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U.S. Department of Transportation
Dockets Management Facility

Re: Docket No. DOT-OST-2012-0168, Interim Guidance on State Freight Plans
and State Freight Advisory Committees

To Whom It May Concern:

Attached for consideration in the above-referenced docket are the comments of the American Association of State Highway and Transportation Officials in response to the noticed published at 77 Federal Register 62596 et seq. (October 15, 2012).

Sincerely yours,

John Horsley
Executive Director

**Comments
of the
American Association of State Highway and Transportation Officials
to the
United States Department of Transportation
In Docket No. DOT-OST-2012-0168
“Interim Guidance on State Freight Plans and State Freight Advisory Committees**

November 13, 2012

The American Association of State Highway and Transportation Officials (AASHTO) is the trade association representing 52 state departments of transportation. AASHTO appreciates this opportunity to comment on the U.S. DOT MAP-21 Interim Guidance on State Freight Plans and State Freight Advisory Committees, and the related Memorandum on Prioritization of Projects to Improve Freight Movement Guidance. AASHTO commends the US DOT for moving quickly to issue this interim guidance.

Over 30 state departments of transportation now have a dedicated freight office or lead in their respective organizations. In recent years, many states have also developed freight strategies, plans, programs and projects. States have benefited from the strong partnership with the Federal Highway Administration (FHWA) Office of Freight Management and Operations, as well as good working relationships with the Federal Railroad Administration (FRA), the Maritime Administration (MARAD), Federal Motor Carrier Safety Administration (FMCSA), and other federal agencies with jurisdiction over key elements of the national freight transportation system.

This is perhaps the most important point to be made about the Interim Guidance and the implementation of the freight provisions of MAP-21 in general: States and the U.S. DOT should go forward in partnership and collaboration.

The challenge is stated clearly and succinctly in the law:

It is the policy of the United States to improve the condition and performance of the national freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy ((23 USC § 167 (a))

Since its founding, the United States responded to the challenge of developing a transportation system able to support a prosperous economy over an extensive geography while governed by a federal system. Each stage of development—coastal maritime, canals, railroads, highways, and air transport—added elements to the freight system, making it w the most efficient and productive in the world. Changes in global trade, slowed economic conditions and an aging infrastructure threaten the continued success of America’s freight transportation system. The State-Federal relationship must be further strengthened if we are to effectively address these challenges.

State Freight Plans

The state freight plan provision of MAP-21 is important because it is intertwined with other provisions in the law, including:

- Prioritization of projects
- State Freight Advisory Committees
- Performance Measure
- Primary freight network and critical rural corridors,
- National freight strategic plan, and
- Transportation investment data and planning tools.

Section 1118 of MAP-21 directs the Secretary of Transportation to:

“Encourage each state to develop a freight plan...” This plan may “be developed separate from or incorporated into the statewide strategic long-range transportation plan.”

AASHTO has identified 25 states that have State Freight Plans—13 individual State Freight Plans and an additional 12 that are incorporated into the state’s strategic long-range transportation plan. Other states have separate modal plans that, if combined, would constitute freight plans.

The operative term in both the freight plan and freight advisory council provisions is that “the Secretary shall encourage each state.” It is AASHTO’s opinion that in this language four general points are clear:

1. MAP-21 states that the Secretary encourage the development of freight plans and freight advisory committees; no requirement for States to develop plans and committees is mandated in the law (prioritization of projects discussed below);
2. At minimum, the U.S. DOT should not discourage the development of State Freight Plans and State Freight Advisory Committees. Beyond the minimum, US DOT should support development of such plans and councils with resources including data, planning tools, technical assistance, and active collaboration;
3. It should be presumed that if a state has a freight plan, it has been adopted as the state freight plan by the state and absent strong reasons to the contrary, should be accepted as such. The average cost to a State to develop a statewide freight plan is nearly \$1 million and takes up to two years to complete; and,
4. While the law identifies “minimum” contents of state freight plans, the encouragement is directed to all states and therefore the focus, emphasis, priorities, analysis, scope, and complexity of plans will and should vary among

the states depending on their size, economies, transportation systems, and state-determined objectives.

Recommendation: AASHTO urges the U.S. DOT to incorporate these points into a revised Interim Guidance with collaboration with the states moving forward. More specific points follow.

MAP-21 identifies six (6) topics to be included in State plans “at a minimum.” The Interim Guidance elaborates on these as “required” contents or topics that “must” be included, and adds five “recommended” items.

Recommendation: AASHTO recommends that initially the contents of the state freight plans—required or recommended be limited to the items listed in the law. These six items represent a broad and heavy responsibility. Adding to them with additional items or with additional requirements within the six topics in the law will discourage the development of state freight plans.

Related to that point, the volume of data and analysis suggested and implied in the interim guidance for both required and recommended topics is immense, potentially very costly, and in some cases simply not available. The objective should be to encourage states to develop freight plans. The Interim Guidance may have the opposite effect.

AASHTO has done a preliminary inventory of the data and analysis suggested, and will work with the U.S. DOT to determine how to meet the data and analysis needs for the preparation of state freight plans. In some cases this may involve the Department providing national data sets for the use of State DOTs. In the meantime, the data and analysis customarily used in state freight plans and in project justifications should be presumed adequate.

As it is drafted, the freight plan guidance does not contain any indication of thresholds relative to the required and recommended elements, or the range of diversity that is required for good freight plans among states that are very different in terms of area, population, economy, freight system, and institutions.

The US DOT knows that in this area, one size does not fit all. State Freight Plans will vary to be consistent with the characteristics of a state. States must assume that everything in the guidance is required, and thus many will be discouraged from developing plans under MAP-21.

There are established planning and programming processes for state transportation project delivery that include freight transportation. The guidance does not appear to take this into account. For example, the guidance does not acknowledge the difference between an investment or project plan and a policy plan and, therefore, is not congruent with the standard state long-range plan and the programming processes of most states.

There is, furthermore, no process for review and comment contained in the Interim Guidance.

Recommendation: As part of the interim process, AASHTO proposes that the U.S. DOT and AASHTO collaborate in a program that will encourage the development of state freight plans and based on state-experience to date and national objectives for freight transportation, provide insight into how state differences can be accommodated within general guidelines for plans.

Prioritization of Projects to Improve Freight Movement Guidance
AASHTO commends the U.S. DOT for its decision to issue the Memorandum on Prioritization of Projects to Improve Freight Movement Guidance. AASHTO has recommended that an interim process be developed that would make it possible for states to receive the increased federal share for freight projects immediately.

Recommendation: MAP-21 conditions project eligibility on demonstration of progress towards the achievement of freight performance targets and inclusion in the state freight plan. The Memorandum allows for the use of existing state freight plans to determine consistency with established goals and project information demonstrating benefits to freight movement. AASHTO supports this position.

AASHTO is concerned, however, that other provisions within the Memorandum suggest that the Department will manage the process for the approval of increased federal share for freight projects as though it were a categorical grant program. It is AASHTO's position that the law on the Federal increased federal share requires only a simple state self-determination that the project is consistent with the state's freight plan and contributes to the improvement of freight movement.

The memorandum states:

“The total annual project(s) costs receiving an increased Federal share under this provision will not exceed 10% of the State's allotment unless otherwise recommended by the Secretary.”

This goes beyond the scope of the legislation.

Recommendation: AASHTO recommends that it be eliminated.

In addition, the Memorandum identifies four “highest-priority types of eligible projects” to receive priority for the increased federal share. This is also beyond the scope of the legislation. The law includes a list of eligible projects and states that eligibility is not limited to the items on the list. This is not a categorical funding. It involves funds apportioned to the states. Further, the multiple layers of approval, from the FHWA Division Office to the U.S. DOT Freight Policy Council create the appearance of a competitive grants program which is not what the law prescribes. Criteria and thresholds for approval or disapproval of projects are not included in the legislation

beyond the general requirements the project provide freight benefits and be in a state freight plan and should not be established in the guidance.

States should be allowed to identify their priority projects, include them in State freight plans and become eligible for priority funding. Rather than limiting the scope of priority funding, the process should encourage additional regional and multi-regional planning efforts to ensure that multistate efforts, integrated systems, and intermodal connectors are included, and the benefits documented in State Freight Plans.

State Freight Advisory Committees

Section 1117 of MAP-21 directs the Secretary of Transportation to:

“Encourage each state to establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders...”

[MAP-21] specifically references “representatives of ports, shippers, carriers, freight-related associations, the freight industry workforce, the transportation department of the state, and local governments.”

A number of state DOTs have established freight advisory committees or their equivalent principally for the purpose of involving the private sector in freight strategies, plans, programs, and projects.

What is important is the function. A state freight advisory council may take many forms depending upon the given State. Varieties of institutional relationships exist between State DOTs and freight advisory committees, councils and advisory groups, and have generally proven effective

Freight advisory committees are structured and work in a variety of ways. From groups that are organized and managed by the DOT, to external groups that actively champion freight and advise the DOT through development agencies, to the utilization of regional planning relationships, to transient committees and groups that are formed for special projects and freight planning activities then disbanded, to freight advisory committees that are established and required by state law;

The guidance and implementation on State Freight Advisory Councils should reflect this diversity of institutional arrangements and range of membership that participate on these groups. Existing groups external to the agency, but functioning as a State Freight Advisory Council are not defined in the guidance.

Further, States should have the discretion to create and disband advisory committees for specific freight projects and planning activities, rather than convene a standing advisory group when state activities and investments may not warrant the time investments of private sector advisors. Existing committees should have discretion of

membership based on their experiences and proven approaches. The guidance should not specify membership beyond what is established in the law.

Recommendation: As with state freight plans, AASHTO recommends that the states and the U.S. DOT assess the experience of the states with freight advisory committees and based on that develop a program to encourage the development of committees in states that do not have them and improvements in states that do have them.

AASHTO appreciates the opportunity to comment on the Interim Guidance and looks forward to working with the U.S. DOT to implement a national freight program that achieves the objectives of MAP-21 and maximizes the contributions that the states and the federal government can make to this effort.