corps of Engineers and Fish and Wildlife Service, are responsible for managing and protecting natural and cultural resources like wetlands, historic properties, and wildlife. We have ongoing work on the environmental permitting by federal resource agencies for highway and transit projects and plan to publish our work in spring 2018.

taken.⁹ For highway and transit projects, the project sponsor is responsible for preparing documentation showing the extent of the project's environmental impacts, in accordance with NEPA, and determining which of the three following documentation types is needed:

- An environmental impact statement (EIS), the most comprehensive of the three documentation types, is required for projects that have a significant effect on the environment. In broad terms, the lead federal agency, FHWA or FTA, starts the EIS process by publishing a notice of intent in the *Federal Register*. The lead agency then must engage in an open process—inviting the participation of affected government agencies, Indian tribes, the proponent of the action, and other interested persons—for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The lead agency then is to coordinate as appropriate with resource agencies, such as the U.S. Army Corps of Engineers or the Fish and Wildlife Service, solicit comments from the public on a draft EIS, incorporate comment responses as appropriate into a final EIS, and issue a record of decision.¹⁰
- Project sponsors are to prepare environmental assessments when, among other things, it is not clear whether a project is expected to have significant environmental impacts. An environmental assessment is intended to be a concise document that, among other things, briefly provides sufficient evidence and analysis for determining whether to prepare an EIS. If the agency determines that there are no significant impacts from the proposed action, then the agency prepares a Finding of No Significant Impact that presents the reasons why the agency made that determination. If the agency determines the project may cause significant environmental impacts, it conducts an EIS.
- Categorical exclusions refer to projects that would not individually or cumulatively have a significant effect on the environment. These projects generally require no or limited environmental review or documentation under NEPA. Examples of highway projects that are

⁹Pub. L. No. 91-190 (1970), codified at 42 U.S.C. §§ 4321-4347.

¹⁰The EIS must, among other things, (1) describe the environment that will be affected, (2) identify alternatives to the proposed action, including the no action alternative, and identify the agency's preferred alternative, (3) present the environmental impacts of the proposed action and alternatives, (4) identify any adverse environmental impacts that cannot be avoided should the proposed action be implemented and discuss means to mitigate adverse impacts.

generally processed as categorical exclusions include resurfacing roads, constructing bicycle lanes, installing noise barriers, and landscaping.

While FHWA and FTA are the federal agencies responsible for ensuring NEPA compliance on highway and transit projects, if certain requirements are met, FHWA or FTA may assign a state and that state may assume federal NEPA authority. States assume this authority subject to the same procedural and substantive requirements as would apply to FHWA or FTA. Specifically, the *NEPA Assignment Authority* provision provides authority for FHWA to assign federal NEPA authority to states for approving an EIS, environmental assessment, or categorical exclusion. States must apply to FHWA or FTA, which reviews the state's suitability to assume the authority based on meeting certain regulatory requirements and the state's capability to assume the responsibility. States must enter into a written memorandum of understanding (MOU) and must, among other things, expressly consent to the jurisdiction of federal courts by waiving sovereign immunity for any responsibility assumed for NEPA. The MOU is for a term of not more than 5 years and is renewable. MOUs are unique to each state; however they all contain certain sections such as assignments of authority, acceptance of jurisdiction, and performance measures. For the first 4 years, FHWA is to conduct an annual audit to ensure compliance with the MOU, including compliance with all federal laws. After the fourth year, FHWA is to continue to monitor state compliance with the MOU, using a more limited review.¹¹

In prior reports, we identified a number of factors that can affect the length of time required to complete transportation projects. For highway projects, we found that the large number of stakeholders and steps (which include environmental reviews) in the project delivery process, availability of funding, changing priorities, and public opposition can lead to longer project time frames.¹² For transit projects, we found that local factors specific to each project determine the project development time frame, including the extent of community support and extent of local planning prior to approval of funding.¹³ We found that for 32 projects we

¹¹23 U.S.C. § 327(h).

¹²[GAO-12-593](#).

¹³GAO, *Public Transit: Length of Development Process, Cost Estimates, and Ridership Forecasts for Capital-Investment Grant Projects*, [GAO-14-472](#) (Washington D.C.: May 30, 2014).

reviewed, the environmental review process was tied with stakeholder coordination as the third most frequently cited factor by transit project sponsors contributing to the length of the project development process.

The Three Most Recent Transportation Authorizations Included Numerous Provisions for Accelerating Highway and Transit Project Delivery

We identified 34 project delivery provisions that apply to highway projects and 29 such provisions that apply to transit projects.¹⁴ These provisions are intended to streamline various aspects of the NEPA process, making it more efficient and timely. Most of the provisions apply to both types of projects. Based on our review, we grouped the provisions into four general categories: *Accelerated NEPA Review*, *Administrative and Coordination Changes*, *NEPA Assignment*, and *Advance Planning* (see table 1). See appendix III for the full list and a description of each project delivery provision we identified.

Table 1: Number of Project Delivery Provisions GAO Identified, Grouped by Category for Highway and Transit Projects		
Category	Highway projects	Transit projects
Accelerated National Environmental Policy Act (NEPA) Review ^a	12	10
Administrative and Coordination Changes	17	17
NEPA Assignment	2	2
Advance Planning	3	0
Total provisions:	34	29

Source: GAO analysis of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the Moving Ahead for Progress in the 21st Century Act; and the Fixing America's Surface Transportation Act. | GAO-18-222

^aIn the Accelerated NEPA Review category, 5 provisions apply to both highway and transit projects, 7 apply exclusively to highway projects, and 5 apply exclusively to transit projects.

The *Accelerated NEPA Review* category's provisions generally establish certain conditions that permit projects, if the specific conditions are applicable, to exclude certain actions from a more detailed NEPA review. For instance, these provisions are primarily comprised of new categorical

¹⁴In order to separately identify each applicable provision, we combined provisions that were modified in later statutory language and did not specify among different versions of the provisions.

exclusions. Additionally, the *Minor Impacts to Protected Public Land* provision authorizes a historic site, parkland, or refuge to be used for a transportation project if that project is determined to have a *de minimis* impact on the environment.¹⁵

The *Administrative and Coordination Changes* category's provisions are more process oriented. These provisions, for example: (1) establish time frames for parts of the NEPA review process, (2) encourage the use of planning documents and programmatic plans as well as a coordination plan for public and federal agency participation in the environmental review process, and (3) seek to avoid duplication in NEPA review documents.

The *NEPA Assignment* category's provisions authorize FHWA or FTA, as discussed above, to assign their NEPA authority to states. The first of the two provisions—the 'NEPA Assignment Authority' provision—authorizes FHWA or FTA to assign federal NEPA authority to states for reviewing EIS, environmental assessment, and some categorical exclusion reviews, so long as the categorical exclusion does not require an air-quality review that involves the Environmental Protection Agency. The second provision—the *Categorical Exclusion Determination Authority* provision—allows FHWA or FTA to assign limited NEPA authority to states to review categorical exclusions.¹⁶ This authority can apply to categorical exclusions with air-quality reviews, as well as all other categorical exclusions.

The *Advance Planning* category's provisions are not part of the agency's environmental review process and are not applicable to transit projects. These provisions allow for certain activities in the highway project development cycle, such as land acquisition, to occur prior to NEPA approval. The three provisions in this category include the following:

¹⁵This provision is commonly referred to as "4(f) *de minimis*." A *de minimis* impact is one that is minor in nature and after taking into account avoidance, minimization, mitigation, and enhancement measures results in no adverse effect to the activities, features, or attributes qualifying a park, recreation area, or wildlife and waterfowl refuge for protection under Section 4(f).

¹⁶A state can assume responsibility for certain categorical exclusions under 23 U.S.C. § 326. This program is formally known as the "State Assumption of Responsibility for Categorical Exclusions."

-
- The *Advance Design-Build Contracting* provision permits a state to release requests for proposals and award design-build contracts prior to completing the NEPA process; however, a contractor may not proceed with final design or construction during the NEPA process.¹⁷
 - The *Advance Acquisition of Real Property* provision authorizes states to acquire real property interests, such as land, for a project before completion of the NEPA process.
 - The *2-phase Contracts* provision authorizes the awarding of contracts on a competitive basis for preconstruction services and preliminary project design before the completion of the NEPA process.

Most of the project delivery provisions are optional, which we define to mean that the relevant entities (a federal agency or state or local transportation agency), can choose to use the provision if circumstances allow. For example, a state highway project within an existing operational right-of-way may have the option to use the categorical exclusion for projects within an existing operational right-of-way. Specifically, 22 of the 34 highway project delivery provisions and 17 of the 29 transit project delivery provisions are optional. By contrast, 12 provisions are requirements for both highway and transit projects, which we define to mean that federal agencies, or state or local transportation agencies that are subject to a provision must adhere to the requirements and obligations in the provision, if all the conditions for its use have been satisfied. Required provisions are primarily contained in the *Administrative and Coordination Changes* category. For example, for highway projects, the *Programmatic Agreements for Efficient Environmental Review* provision, enacted in 2012, requires FHWA to seek opportunities with states to enter into agreements that establish streamlined processes for handling routine projects, such as highway repair. Prior to 2012, FHWA actively encouraged programmatic agreements between state DOTs and FHWA division offices, but seeking opportunities to enter such agreements were not required.

¹⁷Design-build is a contracting method that combines the responsibilities for designing and constructing a project in a single contract instead of the more traditional approach of separating these responsibilities.

State DOTs Reported That a Number of Provisions They Used Sped Up Highway Project Delivery, While for Most Selected Transit Agencies Effects Were Unclear

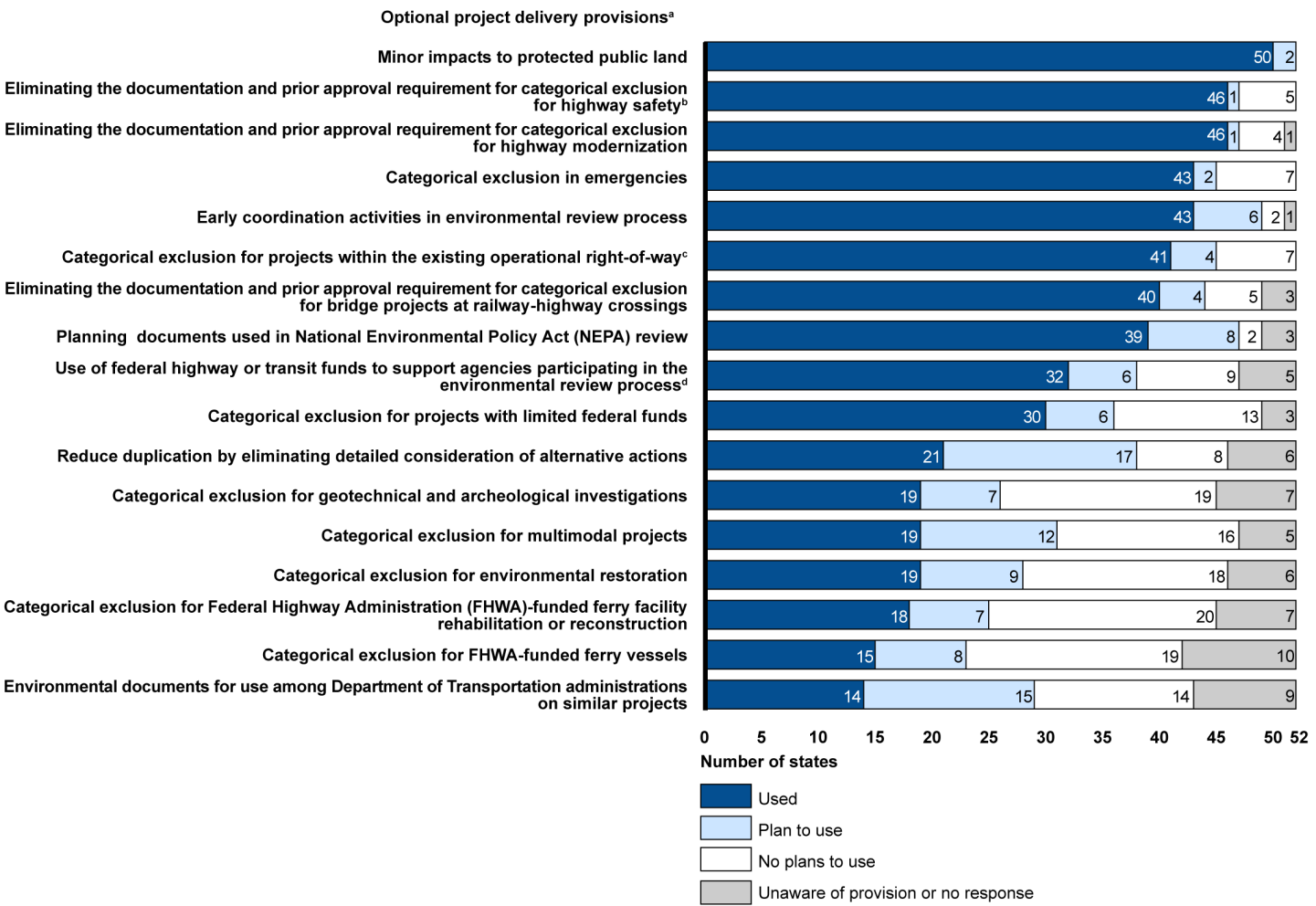
More Than Half of Optional Provisions Were Reported to Be Used by a Majority of State DOTs on Highway Projects

According to survey responses, 10 of the 17 optional provisions included in the survey—which primarily fall under the *Accelerated NEPA Review* category—were each used by 30 or more state DOTs (see fig. 1).¹⁸ Fifty state DOTs reported using the *Minor Impacts to Protected Public Land* provision—the most of any of the provisions. Some of the less widely used provisions—the 7 provisions reported to be used by 21 or fewer states—only apply to specific circumstances or highway projects that many state DOTs undertake less frequently. For example, the *Categorical Exclusion for FHWA-funded Ferry Facility Rehabilitation or Reconstruction* provision would only apply to states that operate ferry services, a circumstance that may explain its relatively low use. Also, for 3 of these 7 provisions, 10 or more states reported that they plan to use the provision in the future. For example, while 21 state DOTs used the *Reduce Duplication by Eliminating Detailed Consideration of Alternative Actions* provision, an additional 17 state DOTs reported that they plan to

¹⁸Our survey of state DOTs included 17 of the 22 optional provisions and all 12 required provisions that apply to highway projects. We did not include the 3 provisions from the *Advance Planning* category, which do not directly relate to NEPA review, as part of our 52-state DOT survey; we addressed these provisions in the follow-up interviews with the 10 selected state DOTs and discuss our findings later in this section. We also did not include the 2 provisions from the *NEPA Assignment* category because we spoke individually with officials in all of the states that have implemented or are in the process of implementing these provisions. We discuss these provisions later in the report.

use it.¹⁹ All of the optional provisions were reported to be used by at least 14 state DOTs.

Figure 1: Number of States That Used Optional Project Delivery Provisions as Reported by Departments of Transportation in 50 States, the District of Columbia, and Puerto Rico



Source: GAO analysis of survey responses from 52 state departments of transportation. | GAO-18-222

^aWe define “optional” provisions to mean that the relevant entity (a federal agency or state or local transportation agency) can choose to use the provision if circumstances allow.

¹⁹The *Reduce Duplication by Eliminating Detailed Consideration of Alternative Actions* provision authorizes the lead agency to reduce duplication, by eliminating from detailed consideration an alternative proposed in an EIS if the alternative was already proposed in a planning process or state environmental review process.

^b“Categorical exclusion” means a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

^cThe existing operational right-of-way refers to a strip of land that has been disturbed for an existing transportation facility or is maintained for transportation purposes, such as a highway, public footpath, or rail bed, landscaping, or rest areas with direct access to a controlled access highway.

^dFunds may be provided: for transportation planning activities that precede the initiation of the environmental review process, for dedicated staffing, for training of agency personnel, for information gathering and mapping, and for development of programmatic agreements.

Some states reported that they have not used certain provisions and have no plans to do so. Our survey served as a nationwide review of the use of the provisions and was not designed to determine why each state did or did not use each provision. However, our discussions with selected states and optional comments provided in the survey provided some additional insight into states’ use of the provisions. Officials at some state DOTs reported that they had not used certain categorical exclusions because other categorical exclusions could also apply to those projects. Specifically, officials in 4 state DOTs told us that they did not use 4 categorical exclusion provisions for this reason. For example, officials at the Colorado DOT said that the *Categorical Exclusion for Geotechnical and Archeological Investigations* provision has not been used in Colorado because other categorical exclusions were more applicable.²⁰ Similarly, officials at the Oklahoma DOT said that they had not used the *Categorical Exclusion for Projects within the Existing Operational Right-of-Way* provision because most of those projects already qualify for a categorical exclusion under other criteria.²¹ For other provisions, such as the *Categorical Exclusion for Multimodal Projects* provision, some state DOTs, such as the Nebraska DOT, indicated that they do not conduct multimodal projects and have no plans to do so for the foreseeable future.²²

²⁰The *Categorical Exclusion for Geotechnical and Archeological Investigations* provision for highway projects designates a categorical exclusion for geotechnical and archeological investigations to provide information for preliminary design.

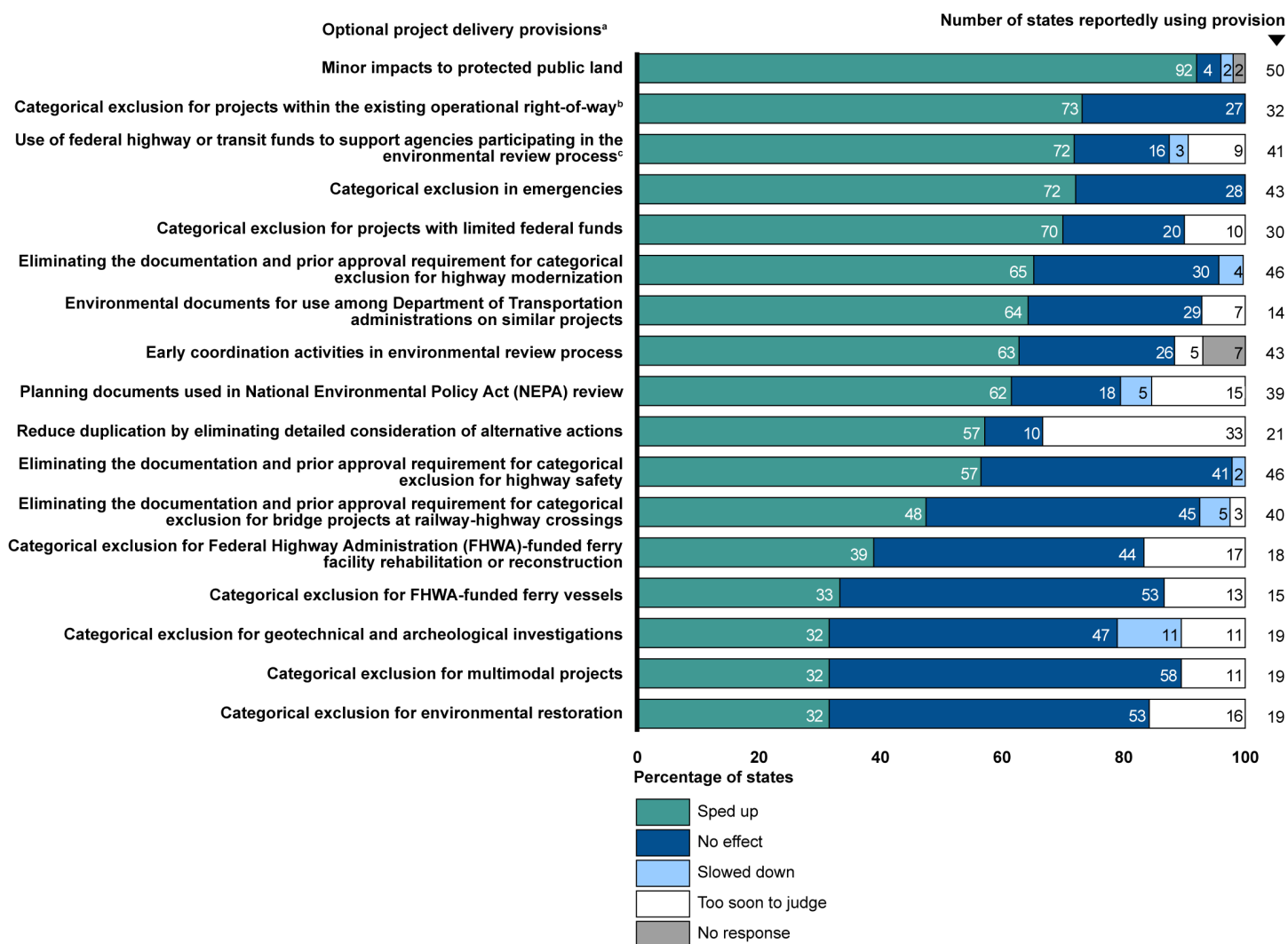
²¹The *Categorical Exclusion for Projects within the Existing Operational Right-of-Way* provision designates a project within an existing operational right-of-way as a categorical exclusion.

²²The *Categorical Exclusion for Multimodal Projects* provision authorizes a DOT operating administration to apply a categorical exclusion of another DOT operating administration to a multimodal project.

About Two-Thirds of the Optional Provisions Reportedly Sped Up Highway Project Delivery for the Majority of Users

For 11 of the 17 optional provisions included in our survey, a majority of state DOTs that indicated they used the provisions (users) reported that the provisions sped up project delivery (see fig. 2).

Figure 2: Percentage of Departments of Transportation in 50 States, the District of Columbia, and Puerto Rico That Reported Various Effects of Used Optional Highway Project Delivery Provisions



Source: GAO analysis of survey responses from 52 state departments of transportation. | GAO-18-222

^aWe define “optional” provisions to mean that the relevant entity (a federal agency or state or local transportation agency) can choose to use the provision if circumstances allow.

^b“Categorical exclusion” means a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The existing operational right-of-way refers to a strip of land that has been disturbed for an existing transportation facility or is maintained for transportation purposes, such as a highway, public footpath, or rail bed, landscaping, or rest areas with direct access to a controlled access highway.

^cFunds may be provided: for transportation planning activities that precede the initiation of the environmental review process, for dedicated staffing, for training of agency personnel, for information gathering and mapping, and for development of programmatic agreements.

Over 90 percent of users of the *Minor Impacts to Protected Public Land* provision reported that it sped up project delivery (46 out of 50 state DOTs using the provision). FHWA officials said that without the *Minor Impacts to Protected Public Land* provision, a state DOT would need to complete an environmental assessment to show that performing even a small project, such as adding a small bus stop on the periphery of a park, would not have significant effects on the environment.²³ The *Minor Impacts to Protected Public Land* provision now allows a state DOT to complete transportation projects that have a minimal environmental effect on historic sites and parklands more quickly because the state DOT can bypass the environmental assessment process. In our survey and discussions with state DOTs, some officials noted how much time the provision can help them save.²⁴ Officials at the Virginia DOT estimated that a 9-month to 1-year review could be cut to 2 to 4 months.²⁵ An official at the Colorado DOT said that reviews that used to take 6 months now take 30 days. And officials at the Mississippi DOT said that they used the provision when adding turn lanes near parks and were able to bypass a review process that previously took 6 to 12 months.

Other examples of sped-up project delivery provided by state DOTs include the following:

²³Prior to the enactment of this provision, we reported in May 2003 on stakeholders’ views about aspects of the environmental review process that add time to the process for transportation projects. We found that 9 of 16 selected stakeholders reported that the statutory “4(f)” requirement protecting properties on historic sites and parkland was burdensome. GAO, *Highway Infrastructure: Stakeholders’ Views on Time to Conduct Environmental Reviews of Highway Projects*, [GAO-03-534](#) (Washington, D.C.: May 23, 2003).

²⁴We gathered examples of the effects of the provisions, including time savings, both through the follow-up interviews we conducted with officials at 10 state DOTs and in the optional areas for comments included in the survey.

²⁵We did not independently verify state DOT officials’ estimates of time savings.

-
- *Categorical Exclusion in Emergencies* provision: Mississippi DOT officials said that this provision has been helpful, particularly given project delivery lessons learned since Hurricane Katrina. They said the provision allows the state DOT to use a categorical exclusion, which takes 6 to 8 months for some projects, in place of an environmental assessment, which can take 12 to 18 months and involves additional review steps such as providing evidence and analysis as to why a project does not require an EIS.²⁶
 - *Use of Federal Highway or Transit Funds to Support Agencies Participating in the Environmental Review Process* provision: Arizona DOT officials said that the state DOT funds positions in the Army Corps of Engineers and the Fish and Wildlife Service that help lessen the time it takes for those agencies to provide comments on Arizona DOT project's NEPA reviews. The officials estimated these positions reduce review time by about one month compared to when these agencies did not have Arizona DOT-funded positions.²⁷

For the remaining six optional provisions, 41 to 58 percent of users reported that the provisions had no effect on project delivery. Based on discussions with selected state DOTs and comments included with survey responses, officials at some state DOTs reported that the provisions did not have any effect because the states had already developed similar processes, either through programmatic agreements with their FHWA division office or at their own initiative. As a result, the state DOTs did not realize any new time savings after the provisions were enacted in law. For example, for each of three provisions that allow for certain documentation to be eliminated for categorical exclusions, officials at seven state DOTs reported that they had already developed similar processes through

²⁶The *Categorical Exclusion in Emergencies* provision designates the repair or reconstruction of any road, highway, or bridge that was damaged by an emergency as a categorical exclusion.

²⁷The *Use of Federal Highway or Transit Funds to Support Agencies Participating in the Environmental Review Process* provision allows a public entity to use its federal highway or transit funds to support a federal or state agency or Indian tribe participating in the environmental review process on activities that directly contribute to expediting and improving project planning and delivery.

programmatic agreements with their FHWA division office.²⁸ Further, five state DOTs reported that the *Early Coordination Activities in Environmental Review Process* provision had no effect because they already had a similar coordination process in place. Some states used such a process at their own initiative and others in conjunction with their FHWA division office.²⁹

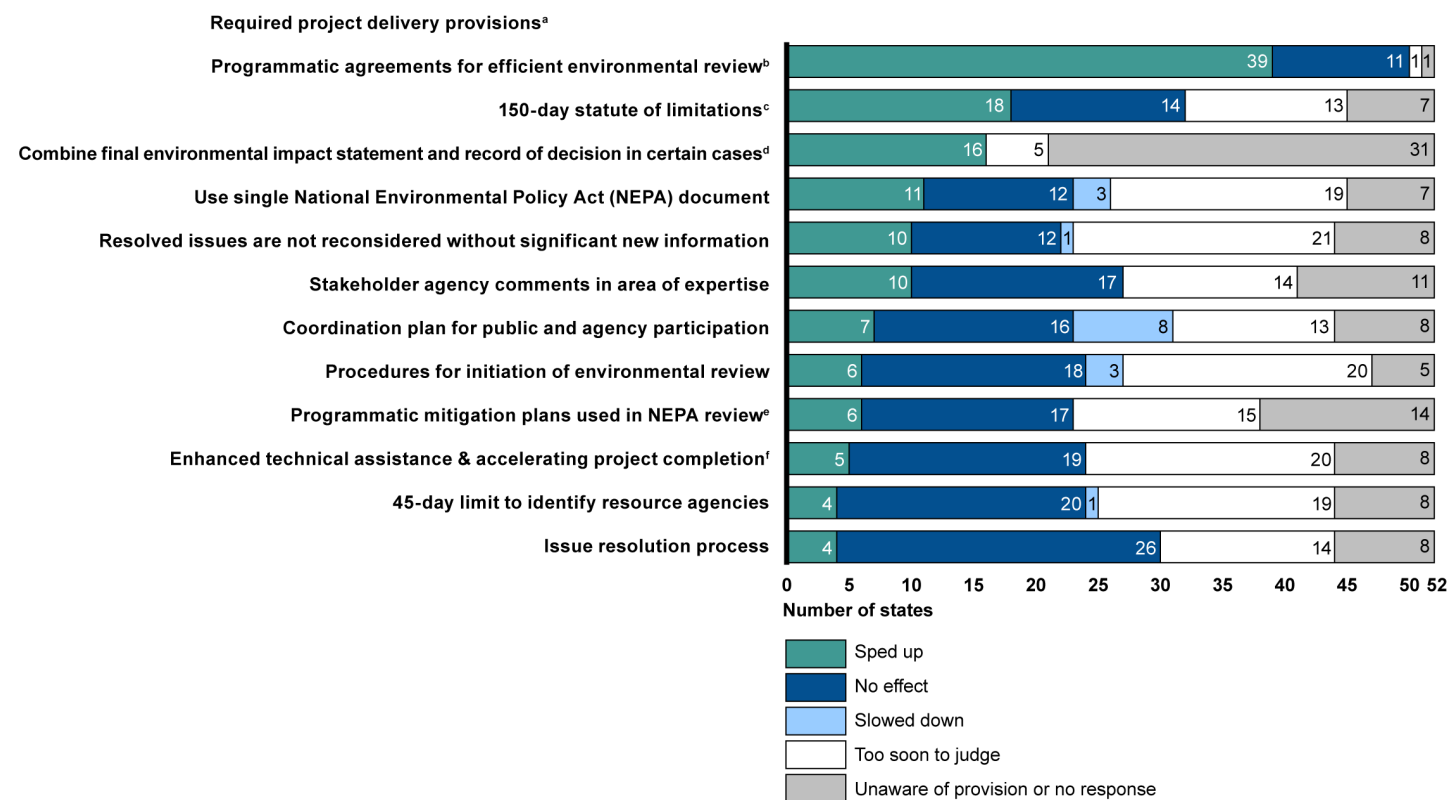
Among Required Provisions, about Three-Quarters of State DOTs Reported That “Programmatic Agreements” Helped Speed Up Highway Projects, While the Effects Are Mixed for Other Provisions

Of the 12 required provisions—which fall into the *Administrative and Coordination Change* category—only the *Programmatic Agreements for Efficient Environmental Review* provision was reported by a majority of state DOTs (39) to have sped up project delivery (see fig. 3). For example, officials at the Mississippi DOT reported that a programmatic agreement with the FHWA division office can allow it to save 6 to 8 months when processing categorical exclusions for projects with minimal right-of-way acquisition. They explained that they no longer had to wait for the FHWA division office to process the categorical exclusion. As previously discussed, prior to 2012, FHWA actively encouraged, but did not require, programmatic agreements between state DOTs and FHWA division offices. In interviews and optional comments from the survey, officials reported that programmatic agreements, both those entered into before and after the enactment of the provision, had sped up project delivery. We did not determine the number of state DOTs that attributed the speed up in project delivery to the 2012 provision, as opposed to those who attributed it to the earlier programmatic agreements with their FHWA division offices. All of the required provisions reportedly sped up project delivery for at least 4 state DOTs.

²⁸The *Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Bridge Projects at Railway-Highway Crossings* provision designates bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, as a categorical exclusion. The *Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Highway Modernization* provision designates resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes as a categorical exclusion. The *Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Highway Safety* provision designates highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, as a categorical exclusion.

²⁹The *Early Coordination Activities in Environmental Review Process* provision encourages early cooperation between DOT and other agencies, including states or local-planning agencies, in the environmental review process to avoid delay and duplication, and suggests early coordination activities. Early coordination includes establishment of MOUs with states or local-planning agencies.

Figure 3: Number of Departments of Transportation in 50 States, the District of Columbia, and Puerto Rico That Reported Various Effects of the Required Highway Project Delivery Provisions



Source: GAO analysis of survey responses from 52 state departments of transportation. | GAO-18-222

^aWe define “required” provisions to mean that federal agencies, or state or local transportation agencies that are subject to a provision must adhere to the requirements and obligations in the provision, if all the conditions for its use have been satisfied.

^b“Programmatic agreements” are agreements between state departments of transportation and their Federal Highway Administration division office on processes and procedures to carry out environmental reviews and other required project reviews.

^cThe provision bars judicial review of claims unless they are timely filed.

^dThere may be instances in which a combined document is not the best option.

^eOnce states or metropolitan planning organizations decide to use such plans, federal agencies must give substantial weight to the plans.

^fOnce a project sponsor or governor requests assistance, the Department of Transportation is required to provide it.

For 5 of the 12 provisions, between 10 and 18 states responded that the provisions sped up project delivery. For example, officials at the Ohio DOT estimated that the *Combine Final Environmental Impact Statement and Record of Decision in Certain Cases* provision saves them a

minimum of 3 months. For the remaining 6 provisions, between 4 and 7 states reported that the provisions sped up project delivery, but each of these provisions also had at least 16 states that reported the provision had no effect on project delivery. Our survey served as a broad-based review of the effects of the provisions and was not designed to determine why each provision had the reported effects; however, some states provided voluntary comments in the survey. As with various optional provisions, some state DOT officials reported no effect because the state had already developed processes and practices that they said achieved what the provisions formalized, for example:

- *Coordination Plan for Public and Agency Participation* provision: In discussions and from optional comments, 4 state DOTs said that they already had a similar process in place. Officials at the Louisiana DOT stated that they performed a similar process prior to the ‘Coordination Plan for Public and Agency Participation’ provision’s enactment in law in an effort to coordinate with the public and other government agencies.³⁰
- *45-Day Limit to Identify Resource Agencies* provision: In interviews and optional survey comments, officials at 2 state DOTs said that they already had a similar process in place to promptly identify stakeholder agencies.³¹
- *Issue Resolution Process* provision: Wyoming DOT officials said that they had been performing a similar process prior to this provision’s enactment in law to ensure consensus among stakeholders.³²

Some state DOTs reported that it was too early to determine the effects of several provisions, particularly more recently enacted provisions. For 5 of the 12 required provisions, more than one third of state DOTs (over 17 states) reported that it was too soon to judge the provisions’ effects. Four of these 5 provisions were enacted in the FAST Act in 2015. Consequently, state DOTs that used the provision had a short window of

³⁰The *Coordination Plan for Public and Agency Participation* provision requires a coordination plan for public and agency participation in the environmental review process within 90 days of notice of intent or the initiation of an environmental assessment, including a schedule for completion of the environmental review process for the project.

³¹The *45-Day Limit to Identify Resource Agencies* provision establishes a 45-day limit after the notice of intent date for a lead agency to identify other agencies to participate in the environmental review process on EIS projects.

³²The *Issue Resolution Process* provision establishes procedures to resolve issues between state DOTs and relevant resource agencies.

time to assess any potential effect on project delivery—particularly given that highway projects often take a number of years to complete. Also, while our survey did not ask state DOTs when they had most recently initiated an EIS, several state DOTs voluntarily noted that they had not done so since the FAST Act. Certain provisions apply only to projects undergoing an EIS; states that have not done an EIS since such provisions were enacted would not have had the opportunity to use the provision. One such provision is the *45-Day Limit to Identify Resource Agencies* provision, for which 19 state DOTs reported that it was too early to judge the effects.

For 5 of the 12 provisions, a relatively few state DOTs, between one and eight, reported that the provision had slowed down project delivery. Eight states reported that the *Coordination Plan for Public and Agency Participation* provision slowed down project delivery, the most for any provision. According to the Minnesota DOT, this provision slowed down project delivery because it formalized and required a specific coordination process in addition to those that had already been voluntarily occurring with relevant federal and state resource agencies. Formalizing this process resulted in resource agencies taking longer to provide responses to the Minnesota DOT. Other states similarly said that this provision's additional formal processes slowed down project delivery.

We defined required provisions to mean that federal agencies or state or local transportation agencies that are subject to the provision must adhere to requirements and obligations in the provision, if all the conditions for its use have been satisfied. States may not have had the opportunity to apply some of the required provisions that apply to them because they did not have exposure to the circumstances and conditions that would invoke this provision's use. For example, a state would not be exposed to the *150-Day Statute of Limitations* provision if it had not been subject to a lawsuit.³³ Unlike the optional provisions, we did not ask states whether they elected to use the required provisions since state DOTs, if

³³The *150 Day Statute of Limitations* provision bars claims seeking judicial review of a permit, license, or approval issued by a federal agency for highway projects unless they are filed within 150 days after publication of a notice in the *Federal Register* announcing the final agency action, or unless a shorter time is specified in the federal law under which the judicial review is allowed.

subject to the provision, must adhere to the requirements and obligations in the provision.³⁴

Selected State DOTs Reported Using the Three Advance Planning Provisions That Affect Project Delivery but Precede NEPA Review

Two of the three provisions from the *Advance Planning* category were used by a majority of the 10 state DOTs we interviewed, and most of the state DOTs that used each provision stated that it sped up project delivery. This use is illustrated more specifically:³⁵

- *Advance Design-Build Contracting* provision: 8 state DOTs used this provision, 5 of which reported it sped up highway project delivery.³⁶
- *Advance Acquisition of Real Property* provision: 6 state DOTs used this provision, 4 of which reported it sped up highway project delivery.³⁷
- *2-phase Contracts* provision: 5 state DOTs used this provision, 4 of which reported it sped up highway project delivery.³⁸

Some state DOT officials provided examples of how the provisions affected their project delivery. For example, California DOT officials said that the *Advance Acquisition of Real Property* provision saved them a few months on small projects, involving one or two parcels of land; for a large project involving hundreds of commercial and residential parcels, they estimated time savings of more than a year. Similarly, Illinois DOT officials said that the provision has yielded time savings of 6 months to a year in instances where the DOT needs to purchase residential property.

³⁴Based on optional comments from the survey, we found that states that had not had the opportunity to apply a required provision may have responded that the provision either had no effect or that it was too soon to judge its effect.

³⁵We did not include provisions from the *Advance Planning* category in our survey because the primary survey respondents were not cognizant of these provisions, as they do not directly relate to the NEPA process.

³⁶The *Advance Design-Build Contracting* provision permits states or local transportation agencies to release requests for proposals and award design-build contracts prior to the completion of the NEPA process; however it precludes a contractor from proceeding with final design or construction before completion of the NEPA process.

³⁷The *Advance Acquisition of Real Property* provision authorizes states to acquire real property interests for a project before completion of the NEPA process.

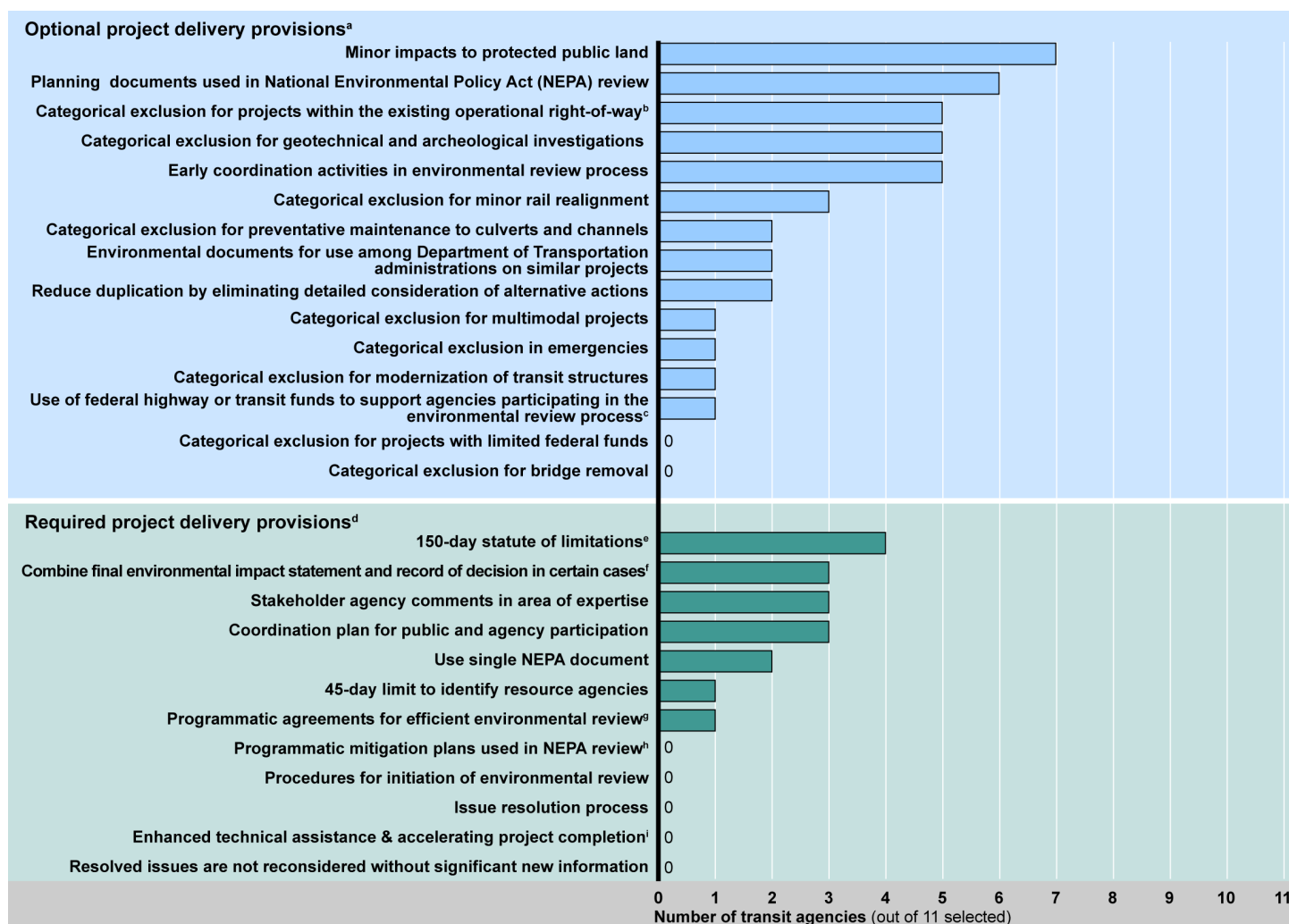
³⁸The *2-phase Contracts* provision authorizes the awarding of 2-phase contracts (construction manager/ general contractor) with preconstruction services and preliminary design of a project using a competitive selection process before the completion of the NEPA process.

Most Project Delivery Provisions Were Used by Selected Transit Agencies, but the Provisions' Effects on Project Delivery Were Generally Unclear

More than two-thirds of the provisions designed to speed up transit project delivery were reportedly used by 11 selected transit agencies. We asked officials in selected transit agencies to report their use of 29 project delivery provisions applicable to transit agencies, 17 of which are optional and 12 of which are required.³⁹ Of the 29 provisions, 6 were used by 4 or more selected transit agencies (see fig. 4). The most used optional provision, by 7 transit agencies, was the *Minor Impacts to Protected Public Land* provision described earlier followed by the *Planning Documents Used in NEPA Review* provision, used by 6 transit agencies.

³⁹Selected transit agencies may report not using a required provision because the conditions stated in the provision are not present, as we mentioned earlier. For example, the *Issue Resolution Process* provision, a required provision, is only required when a dispute arises that cannot be resolved otherwise.

Figure 4: Number of 11 Selected Transit Agencies That Reported Using Transit Project Delivery Provisions



Source: GAO analysis of responses from 11 selected transit agencies. | GAO-18-222

^aWe define “optional” provisions to mean that the relevant entity (a federal agency or state or local transportation agency) can choose to use the provision if circumstances allow. This figure does not include the two optional *NEPA Assignment* category’s provisions—*NEPA Assignment Authority* provision and *Categorical Exclusion Determination Authority* provision.

^b“Categorical exclusion” means a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The existing operational right-of-way refers to a strip of land that has been disturbed for an existing transportation facility or is maintained for transportation purposes, such as a highway, public footpath, or rail bed, landscaping, or rest areas with direct access to a controlled access highway.

^cFunds may be provided: for transportation planning activities that precede the initiation of the environmental review process, for dedicated staffing, for training of agency personnel, for information gathering and mapping, and for development of programmatic agreements.

^dWe define “required” provisions to mean that federal agencies or state or local transportation agencies that are subject to a provision must adhere to the requirements and obligations in the provision, if all the conditions for its use have been satisfied.

^eThe provision bars judicial review of claims unless they are timely filed.

^fThere may be instances in which a combined document is not the best option.

^g“Programmatic agreements” are agreements between state departments of transportation and their Federal Highway Administration division office on processes and procedures to carry out environmental reviews and other required project reviews.

^hOnce states or metropolitan planning organizations decide to use such plans federal agencies must give substantial weight to the plans.

ⁱOnce a project sponsor or governor requests assistance, the Department of Transportation is required to provide it.

Some transit agencies told us that the provisions they used sped up project delivery. In addition, some provided estimated time savings.⁴⁰

- Chicago Transit Authority (CTA) officials told us that the *Minor Impacts to Protected Public Land* provision was extremely helpful for recent CTA projects involving historic properties. For example, CTA has implemented projects that involve track work at a station that is adjacent to a historic boulevard. They estimated that the *Minor Impacts to Protected Public Land* provision has reduced the time to complete documentation by several months. Similarly, a Tri-County Metropolitan Transportation District of Oregon official stated the *Minor Impacts to Protected Public Land* provision has been instrumental since in the past, the agency would have to stop the project if it affected a park land.
- Southeastern Pennsylvania Transportation Authority (SEPTA) officials told us that they used the *Categorical Exclusion for Minor Rail Realignment* provision one or two times within the past 2 years. SEPTA estimated the provision saved the agency several months in time savings per project. Officials stated that the provision allowed the SEPTA to use a categorical exclusion in place of an environment assessment. SEPTA officials also said they saved staff time and approximately \$100,000 a year in consultant fees and agency staff resources by using the *Categorical Exclusion for Preventative Maintenance to Culverts and Channels* provision.
- Capital Metro officials in Austin, Texas, told us they used the *Categorical Exclusion for Projects within the Existing Operational Right-of-Way* provision for a rail right-of-way project. They estimated the provision helped save at least 4 to 6 months in project delivery

⁴⁰We did not verify transit agencies' cost savings estimates resulting from the provisions.

because the agency was not required to do an environmental assessment.

While some selected transit agencies reported using some provisions and added that this provision's use helped speed up project delivery or lower costs, the effects of the provisions—whether they sped up project delivery or streamlined the NEPA review process—were not clear to a majority of the selected transit agencies. Because transit agencies in our review do not track NEPA reviews—including their start and end dates—they were not able to assess how project time frames or costs were affected by the provisions. Officials from several selected transit agencies told us that their understanding of the project delivery provisions' effects was also limited by their reliance on engineering and environmental-planning consultants to prepare their NEPA documents. Officials from 4 of the 11 transit agencies told us that they rely on these consultants' knowledge of the provisions to prepare their NEPA documents. Further, officials from 1 transit agency said they required the assistance of their consultants to respond to our requests for information.

Nine of the 29 provisions were not used by any of the agencies, and no provision was used by more than 7 agencies. Our discussions with selected transit agency and FTA officials provided some insight into transit agencies' use of the provisions, specifically:

- *Limited transit projects needing EISs:* Transit agencies that do not prepare EISs may have fewer opportunities to use some of the provisions. Following discussions with FTA officials, we examined the number of times transit agencies filed a notice of intent to prepare an EIS in the *Federal Register* from 2005 through 2016 as a proxy to identify those transit agencies that would likely use a number of the project delivery provisions.⁴¹ We found that 48 transit agencies (out of several hundreds of transit agencies) filed notices of intent from fiscal year 2005 through 2016 but that of the 48 transit agencies, 34 had filed a notice of intent only once during that time. In general, the vast majority of transit agencies have little recent experience preparing EIS documentation and using the provisions that are triggered by an

⁴¹FTA, as the lead federal agency, starts the EIS process by publishing a notice of intent in the *Federal Register* on behalf of the local transit agency. We used this approach because transit agencies that have prepared EIS documents would likely have experience and insight into environmental actions broadly speaking; however, we recognize that some transit agencies may have less experience with EIS provisions and more experience using other provisions related to categorical exclusions.

EIS.⁴² For example, only one transit agency (Tri-County Metropolitan Transportation District of Oregon) had filed a notice of intent to prepare an EIS after the FAST Act was enacted in 2015.

- *Duration of transit projects:* Some instances where transit project delivery provisions were not used could be due to the number of years it takes to complete transit projects. According to FTA officials, where sponsors for highway projects may have new projects initiating and requiring NEPA reviews on a rolling basis, transit agencies operate differently. A transit agency may have a project that goes through a NEPA review and then begins construction of the project that can last a number of years. The transit agency may not have another project that requires an EIS for several years. For example, New York Metropolitan Transportation Authority (MTA), the largest transit agency by ridership in the country, completed its last EIS review in 2004 and has since been working on construction of that project, according to FTA officials. While MTA has been receiving FTA funds for construction, no additional project has undergone an EIS.
- *Changing provisions and delayed guidance:* Some transit agency officials told us that the changing provisions across the three enacted surface transportation authorization acts pose challenges to using the project delivery provisions. Understanding the changes in the project delivery provisions—for example, changes in categorical exclusions—included in SAFETEA-LU, MAP-21, and the FAST Act was challenging according to some selected transit agencies. Further, some transit agency officials stated that the lag time in receiving guidance from FTA on the changing provisions also posed challenges to using some of the provisions.

⁴²Ten agencies filed a notice of intent two times between these years and four agencies filed a notice of intent three or more times between these years.

DOT's FHWA Has Assigned Six States NEPA Authority, and Two States Reported Time Savings, but FHWA Has Not Provided Guidance on Measuring Effects

DOT, specifically FHWA, has assigned its NEPA approval authority to six states, and other states are interested in this authority. Of the six states, California and Texas have completed some NEPA reviews and determined they have achieved time savings through state approval of NEPA documents rather than federal approval. However, we found the reported time savings to be questionable for several reasons, including challenges faced by California and Texas in establishing sound baselines for comparison. Despite this finding, the reported time-savings information is used by other states to seek out NEPA authority and in reporting to DOT and Congress. FHWA focuses its oversight of NEPA assignment states on ensuring these states have the processes in place to carry out FHWA's NEPA responsibilities, according to a written agreement between each state and FHWA, and does not focus on determining whether states are achieving time savings.

FHWA Has Assigned Six States NEPA Authority, and Additional States Are Interested

FHWA has assigned its NEPA authority to six states, enabling those state DOTs to assume FHWA's authority and approve state-prepared NEPA documentation for highway projects, in lieu of seeking federal approval.⁴³ California's NEPA authority began in 2007, as the first state in the then-pilot program, and continued when the program was made permanent in 2012. Once eligibility expanded to all states, Texas became the second state to be assigned NEPA authority, in 2014, followed more recently by Ohio in 2015, Florida in 2016, and Utah and Alaska in 2017.⁴⁴

The 2005 Conference Report accompanying SAFETEA-LU indicates that the *NEPA Assignment Authority* provision was created to achieve more efficient and timely environmental reviews, which are a key benefit sought by participating states. The report states that the NEPA assignment program was initially created as a pilot program to provide information to Congress and the public as to whether delegation of DOT's environmental review responsibilities resulted in more efficient

⁴³The *NEPA Assignment Authority* provision authorizes FHWA to do this. As discussed above, another provision—the *Categorical Exclusion Determination Authority* provision—authorized FHWA to assign a state to assume responsibility for determining if projects can be categorically excluded from NEPA review. Three states currently have assumed this authority—Alaska, California, and Utah. According to FTA officials, no state has assumed FTA's NEPA authority for document approval on transit projects.

⁴⁴We did not include Alaska in our review because it did not assume NEPA authority until November 2017.

environmental reviews.⁴⁵ In addition, in MAP-21, Congress declared that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process.⁴⁶ State DOT officials from the five NEPA assignment states we reviewed cited anticipated time savings or greater efficiency in environmental review as a reason for taking on this authority. For example, Texas DOT officials said they expected to save time by eliminating FHWA approval processes that they described as time consuming. With NEPA authority, the state puts in place its own approval processes to carry out the federal government's NEPA review responsibilities, and agrees to take on the risk of legal liability for decisions made in this capacity.

Additional states have expressed interest and have taken steps to apply for NEPA authority. Officials from three state DOTs told us they plan to apply for NEPA authority, and one of these, the Arizona DOT, has taken the first step in the process and obtained the requisite changes in state law.⁴⁷ In explaining the anticipated benefits of NEPA assignment to the state legislature, an Arizona DOT official cited time savings reported by California and Texas as a reason for taking on the application process. Time savings' results had been shared by California and Texas DOT officials during a peer exchange event held by an association of state highway officials in 2015 for states that are in the early stages or are considering applying for NEPA authority. Also, the Texas DOT had testified before a congressional committee in 2015 and described the time savings for environmental assessment reviews under its NEPA authority and its role communicating this information to other states pursuing NEPA authority.⁴⁸

⁴⁵H.R. Rep. No. 109-203, at 1053 (2005).

⁴⁶Pub. L. No 114-121, § 1301(c), 126 Stat. 405, 528, codified at 23 U.S.C. § 101(b)(4).

⁴⁷The Nebraska and Puerto Rico DOTs are also considering applying, according to officials in those states. States must, among other things, authorize a limited waiver of their sovereign immunity under the 11th amendment of the U.S. Constitution and consent to accepting the jurisdiction of the federal courts as a condition of assuming NEPA authority.

⁴⁸The Texas DOT testified before the House Oversight Committee on MAP-21 (Dec. 8, 2015).

State DOTs Calculate Time Savings, but Reported Savings Are Questionable

The MOUs, signed with FHWA by each of the five states we reviewed, set out performance measures for comparing the time of completion for NEPA approvals before and after the assumption of NEPA responsibilities by the states. To calculate time savings, each state has established a baseline—of the time it took to complete NEPA review before it assumed NEPA authority—to compare to the time it takes to complete NEPA review after assuming NEPA authority. The baseline is to serve as a key reference point in determining the efficiency of state-led NEPA reviews. Thus far, the two states that have had NEPA authority long enough to report results are California and Texas, and only California has reported results for EISs. The California DOT reported that its EIS reviews now take about 6 years to approve, which it determined to be a 10-year improvement over the 16-year (15.9 years) baseline the state DOT established. For environmental assessment reviews, the California DOT reported completion times of about 3.5 years, which it determined to be a 1-year improvement over the established baseline. The Texas DOT has not started and completed an EIS review since assuming NEPA authority but reported that its environmental assessment reviews have taken about 1.5 years, compared to the baseline of almost 2.5 years.

However, we found California and Texas DOTs' reported time savings to be questionable due to the methods used to compare time frames and challenges associated with establishing baselines. First, there is an inherent weakness in comparing the NEPA review time frames before and after NEPA authority because the comparison does not isolate the effect of assuming NEPA authority on NEPA review time frames from other possible factors. As discussed earlier, we have previously found that such factors include the extent of public opposition to a project and changes in transportation priorities, among other factors.⁴⁹ Further, according to a report from the American Association of State Highway and Transportation Officials, such a comparison does not include information to control for non-environmental factors that are important to project delivery time frames, including delay in completion of design work necessary to advance the environmental review and changes in project funding that put a project on hold.⁵⁰ Moreover, neither California nor Texas DOTs' time frame comparisons isolate the effects of NEPA

⁴⁹GAO-12-593.

⁵⁰American Association of State Highway and Transportation Officials, *Lessons Learned from State DOT NEPA Assignment* (May 2016).

assignment from other streamlining initiatives that may have helped accelerate delivery of projects, such as potential benefits realized from other project delivery provisions.

Second, California and Texas have faced challenges creating appropriate baselines. States are responsible for determining how many and which projects to include in baseline calculations and adopting their own methodologies. While circumstances and conditions are different across states and states can be expected to have different experiences, California's current 16-year EIS baseline is over double that of Texas' EIS baseline.⁵¹ In 2012, we found that for the 32 projects in which FHWA was the lead agency and signed the EIS in fiscal year 2009, the average time to complete the process was about 7 years.⁵² According to information contained in California DOT reports to the state legislature from 2007 and 2009, California's original baseline for EISs was comprised of 1 project that resulted in an EIS baseline of 2.5 years.⁵³ In 2009 state DOT officials increased the number of EIS projects in order to achieve what they viewed as a more representative mix. This process increased California's EIS baseline six-fold, which has been consistently used since that time. Specifically, California used the median of five projects that had review times of around 2.5 years, 6.2 years, 15.9 years, 16.6 years, and 17.3 years. These projects were selected because they were among the final EIS projects that were reviewed prior to California's assuming NEPA authority.

However, the EIS baseline may not be meaningful. First, it includes outlier projects, which are projects that take much longer than usual to complete. According to California DOT officials, this factor is a limitation to determining time savings because the outliers increased the EIS baseline and therefore makes subsequent time savings look greater than they are. Next, despite the increase in EIS projects included in the baseline, a 2016 California DOT report to the state legislature stated that this new EIS baseline may still not be meaningful because of the relatively small sample size, and therefore the inferences that can be made from EIS

⁵¹The other NEPA assignment states have not publicly reported EIS baselines.

⁵²[GAO-12-593](#).

⁵³California Department of Transportation, *Report to the California Legislature Pursuant to Section 820.1 of the California Streets and Highways Code* (November 2007); and California Department of Transportation, *Second Report to the California Legislature Pursuant to Section 820.1 of the California Streets and Highways Code* (Jan. 1, 2009).

analysis on time savings are limited.⁵⁴ The report caveats that “*the EIS analysis should not be used as a major indicator of the effectiveness of NEPA assignment,*” but still reports the EIS analysis results. However, California DOT uses the figure in determining and reporting time savings. For example, information available on the California DOT’s web site as of November 2017 presents these data and states that they are evidence of saving “*significant time in reviewing and approving its NEPA documents since undertaking NEPA assignment.*”⁵⁵

Moreover, the California DOT’s reported median time frame of 6 years for EIS reviews only accounts for those projects that have both started and completed their environmental review since the state assumed NEPA authority. As only 10 years have passed since California assumed NEPA authority in 2007, all EIS reviews started and completed since 2007 automatically have shorter time frames than the 16-year baseline. Thus, it will be 2023 before any EIS reviews in California could equal the baseline, let alone exceed it, making any EIS review started after assumption of NEPA authority and completed before 2023 appear to demonstrate time savings.

Texas DOT officials stated that they had challenges determining a baseline for environmental assessments because there is no nationally accepted standard definition of when an environmental assessment begins. Moreover, Texas DOT recently revised its environmental assessment baseline, reducing it from 3 years to 2.5 years and including projects over a 2-year period instead of a longer 3-year period due to uncertainties with quality of the older data, according to Texas DOT officials. Texas also included, then excluded three outliers from its revised baseline (reviews that took between 6 and 9 years to complete) because officials determined they were not representative of typical environmental assessment reviews. While improving project data to create more accurate baselines is beneficial, it also results in different time savings’ estimates over time and illustrates the challenges of constructing sound baselines.

⁵⁴California Department of Transportation, *2016 Report to the Legislature, NEPA Assignment: July 2007-June 2014* (Jan. 1, 2016).

⁵⁵California Department of Transportation, *Caltrans NEPA Assignment Fact Sheet* (October 2017).

As previously discussed, states that are considering or have recently decided to assume NEPA assignment authority have relied, at least in part, on time savings reported by California and Texas. As additional NEPA assignment states begin calculating and reporting time savings as outlined in their MOUs with FHWA, the inherent weakness of a pre- and post-assignment baseline comparison, combined with challenges establishing sound baselines, creates the potential for questionable information about the program's effects to be reported and relied upon by other states considering applying for NEPA assignment. Questionable information also negatively affects DOT's and Congress' ability to determine whether NEPA assignment is having its intended effect and resulting in more efficient environmental reviews.

FHWA Has Focused on States' Compliance and Processes but Has Played a Limited Role in Time Savings Measures

FHWA focuses its oversight of NEPA assignment states through audits and monitoring to ensure that states have the processes in place to carry out FHWA's role in the NEPA process and that they comply with the MOU agreed to between FHWA and each of the NEPA assignment states. According to the MOUs, FHWA's annual audits include evaluating the attainment of performance measures contained in each MOU. Each of the five MOUs contains four performance measures including: (1) documenting compliance with NEPA and other federal laws and regulations, (2) maintaining internal quality control and assurance measures for NEPA decisions including legal reviews, (3) fostering communication with other agencies and the general public, and (4) documenting efficiency and timeliness in the NEPA process by comparing the completion of NEPA documents and approvals before and after NEPA assignment.

According to FHWA officials, the agency interprets evaluating the attainment of performance measures contained in the MOU as ensuring that the state has a process in place to assess attainment. For the efficiency and timeliness measures, FHWA does not use its audits to measure whether the state is achieving performance goals. FHWA only ensures that the state has a process in place to track the completion of NEPA documents and approvals before and after NEPA assignment, and that states follow the process, according to FHWA officials. For example, FHWA officials from the California division office stated that they did not assess the baseline methodology or assess its validity or accuracy. FHWA's Texas division officials added that setting the baseline has not been an FHWA role. FHWA does not assess or collect information on states' calculations of their time savings from NEPA assignment.

FHWA officials stated that their focused approach on compliance and processes is consistent with the authority they have been granted and that it is not required by statute to measure environmental review efficiency and timeliness performance of participating states. Moreover, according to these officials, this authority limits their ability to request state information on issues related to, and otherwise assess, states' performance measures, including time savings, specifically:

- According to an FHWA program document, FHWA is statutorily authorized to require the state to provide any information that FHWA reasonably considers necessary to ensure that the state is adequately carrying out the responsibilities assigned to the state.⁵⁶ Further, a request for information is reasonable if it pertains to FHWA's reviewing the performance of the state in assuming NEPA assignment responsibilities. However, FHWA officials told us they do not consider an assessment of efficiency and timeliness measures to be necessary to ensure that the state is adequately carrying out its responsibilities.
- Additionally, FHWA considers timeliness performance measures to be a state role. FHWA officials told us that the timeliness performance measures in the NEPA assignment MOUs were added by the states, not FHWA. For instance, California added a timeliness performance measure based on its state legislature's reporting requirements. Each of the subsequent four NEPA assignment states we reviewed also included timeliness performance measures in their respective MOUs. However, the DOT Office of Inspector General reported in 2017 that while FHWA is not statutorily required to measure performance regarding the environmental review process for NEPA assignment states, the lack of data collection and tracking inhibits FHWA's ability to measure the effectiveness of NEPA assignment in accelerating project delivery.⁵⁷ The DOT Office of Inspector General recommended that FHWA develop and implement an oversight mechanism to periodically evaluate the performance of NEPA assignment states, which has not yet been implemented.

While FHWA does not, according to officials, have the authority to assess states' measurement of timeliness performance, FHWA has a role and the authority to provide guidance or technical assistance to states to help find solutions to particular problems and to ensure complete and quality

⁵⁶23 U.S.C. § 327(c)(4).

⁵⁷DOT Office of Inspector General, *Vulnerabilities Exist in Implementing Initiatives Under MAP-21 Subtitle C to Accelerate Project Delivery* (ST2017029) (Mar. 6, 2017).

information is provided to Congress, state DOTs, and the public to help make informed policy choices. Federal standards for internal control state that agencies should use quality information to determine the extent to which they are achieving their intended program outcomes.⁵⁸

Characteristics of quality information include complete, appropriate, and accurate information that helps management make informed decisions and evaluate the entity's performance in achieving strategic outcomes. FHWA's mission to advance the federal-aid highway program is articulated in its national leadership strategic goal, which states that FHWA "leads in developing and advocating solutions to national transportation needs." To carry out its mission, FHWA engages in a range of activities to assist state DOTs in guiding projects through construction to improve the highway system. Specifically, according to agency documents, FHWA provides technical assistance and training to state DOTs and works with states to identify issues and develop and advocate solutions. Its broad authority to offer guidance and technical assistance can include helping states develop sound program methodologies. Such assistance or guidance could also include sharing best practices and lessons learned on evaluation methodologies, including creation of baselines, and potentially result in better quality information to assess the results of NEPA assignment. Without quality information reported from NEPA assignment states on time savings, questionable information about the program effects may be relied upon by other states considering applying for NEPA authority, and may negatively impact DOT's and Congress' ability to determine whether NEPA assignment is having its intended effect and resulting in more efficient environmental reviews.

FHWA officials stated that they advise NEPA assignment states on process improvements and technical assistance, but that no state has requested assistance developing evaluation methodologies or baselines. However, offering guidance or technical assistance on evaluation methodologies to measure time savings can help ensure that states are basing decisions to participate on reliable information and that, in turn, those NEPA assignment states can provide reliable information to FHWA and Congress to help assess whether NEPA assignment results in more efficient environmental reviews.

⁵⁸ [GAO-14-704G](#).

Conclusions

A number of factors can affect the time it takes to complete highway and transit projects, including the NEPA review process. Congress has stated that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process, and has taken a number of steps in this direction, including allowing DOT to assign NEPA authority to the states. We found that the time savings results publicly shared by current NEPA assignment states have spurred interest among other states seeking NEPA authority. However, states are making program decisions—taking on risk and assuming federal authority—based on questionable information and reports of success.

Given questions about participating states' reported time savings, FHWA can help provide some assurance that the performance measures states develop and use to report out are based on sound methodologies. FHWA has the authority to issue program guidance and offer and provide technical assistance to help state DOTs find solutions to particular problems, including the development of sound evaluation methodologies. Without such assistance, states may continue to face difficulties establishing sound baselines. And without a sound baseline, the time savings states calculate—which may continue to be subsequently publicly reported—may be of questionable accuracy and value. And Congress, in turn, would not have reliable information on whether the assignment of NEPA authority to states is having its intended effect.

Recommendation for Executive Action

The FHWA Administrator should offer and provide guidance or technical assistance to NEPA assignment states on developing evaluation methodologies, including baseline time frames and timeliness measures. (Recommendation 1)

Agency Comments and Our Evaluation

We provided a draft of this report to DOT for review and comment. DOT provided a written response (see app. VI), as well as technical comments, which we incorporated as appropriate. DOT partially concurred with our recommendation. Specifically, DOT stated that it would clarify environmental review start times and communicate this to all FHWA

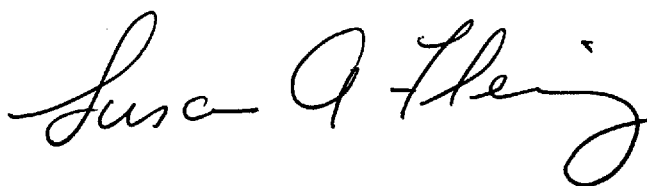
divisions and states. DOT also stated it would provide the NEPA assignment states with any new federal government-wide guidance developed on performance measures of environmental reviews. DOT also stated that it already provides technical assistance to NEPA assignment states in other areas and that FHWA is not required by statute to measure the environmental review efficiency and timeliness of NEPA assignment states. Further, DOT stated that focusing only on timeliness metrics for environmental reviews overlooks other significant benefits of NEPA assignment, such as state control over when and how to conduct environmental reviews, which according to DOT is one of the most significant factors that a state considers in deciding whether to request NEPA assignment authority.

We are encouraged that DOT stated it would clarify environmental review start times. This step can improve the accuracy of environmental assessment review time frames, which is a part of developing sound baselines. In addition, while providing general guidance related to performance measures of environmental reviews would be helpful, we continue to believe that FHWA needs to provide further guidance or technical assistance to NEPA assignment states on developing sound evaluation methodologies. We recognize that FHWA has stated that it is not required by statute to measure environmental review efficiency; however, FHWA does have broad authority to offer guidance and technical assistance to help states develop sound program methodologies, including sharing practices and lessons learned on evaluation methodologies. As we reported, Congress indicated its interest in more efficient and timely environmental reviews when it created the NEPA assignment program. FHWA can help provide reasonable assurance that the performance measures states develop and use to report information are based on sound methodologies, which would in turn help provide Congress reliable information on whether the assignment of NEPA authority to states is having its intended effect. Further, while we acknowledge that other benefits of NEPA assignment may be important to states, all the NEPA assignment states we reviewed consistently identified time savings as a reason for taking on this authority. Offering guidance on evaluation methodologies to measure time savings can help FHWA ensure that additional states interested in NEPA authority for this reason are basing decisions to participate on reliable information.

We are sending copies of this report to interested congressional committees, the Secretary of the Department of Transportation, and other

interested parties. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or flemings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.

A handwritten signature in black ink, reading "Susan A. Fleming". The signature is written in a cursive style with a large, stylized "S" and "F".

Susan Fleming
Director, Physical Infrastructure Issues

Appendix I: Available Information about the Number, Percentage, and Costs of NEPA Reviews for Highway and Transit Projects

Based on 2009 data, we previously reported that 96 percent of environmental reviews are completed through categorical exclusions and a smaller number of highway projects undergo EISs and environmental assessments, 1 and 3 percent respectively.¹ We have previously reported that government-wide data on the cost of NEPA reviews are not readily available because agencies do not routinely track the cost of completing NEPA reviews and there is no government-wide mechanism to do so.² To comply with congressional reporting requirements, FHWA maintains the Project and Program Action Information (PAPAI) system, which is a monitoring database that tracks projects' NEPA review progress at major milestones. FHWA developed PAPAI in 2013 in response to statutory reporting requirements on NEPA time frames. PAPAI tracks EIS and environmental assessment start and end dates, among other information, allowing FHWA to track the processing time for these reviews. FTA does not have a similar monitoring system that tracks NEPA reviews, but has developed a new grant management system, the Transit Award Management System (TrAMS), which FTA also uses to track EIS and environmental assessment start and end dates. However, FTA officials told us that TrAMS is still in the early phases of deployment and may contain incomplete information on NEPA time frames on transit projects.

Highway Projects

While some information is available on the number of NEPA reviews (i.e., NEPA review time frames) for highway projects, little to no information is known about the percentage breakdown of the three types of NEPA reviews that have been conducted for these projects and their associated costs.

- *Number of NEPA Reviews:* Some information is available regarding the number of EIS and environmental assessments; however, less is known about the number of categorical exclusions. In an October 2017 report to Congress, FHWA stated that 29 EISs were initiated since 2012, of which 3 EISs were completed and 26 EISs remain active.³ In its October 2013 report to Congress and consistent with

¹GAO, *Highway Projects: Some Federal and State Projects to Expedite Completion Show Progress*, [GAO-12-593](#) (Washington, D.C.: June 6, 2012).

²GAO, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, [GAO-14-369](#) (Washington, D.C.: April 15, 2014).

³FHWA, *Report to Congress: Review of Federal Project and Program Delivery Completion Time Assessments* (Washington, D.C.: October 2017).

MAP-21 reporting requirements, FHWA reported the number of EISs that state DOTs “initiated” from 2002 through 2012. In this report, FHWA stated that the number of EISs that initiated decreased over time.⁴ For example, FHWA reported that 38 EISs were initiated in fiscal year 2002 compared to 15 EISs that were initiated in 2012.⁵

Regarding the number of environmental assessments state DOTs conduct for highway projects, FHWA’s October 2017 report to Congress stated 232 environmental assessments were initiated since 2012, of which 103 environmental assessments were completed and 129 environmental assessments remain active. FHWA’s October 2013 report to Congress did not report on the number of environmental assessments. FHWA officials told us that prior to fiscal year 2013, FHWA division offices were not required to submit data on environmental assessments.

While some information on categorical exclusions exists, the total number of categorical exclusions is unknown. FHWA does not actively track categorical exclusions because state DOTs process most categorical exclusions without involvement from FHWA, as allowed by established programmatic agreements.⁶

- *Percentage of NEPA Reviews by Type:* The percentage breakdown of EIS, environmental assessments, and categorical exclusions conducted by state DOTs for federal-aid highway projects is largely unknown since FHWA has systematically collected numerical data only on EIS reviews and environmental assessments since fiscal year 2013. We previously reported that, FHWA estimated that approximately 96 percent of NEPA reviews were categorical exclusions, 3 percent were environmental assessments, and 1 percent were EISs.⁷ While the current percentage breakdown of NEPA reviews is not known, FHWA officials told us that categorical exclusions still constitute the vast majority of NEPA reviews for highway projects. Furthermore, highway projects requiring an EIS

⁴FHWA, *Report to Congress: MAP-21 Review of Federal Project and Program Delivery Completion Time Assessments* (Washington, D.C.: Oct. 1, 2013).

⁵MAP-21 required FHWA to report on the number of EIS reviews that were “initiated “each year.

⁶In an October 2017 report to Congress, FHWA collected states’ data and sampled more than 8,000 categorical exclusions, of which approximately 5,700 were initiated since 2012.

⁷[GAO-12-593](#).

likely remain the smallest portion of all projects and are likely to be high-profile, complex, and expensive.

- *Costs of NEPA Reviews:* The costs of completing NEPA reviews are unknown according to officials we interviewed. Officials from FHWA and the National Association of Environmental Professionals believe that data on the cost of processing NEPA reviews do not exist and are not tracked. In our survey of state DOTs, we found that a majority (37 of the 52 state DOTs surveyed) do not collect cost data. For example, officials from Virginia DOT stated that they do not track NEPA costs and that compiling this information would be difficult and labor-intensive.

Transit Projects

- *Number and Percentage of NEPA Reviews:* FTA has some data on the number of categorical exclusions that transit agencies process, but has just begun to collect data on the number of EIS reviews or environmental assessments. According to an August 2016 report, FTA reported that 24,426 categorical exclusions were processed for 6,804 projects between February 2013 and September 2015.⁸ However, the same report cited a number of limitations and challenges with the underlying data, and as a result, the data may not be accurate. FTA officials told us that its new internal grant management system, TrAMS, also has the capability to track EIS reviews and environment assessments, but they are in the early stages of collecting this information. Given that data on the number of NEPA reviews are either not available (EIS and environmental assessments) or potentially unreliable (categorical exclusions), data on the percentage of NEPA reviews are also not available. However, FTA officials believe that similar to highway projects, the most common type of NEPA reviews that transit agencies process are categorical exclusions.
- *Costs of NEPA Reviews:* FTA and transit agencies do not track costs of processing NEPA reviews for transit projects. According to FTA and our previously issued work, separating out the costs for NEPA reviews (versus “planning” costs or “preliminary design” costs) within the project delivery process would be difficult to determine.⁹

⁸Volpe National Transportation Systems Center, *Federal Transit Administration Categorical Exclusion Audit Synthesis Report*. (Cambridge, MA: August 2016).

⁹[GAO-14-369](#).

Appendix II: Objectives, Scope, and Methodology

Our work focused on federal-aid highway and transit projects and the provisions included in the past three surface transportation reauthorizations that are intended to accelerate the delivery of such projects (i.e., project delivery provisions). In particular, this report: (1) identifies the provisions aimed at accelerating the delivery of highway and transit projects that were included in the last three surface transportation reauthorizations; (2) examines the extent to which the provisions were used by state departments of transportation (state DOT) and transit agencies and the provisions' reported effects, if any, on accelerating the delivery of projects; and (3) evaluates the extent to which DOT has assigned National Environmental Policy Act of 1969 (NEPA) authority to states and the reported effects. In addition, in appendix I, we identify available information on the number and percentage of the different types of NEPA reviews, and costs of conducting NEPA reviews.

To identify all relevant project delivery provisions, we reviewed language in the three most recent surface transportation reauthorizations and included those provisions with the goal to accelerate the delivery of federal-aid highway or transit projects. The three reauthorizations we reviewed are as follows:

- the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)—the seven project delivery provisions we used were derived from provisions we had previously identified from SAFETEA-LU, Title VI, on Transportation Planning and Project Delivery;¹
- the Moving Ahead for Progress in the 21st Century Act (MAP-21), Division A, Title 1, Subtitle C, entitled Acceleration of Project Delivery (Sections 1301 through 1323); and
- the Fixing America's Surface Transportation Act (FAST Act), Division A, Title 1, Subtitle C, entitled Acceleration of Project Delivery (Sections 1301 through 1318).

One provision (MAP-21 §1318(a)-(c)) included statutory language directing the Department of Transportation (DOT) to develop additional project delivery provisions through rulemaking. Accordingly, we reviewed the DOT regulations promulgated in response to that requirement (23 C.F.R. §§ 771.117(c)(24)-(30), 771.118(c)(14)-(16), 771.118(d)(7)-(8) and identified 12 additional project delivery provisions. We combined

¹[GAO-12-593](#).

provisions that were modified in later statutory language and did not specify between different versions of the provisions, as this precision was not necessary for our purposes. For example, the *150-Day Statute of Limitations* provision was created in SAFETEA-LU (section 6002) as a 180-day statute of limitations and amended in MAP-21 (section 1308) to 150 days, which is the version we used. We also grouped the provisions into categories for ease of understanding; determined if provisions were applicable to highway projects or transit projects, or both; and specified if provisions were required or optional, based on professional judgement and legal review. We define “required” provisions to mean that federal agencies or state or local transportation agencies that are subject to a provision must adhere to the requirements and obligations in the provision, if all the conditions for its use have been satisfied. We define “optional” provisions to mean that the relevant entity (a federal agency or state or local transportation agency) can choose to use the provision if circumstances allow.

We met with officials from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) to confirm that we had a complete list of project delivery provisions for highway and transit projects.

To determine states’ awareness, use, and perceived effects of the project delivery provisions on highway projects over the previous 5 years, we surveyed state DOTs within all 50 states, the District of Columbia, and Puerto Rico. We directed the survey to officials in state DOTs that oversee environmental compliance for highway projects under NEPA. Because these officials do not have responsibilities with respect to three *Advance Planning* category’s provisions that allow certain activities to occur prior to the completion of a NEPA review, we excluded these project delivery provisions from the survey.² We also excluded two provisions from the survey that are related to DOT assignment of federal NEPA authority, because their use requires a written agreement between FHWA and state DOTs, and we addressed those provisions separately through interviews with states that have such written agreements in place.³ Our survey response rate was 100 percent. In order to ensure that

²The three *Advance Planning* category’s provisions are the: *Design-Build Contracting* provision, *Advance Acquisition of Real Property* provision, and *2-phase Contracts* provision.

³The two *NEPA Assignment* category’s provisions are the *NEPA Assignment Authority* provision and the *Categorical Exclusion Determination Authority* provision.

respondents would interpret our questions as intended, prior to administering the survey, we conducted pretests with state DOTs in four states: Georgia, Ohio, Texas, and Washington. In each pretest, we conducted a session with state DOT officials during which the officials completed the survey and then provided feedback on the clarity of the questions. Based on the feedback, we refined some questions and restructured parts of the survey. After the four pretests were completed, we provided a draft copy of the survey to FHWA and the American Association of State Highway and Transportation Officials (AASHTO) for their review and comment. Both provided technical comments that we incorporated, as appropriate. Based on early interviews with highway project stakeholders and our pretests, we determined that the survey should be sent to environmental officials at the state DOTs. Additional information about our survey methodology includes the following:

- To determine whom we should send the pretest and survey to (i.e., the survey respondent), we used a list of environmental officials at the state DOTs compiled by AASHTO. We took steps, such as sending early notification e-mails, to help ensure that the list of respondents we created was accurate.
- We launched our survey on March 7, 2017. We sent e-mail reminders and telephoned survey respondents who had not completed the survey after two weeks, urging them to do so as soon as possible. We reviewed survey responses for omissions and analyzed the information provided. The survey and aggregated responses—with the exception of open-ended responses and information that would identify individual state DOTs—are provided in appendix IV.
- For each of the provisions included on the survey, we included references to legal citations in order to minimize confusion among provisions or versions of provisions.
- We provided space in the survey for respondents to provide optional comments for each individual provision and for each category of provisions. We analyzed these comments primarily for additional context and as a source of illustrative examples.
- Because all state DOTs were included in our survey, our analyses are not subject to sampling errors. However the practical difficulties of conducting any survey may introduce non-sampling errors. For example, differences in how a particular question is interpreted or the sources of information available to respondents can introduce errors into the survey results. We included steps both in the data collection and data analysis stages, including pretesting, to minimize such non-

sampling errors. We also sent a draft of the questionnaire to FHWA and AASHTO for review and comment.

- We examined the survey results, reviewed survey responses during follow-up interviews with selected states, and performed computer analyses to identify inconsistencies and other indications of error and addressed such issues, where necessary. A second, independent analyst checked the accuracy of all computer analyses to minimize the likelihood of errors in data processing.

Based on the survey results, we conducted follow-up interviews with officials from 10 state DOTs to discuss their views about the effects the project delivery provisions had on the duration of highway projects in their states in the past 5 years. We did not independently verify state DOT officials' estimates of time savings. We selected state DOTs that reported a range of use and effects of the provisions; we also selected geographically diverse states. The 10 states we selected were Arizona, California, Colorado, Illinois, Maine, Minnesota, Mississippi, Texas, Virginia, and Wyoming. We also asked these state DOTs about their use and experiences with the three *Advance Planning* category's provisions we excluded from the survey. These interviews are not generalizable to all states but provide additional context for responses.

To determine transit agencies' awareness, use, and views about the effects of the project delivery provisions applicable to transit, we selected a non-generalizable sample of 11 transit agencies, provided a "checklist" of the provisions to the officials regarding their awareness and use of the provisions, and interviewed officials at those agencies that oversee NEPA reviews for transit projects. We selected these agencies based primarily on the number of times they issued a notice of intent to prepare an EIS in the *Federal Register* from 2005 through 2016 to identify those transit agencies that may have experience preparing EISs or some another NEPA review and experience using transit project delivery provisions. While notices of intent to prepare an EIS do not always result in a transit agency's conducting an actual EIS review, they indicate instances in which a transit agency plans to conduct an EIS review. Other factors, such as ridership and geographic location, were also considered to select the 11 transit agencies. We identified contacts for the transit agencies by calling the transit agencies' Planning and Environmental Review departments and identifying individuals that had experience with environmental reviews and project delivery provisions. We interviewed officials at the following transit agencies:

- Capital Metro (Austin, Texas),

- Chicago Transit Authority,
- Houston Metropolitan Transit Authority,
- Los Angeles County Metropolitan Transportation Authority,
- Metropolitan Atlanta Rapid Transit Authority,
- Sacramento Regional Transit District,
- San Francisco Bay Area Water Emergency Transportation Authority,
- San Francisco Municipal Transportation Agency,
- Sound Transit (Seattle, Washington),
- Southeastern Pennsylvania Transportation Authority, and
- Tri-County Metropolitan Transportation District of Oregon.

Similar to the survey we provided to state DOTs regarding highway projects, we provided the transit agencies with a “checklist” of the provisions in which the transit agency officials indicated whether they had heard of and used the provisions. To understand why the provisions may not be used by selected transit agencies, we also examined the frequency in which transit agencies filed a notice of intent to prepare an EIS in the *Federal Register*. After discussions with FTA, we used the number of times transit agencies filed a notice of intent to prepare an EIS as a proxy because agencies that have performed multiple EISs, which are typically complex in nature, are more likely to use the provisions and be able to offer insight. Transit agencies may also have experience using provisions related to categorical exclusions since transit agencies process their NEPA reviews more commonly using categorical exclusions. However, we did not examine the extent to which categorical exclusions are used by transit agencies as a proxy to identify agencies that have experience using the provisions in part because FTA’s current database, TrAMS, does not have comprehensive data on categorical exclusions. We discussed transit agency officials’ views about the effects of the provisions during our interviews. These interviews are not generalizable to all transit agencies but provide anecdotal information and context.

To evaluate the extent that DOT has assigned NEPA authority to states and the effects states have reported from assuming NEPA authority, we identified states that have assumed NEPA authority based on information from FHWA: Alaska, California, Florida, Ohio, Texas, and Utah. We did not include Alaska in our review because that state did not assume NEPA authority until November 2017. For the five states we reviewed, we interviewed state DOT officials and reviewed relevant documentation

including memorandums of understanding and analyses the state DOTs conducted on NEPA assignment authority, such as methodologies for calculating NEPA assignment time savings. We also surveyed the state DOTs that have not yet sought NEPA authority to assess their interest in assuming NEPA authority. In addition, we interviewed FHWA officials about procedures to oversee the performance of NEPA assignment states and interviewed FHWA division officials from those states. We compared FHWA's procedures to oversee NEPA assignment states against standards for information and communication contained in *Standards for Internal Control in the Federal Government*.⁴

To determine available information on the number and percentage of the different NEPA reviews and costs of conducting NEPA reviews for highway and transit projects, we reviewed relevant publications, obtained documents and analyses from federal agencies, and interviewed federal officials and individuals from professional associations with expertise in conducting NEPA analyses. We also included a question on costs of conducting NEPA reviews in the survey we administered to state DOTs.

For all objectives, we interviewed agency officials and stakeholders involved in highway and transit projects from FHWA and FTA headquarters and transportation industry and environmental organizations that are familiar with project delivery and environmental review.

We conducted this performance audit from August 2016 to January 2018 in accordance with generally accepted government auditing standards. 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.

⁴[GAO-14-704G](#).

Appendix III: Project Delivery Provisions Included in the Three Most Recent Federal Transportation Reauthorization Acts That Apply to Highway and Transit Projects

Table 2: Project Delivery Provisions Included in Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Moving Ahead for Progress in the 21st Century Act (MAP-21), and the Fixing America’s Surface Transportation Act (FAST Act) That Apply to Highway and Transit Projects

GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
Accelerated National Environmental Policy Act (NEPA) Review	Categorical Exclusion for Multimodal Projects ^b Authorizes a Department of Transportation (DOT) operating administration to apply a categorical exclusion of another DOT operating administration to a multimodal project. MAP-21: § 1314, as amended by FAST Act: § 1310 (codified at 49 U.S.C. § 304)	X	X	-	X	X
	Categorical Exclusion in Emergencies Designates the repair reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility that was damaged by an emergency as a categorical exclusion. MAP-21: § 1315 (23 U.S.C. § 109 note) 23 C.F.R. § 771.117(c)(9) 23 C.F.R. § 771.118(c)(11)	X	X	-	X	X
	Categorical Exclusion for Projects within the Existing Operational Right-of-Way ^c Designates a project within an existing operational right-of-way as a categorical exclusion. MAP-21: § 1316 (23 U.S.C. § 109 note) 23 C.F.R. § 771.117(c)(18) 23 C.F.R. § 771.118(c)(12)	X	X	-	X	X
	Categorical Exclusion for Projects with Limited Federal Funds Authorizes the designation of a categorical exclusion for projects receiving less than \$5 million in federal funds, or less than 15 percent federal funds for a project under \$30 million, subject to an annual inflation adjustment. MAP-21: § 1317, as amended by FAST Act: § 1314 (23 U.S.C. § 109 note) 23 C.F.R. § 771.117(c)(23) 23 C.F.R. § 771.118(c)(13)	X	X	-	X	X
	Categorical Exclusion for Geotechnical and Archeological Investigations For highway projects, designates a categorical exclusion for geotechnical and archeological investigations to provide information for preliminary design. 23 C.F.R. § 771.117(c)(24)	X	-	-	X	-

**Appendix III: Project Delivery Provisions
Included in the Three Most Recent Federal
Transportation Reauthorization Acts That
Apply to Highway and Transit Projects**

GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
	Categorical Exclusion for Environmental Restoration For highway projects, designates environmental restoration and pollution abatement actions to minimize or mitigate the impact of any existing transportation facility. 23 C.F.R. § 771.117(c)(25)	X	-	-	X	-
	Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Highway Modernization For highway projects, designates resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes as a categorical exclusion that does not require documentation or prior FHWA approval. 23 C.F.R. § 771.117(c)(26)	X	-	-	X	-
	Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Highway Safety For highway projects, designates highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, as a categorical exclusion that does not require documentation or prior FHWA approval. 23 C.F.R. § 771.117(c)(27)	X	-	-	X	-
	Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Bridge Projects at Railway-Highway Crossings For highway projects, designates bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, as a categorical exclusion that does not require documentation or prior FHWA approval. 23 C.F.R. § 771.117(c)(28)	X	-	-	X	-
	Categorical Exclusion for FHWA-funded Ferry Vessels For FHWA-funded ferry projects, designates the purchase, construction, replacement, or rehabilitation of ferry vessels that would not require a change in the function of the ferry terminals as a categorical exclusion. 23 C.F.R. § 771.117(c)(29)	X	-	-	X	-
	Categorical Exclusion for FHWA-funded Ferry Facility Rehabilitation or Reconstruction For FHWA-funded ferry terminal projects, designates the rehabilitation or reconstruction of existing ferry facilities that do not substantially enlarge the footprint or capacity as a categorical exclusion. 23 C.F.R. § 771.117(c)(30)	X	-	-	X	-

**Appendix III: Project Delivery Provisions
Included in the Three Most Recent Federal
Transportation Reauthorization Acts That
Apply to Highway and Transit Projects**

GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
	Categorical Exclusion for Bridge Removal Designates bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris as a categorical exclusion. 23 C.F.R. § 771.118(c)(14)	-	X	-	-	X
	Categorical Exclusion for Preventative Maintenance to Culverts and Channels Designates preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way as a categorical exclusion. 23 C.F.R. § 771.118(c)(15)	-	X	-	-	X
	Categorical Exclusion for Geotechnical and Archeological Investigations For transit projects, designates geotechnical and archeological investigations to provide information for preliminary design, environmental analyses, and permitting purposes as a categorical exclusion. 23 C.F.R. § 771.118(c)(16)	-	X	-	-	X
	Categorical Exclusion for Minor Rail Realignment Designates minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, as a categorical exclusion. 23 C.F.R. § 771.119(d)(7)	-	X	-	-	X
	Categorical Exclusion for Modernization of Transit Structures Designates modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as ridges, stations, or rail yards, as a categorical exclusion. 23 C.F.R. § 771.118(d)(8)	-	X	-	-	X
	Minor Impacts to Protected Public Land Authorizes a historic site, park land, or refuge to be used for a transportation program or project if it is determined that “ <i>de minimis</i> ” impact would result. SAFETEA-LU: § 6009, as amended by FAST Act: §§ 1301-1303 (codified at 23 U.S.C. § 138(b))	X	X	-	X	X

**Appendix III: Project Delivery Provisions
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GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
Administrative and Coordination Changes	150-Day Statute of Limitations ^d Bars claims seeking judicial review of a permit, license, or approval issued by a federal agency for highway projects unless they are filed within 150 days after publication of a notice in the <i>Federal Register</i> announcing the final agency action, or unless a shorter time is specified in the federal law under which the judicial review is allowed. SAFETEA-LU: § 6002, as amended by MAP-21: § 1308 (codified at 23 U.S.C. § 139(l))	X	X	X	-	-
	Planning Documents Used in NEPA Review Authorizes the lead agency for a project to use planning products, such as planning decisions, analysis, or studies, in the environmental review process of the project. MAP-21: § 1310, as amended by FAST Act: § 1305 (codified at 23 U.S.C. § 168(b)) 23 C.F.R. Part 450	X	X	-	X	X
	Programmatic Mitigation Plans Used in NEPA Review Requires that any federal agency responsible for environmental review give substantial weight to the recommendations in a state or metropolitan programmatic mitigation plan, if one had been developed as part of the transportation planning process, when carrying out responsibilities under NEPA or other environmental law. MAP-21: § 1311, as amended by FAST Act: § 1306 (codified at 23 U.S.C. § 169(f))	X	X	X ^e	-	-
	Combine Final Environmental Impact Statement (EIS) and Record of Decision in Certain Cases To the maximum extent practicable, the lead agency shall combine the final EIS and record of decision in certain cases. FAST Act: §§ 1311 & 1304 (codified at 49 U.S.C. § 304a(a)-(b))	X	X	X ^f	-	-
	Environmental Documents for Use Among DOT Administrations on Similar Projects Authorizes the operating administrations of DOT to adopt a draft EIS, environmental assessment, or final EIS of another operating administration without recirculating the document for public review if the proposed action is substantially the same as the project considered in the document to be adopted. FAST Act: § 1311 (codified at 49 U.S.C. § 304a(c))	X	X	-	X	X

**Appendix III: Project Delivery Provisions
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Transportation Reauthorization Acts That
Apply to Highway and Transit Projects**

GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
	45-Day Limit to Identify Resource Agencies Establishes a 45-day limit after the notice of intent date for a lead agency to identify other agencies to participate in the environmental review process on EIS projects. FAST Act: § 1304(d)(1) (codified at 23 U.S.C. § 139(d)(2))	X	X	X	-	-
	Use Single NEPA Document Requires to the maximum extent practicable and consistent with federal law, for the EIS project lead agency to develop a single NEPA document to satisfy the requirements for federal approval or other federal action, including permits. FAST Act: § 1304(d)(2) (codified at 23 U.S.C. § 139(d)(8))	X	X	X	-	-
	Procedures for Initiation of Environmental Review Creates several requirements at the start of an EIS project's environmental review process, such as 1) establishing a 45-day deadline for DOT to provide a written response to the project sponsor on initiation of the environmental review process; 2) establishing a 45-day deadline for DOT to respond to a request for designation of a lead agency; and 3) requiring the development of a checklist by the lead agency, as appropriate, to help identify natural, cultural, and historic resources, to identify cooperating and participating agencies and improve interagency collaboration. FAST Act: §1304(e) (codified at 23 U.S.C. § 139(e))	X	X	X	-	-
	Reduce Duplication by Eliminating Detailed Consideration of Alternative Actions Authorizes the lead agency to reduce duplication, by eliminating from detailed consideration an alternative proposed in an EIS if the alternative was already proposed in a planning process or state environmental review process. FAST Act: § 1304(f)(2)(C) (codified at 23 U.S.C. § 139(f)(4)(E)(ii))	X	X	-	X	X

**Appendix III: Project Delivery Provisions
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Transportation Reauthorization Acts That
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GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
	Use of Federal Highway or Transit Funds to Support Agencies Participating in the Environmental Review Process ^g Allows a public entity to use its federal highway or transit funds to support a federal or state agency or Indian tribe participating in the environmental review process on activities that directly contribute to expediting and improving project planning and delivery. SAFETEA-LU: § 6002(j), as amended by MAP-21: § 1307 and FAST Act: § 1304(i) (codified at 23 U.S.C. § 139(j))	X	X	-	X	X
	Issue Resolution Process Establishes procedures to resolve issues between state DOTs and relevant resource agencies. SAFETEA-LU: § 6002(a), as amended by MAP-21: § 1306 and FAST Act: § 1304(h) (codified at 23 U.S.C. § 139(h))	X	X	X	-	-
	Enhanced Technical Assistance & Accelerating Project Completion At the request of a project sponsor or a governor of the state in which the project is located, requires DOT to provide additional technical assistance for a project where EIS review has taken 2 years, and establish a schedule for review completion within 4 years. MAP-21: § 1309 (codified at 23 U.S.C. § 139(m))	X	X	X ^h	-	-
	Programmatic Agreements for Efficient Environmental Review ⁱ Requires DOT to seek opportunities with states to enter into programmatic agreements to carry out environmental and other project reviews. MAP-21: §§ 1305(a) and 1318(d) (23 U.S.C. § 139 note) FAST Act: § 1304(b)	X	X	X	-	-
	Early Coordination Activities in Environmental Review Process Encourages early cooperation between DOT and other agencies, including states or local planning agencies, in the environmental review process to avoid delay and duplication, and suggests early coordination activities. Early coordination includes establishment of MOUs with states or local planning agencies. MAP-21: § 1320 (23 U.S.C. § 139 note)	X	X	-	X	X

**Appendix III: Project Delivery Provisions
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GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
	Stakeholder Agency Comments in Area of Expertise Limits the comments of participating agencies to subject matter areas within the special expertise or jurisdiction of the agency. FAST Act: § 1304(f)(2)(A) (codified at 23 U.S.C. § 139(f)(4)(A)(ii))	X	X	X	-	-
	Coordination Plan for Public and Agency Participation Requires a coordination plan for public and agency participation in the environmental review process within 90 days of notice of intent or the initiation of an Environmental Assessment, including a schedule for completion of the environmental review process for the project. SAFETEA-LU: § 6002 as amended by MAP-21: § 1305, and FAST Act: § 1304(g)(1) (codified at 23 U.S.C. § 139(g)(1)(A) and (B))	X	X	X	-	-
	Resolved Issues are Not Reconsidered Without Significant New Information Issues that are resolved by the lead agency with concurrence from stakeholder cannot be reconsidered unless there is significant new information or circumstances arise. FAST Act: § 1304(h)(1) (codified at 23 U.S.C. § 139(h)(4))	X	X	X	-	-
Advance Planning	Advance Design-Build Contracting Permits states or local transportation agencies to release requests for proposals and award design-build contracts prior to the completion of the NEPA process; however, it precludes a contractor from proceeding with final design or construction before completion of the NEPA process. SAFETEA-LU: § 1503(2) (codified at 23 U.S.C. § 112(b)(3))	X	-	-	X	-
	Advance Acquisition of Real Property Authorizes states to acquire real property interests for a project before completion of the NEPA process. MAP-21: § 1302 (codified at 23 U.S.C. § 108(c))	X	-	-	X	-
	2-phase Contracts Authorizes the awarding of 2-phase contracts (construction manager/ general contractor) with preconstruction services and preliminary design of a project using a competitive selection process before the completion of the NEPA process. MAP-21: § 1303(a) (codified at 23 U.S.C. § 112(b)(4))	X	-	-	X	-

**Appendix III: Project Delivery Provisions
Included in the Three Most Recent Federal
Transportation Reauthorization Acts That
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GAO category for provision	GAO term for provision	Applies to:		Provision is ^a :		
		Highway	Transit	Required	(Highway) Optional	(Transit) Optional
NEPA Assignment	Categorical Exclusion Determination Authority Authorizes DOT to assign and a state to assume responsibility for determining if projects can be categorically excluded from NEPA review. SAFETEA-LU: § 6004(a), as amended by MAP-21: § 1312, and FAST Act: § 1307 (codified at 23 U.S.C. § 326)	X	X	-	X	X
	NEPA Assignment Authority Authorizes DOT to assign and a state to assume many federal environmental review responsibilities for highway, public transportation, and railroad projects, to be administered in accordance with a written agreement between DOT and the participating state. SAFETEA-LU: § 6005(a), as amended by MAP-21: § 1313, and FAST Act: § 1308 (codified at 23 U.S.C. § 327)	X	X	-	X	X
Total provisions :		34	29	12	22	17

Source: GAO analysis of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the Moving Ahead for Progress in the 21st Century Act; and the Fixing America's Surface Transportation Act. | GAO-18-222

^aWe define "required" provisions to mean that federal agencies, or state or local transportation agencies that are subject to a provision must adhere to the requirements and obligations in the provision, if all the conditions for its use have been satisfied. We define "optional" provisions to mean that the relevant entity (a federal agency or state or local transportation agency) can choose to use the provision if circumstances allow.

^b"Categorical exclusion" means a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

^cThe existing operational right-of-way refers to a strip of land that has been disturbed for an existing transportation facility or is maintained for transportation purposes, such as a highway, public footpath, rail bed, landscaping, or rest areas with direct access to a controlled access highway.

^dThe provision bars judicial review of claims unless they are timely filed.

^eOnce states or metropolitan planning organizations decide to use such plans federal agencies must give substantial weight to the plans.

^fThere may be instances in which a combined document is not the best option.

^gFunds may be provided for transportation-planning activities that precede the initiation of the environmental review process, for dedicated staffing, for training of agency personnel, for information gathering and mapping, and for development of programmatic agreements.

^hOnce a project sponsor or governor requests assistance, DOT is required to provide it.

ⁱ"Programmatic agreements" are agreements between state departments of transportation and their Federal Highway Administration division office on processes and procedures to carry out environmental reviews and other required project reviews.

Appendix IV: Highway Questionnaire and Summarized Responses

This appendix provides a copy of the survey sent to state departments of transportation in all 50 states, the District of Columbia, and Puerto Rico concerning their use of the project delivery provisions for highway projects. The appendix also includes the responses received for each of the provisions; it does not include information on non-responses, which resulted either from the survey’s skip patterns or from state officials voluntarily declining to respond.

GAO also developed names for the provisions in the survey; we subsequently modified the names of several of the provisions for the text of our report to make them more intuitive for readers. The following list matches the provisions that have different names in our report than in the survey.

Report Name	Survey Name
<ul style="list-style-type: none">• Categorical Exclusion for Projects within the Existing Operational Right-of-Way• Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Highway Modernization• Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Highway Safety• Eliminating the Documentation and Prior Approval Requirement for Categorical Exclusion for Bridge Projects at Railway-Highway Crossings• Categorical Exclusion for FHWA-funded Ferry Vessels• Categorical Exclusion for FHWA-funded Ferry Facility Rehabilitation or Reconstruction• Planning Documents Used in National Environmental Protection Act (NEPA) Review• Reduce Duplication by Eliminating Detailed Consideration of Alternative Actions• Use of Federal Highway or Transit Funds to Support Agencies Participating in the Environmental Review Process	<ul style="list-style-type: none">• Categorical Exclusion for Projects Within the Right-of-Way• Categorical Exclusion for Highway Modernization• Categorical Exclusion for Highway Safety and Operational Improvement• Categorical Exclusion for Bridge Projects at Railway-Highway Crossings• Categorical Exclusion for Ferry Vessels• Categorical Exclusion for Ferry Facilities• Planning Products for Use in NEPA Review• Reduce Duplicate Consideration of Alternatives• Offering Financial Assistance to Stakeholder Agencies

Report Name	Survey Name
<ul style="list-style-type: none">• Use Single NEPA Document• Procedures for Initiation of Environmental Review	<ul style="list-style-type: none">• Single NEPA Document• Initiation of Environmental Review Process



United States Government Accountability Office

Highway Project Delivery Questionnaire

March 7, 2017

Introduction

The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that assists Congress in evaluating federal programs. This questionnaire is part of a legislatively mandated GAO study regarding provisions that aim to accelerate project delivery and streamline the environmental review process required under the National Environmental Policy Act of 1969 (NEPA). These project delivery provisions were enacted in the past three surface transportation reauthorization acts—Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU; 2005), Moving Ahead for Progress in the 21st Century Act (MAP-21; 2012), and Fixing America's Surface Transportation Act (FAST Act; 2015).

The results of this questionnaire will help inform a written report to Congress. In our report, we will generally use only the aggregated results of this questionnaire. GAO will not attribute specific responses of this questionnaire to any individual respondents or otherwise disclose them to the public. However, GAO will include a list of state highway agencies in an appendix of the report as having responded to the questionnaire.

Please answer this questionnaire from your perspective as environmental director (or designee) of your agency. If you are not able to answer all the questions in this questionnaire yourself, you may need to coordinate your responses with the appropriate people within your agency. Please complete and return this questionnaire by e-mail to LevyE@gao.gov within 2 weeks of receiving it. Each agency should only submit one questionnaire. In testing this survey, we found that it took approximately 30 minutes to complete. We may contact you to clarify responses as needed.

Thank you in advance for your time and consideration.

GAO Contacts

Ethan Levy at (202) 512-4807 (LevyE@gao.gov)
Brian Chung at (206) 287-4795 (ChungC@gao.gov)

Instructions

This questionnaire can be filled out using Microsoft Word. Please save this document to your computer before entering any information. Please use your mouse to navigate, clicking on the field or check box ☐ you wish to answer. To select a check box or a button, click on the center of the box. To change or deselect a check box response, click on the check box and the 'X' will disappear. For questions that require a written response, click the answer field with your mouse and enter text. The field will expand to accommodate your answer. When you have completed the questionnaire, please save it to your computer and email it as an attachment to LevyE@gao.gov.

Contact Information

Please provide contact information for the person primarily responsible for completing this question set so that we may contact you should any clarifications be needed. If multiple individuals are involved in answering these questions, please identify a single point of contact.

Your Name	
Title	
State Highway Agency	
Phone	
Email	

Part I.

In Part I of the questionnaire, please select 'Yes', 'No', or 'Not Applicable' for each question.

	Yes	No	Not Applicable
1. Does your state track the number of highway projects processed as categorical exclusions?	48	4	0
2. Does your state track the number of highway projects processed as environmental assessments?	46	6	0
3. Does your state track the number of highway projects processed as environmental impact statements?	44	7	1
4. Does your state track the timeframe for NEPA review of highway projects?	40	11	1
5. Does your state collect data on the costs associated with NEPA review for highway projects?	14	37	1

Do you have any comments or anything further to add on the tracking of NEPA review timeframes or costs?

(add pages if needed)

Part IIA.

In Part IIA of the questionnaire, for each provision listed, GAO has paraphrased a provision title and description, and included citations for the statute(s) that created/amended it (in some cases, citations for regulations are included). We included Internet hyperlinks to U.S. Government Publishing Office websites, for reference to citations if needed. (You must be connected to the Internet to use this feature.) We then created our own categories to group the provisions. For each provision-

- Question 'A' asks for a 'Yes' or 'No' response. If your response is 'Yes', continue to question 'B'.
- Question 'B' asks for the response that best fits your agency's experience. If your response indicates any use (i.e. Frequently, Sometimes, Rarely), continue to question 'C'.
- Question 'C' asks for the response that best fits your agency's experience.
- At the end of each category of provisions, you will have an opportunity to expand upon any of your responses and provide any additional comments.

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
Categorical Exclusions			
1. Categorical Exclusion for Multimodal Projects Authorizes the lead agency of a multimodal project to apply a categorical exclusion designation to the project. MAP-21: Sec. 1314 [PDF p.547] FAST Act: Sec. 1310(3) [PDF p.1397]	Yes: 48 ➔ No: 4 ↓ (Go to next provision)	Frequently: 3 Sometimes: 4 Rarely: 12 } ➔ Not at all, but plan to use: 12 Not at all, and no plans to use: 16 ↓ (Go to next provision)	Sped up greatly: 2 Sped up somewhat: 4 No effect: 11 Slowed down somewhat: 0 Slowed down greatly: 0 Too soon to judge: 4
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
2. Categorical Exclusion in Emergencies Designates the repair or reconstruction of any road, highway, or bridge that was damaged by an emergency as a categorical exclusion. MAP-21: Sec. 1315 [PDF p.549] 23 CFR 771.117(c)(9) [PDF p.1]	Yes 52 ➡ No 0 ↓ <i>(Go to next provision)</i>	Frequently 8 Sometimes 17 ➡ Rarely 19 Not at all, but plan to use 2 Not at all, and no plans to use 6 ↓ <i>(Go to next provision)</i>	Sped up greatly 14 Sped up somewhat 17 No effect 13 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 0
(Optional) Comments on your answers:			
3. Categorical Exclusion for Projects Within the Right-of-Way Designates a project within an operational right-of-way as a categorical exclusion. MAP-21: Sec. 1316 [PDF p.549] 23 CFR 771.117(c)(18) [PDF p.2]	Yes 52 ➡ No 0 ↓ <i>(Go to next provision)</i>	Frequently 18 Sometimes 16 ➡ Rarely 8 Not at all, but plan to use 4 Not at all, and no plans to use 6 ↓ <i>(Go to next provision)</i>	Sped up greatly 9 Sped up somewhat 21 No effect 12 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 0
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
4. Categorical Exclusion for Projects with Limited Federal Funds Authorizes the designation of a categorical exclusion for projects receiving less than \$5 million in federal funds, or less than 15 percent federal funds for a project under \$30 million, subject to an annual inflation adjustment. <i>MAP-21: Sec. 1317 [PDF p.550]</i> <i>FAST Act: Sec. 1314 [PDF p.1402]</i>	Yes 50 ➡ No 2 ↓ (Go to next provision)	Frequently 9 Sometimes 7 ➡ Rarely 14 } Not at all, but plan to use 6 Not at all, and no plans to use 12 ↓ (Go to next provision)	Sped up greatly 2 Sped up somewhat 19 No effect 8 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 3
(Optional) Comments on your answers:			
Do you have any comments or anything further to add on the statutory Categorical Exclusion provisions? (add pages if needed)			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
The following <i>Categorical Exclusions</i> were created by regulation, as a result of requirements from MAP-21: Sec. 1318.			
5. Categorical Exclusion for Geotechnical and Archeological Investigations For highway projects, designates a categorical exclusion for geotechnical and archeological investigations to provide information for preliminary design. MAP-21: Sec. 1318(a)-(c) [PDF p.550] 23 CFR Part 771.117(c)(24) [PDF p.2]	Yes 46 ➡ No 6 ↓ (Go to next provision)	Frequently 3 Sometimes 5 ➡ Rarely 11 } Not at all, but plan to use 7 Not at all, and no plans to use 19 ↓ (Go to next provision)	Sped up greatly 2 Sped up somewhat 4 No effect 10 Slowed down somewhat 2 Slowed down greatly 0 Too soon to judge 2
(Optional) Comments on your answers:			
6. Categorical Exclusion for Environmental Restoration For highway projects, designates environmental restoration and pollution abatement actions to minimize or mitigate the impact of any existing transportation facility. MAP-21: Sec. 1318(a)-(c) [PDF p.550] 23 CFR Part 771.117(c)(25) [PDF p.3]	Yes 46 ➡ No 6 ↓ (Go to next provision) (Go to next provision)	Frequently 2 Sometimes 3 ➡ Rarely 14 } Not at all, but plan to use 9 Not at all, and no plans to use 18 ↓ (Go to next provision)	Sped up greatly 3 Sped up somewhat 3 No effect 11 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 4
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
7. Categorical Exclusion for Highway Modernization For highway projects, designates resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes as a categorical exclusion. MAP-21: Sec. 1318(c)(1) [PDF p.550] 23 CFR Part 771.117(c)(26) [PDF p.3]	Yes 52 ➡ No 0 ↓ <i>(Go to next provision)</i>	Frequently 31 Sometimes 13 ➡ Rarely 2 Not at all, but plan to use 1 Not at all, and no plans to use 4 ↓ <i>(Go to next provision)</i>	Sped up greatly 13 Sped up somewhat 17 No effect 15 Slowed down somewhat 2 Slowed down greatly 0 Too soon to judge 0
(Optional) Comments on your answers:			
8. Categorical Exclusion for Highway Safety and Operational Improvement For highway projects, designates highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, as a categorical exclusion. MAP-21: Sec. 1318(c)(2) [PDF p.551] 23 CFR Part 771.117(c)(27) [PDF p.3]	Yes 52 ➡ No 0 ↓ <i>(Go to next provision)</i>	Frequently 22 Sometimes 18 ➡ Rarely 7 Not at all, but plan to use 1 Not at all, and no plans to use 4 ↓ <i>(Go to next provision)</i>	Sped up greatly 11 Sped up somewhat 15 No effect 20 Slowed down somewhat 1 Slowed down greatly 0 Too soon to judge 0
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
9. Categorical Exclusion for Bridge Projects at Railway-Highway Crossings For highway projects, designates bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, as a categorical exclusion. MAP-21: Sec. 1318(c)(3) [PDF p.551] 23 CFR Part 771.117(c)(28) [PDF p.3]	Yes 50 ➡ No 2 ↓ (Go to next provision)	Frequently 14 Sometimes 19 ➡ Rarely 7 Not at all, but plan to use 4 Not at all, and no plans to use 5 ↓ (Go to next provision)	Sped up greatly 8 Sped up somewhat 11 No effect 18 Slowed down somewhat 2 Slowed down greatly 0 Too soon to judge 1
(Optional) Comments on your answers:			
10. Categorical Exclusion for Ferry Vessels For FHWA-funded ferry projects, designates the purchase, construction, replacement, or rehabilitation of ferry vessels that would not require a change in the function of the ferry terminals as a categorical exclusion. MAP-21: Sec. 1318(a)-(c) [PDF p.550] 23 CFR Part 771.117(c)(29) [PDF p.3]	Yes 42 ➡ No 7 ↓ (Go to next provision)	Frequently 2 Sometimes 2 ➡ Rarely 11 Not at all, but plan to use 8 Not at all, and no plans to use 19 ↓ (Go to next provision)	Sped up greatly 3 Sped up somewhat 2 No effect 8 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 2
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
11. Categorical Exclusion for Ferry Facilities For FHWA-funded ferry terminal projects, designates the rehabilitation or reconstruction of existing ferry facilities as a categorical exclusion. MAP-21: Sec. 1318(a)-(c) [PDF p.550] 23 CFR Part 771.117(c)(30) [PDF p.3]	Yes 45 ➡ No 6 ↓ <i>(Go to next provision)</i>	Frequently 2 Sometimes 3 ➡ Rarely 13 } Not at all, but plan to use 7 Not at all, and no plans to use 20 ↓ <i>(Go to next provision)</i>	Sped up greatly 3 Sped up somewhat 4 No effect 9 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 3
(Optional) Comments on your answers:			
Do you have any comments or anything further to add on the Categorical Exclusion provisions created by regulation? (add pages if needed)			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
4(f) "de minimis impact"			
12. Minor Impacts to Protected Public Land Authorizes a historic site, park land, or refuge to be used for a transportation program or project if it is determined that "de minimis impact" would result. SAFETEA-LU: Sec. 6009 [PDF p.732]	Yes 52 ➡ No 0 ↓ (Go to next provision)	Frequently 31 Sometimes 16 ➡ Rarely 3 Not at all, but plan to use 2 Not at all, and no plans to use 0 ↓ (Go to next provision)	Sped up greatly 33 Sped up somewhat 13 No effect 2 Slowed down somewhat 1 Slowed down greatly 0 Too soon to judge 0
(Optional) Comments on your answers:			
Administrative Changes			
13. Planning Products for Use in NEPA Review Authorizes the lead agency for a project to use planning products, such as planning decisions, analysis, or studies, in the environmental review process of the project. MAP-21: Sec. 1310 [PDF p.540] FAST Act: Sec. 1305 [PDF p.1386]	Yes 50 ➡ No 2 ↓ (Go to next provision)	Frequently 4 Sometimes 21 ➡ Rarely 14 Not at all, but plan to use 8 Not at all, and no plans to use 2 ↓ (Go to next provision)	Sped up greatly 6 Sped up somewhat 18 No effect 7 Slowed down somewhat 1 Slowed down greatly 1 Too soon to judge 6
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
14. Combine Final Environmental Impact Statement and Record of Decision in Certain Cases Allows the lead agency of a project, in order to expedite decisions, to use an errata sheet attached to a final EIS, instead of rewriting it, if the comments are minor. Also, to the maximum extent practicable, combines the final EIS and record of decision in certain cases. <i>FAST Act: Sec. 1311 & 1304(j) [PDF p.1398 & 1385]</i>	Yes 50 ➡ No 2 ↓ <i>(Go to next provision)</i>	Frequently 4 Sometimes 5 ➡ Rarely 12 } Not at all, but plan to use 22 Not at all, and no plans to use 7 ↓ <i>(Go to next provision)</i>	Sped up greatly 4 Sped up somewhat 12 No effect 0 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 8
(Optional) Comments on your answers:			
15. Environmental Documents for Use Among DOT Administrations on Similar Projects Authorizes the operating administrations of DOT to adopt a draft EIS, EA, or final EIS of another operating administration without recirculating the document for public review if the proposed action is substantially the same as the project considered in the document to be adopted. <i>FAST Act: Sec. 1311 [PDF p.1398]</i>	Yes 43 ➡ No 9 ↓ <i>(Go to next provision)</i>	Frequently 0 Sometimes 3 ➡ Rarely 11 } Not at all, but plan to use 15 Not at all, and no plans to use 14 ↓ <i>(Go to next provision)</i>	Sped up greatly 3 Sped up somewhat 6 No effect 5 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 1
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
16. Reduce Duplicate Consideration of Alternatives Authorizes the lead agency to reduce duplication, by eliminating from detailed consideration an alternative proposed in an EIS if the alternative was already proposed in a planning process or state environmental review process. <i>FAST Act: Sec. 1304(f)(2)(C.) [PDF p.1382]</i>	Yes 46 ➡ No 5 ↓ <i>(Go to next provision)</i>	Frequently 0 Sometimes 6 ➡ Rarely 15 } Not at all, but plan to use 17 Not at all, and no plans to use 8 ↓ <i>(Go to next provision)</i>	Sped up greatly 1 Sped up somewhat 11 No effect 2 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 8
(Optional) Comments on your answers:			
Do you have any comments or anything further to add on the administrative changes provisions? (add pages if needed)			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
Coordination/Collaboration			
17. Offering Financial Assistance to Stakeholder Agencies Allows a state to use its federal highway funds to support a federal or state agency or Indian tribe participating in the environmental review process on activities that directly contribute to expediting and improving project planning and delivery. SAFETEA-LU: Sec. 6002(a) [PDF p.715] MAP-21: Sec. 1307 [PDF p.539] FAST Act: Sec. 1304(i) & 1312 [PDF p.1384 & 1399]	Yes 48 ➡ No 4 ↓ (Go to next provision)	Frequently 16 Sometimes 7 ➡ Rarely 9 Not at all, but plan to use 6 Not at all, and no plans to use 9 ↓ (Go to next provision)	Sped up greatly 13 Sped up somewhat 10 No effect 5 Slowed down somewhat 0 Slowed down greatly 1 Too soon to judge 4
(Optional) Comments on your answers:			
18. Early Coordination Activities in Environmental Review Process Encourages early cooperation between DOT and other agencies, including States or local planning agencies, in the environmental review process to avoid delay and duplication, and suggests early coordination activities. Early coordination includes establishment of MOUs with States or local planning agencies. MAP-21: Sec. 1320 [PDF p.551]	Yes 52 ➡ No 0 ↓ (Go to next provision)	Frequently 20 Sometimes 16 ➡ Rarely 7 Not at all, but plan to use 6 Not at all, and no plans to use 2 ↓ (Go to next provision)	Sped up greatly 10 Sped up somewhat 17 No effect 12 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 3
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)	B. If Yes to 'A,' how often in the past five years has your agency used this provision across all highway projects? (Mark only one box)	C. If any use marked in 'B,' in what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
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Do you have any comments or anything further to add on the coordination/collaboration provisions?

(add pages if needed)

Part IIB.

In Part IIB of the questionnaire, for each provision listed, GAO has paraphrased a provision title and description, and included citations for the statute(s) that created/amended it. We included Internet hyperlinks to U.S. Government Publishing Office websites, for reference to citations if needed. (You must be connected to the Internet to use this feature.)

- For each provision- please respond to questions 'A' and 'C,' which are the same questions from Part IIA. We excluded question 'B' from this section.

	A. Is your agency aware of this provision? (Mark only one box)		C. In what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
Required Provisions (Note: Please provide a response for questions 'A' and 'C.' Question 'B' is not included as the required provisions apply to all projects since their enactment.)			
19. 150-Day Statute of Limitations Bars claims seeking judicial review of a permit, license, or approval issued by a federal agency for highway projects unless they are filed within 150 days after publication of a notice in the <i>Federal Register</i> announcing the final agency action, or unless a shorter time is specified in the federal law under which the judicial review is allowed. SAFETEA-LU: Sec. 6002 [PDF p.723] MAP-21: Sec. 1308 [PDF p.539]	Yes 46 ➡ No 6 ↓ (Go to next provision)		Sped up greatly 2 Sped up somewhat 16 No effect 14 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 13
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)		C. In what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
20. Programmatic Mitigation Plans for Use in NEPA Review Requires that any federal agency responsible for environmental review to give substantial weight to a state or metropolitan programmatic mitigation plan, if one had been developed as part of the transportation planning process, when carrying out responsibilities under NEPA or other environmental law. <i>MAP-21: Sec. 1311 [PDF p.543]</i> <i>FAST Act: Sec. 1306 [PDF p.1306]</i>	Yes 41 ➡ No 11 ↓ <i>(Go to next provision)</i>		Sped up greatly 3 Sped up somewhat 3 No effect 17 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 15
(Optional) Comments on your answers:			
21. 45-Day Limit to Identify Resource Agencies Establishes a 45-day limit after the notice of intent date for a lead agency to identify other agencies to participate in the environmental review process on EIS projects. <i>FAST Act: Sec. 1304(d)(1) [PDF p.1379]</i>	Yes 45 ➡ No 7 ↓ <i>(Go to next provision)</i>		Sped up greatly 1 Sped up somewhat 3 No effect 20 Slowed down somewhat 1 Slowed down greatly 0 Too soon to judge 19
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)		C. In what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
22. Single NEPA Document Requires to the maximum extent practicable and consistent with federal law, for the EIS project lead agency to develop a single NEPA document to satisfy the requirements for federal approval or other federal action, including permits. <i>FAST Act: Sec. 1304(d)(2) [PDF p.1380]</i>	Yes 47 ➡ No 4 ↓ <i>(Go to next provision)</i>		Sped up greatly 4 Sped up somewhat 7 No effect 12 Slowed down somewhat 3 Slowed down greatly 0 Too soon to judge 19
(Optional) Comments on your answers:			
23. Initiation of Environmental Review Process Creates several requirements at the start of an EIS project's environmental review process, such as 1) establishing a 45 day deadline for DOT to provide a written response to the project sponsor on initiation of the environmental review process; 2) establishing a 45 day deadline for DOT to respond to a request for designation of a lead agency; and 3) requiring the development of a checklist by the lead agency, as appropriate, to help identify natural, cultural, and historic resources, to identify cooperating and participating agencies and improve interagency collaboration. <i>FAST Act: Sec. 1304(e.) [PDF p.1380]</i>	Yes 48 ➡ No 4 ↓ <i>(Go to next provision)</i>		Sped up greatly 2 Sped up somewhat 4 No effect 18 Slowed down somewhat 3 Slowed down greatly 0 Too soon to judge 20
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)		C. In what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
24. Issue Resolution Process Establishes procedures to resolve issues between state DOTs and relevant resource agencies. <i>SAFETEA-LU: Sec. 6002(a) [PDF p.715]</i> <i>MAP-21: Sec. 1306 [PDF p.535]</i>	Yes 47 ➡ No 4 ↓ <i>(Go to next provision)</i>		Sped up greatly 1 Sped up somewhat 3 No effect 26 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 14
(Optional) Comments on your answers:			
25. Accelerating Environmental Review of Complex Projects At the request of a project sponsor or a Governor of the State in which the project is located, requires DOT to provide additional technical assistance for a project where EIS review has taken 2 years, and establish a schedule for review completion within 4 years. <i>MAP-21: Sec. 1309 [PDF p.539]</i>	Yes 47 ➡ No 5 ↓ <i>(Go to next provision)</i>		Sped up greatly 1 Sped up somewhat 4 No effect 19 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 20
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)		C. In what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
26. Programmatic Agreements for Efficient Environmental Review Requires DOT to seek opportunities with states to enter into programmatic agreements to carry out environmental and other project reviews. MAP-21: Sec. 1318(d) [PDF p.551]	Yes 52 ➡ No 0 ↓ <i>(Go to next provision)</i>		Sped up greatly 24 Sped up somewhat 15 No effect 11 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 1
(Optional) Comments on your answers:			
27. Stakeholder Agency Comments in Area of Expertise Limits the comments of participating agencies to subject matter areas within the special expertise or jurisdiction of the agency. FAST Act: Sec. 1304(f)(2)(A) [PDF p.1381]	Yes 45 ➡ No 7 ↓ <i>(Go to next provision)</i>		Sped up greatly 1 Sped up somewhat 9 No effect 17 Slowed down somewhat 0 Slowed down greatly 0 Too soon to judge 14
(Optional) Comments on your answers:			

	A. Is your agency aware of this provision? (Mark only one box)		C. In what way has this provision affected the speed of project delivery at your agency? (Mark only one box)
28. Coordination Plan for Public and Agency Participation Requires a coordination plan for public and agency participation in the environmental review process within 90 days of notice of intent or the initiation of an Environmental Assessment, including a schedule for completion of the environmental review process for the project. <i>FAST Act: Sec. 1304(g)(1) [PDF p. 1383]</i>	Yes 45 ➡ No 7 ↓ <i>(Go to next provision)</i>		Sped up greatly 1 Sped up somewhat 6 No effect 16 Slowed down somewhat 7 Slowed down greatly 1 Too soon to judge 13
(Optional) Comments on your answers:			
29. Resolved Issues are Not Reconsidered Without Significant New Information Issues that are resolved by the lead agency with concurrence from stakeholder cannot be reconsidered unless there is significant new information or circumstances arise. <i>FAST Act: Sec. 1304(h)(1) [PDF p. 1383]</i>	Yes 46 ➡ No 6 ↓ <i>(Go to next provision)</i>		Sped up greatly 2 Sped up somewhat 8 No effect 12 Slowed down somewhat 1 Slowed down greatly 0 Too soon to judge 21
(Optional) Comments on your answers:			
Do you have any comments or anything further to add on the required provisions?			
(add pages if needed)			

Thank you. You have completed the Highway Project Delivery Questionnaire.

Internet Hyperlinks

We provided the following Internet hyperlinks for reference to citations, if needed. You must be connected to the Internet to use this feature. If the hyperlink does not work, please copy and paste the following URLs into your Internet browser.

U.S. Government Publishing Office websites

SAFETEA-LU: <https://www.gpo.gov/fdsys/pkg/PLAW-109publ59/pdf/PLAW-109publ59.pdf>

MAP-21: <https://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

FAST Act: <https://www.gpo.gov/fdsys/pkg/PLAW-114publ94/pdf/PLAW-114publ94.pdf>

23 CFR 771.117 FHWA Categorical Exclusions: <https://www.gpo.gov/fdsys/pkg/CFR-2016-title23-vol1/pdf/CFR-2016-title23-vol1-sec771-117.pdf>

Appendix V: Transit Agency Provisions Checklist and Responses Regarding Awareness and Use

Category	Provision number	Description	Are you aware of this project delivery provision? (Y or N)	Have you used this project delivery provision? (Y or N)
CE	1	Authorizes the lead agency of a multimodal project to apply categorical exclusions from the NEPA implementing regulations or procedures of a cooperating DOT operating administration.	9	1
CE	2	Designates the repair or reconstruction of any road, highway, or bridge that was damaged by an emergency as a categorical exclusion, subject to certain conditions.	9	1
CE	3	Designates a project within an operational right-of-way as a categorical exclusion, subject to certain conditions.	11	5
CE	4	Authorizes the designation of a categorical exclusion for projects receiving less than \$5 million in federal funds, or less than 15 percent federal funds for a project under \$30 million, subject to an annual inflation adjustment.	8	0
CE	5	For transit projects, designates bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris as a categorical exclusion.	9	0
CE	6	For transit projects, designates preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way as a categorical exclusion.	8	2
CE	7	For transit projects, designates geotechnical and archeological investigations to provide information for preliminary design, environmental analyses, and permitting purposes as a categorical exclusion.	9	5
CE	8	For transit projects, designates minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, as a categorical exclusion.	11	3
CE	9	For transit projects, designates modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards, as a categorical exclusion.	10	1
Parkland exclusion	10	Authorizes a historic site, park land, or refuge to be used for a transportation program or project if it is determined that “ <i>de minimis</i> impact” would result.	9	7
Admin changes	11	Bars claims seeking judicial review of a permit, license, or approval issued by a federal agency for projects unless they are filed within 150 days after publication of a notice in the <i>Federal Register</i> announcing the final agency action, unless a shorter time is specified in the federal law under which the judicial review is allowed.	9	4

**Appendix V: Transit Agency Provisions
Checklist and Responses Regarding
Awareness and Use**

Category	Provision number	Description	Are you aware of this project delivery provision? (Y or N)	Have you used this project delivery provision? (Y or N)
Admin changes	12	Authorizes the lead agency for a project to use planning products, such as planning decisions, analysis, or studies, in the environmental review process of the project.	10	6
Admin changes	13	Requires that any federal agency responsible for environmental review to give substantial weight to a state or metropolitan programmatic mitigation plan, if one had been developed as part of the transportation planning process, when carrying out responsibilities under NEPA or other environmental law.	8	0
Admin changes	14	Allows the lead agency of a project, in order to expedite decisions, to use an errata sheet attached to a final EIS, instead of rewriting it, if the comments are minor. Also, to the maximum extent practicable, combines the final EIS and record of decision in certain cases.	10	3
Admin changes	15	Authorizes the operating administrations of DOT to adopt a draft EIS, EA, or final EIS of another operating administration without recirculating the document for public review if the proposed action is substantially the same as the project considered in the document to be adopted.	7	2
Admin changes	16	Establishes a 45-day limit after the notice of intent date for a lead agency to identify other agencies to participate in the environmental review process on EIS projects.	9	1
Admin changes	17	To the maximum extent practicable and consistent with federal law, requires lead agencies to develop a single NEPA document to satisfy the requirements for federal approval or other federal action, including permits.	10	2
Admin changes	18	Creates several requirements at the start of a project's Section 139 environmental review process, such as 1) establishing a 45-day deadline for DOT to provide a written response to the project sponsor on initiation of the environmental review process; 2) establishing a 45-day deadline for DOT to respond to a request for designation of a lead agency; and 3) requiring the development of a checklist by the lead agency to help identify natural, cultural, and historic resources, to identify agencies and improve interagency collaboration.	8	0
Admin changes	19	Authorizes the lead agency to reduce duplication, by eliminating from detailed consideration an alternative proposed in an EIS if the alternative was already proposed in a planning process or state environmental review process, subject to certain conditions.	9	2
Coordination	20	Allows a state to use its federal funds to support a federal or state agency or Indian tribe participating in the environmental review process on activities that directly contribute to expediting and improving project planning and delivery.	8	1

**Appendix V: Transit Agency Provisions
Checklist and Responses Regarding
Awareness and Use**

Category	Provision number	Description	Are you aware of this project delivery provision? (Y or N)	Have you used this project delivery provision? (Y or N)
Coordination	21	Establishes procedures to resolve issues between project sponsors and relevant resource agencies.	8	0
Coordination	22	At the request of a project sponsor or a governor of the state in which the project is located, requires DOT to provide additional technical assistance for a project where EIS review has taken 2 years, and establish a schedule for review completion within 4 years.	5	0
Coordination	23	Requires DOT to seek opportunities with states to enter into programmatic agreements to carry out environmental and other project reviews.	7	1
Coordination	24	Encourages early cooperation between DOT and other agencies, including states or local planning agencies, in the environmental review process to avoid delay and duplication, and suggests early coordination activities. Early coordination includes establishment of MOUs with states or local planning agencies.	9	5
Coordination	25	Limits the comments of participating agencies to subject matter areas within the special expertise or jurisdiction of the agency.	8	3
Coordination	26	Requires a coordination plan for public and agency participation in the Section 139 environmental review process within 90 days of a Notice of Intent or the initiation of an Environmental Assessment, including a schedule.	9	3
Coordination	27	Issues that are resolved by the lead agency with concurrence from stakeholders cannot be reconsidered unless there is significant new information or circumstances arise.	4	0
Project Delivery	28	Permits states or local transportation agencies to release requests for proposals and award design-build contracts prior to the completion of the NEPA process; however, it precludes a contractor from proceeding with final design or construction before completion of the NEPA process.	10	6
Project Delivery	29	Authorizes states to acquire real property interests for a project before completion of the NEPA process.	10	2
Project Delivery	30	Authorizes the awarding of contracts for the preconstruction services and preliminary design of a project using a competitive selection process before the completion of the NEPA process.	7	0

Source: GAO analysis. | GAO-18-222

Appendix VI: Comments from the Department of Transportation



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

Assistant Secretary
for Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

DEC 18 2017

Susan Fleming
Director, Physical Infrastructure Issues
U.S. Government Accountability Office (GAO)
441 G Street NW
Washington, DC 20548

Dear Ms. Fleming:

The Department of Transportation (DOT) is committed to accelerating project delivery while preserving and enhancing the quality of the human and natural environments. Congress provided provisions in legislation aimed at accelerating the delivery of highway and transit projects. The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have considerable flexibilities to accelerate project delivery, including the Surface Transportation Project Delivery Program under section 327 of title 23, United States Code (U.S.C.), commonly referred to as the National Environmental Policy Act (NEPA) Assignment Program.

FHWA provides continuous, timely, and constructive technical assistance to States in the NEPA Assignment Program, to include the following examples:

- Creating an Environmental Review Toolkit;
- Conducting NEPA Assignment State workshops;
- Conducting technical training in NEPA, at the request of the State;
- Conducting readiness assessments to identify areas of improvements in advance of taking on assignment responsibilities under 23 U.S.C. 326 and 327; and
- Collaborating daily with States that express interest in the program to ensure successful implementation.

The NEPA Assignment Program statute requires the Secretary of Transportation to conduct annual audits and monitoring to ensure compliance by a State with the agreement developed for program participation under 23 U.S.C. 327(g)(1) and (h). However, the statute does not require FHWA to measure environmental review efficiency and timeliness of participating States. While accelerating project delivery remains important, focusing only on timeliness metrics for environmental reviews in NEPA Assignment States overlooks other significant benefits of the Program. For example, the NEPA Assignment Program gives States control over when and how to conduct environmental reviews as long as they comply with the Federal requirements. This is one of the most significant factors that a State considers in deciding whether to request NEPA Assignment, and it is particularly important for the States with large Federal-aid highway programs.

**Appendix VI: Comments from the Department
of Transportation**

Given these circumstances, we can only partially concur with GAO's recommendation to offer and provide guidance or technical assistance to NEPA assignment States on developing evaluation methodologies, including baseline time frames and timeliness measures.

Building upon existing guidance, we will clarify environmental review start times and communicate this to all FHWA Divisions and States. NEPA Assignment States may choose to use this guidance at their discretion. Additionally, we will provide the NEPA Assignment States with any Federal Government-wide guidance developed on this area as a result of Executive Order 13807 and other initiatives involving performance measures of environmental reviews. It is our practice to affirmatively notify NEPA Assignment States of any new guidance related to the environmental review of projects. We will provide a detailed response to the recommendation within 60 days of the final report's issuance.

We appreciate the opportunity to respond to the GAO draft report. Please contact Madeline M. Chulumovich, Director, Audit Relations and Program Improvement, at (202) 366-6512 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Keith Nelson', with a stylized flourish extending to the right.

Keith Nelson
Assistant Secretary for Administration

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Susan Fleming, (202) 512-2834 or flemings@gao.gov

Staff Acknowledgments

In addition to the contact named above, Steve Cohen (Assistant Director); Brian Chung (Analyst-in-Charge); Rich Johnson; Delwen Jones; Hannah Laufe; Ethan Levy; Ned Malone; Josh Ormond; Tina Paek; Cheryl Peterson; and Joe Thompson made significant contributions to this report.

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