



U.S. Department
of Transportation

**Federal Transit
Administration**

MAP-21 Section 1306 Financial Penalties Guidance Questions & Answers

These Questions and Answers (Qs & As) are guidance to Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) personnel in carrying out their responsibilities under the financial penalty provisions in Section 1306 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (23 U.S.C. § 139(h)(6)). The FHWA/FTA encourage early coordination and open and frequent communication among project partners, so that the circumstances that require the penalty—rescission of funds by a Federal agency of jurisdiction—can be avoided. This can be accomplished through strong partnerships and effective coordination efforts that may be established from the start of the environmental review process to avoid later delays. The FHWA/FTA environmental review process (23 U.S.C. § 139) provides multiple opportunities and tools for an integrated and effective review process, including the establishment of participating agencies, interagency Memoranda of Understanding/Agreements, and coordination and concurrence points for key decisions that influence the approvals required under the National Environmental Policy Act (NEPA) and other Federal laws (see <http://environment.fhwa.dot.gov/strmlng/index.asp>). Coordination plans and meetings encourage the early and frequent exchange of information and ideas, and assist in identifying the milestones—and potential bottlenecks—in a project’s review process. These tools and approaches are further encouraged by NEPA, its implementing regulations (e.g., establishing Federal lead agency, cooperating agencies, early coordination), and many Federal environmental requirements and regulations that encourage early coordination with Reviewing Agencies and integration of NEPA and other Federal environmental review requirements.

This guidance applies to those potentially rare instances where a decision on a permit, license, or other approval is not made within the deadlines established in 23 U.S.C. § 139(h)(6).

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1.) What is the financial penalty provision of MAP-21 Section 1306?

The financial penalty provision contained in MAP-21 Section 1306 and codified at 23 U.S.C. § 139(h)(6) establishes timeframe requirements for permits, licenses, and other approval decisions triggered under any applicable Federal law for highway projects, public transportation capital projects, or multimodal¹ projects that also require the preparation of an environmental impact statement (EIS) or an environmental assessment (EA) under FHWA/FTA's NEPA procedures. This section directs a "Federal agency of jurisdiction over an approval" (Reviewing Agency) to "complete any required approval on an expeditious basis using the shortest existing applicable process" and specifies financial penalties that may be applied when a Reviewing Agency does not render a decision by the applicable deadline.

Specifically, a Reviewing Agency must make a decision within 180 days from the later of (1) the date FHWA/FTA issues a Finding of No Significant Impact (FONSI) or Record of Decision (ROD), or (2) the date on which an application for the permit, license, or approval is complete² (see Q & A 5 for discussion of "complete application"). The office of the head of a Reviewing Agency that does not render a decision by the 180-day deadline will be subject to a rescission of funding on the 181st day and each week thereafter until the Reviewing Agency makes a decision, unless FHWA/FTA certifies that the failure to decide was not the fault of the Reviewing Agency (see Q & A 12). The rescission amount is equal to \$20,000 per week if the project will be funded under Title 23 of the U.S. Code and is estimated to cost more than \$100 million,³ or \$10,000 per week for any other projects requiring an EA or EIS.

¹ 23 U.S.C. § 139(a)(5) establishes that a multimodal project is a project funded, in whole or in part, under Title 23 or Chapter 53 of Title 49 and involving participation of more than one Department of Transportation Operating Administration.

² 23 U.S.C. § 139(h)(6)(B)(ii)(I) references "an application for the permit, license, or approval." However, some decisions under the authority of Federal agencies and that relate to projects requiring an EA or EIS do not have formal "applications" but rather formal requests for review. For the purposes of this guidance, "complete application" will cover *all* applications, requests, and any other solicitation for review made by FHWA/FTA or their project partners.

³ 23 U.S.C. § 139(h)(6) specifies that projects that are required to develop financial plans will be subject to the \$20,000 per week rescission. As established in 23 U.S.C. § 106(i), recipients of Federal financial assistance with a total project cost greater than or equal to \$100 million are required to develop financial plans.

2.) What Federal agencies are subject to the financial penalty provision?

Section 139(h)(6) of Title 23 only applies to Federal agencies with jurisdiction over an approval, including a permit, license, request, or other approval, required for a highway project, public transportation capital project, or multimodal project requiring a FHWA/FTA EIS or EA.⁴

3.) Does this provision apply to reviews already underway when the law was enacted?

Yes, the statute applies to projects and associated reviews underway at the time of enactment (October 1, 2012). However, the Reviewing Agency would have 180 days from enactment to render its decision, regardless of when it received the complete application or formal request. For instance, if FHWA/FTA already signed a project's ROD, and a Reviewing Agency received a complete application to permit the project 100 days prior to enactment, the deadline for decision would have been March 30, 2013—180 days after October 1, 2012.

4.) When does the 180-day timeline begin?

A Reviewing Agency has 180 days to render a decision from the later of FHWA/FTA's issuance of a FONSI or a ROD, or the date on which an application or formal request⁵ for the permit, license, or approval is complete. For example, if the Reviewing Agency receives a complete permit application from an applicant prior to issuance of the ROD, the Reviewing Agency would have the length of time between the receipt of the complete application and the issuance of the ROD, in addition to the 180 days following the date FHWA/FTA issues the ROD, to make its decision. Conversely, if FHWA/FTA has already issued the ROD when the Reviewing Agency receives a complete permit application, the Reviewing Agency would have 180 days from the confirmed receipt of a complete application to render a decision. The receipt confirmation could be in the form of a return receipt from the U.S. Postal Service, delivery confirmation from private courier, or electronic receipt for web-based or email submissions.⁶

⁴ The provision applies only to projects that require an EIS or EA under FHWA/FTA's NEPA procedures. It does not apply to decisions associated with projects that are covered under a Categorical Exclusion as found in 23 CFR 771.117 (FHWA) and 771.118 (FTA).

⁵ Some approvals do not require an application to be submitted to the Reviewing Agency, but require a formal request. FHWA/FTA interprets this provision to apply to these situations as well.

⁶ This guidance uses "date of confirmed receipt" as the starting date for the timeframe when it is based on the completed application or formal request. A return receipt is the most efficient way to determine this date because it confirms that the appropriate office of the Reviewing Agency has received the complete application or formal

The 180-day clock begins on the day of confirmed receipt of a complete application or formal request to the Reviewing Agency. While agencies differ in their procedures to determine completeness,⁷ that determination would be completed within the 180-day review deadline. If the determination of completeness indicates that information is missing, then the 180-day deadline would not have started, and the Reviewing Agency would communicate to FHWA/FTA and the project applicant what information is necessary to complete its application or formal request. If the determination of completeness indicates that the project application or formal request is complete as submitted, then the 180-day deadline would have begun on the date of confirmed receipt. If an Agency does not have a protocol for reviewing an application or formal request for completeness and notifying the applicant of their determination, then FHWA/FTA will assume completeness and, absent notification of incompleteness within 30 days, the start date would be the date of confirmed receipt.

5.) Who determines that an application or formal request is complete?

As it is the responsibility of the Reviewing Agency to make rescissions or request a no-fault certification (see Q & A 12 for a discussion on no-fault certifications), it is the Reviewing Agency's responsibility to make the determination of whether an application or formal request for a permit, license, or other approval is complete and track the 180-day period for their review.⁸ Several permits, licenses, and other approvals have clearly defined requirements for determining completeness. Appendix A provides a table with some of the most commonly encountered or significant permits, licenses, and approvals that could be subject to the MAP-21 financial penalty provision, although it is not an exhaustive list. The table contains information on the requirements for these approvals and, where available, the timeframes in which the Reviewing Agency determines if a submittal is complete.⁹

request. For electronic submittals, an acknowledgement from the appropriate office within the Reviewing Agency is needed. An automated electronic response is not sufficient to establish confirmed receipt. This ensures that the application or formal request was received on a business day, and it was not lost or sent to the wrong office.

⁷ See [Q & A 5](#) for a discussion of the determination of completeness.

⁸ FHWA/FTA must also track the duration of the review to facilitate any potential no-fault certification. However, it is ultimately the Reviewing Agency's responsibility to render a decision or request a no-fault certification prior to the end of the 180-day window.

⁹ See [Q & A 13](#) for discussion of applications or formal requests that are deemed "complete" but routinely require additional information during their review.

If a Reviewing Agency does not define a complete application or formal request in its regulations or provide a timeframe for determining completeness, FHWA/FTA will presume completeness, and the 180-day review period will begin on the day of confirmed receipt of an application or formal request by the Reviewing Agency, unless the Reviewing Agency notifies FHWA/FTA and the applicant within 30 days of receipt that the application or formal request is incomplete. A notification that the application or formal request is incomplete should describe what information is needed to make it complete. The project sponsor, agency, or other entity seeking funding or approval for a project should notify FHWA/FTA (with a copy to the Reviewing Agency) when it has submitted an application or formal request to the Reviewing Agency. The Reviewing Agency should provide the applicant/requester certification of receipt, acknowledging that, absent its determination of incompleteness within 30 days, the Reviewing Agency will render a decision within 180 days. If the Reviewing Agency deems the application or formal request incomplete, the applicant should address the deficiency. The 180-day review period would then begin upon the date of confirmed receipt of the requested information with the same process described above as for the initial application or formal request.

FHWA/FTA may be unable to certify “no fault of agency” in those situations where the Reviewing Agency fails to notify FHWA/FTA and the applicant that the application or formal request is incomplete within 30 days of receipt and the Reviewing Agency exceeds the 180 day timeline, depending on the circumstances of the individual project.

FHWA/FTA and Reviewing Agencies may establish guidelines (e.g., checklists) to facilitate a common understanding of the requirements for a complete application or formal request for the typical permits, licenses, and other approvals associated with the projects covered by 23 U.S.C. § 139(h)(6).

6.) What happens with the timeframe to make a decision under the various possible scenarios encountered when applying for a permit, license, or other approval?

The following table describes the consequences on the timeframe for the most likely scenarios encountered when seeking a permit, license, or other approval from a Reviewing Agency:

Scenario	Effect	Description
Prior to the FONSI or ROD, an application or formal request is confirmed received and determined complete by Reviewing Agency.	180 days to render decision after FONSI or ROD.	The starting date for the statutory timeframe is the day FHWA/FTA issues a FONSI or a ROD for the project.
After FHWA/FTA issue a FONSI or ROD, an application or formal request is confirmed received, determined complete by Reviewing Agency within timeframe provided in the statute or regulation of the approval.	180 days to render decision from the date of confirmed receipt.	The starting date for the statutory timeframe is the day of confirmed receipt of the application or formal request.
After FHWA/FTA issue a FONSI or ROD, an application or formal request is confirmed received, the Reviewing Agency does not communicate to the applicant and FHWA/FTA on its completeness, and the statute or regulation of the approval prescribes timeframe for completeness determination.	180 days to render decision from the date of confirmed receipt.	If the Reviewing Agency has clearly defined requirements to determine completeness, the statutory timeframe will begin once the Reviewing Agency has made their determination in accordance with their requirements. Absent such requirements, the starting date for the statutory timeframe is the day of confirmed receipt of the application or formal request, which is assumed to be complete.
After FHWA/FTA issue a FONSI or ROD, an application or formal request is confirmed received, the Reviewing Agency does not communicate to the applicant and FHWA/FTA on its completeness, and there is no statutory or regulatory timeframe for completeness determination.	180 days to render decision from the date of confirmed receipt.	The starting date for the statutory timeframe is the day of confirmed receipt of application or formal request, which is assumed to be complete unless the Reviewing Agency notifies the applicant and FHWA/FTA of incompleteness within 30 days.

Scenario	Effect	Description
After FHWA/FTA issue a FONSI or ROD, an application or formal request is confirmed received, the Reviewing Agency determines the application or formal request is incomplete, and communicates insufficiencies to the applicant and FHWA/FTA.	180 days does not start.	In these situations, the applicant would need to supplement application or formal request. The 180-day deadline does not start until a complete application or formal request is submitted.
After FHWA/FTA issue a FONSI or ROD, an application or formal request is confirmed received, the Reviewing Agency either communicates that it is complete or is silent on completeness, the 180-day clock has started, but it is subsequently determined that additional information is needed from applicant to meet regulatory requirements of the approval.	Time is suspended from request of additional information until the additional information is submitted.	The Reviewing Agency will specify to the applicant and FHWA/FTA the information needed. The timeframe is stopped on the day the Reviewing Agency formally requests the additional information and resumes upon confirmed receipt of the requested information with the same process for determining completeness as described for the initial application or formal request.
After FHWA/FTA issue a FONSI or ROD, an application or formal request is confirmed received, the Reviewing Agency either communicates that it is complete or is silent on completeness, but it is later determined that additional information is needed from third party (State, Federal, local agency).	Time is suspended from notification to FHWA/FTA until additional information is obtained.	The Reviewing Agency will specify to the applicant and FHWA/FTA the information/decision needed from third party. The timeframe is stopped on the day the Reviewing Agency gives notice to the applicant and FHWA/FTA of the deficiency and resumes upon confirmed receipt of the requested information with the same process for determining completeness as described for the initial application or formal request.

Scenario	Effect	Description
After FHWA/FTA issue FONSI or ROD, an application or formal request is confirmed received, the Reviewing Agency either communicates that it is complete or is silent on completeness, but significant new information or circumstances arise that warrant consideration.	Restart of timeframe.	FHWA/FTA/applicant inform the Reviewing Agency (or vice versa) of significant new information or circumstances. The 180 days restart upon confirmed receipt of new information to the Reviewing Agency.

Table 1 - Scenarios and effects to timeframe to make a decision under Section 1306

7.) Are “consultations” such as those under the Endangered Species Act (ESA) or decisions on special use permits considered “approval(s)”?

Yes. The statutory language is broad and is applicable to all Federal agencies “of jurisdiction over an approval required for a project” and directs such agencies to “complete any required approval on an expeditious basis using the shortest existing applicable process.” Such approvals include all decisions made under Federal law with respect to an FHWA/FTA project, including the issuance or denial of a permit, license, or other approval. Such decisions include determinations, concurrences, and other information that concludes an informal or formal consultation process and that is necessary in order for a project to proceed. Therefore, this provision applies to decisions associated with ESA Section 7 consultations, as well as the decisions of other Federal agencies necessary for a project to proceed.

However, the vast majority of consultations occur during the NEPA process. Accordingly, associated decisions usually will be made before FHWA/FTA’s issuance of the FONSI or ROD, and therefore should not be affected by this provision.

If an ESA consultation occurs after issuance of the FONSI or ROD, then completion of that consultation as well as another Reviewing Agency’s decision on a permit, license, or other approval all must occur within the same 180 days following the issuance of the FONSI or ROD, or within the same 180 days after the date on which the application is complete, whichever is later. The “no fault” provision of the statute makes clear that the 180-day period runs concurrently for all approvals required for a project, because one of the two circumstances for

which the statute authorizes FHWA or FTA to make a no-fault certification is when an “agency has not received necessary information or approvals from another entity . . . in a manner that affects the ability of the agency to meet any requirements under State, local, or Federal law”. (Emphasis added) Accordingly, if an ESA Section 7 consultation is not completed within 180 days, the U.S. Fish and Wildlife Service and National Marine Fisheries Service may request a no-fault certification if one or both statutory conditions for the certification are present. Similarly if another Reviewing Agency cannot render a decision until after completion of the ESA Section 7 consultation, and the progress of that consultation is such that it negatively affects the ability of that Reviewing Agency to render a decision within the 180 days, that Reviewing Agency also could request a no-fault certification. Such situations are expected to be rare and no-fault certification would be made on a case-by-case basis.

8.) Under what conditions would the financial penalty provisions apply to FHWA/FTA-funded projects on Federal lands?

The financial penalty provisions could apply to FHWA/FTA-funded projects that would take place within Federal lands and require decisions from a Federal land management agency after the issuance of a FONSI or ROD by FHWA/FTA. Decisions include issuance of special use permits, access authorizations, easement deeds for use of Federal land, and rights-of-way. The financial penalty provisions would not apply to Federal land management agency-funded projects designed or constructed by FHWA under 23 U.S.C. § 308.

9.) How will disputes related to the review, license, or approval be handled?

Disputes related to an application or formal request and subsequent review and decisions by the Reviewing Agency are subject to the issue resolution and referral process in 23 U.S.C. § 139(h)(5). This process includes specific timeframes for meetings and elevation procedures. An existing approved dispute resolution process for a permit, license, or other approval also may be used, but if the Section 139(h)(5) process is elected, it is to the exclusion of other existing processes.

10.) How will Reviewing Agencies implement the financial penalties when they have surpassed the 180 days for issuing a decision?

It is up to each Reviewing Agency to determine, in accordance with Office of Management and Budget (OMB) policy, how it will implement rescissions in accordance with the specific provisions in the statute (e.g., the annual limit on rescissions and the prohibition on reprogramming funds).

11.) Can FHWA/FTA waive the financial penalty?

No. FHWA/FTA do not impose or collect the financial penalty, and do not have the authority to waive or exempt the application of a financial penalty to a Reviewing Agency. However, under certain circumstances explained below, FHWA/FTA may certify that a Reviewing Agency's delay in rendering a decision was no fault of the Reviewing Agency, which would result in the penalty for that delay not being assessed.

12.) How will FHWA/FTA certify "No Fault of Agency"?

Although FHWA/FTA cannot waive the financial penalties, the statute provides a no-fault provision whereby a penalty would not be assessed when a Reviewing Agency misses a deadline if FHWA/FTA certifies that (1) the Reviewing Agency has not received necessary information or approvals from another entity or the applicant in a manner that affects the ability of the Reviewing Agency to meet any requirements under local, State, or Federal law, or (2) significant new information or circumstances require additional analysis for the Reviewing Agency to make a decision on the project application or formal request. These two conditions are considered to be outside the control of the Reviewing Agency, and therefore, its failure to decide was no fault of its own.

Many Reviewing Agency decisions cannot be made until another entity makes a decision, even if an application or formal request is otherwise deemed complete. Examples of other Federal, State, Tribal, or local agency decisions, information, or approvals on which a Federal permit, license, or approval is dependent may include:

- 401 Clean Water Act certification;
- State Historic Preservation Officer or Tribal Historic Preservation Officer concurrence on a no effect or adverse effect determination under Section 106 of the National Historic Preservation Act;

- Coastal zone consistency determination by a coastal zone management agency;
- Stormwater Pollution Prevention Plan permit from an environmental quality agency;
- Floodplain permit by the local floodplain management administrator;
- Completion of consultation with the Fish and Wildlife Services or National Marine Fisheries Service; and
- Tribal concurrence for roads under the Tribal Transportation Program.

FHWA/FTA will make the no-fault certification on or as soon as possible after the 180th day following the later date of FHWA/FTA issuing a FONSI or a ROD, or the Reviewing Agency receiving a complete application or formal request. Generally, FHWA/FTA will not issue a no-fault certification prior to the 180th day, allowing the Reviewing Agency the full time period to make its decision. However, FHWA/FTA may issue a no-fault certification prior to the 180th day when it is clear that the Reviewing Agency cannot make its decision before the 180-day deadline due to circumstances that justify the certification. The Reviewing Agency should notify FHWA/FTA in writing of the expected delay as soon as possible and provide sufficient information so that FHWA/FTA can certify that the Reviewing Agency's failure to make a decision was no fault of the agency. FHWA/FTA will notify the Reviewing Agency if additional information is necessary and identify what is needed for FHWA/FTA to make a no-fault determination.

FHWA/FTA's no-fault certification should include a justification for the decision. Table 1 above describes several possible scenarios that could impact the 180-day timeframe and inform the no-fault certification. All project partners are encouraged to maintain open lines of communication throughout the review process to ensure that any potential issues that could impact a Reviewing Agency's ability to make a decision are expeditiously identified and resolved to the extent possible. FHWA/FTA will make a no-fault certification in good faith with the understanding that the Reviewing Agency will work to expeditiously complete its review as soon as possible dependent on the unique circumstances of that project and its review.

13.) How would FHWA/FTA address situations where applications or formal requests for permits, licenses, or other approvals require minimal information that is insufficient for rendering a decision by the Reviewing Agency but are nevertheless considered complete by definition?

There are some permitting, licensing, and approval processes, such as Clean Water Act 404 permits, that require very basic information to constitute a complete application or formal request, but where the Reviewing Agency routinely requests additional information from the applicant as it progresses through its review. In these situations, the 180-day timeframe would stop upon the Reviewing Agency's notification to the applicant and FHWA/FTA and description of additional information needed to render its decision. The timeframe would resume upon confirmed receipt of the additional information from the applicant. FHWA/FTA may also make a no-fault certification based on a determination that the Reviewing Agency has not received necessary information in a manner that affects its ability to meet requirements under Federal law or regulations. The Reviewing Agency must notify FHWA/FTA of any delays in acquiring the additional information that would impact its ability to render a decision within 180 days to support the no-fault certification.

14.) How will the discovery of significant new information or circumstances be handled?

Should FHWA/FTA or the applicant discover significant new information or circumstances such that additional analysis would be required, FHWA/FTA will notify the Reviewing Agencies as soon as possible after it is discovered. The reference to significant new information or circumstances for purposes of the financial penalties provision is broader than the standard for supplementation under NEPA.¹⁰ Thus, significant new information may be discovered that affects the analysis needed for an approval under the financial penalties provision that may not necessarily trigger the need for a supplemental EIS or EA. An example of "significant new information or circumstances" that would warrant notification to the Reviewing Agency is a substantial change in scope or design that would affect the Reviewing Agency's deliberations.

¹⁰ Under the CEQ regulations, agencies must prepare supplements to their draft or final EIS if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 CFR 1502.9(c). The FHWA/FTA procedures establish that an EIS shall be supplemented whenever the FHWA/FTA determines that (1) changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS or (2) new information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS. 23 CFR 771.130(a). See also 23 CFR 771.130(b) for examples of when supplemental EIS are not necessary.

Alternatively, if the Reviewing Agency discovers significant new information or circumstances during its review that would require additional analysis for the Reviewing Agency to make a decision, it should notify FHWA/FTA and the applicant as soon as possible. The 180-day timeframe is stopped on the day the Reviewing Agency gives notice to FHWA/FTA of deficiency and resumes once the Reviewing Agency has confirmed receipt of the requested information.

15.) How does the use of innovative project delivery procurement methods such as design-build affect the deadlines for decisions and financial penalties?

The use of design-build and other alternative procurement methods is consistent with the implementation guidance contained in these Qs & As. Reviewing Agencies frequently require a certain level of design in order for them to render their decisions that may not be available during design-build. In those situations, the Reviewing Agency would notify FHWA/FTA of its need for additional information, and if the Reviewing Agency were unable to make its decision within 180 days of their receipt of a complete application or formal request, FHWA/FTA may issue a no-fault certification. Alternatively, if a Reviewing Agency has rendered a decision that may be affected by a design changes, then FHWA/FTA and the applicant should notify the Reviewing Agency of the change in design to allow the Reviewing Agency to determine if the decision needs to be updated. If the Reviewing Agency determines that the decision needs to be updated due to the design change, then a new 180-day period would start upon the Reviewing Agency's confirmed receipt of a new, complete application or formal request with the design changes included.

16.) Is there a process for a Reviewing Agency to request an extension to review an application or formal request due to extenuating circumstances (e.g., resource staffing, schedule meetings to discuss application)?

No. The purpose of the financial penalty provisions is to ensure a timely decision by a Reviewing Agency on a complete application or formal request for a permit, license, or other approval for a highway, public transportation capital project, or multimodal project. This provision did not provide the flexibility to grant extensions.

17.) Would FHWA/FTA enforce the assessment of financial penalties?

No. FHWA/FTA does not have the authority to assess or collect the financial penalties. FHWA/FTA does not have the authority to determine how the penalty is assessed within a Reviewing Agency.

The Reviewing Agency's Inspector General is responsible for conducting audits to assess compliance with the financial penalty requirements if the penalty has been triggered.

18.) Is FHWA/FTA responsible for reporting to Congress on how each Reviewing Agency is complying with the financial penalty provision?

No. A Reviewing Agency's Inspector General is responsible for reporting to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives 120 days after the end of each fiscal year if a financial penalty was levied against the agency during that fiscal year.

However, under 23 U.S.C. § 139(g)(3), FHWA/FTA is required to notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of a Reviewing Agency's failure to make a decision within the 180-day period established by the financial penalty provision.

19.) Does this provision affect or supersede any other applicable Federal law or process?

As noted in 23 U.S.C. § 139(h)(6)(G), the financial penalty provisions do not affect or limit the application of, or obligation to comply with, any Federal, State, local, or tribal law. Some Reviewing Agencies' statutes or regulations may stipulate processes that must be conducted as part of the review of permits, such as public outreach. FHWA/FTA anticipates that the Reviewing Agencies will plan these processes so as to comply with the 180-day deadline.

20.) May other timelines be used for the financial penalties provisions?

Yes. Section 139(m) authorizes a project proponent or a Governor of a State in which a project is located to request FHWA/FTA enhanced technical assistance for a project with an ongoing EIS for which at least two years have elapsed (from the date of the issuance of the NOI) without the issuance of a ROD. As part of the enhanced technical assistance, FHWA/FTA must develop

a schedule for the completion of any permit, approval, review, or study by the date that is no later than four years after the NOI date (23 U.S.C. § 139(m)(3)(i)). The schedule must comply with all applicable laws and receive concurrence from CEQ and each participating agency (23 U.S.C. § 139(m)(3)(ii)). FHWA/FTA have the discretion to rely on the dates on this schedule for the financial penalties provision instead of the latter of 180 days from the issuance of the ROD or FONSI, or from the date on which an application or formal request for the permit, license, or approval is complete. FHWA/FTA will notify participating agencies of this potential when seeking concurrence on schedules developed for enhanced technical assistance (Section 139(m) schedules). FHWA/FTA will notify Reviewing Agencies when it exercises this discretion to alert appropriate officials within the Reviewing Agency of the applicable dates and timeframes and to allow these officials to take the proper course of action if the timeframes are exceeded.

Appendix A: Frequent permits, licenses, or other approvals that are required for highway projects, public transportation capital projects, or multimodal projects.

Below is a list of the most frequent or significant permits, licenses, or other approvals that are required for highway projects, public transportation capital projects, or multimodal projects. This is not necessarily a complete list of approvals that will be needed for such projects. As indicated in the Qs & As above, it is expected that most of these decisions will be made as part of the NEPA review process before a decision document is finalized and therefore would not be affected by the financial penalty provisions. This table should be used as a reference for those situations where a permit, license, request, or other approval under the listed authorities occurs after the ROD or FONSI. With regard to the “Statutory or Regulatory Timeframe for Decision,” it is important to remember that the financial penalties contained in 23 U.S.C. § 139(h)(6) are only triggered after passing the 180-day point, even if another statutory or regulatory requirement calls for a shorter deadline.

Permit, License, Approval	Issuing Agency	Authority for Requirement	Application/Formal Request Requirements	Timeframe for Determination of Complete Application/Formal Request	Statutory or Regulatory Timeframe for Decision
- Letter of Concurrence (Informal Consultation) Letter	U.S. Fish and Wildlife Service/National Marine Fisheries Service	ESA, Sec. 7 16 U.S.C. § 1536	50 CFR 402.12(f) and 50 CFR 402.13	30 days from receipt of biological assessment (50 CFR 402.12(j))	N/A
- Biological Opinion (Formal Consultation)	U.S. Fish and Wildlife Service/National Marine Fisheries Service	ESA, Sec. 7 16 U.S.C. § 1536	50 CFR 402.14(c)	30 days from receipt of request to initiate formal consultation (Section 7 Handbook pg. 4-2).	135 days ¹¹ (50 CFR 402.14(e))

¹¹ This deadline may be extended by mutual agreement of the action agency and the Services; if an applicant is involved, they must approve any extensions in excess of 60 days.

Permit, License, Approval	Issuing Agency	Authority for Requirement	Application/Formal Request Requirements	Timeframe for Determination of Complete Application/Formal Request	Statutory or Regulatory Timeframe for Decision
- Discharges of dredged or fill material (Sec. 404 Permit)	U.S. Army Corps of Engineers	Clean Water Act, Sec. 404 33 U.S.C. § 1344	33 CFR 325.1(d) and 325.3(a)	15 days from receipt of application (33 CFR 325.2(a)(1)-(2))	60 days after receipt of a complete application with exceptions (33 CFR 325.2(d)(3))
- Obstructions to navigable waters (Sec. 10 Permit)	U.S. Army Corps of Engineers	Rivers and Harbors Act, Sec. 10 33 U.S.C. § 403	33 CFR 325.1(d) and 325.3(a)	15 days from receipt of application (33 CFR 325.2(a)(1)-(2))	60 days after receipt of a complete application with exceptions (33 CFR 325.2(d)(3))
- Ocean disposal of dredged material (Sec. 103 Permit)	U.S. Army Corps of Engineers	Marine Protection, Research, and Sanctuaries Act, Sec. 103 33 U.S.C. § 1413	33 CFR 325.1(d) and 325.3(a)	15 days from receipt of application (33 CFR 325.2(a)(1)-(2))	60 days after receipt of a complete application with exceptions (33 CFR 325.2(d)(3))
- Alteration or modification of a Federal project (Sec. 408 approval)	U.S. Army Corps of Engineers	33 U.S.C. § 408	N/A	N/A	N/A

Permit, License, Approval	Issuing Agency	Authority for Requirement	Application/Formal Request Requirements	Timeframe for Determination of Complete Application/Formal Request	Statutory or Regulatory Timeframe for Decision
<ul style="list-style-type: none"> - No adverse effect to essential fish habitat, or - Essential Fish Habitat Conservation Recommendations 	National Marine Fisheries Service	Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. §§ 1801–1884	50 CFR 600.920(e)	N/A	30 days from receipt of application for abbreviated procedures (50 CFR 600.920(h)(4)) 60 days from receipt of application for expanded procedures (50 CFR 600.920(i)(4))
Bridge Permit	U.S. Coast Guard	Rivers and Harbors Act , Sec. 9 33 U.S.C. § 401 Act of March 23, 1906 33 U.S.C. § 491 General Bridge Act of 1946 33 U.S.C. § 525 International Bridge Act of 1972 33 U.S.C. § 535	Bridge Permit Application Guide, http://www.uscg.mil/hq/cg5/cg551/CP_16591_3C.pdf	Within 30 days of receipt of the application, Coast Guard sends letter to applicant requesting any additional information if required.	N/A

Permit, License, Approval	Issuing Agency	Authority for Requirement	Application/Formal Request Requirements	Timeframe for Determination of Complete Application/Formal Request	Statutory or Regulatory Timeframe for Decision
National Pollutant Discharge Elimination System Permit-for Stormwater Discharges from Construction Activities	Environmental Protection Agency	Clean Water Act Sec. 402 33 U.S.C. § 1342	40 CFR 122.21 and 122.26	As specified in the permit.	N/A
Highway Easement Deed for the use of park lands for Federal Aid highways/roads	FHWA for the National Park Service (NPS)	23 U.S.C. §§ 317 and 107(d)	Official letter of request from FHWA to NPS for use of park land, includes executed and approved compliance documents.	N/A	4-month period after receipt of letter of request for NPS to approve or deny the request.
Wild and Scenic Rivers Act Consistency (Sec. 7 Determination)	U.S. Forest Service (USFS)/ National Park Service/ Bureau of Land Management/ U.S. Fish and Wildlife Service	WSR Act, Sec. 7 (16 U.S.C. § 1278)	36 CFR 297.4 (USFS)	N/A	Not Applicable

Permit, License, Approval	Issuing Agency	Authority for Requirement	Application/Formal Request Requirements	Timeframe for Determination of Complete Application/Formal Request	Statutory or Regulatory Timeframe for Decision
Letter of Consent	Bureau of Land Management (BLM)	23 U.S.C. §§ 317 and 107(d)	Official written request for appropriation, accompanied by a map showing the location of lands it desires to appropriate, a statement of its determination, a copy of the EA, and/or EIS	N/A	120 days after receipt of the request and attachments, the BLM will review the material and notify the FHWA, in writing, either (a) that the appropriation would be contrary to the public interest or inconsistent with the proposes for which the public lands or material are being managed or (b) that the BLM is in agreement, subject to conditions of adequate protection and utilization of public lands. If the BLM does not respond, such lands may be considered appropriated by FHWA