

National Association of County Engineers

“The Voice of County Road Officials”

Transportation & Infrastructure Legislative Update

North Dakota Association of County Engineers

County Roads Conference



Kevan Stone

Executive Director

National Association of County Engineers

NACE 2020

ORANGE BEACH (BALDWIN COUNTY), ALABAMA

Join Us Next Year
for NACE 2020

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2020**
ALABAMA

**Baldwin County,
Alabama
April 19-23**

**THE LARGEST
EVENT OF COUNTY
INFRASTRUCTURE
PROFESSIONALS**

Hosted By

 **Voice of County
Road Officials**
www.countyengineers.org



The graphic features a wooden plank background. On the left is a blue shield-shaped road sign with yellow text. In the center is a photograph of a coastal road with a yellow starfish and a seashell overlaid. At the bottom are two circular logos: one for NACE (National Association of County Engineers) and one for ACEA (Alabama County Engineers Association).

NACE FLY-IN

FEBRUARY 27, 2020

- United States Department of Transportation
- Senate Environment & Public Works Committee
- House Transportation & Infrastructure Committee



NACE LEGISLATIVE PRIORITIES

- Permit and Approval Process Streamlining
- Increased Federal Funding for county road infrastructure
- More Opportunities for Direct Funding
- Waters of the United States (WOTUS)
- Ensuring new streams of federal funding, such as the competitive bridge-bundling program
- Safety

COALITIONS

November 14, 2019

The Honorable Mitch McConnell, Majority Leader, United States Senate
The Honorable Nancy Pelosi, Speaker, United States House of Representatives

The Honorable Charles E. Schumer, Democratic Leader, United States Senate
The Honorable Kevin McCarthy, Republican Leader, United States House of Representatives

Subject: Repealing the \$7.6 billion FAST Act Rescission of Highway Contract Authority by End of 2019

Dear Congressional Leaders:

The undersigned group of diverse national associations that support investment in our nation's transportation infrastructure is writing once again to urge Congress to repeal—by the end of this calendar year—the impending \$7.6 billion rescission of highway contract authority scheduled for July 1, 2020, under the Fixing America's Surface Transportation (FAST) Act. We ask for this action immediately as part of any moving legislation, including FY 2020 appropriations, the National Defense Authorization Act, or another year-end vehicle.

According to Federal Highway Administration information released November 4 (see Appendix), states held \$5.4 billion in highway dollars subject to the rescission at the end of FY 2019. Yet because Section 1438 of the FAST Act calls for a cut of \$7.6 billion, without repealing this provision, states will face an additional \$2.2 billion reduction in highway contract authority next summer.

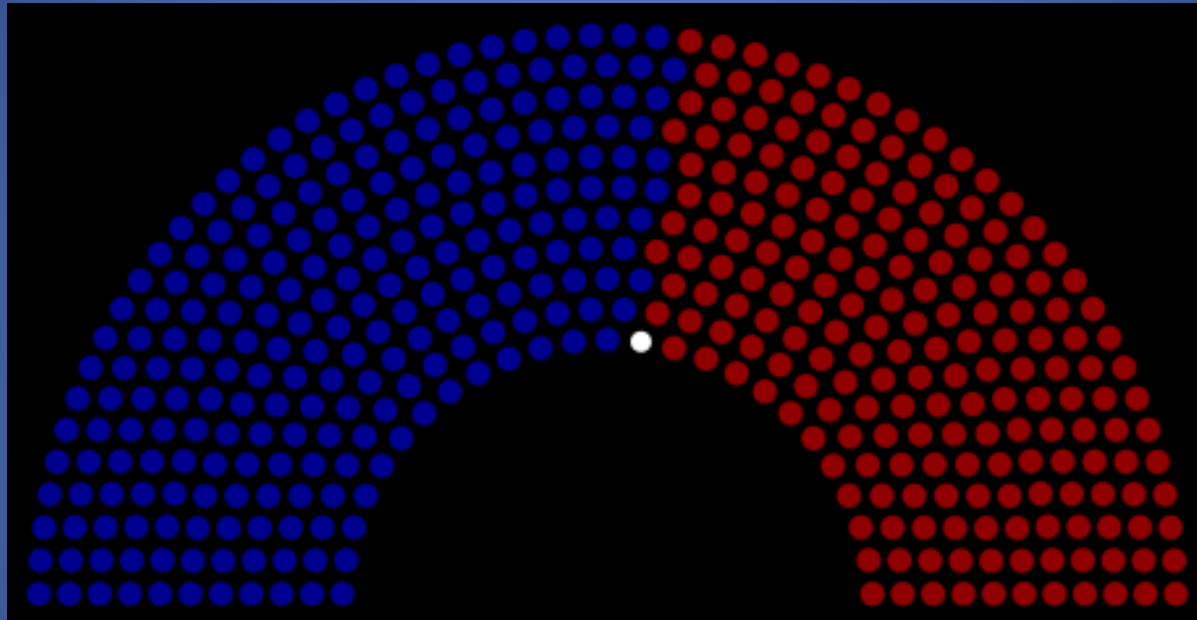
It is especially critical to repeal this provision during the current calendar year because in the worst-case scenario, states may be forced to deobligate existing projects in order to provide the necessary amount of contract authority to be rescinded. If this happens next spring or summer at the peak of the construction season, the effect would be especially devastating.

Furthermore, the lack of funding flexibility resulting from the rescission will severely undermine states' asset management efforts which are intended to meet key national performance targets on safety, pavement, bridge, freight movement, congestion, emissions, and overall system performance.

If you would like to discuss further, please contact Joung Lee, AASHTO's Policy Director, at 202-624-5818 or jlee@aaasho.org.

Sincerely,
Forty-two Transportation Associations and Groups
(Please see next page for the full list.)

Where We Stand Today.... U.S. House of Representatives

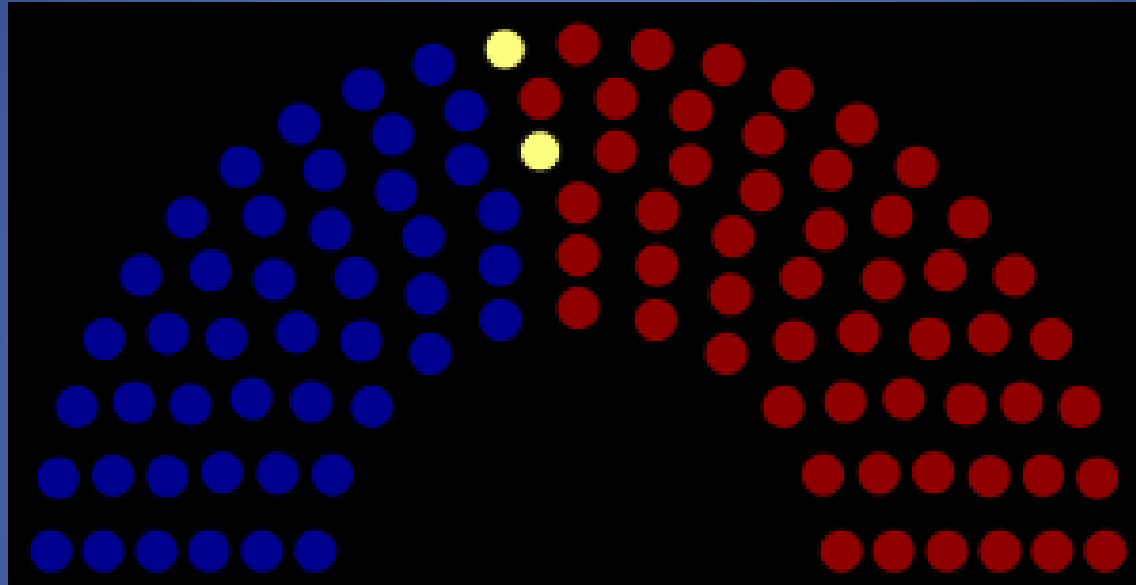


Democrat: 235

Republican: 199

Where we Stand Today....

United States Senate



Republican: 53

Democrat: 45

Independent: 2 (Both I's caucus with Democrats)

Reauthorization Bill

- Aside from a possible infrastructure bill, the current surface transportation bill (Highway Bill) expires FY 2020.
- This year, the House and Senate began hearings on what should be revised, reformed and added.
- This is time to educate your state's members of Congress on your priorities.

America's Transportation Infrastructure Act (ATIA)

On Tuesday, July 30, the U.S. Senate Environment and Public Works Committee unanimously approved a five-year surface transportation reauthorization measure spanning FY 2021 through 2025. The America's Transportation Infrastructure Act (ATIA) (S. 2302) authorizes \$287 billion in funding from the Highway Trust Fund for the nation's highway surface transportation programs over five years, representing a roughly 27 percent increase over the levels authorized in the previous legislation, the Fixing America's Surface Transportation (FAST) Act of 2015, which is set to expire in September 2020.

America's Transportation Infrastructure Act (ATIA)

- **Maintains the off-system bridge set-aside:** ATIA maintains the set-aside under the Surface Transportation Block Grant Program (STBGP) that mandates no less than 15 percent of a state's STBGP allocation be directed to the repair and rehabilitation of bridges off the federal-aid highways system. This set-aside is critical as it increases the amount and flexibility of STBGP dollars allocated to counties for the improvement of off-system bridges. Counties own and maintain 64 percent of the nation's 281,184 off-system bridges.
- **Streamlines the federal permitting process:** The bill codifies certain tenants of the "One Federal Decision" Executive Order, establishing a two-year goal for completion of environmental reviews; a 90-day timeline for related project authorization; a single environmental document and record of decision to be signed by all participating agencies; and an accountability and tracking system to be managed by the U.S. Secretary of Transportation.

America's Transportation Infrastructure Act (ATIA)

NEW competitive grants for bridges: The legislation authorizes more than \$6 billion over five years, including \$3.3 billion from the Highway Trust Fund, for a new competitive bridge grant program to address the growing backlog of bridges in poor conditions nationwide. Under this competitive program, states and counties may apply directly for funding through the U.S. Department of Transportation (DOT). Counties own and operate 38 percent of the National Bridge Inventory, over 50 percent of which are considered “structurally deficient” and in need of repair.

America's Transportation Infrastructure Act (ATIA)

- **NEW funding and focus for resilient infrastructure:** ATIA emphasizes resiliency throughout the bill and expands the eligibility for resilient infrastructure projects to receive federal funding. Resilient measures counties could fund through the bill include relocating roadways to a higher elevation, stabilizing slopes, replacing culverts with bridges or upsizing culverts, tide gates and improving natural features. In addition, the legislation directs specific funding for highway infrastructure that could be affected by flooding, drought, wildfires, rockslides, levee and dam failures and earthquakes. This is particularly important for counties, as 788 counties – or 26 percent – faced at least one major disaster declaration in 2018.
- **The bill also provides significant federal investments for communities to build long-lasting, resilient transportation infrastructure by creating the Promoting Resilient Operations for Transformative, Efficient and Cost-saving Transportation (PROTECT) grant program.** The PROTECT program would provide \$3.9 billion in formula grants and \$1 billion in competitive grants, respectively, over five years and would assist areas in recovering from and/or preparing for natural disasters by directing funds to develop resilient infrastructure in vulnerable communities. The PROTECT Program has two components:

America's Transportation Infrastructure Act (ATIA)

- **NEW formula grant program, as part of PROTECT:** Funded at \$786 million per year via the Highway Trust Fund, the formula grant portion of PROTECT will be distributed to states in the same share the state receives based on its core formula apportionments. These funds may be used for construction activities that improve the resiliency of assets to current and future weather events and natural disasters, for strategies that allow for a continuity of operations or rapid recovery of surface transportation systems that serve critical needs following a disaster, including evacuation routes, or to protect coastal infrastructure that is at long-term risk to sea level rise. The federal share is 80 percent; however, funding from other federal sources may be used to cover the remaining 20 percent.
- **NEW competitive grant program:** Funded at \$200 million per year from the Highway Trust Fund, this portion of the grant program is intended to enable communities to assess vulnerabilities and plan infrastructure improvements and emergency response strategies to address community needs. Local governments may apply directly to U.S. DOT for funding in this portion of the PROTECT program.

America's Transportation Infrastructure Act

- **NEW programs for transportation safety projects:** The legislation increases and expands safety provisions, including designating “leading pedestrian intervals” as an eligible project and allowing states the flexibility to use Highway Safety Improvement Plan (HSIP) funds for educational campaigns on traffic safety and enforcement activities. ATIA creates several new safety grant programs:
- **NEW formula safety incentive grant program:** ATIA establishes a formula safety incentive program for states funded at \$500 million per year from the Highway Trust Fund. Upon receipt of the funds, a state must then sub-allocate 65 percent of their share based on population. This incentive program would mandate states use half the funding for highway safety improvement projects, while the remaining half can be used for any project that is eligible under STGBP so long as the state can prove progress is being made to address its vulnerable road safety assessment. If performance data demonstrates a state is making progress in this area, the federal share is equal to 100 percent.
- **NEW competitive traffic fatality reduction grant program:** ATIA also establishes a fatality reduction program funded at \$100 million annually from the Highway Trust Fund. Eligibility is directed toward state and local governments where data shows an adversely high number of fatalities or serious injuries resulting from traffic accidents have occurred. Successful applicants will be states and other units of government who can demonstrate progress in reducing these averages. The grant criteria, which may be funded at up to a 100 percent federal share, is based on the ability of a state or local government to demonstrate one or more of the following:
 - Reducing per capita serious injuries and fatalities
 - Reducing rates of serious injuries and fatalities per vehicles miles traveled (VMT)
 - Having the lowest per capita serious injuries and fatalities
 - Having among the lowest per-VMT serious injury and fatality averages
 - Innovative safety efforts

America's Transportation Infrastructure Act

- **Increases sub-allocation amounts for Transportation Alternatives Program (TAP) Projects:** The bill increases the TAP set-aside within the STBGP, as well as its sub-allocation amounts, while also providing smaller communities greater access. TAP was created under the FAST Act and provides funding to projects considered alternative to traditional highway construction. Counties utilize the TAP program for pedestrian and bicycle facilities, trails, safe routes to school projects, community improvements and environmental mitigation, among others.
- **NEW language added to give counties the opportunity to receive 100 percent of TAP set-aside funds allocated to states:** The legislation includes new language mandating states disperse funds they receive through the TAP set-aside with an opportunity to “allocate up to 100 percent of the funds referred to counties and other local transportation entities.” This provision will give counties the opportunity to receive more federal funding for specific infrastructure projects.

America's Transportation Infrastructure Act

Other Provisions

- Increases funding for the Nationally Significant Freight and Highway Projects Program
- Increases investments in tribal and federal lands transportation programs
- NEW environmental provisions to reduce motor vehicle carbon emissions and road congestion

MOVING FORWARD FRAMEWORK

FOR THE PEOPLE

Fact Sheet

House Democrats' Moving Forward Framework outlines a 5-year, \$760 billion investment to get our existing infrastructure working again and fund new, transformative projects that will create more than 10 million jobs, while reducing carbon pollution, dramatically improving safety, and spurring economic activity. It's infrastructure investment that is **smarter, safer, and made to last.**

Modern Highways & Highway Safety Investments — \$329 Billion

- ◊ Delivers better roads and bridges faster, by prioritizing fixing the broken, outdated infrastructure we already have, including the Nation's [47,000 structurally deficient bridges](#).
- ◊ Modernizes our infrastructure with bold new funding for addressing the most impactful projects and bottlenecks that affect local regions and the national transportation network.
- ◊ Invests in reducing carbon pollution from the transportation sector and improving the resilience of infrastructure to withstand the impacts of climate change.
- ◊ Dramatically increasing the availability of charging stations and other alternative fueling options for electric and zero-emissions vehicles.
- ◊ Addresses the sharp rise in pedestrian and bicyclist deaths by making our roads safer for all users.
- ◊ Uses modern technology, such as smart traffic lights and innovative materials, to create smarter, more efficient transportation systems.

Transit Investment — \$105 Billion

- ◊ Increases funding for transit agencies to add new routes and provide more reliable service, encouraging viable public transit options and fewer single-occupant cars clogging highways.
- ◊ Increases investment in zero-emission buses to reduce carbon pollution.
- ◊ Streamlines project delivery so that our investments get shovels in the ground quicker and commuters see results faster, by reforming the Capital Investment Grant program.
- ◊ Provides the investments needed to address the growing backlog of transit maintenance needs, making public transit safer and more reliable.

Rail Investments — \$55 Billion

- ◊ Expands our passenger rail network, giving travelers a reliable, low-carbon option to travel both short and long distances, including to regions that lack frequent or affordable airport service.
- ◊ Invests in Amtrak stations, facilities, services, and modernization of its rail cars, while continuing Amtrak's legacy of serving long-distance and intercity passengers.

Airport Investments — \$30 Billion

- ◊ Supports airport investments to meet growing passenger demand and advances FAA's airspace modernization efforts to make air travel safer and easier.

- Incentivizes the development and use of sustainable aviation fuels and new aircraft technologies to reduce the carbon pollution from air travel.
- Accelerates research into noise reduction efforts in communities near U.S. airports, making communities healthier and more livable.

Clean Water & Wastewater Infrastructure — \$50.5 Billion

- Funds building new, modern clean water and wastewater infrastructure by investing \$40 billion in the Clean Water State Revolving Fund (CWSRF), to address local water quality challenges, with dedicated funds for urban and rural communities with affordability concerns.
- Encourages the use of energy-efficient and water-efficient technologies.
- Helps communities affordably address local sewer overflow and stormwater infrastructure needs, preventing pollution in local rivers and waterways, and disruptions to service.
- Establishes a new EPA program to detect, prevent, and treat discharge of industrial chemicals, including PFAS.

Water Infrastructure (Flood protection, navigation, etc.) — \$10 Billion

- Addresses the impact of severe weather events by tackling the backlog of Army Corps' projects designed to protect communities at risk of flooding, to enhance community resiliency, and to enhance national, regional, and local economic growth.

Harbor Infrastructure — \$19.7 Billion

- Funds the essential dredging and upkeep of American harbors, ports and channels – keeping commerce flowing and ensuring U.S. economic competitiveness – by making sure the fees collected from maritime shippers go toward regular harbor maintenance.

Brownfield Restoration — \$2.7 Billion

- Helps communities fix up abandoned and contaminated properties for new use, particularly important for the revitalization of economically distressed communities.

Drinking Water — \$25.4 Billion

- Protects Americans' drinking water – particularly for vulnerable communities – by investing in the Drinking Water State Revolving Fund and programs to ensure clean drinking water in schools, day care centers and on Native American Reservations.
- Provides funding to local communities dealing with PFAS contamination in the drinking water and requires EPA identify and assist these and other communities with effective decontamination techniques.

Clean Energy— \$34.3 Billion

- Invests in electric grid modernization to accommodate more renewable energy and to make the grid more secure, resilient and efficient.
- Encourages local communities to invest in energy efficient infrastructure including retrofitting and weatherizing buildings and funding energy efficiency and conservation projects to reduce carbon pollution and put people back to work.
- Strengthens existing energy supply infrastructure and expands renewable energy infrastructure in low-income and underserved communities to increase climate resiliency and reduce greenhouse gas pollution across the country.
- Supports the development of an electric vehicle charging network to facilitate the transition to zero emissions vehicles from coast to coast.

Broadband & Communications — \$86 Billion

- Invests in expanding broadband access to unserved and underserved rural, suburban, and urban communities across the country – connecting Americans, creating strong small businesses, more jobs and strengthening economies in communities that have been left behind.

Public Safety Communications — \$12 Billion

- Protects American lives by funding implementation of a Next Generation 9-1-1 system that will allow people to call or send texts, images or videos to 9-1-1 to help first responders and emergency personnel better assess the nature of an emergency and reach people in need.

Rumblings and Grumblings

Other ideas are being floated around by elected officials, agency heads, Associations and corporations, all with “solutions” to mitigating congestion and raising revenue. As with everything in Washington, every idea will always have a passionate opposition.

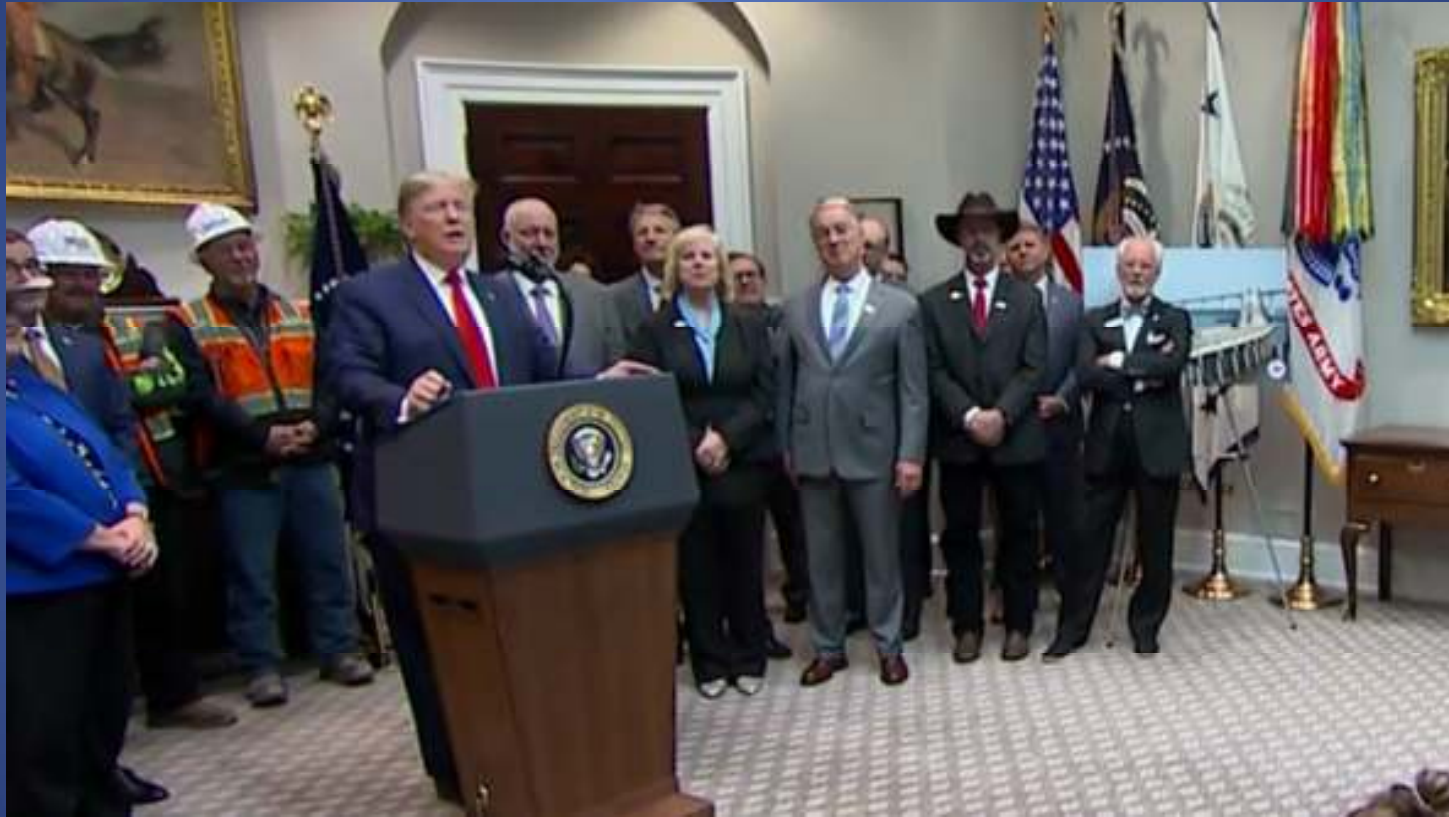
Two notable ideas are:

- Congestion Pricing
- Tolling of Existing Interstate Lanes
- Comprehensive VMT

Now What?

It is important to remember this is only the first step in what will be a long bipartisan and bicameral process. Here's what needs to happen:

1. Senate Passes Bill out of Committee
2. Full Senate Votes in Favor of Bill (60 votes)
3. House Pass Bill out of Committee
4. Full House Votes in favor of Bill (Majority vote needed)
5. Chambers go to Conference (A conference Committee is members from both chambers selected (by leadership) to work together to form one Bill from the House and Senate versions.)
6. Conferees (members of Conference Committee) must sign off on the one bill that will then go to both chambers for a vote.
7. Both Chambers must pass the Conference Committee Bill (Conference Report).
8. President Signs Legislation, thus becoming law.



NEW NEPA REFORMS

According to the Council on environmental Quality (CEQ), the average length of an EIS is over 600 pages, and that the average time for Federal agencies to conduct these NEPA reviews is four and a half years. However, reviews for some projects have taken much longer. NEPA analyses are frequently challenged in the courts, and while Federal agencies ultimately prevail in many cases, litigation can unnecessarily delay and increase costs for important projects such as needed transportation, water, and other infrastructure that benefit States, Tribes, and local communities. The increased costs and complexity of NEPA reviews and litigation make it very challenging for large and small businesses to plan, finance, and build projects in the United States.

Overview of Key Elements of the Proposed Rule

Modernize, Simplify and Accelerate the NEPA Process

- **Establish presumptive time limits of two years** for completion of environmental impact statements (EISs) and one year for completion of environmental assessments (EAs).
- Specify presumptive page limits
- **Require joint schedules, a single EIS, and a single record of decision (ROD), where appropriate,** for EISs involving multiple agencies to strengthen the role of the lead agency and require senior agency officials to timely resolve disputes to avoid delays to promote use of modern technologies for information sharing and public outreach.

Overview of Key Elements of the Proposed Rule

Clarify Terms, Application and Scope of NEPA Review

- **Provide direction regarding the threshold consideration of whether NEPA applies to a particular action**
- **Require earlier solicitation of input from the public** to ensure informed decision making by Federal agencies
- **Require comments to be specific and timely** to ensure appropriate consideration
- **Require agencies** to summarize alternatives, analyses, and information submitted by commenters and to certify consideration of submitted information in the ROD
- **Simplify the definition of environmental “effects”** and clarify that effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action
- State that analysis of cumulative effects is not required under NEPA
- Clarify that “major Federal action” does not include non-discretionary decisions and non-Federal projects (those with minimal Federal funding or involvement)
- Clarify that “reasonable alternatives” requiring consideration must be technically and economically feasible

Overview of Key Elements of the Proposed Rule Enhance Coordination with States, Tribes & Localities

- **Reduce duplication** by facilitating use of documents required by other statutes or prepared by State, Tribal, and local agencies to **comply with NEPA**
- Ensure appropriate consultation with affected Tribal governments and agencies to eliminate the provisions in the current regulations that limit Tribal interest to reservations.

Reduce Unnecessary Burdens, Delays

- **Facilitate use of efficient reviews** (categorical exclusions (CEs), environmental assessments)
- **Allow agencies to establish procedures** for adopting other agencies' CEs
- **Allow applicants/contractors to assume a greater role** in preparing EISs under the supervision of an agency

NEW WOTUS RULE

On January 23, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) finalized a new “Waters of the U.S.” (WOTUS) definition to replace the 2015 WOTUS rule issued under the Obama Administration. The announcement comes two years after President Trump signed an executive order directing the EPA to withdraw and rewrite the controversial 2015 rule. The rule goes into effect on 60 days after being published in the federal register.

The new definition creates four categories of regulated waters and includes 12 exemptions. The four categories of WOTUS include:

- Territorial seas and traditional navigable waters
- Tributaries
- Lakes, ponds and impoundments of jurisdictional waters
- Adjacent wetlands

NEW WOTUS RULE

The rule specifies that if water does not meet one of the four listed categories, it will not be considered a WOTUS and clarifies that certain other waters will also no longer be considered a WOTUS. These exemptions include:

- Waterbodies that are not included in the four WOUTS categories
- Groundwater
- Ephemeral features
- Diffuse stormwater run-off and directional sheet flow over upland
- Certain ditches
- Prior converted cropland
- Artificially irrigated areas
- Artificial lakes and ponds
- Water-filled depressions
- Stormwater control features
- Groundwater recharge, water reuse and water recycling structures
- Waste treatment systems

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THANK YOU!

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