

## MAP-21 Implementation Status Report May, 2013

### National Performance Measures

- National Performance Measure will be released in three groups based on status: (1) Safety; (2) Asset measures for pavements and bridges; and (3) System performance, reliability (freight), congestion (CMAQ) and emissions (CMAQ)  
The release of the Safety measures rule in September 2013 is anticipated to include the following:
  - Discussion of how the different rules relate to each other (i.e., HSIP, joint planning rule, asset management and national-level performance measures)
  - Discussion of how the safety measures were established
  - Definition of the measures
  - Methodology to be used to determine “significant” progress
  - Requirements for reports on targets and progress
- The Status 2 measures will come out in December 2013, and the Status 3 measures will come out in March 2014 (my educated guess). ***All three will have the same effective date of April 1, 2015.***
- Four proposed rules are coming out at the same time that all relate to performance measures. These rules are scheduled to be released in the 3<sup>rd</sup> quarter of CY 2013. The likely date is September 1 or later.
  1. ***Safety National-level Performance Measures*** (This is the first of 3 groups of national-level performance measures for which rules will be forthcoming.)
  2. ***Proposed joint FHWA/FTA planning rule*** to update Statewide and MPO planning requirement to incorporate MAP-21 changes – largely, the new performance-based planning and programming requirements.
  3. Proposed rules to implement MAP-21 changes to the ***Highway Safety Improvement Program*** (HSIP) including performance requirements.
  4. Risk-Based ***asset management plan*** process.
- FHWA will hold a number of outreach sessions in mid- to late summer, 2013 prior to the release of the rules.
- A 90-day comment period is expected.
- While the rules will be issued individually, they will be released simultaneously to enable commenters to consider all four which are interrelated with some overlapping requirements.

### Accelerated Project Delivery

MAP-21 enacted a series of comprehensive reforms that have great potential to expedite project delivery. Thus far, DOT’s implementation of these provisions has been positive—we have a few concerns but overall we are still going in the right direction.

- ***Increased Use of Categorical Exclusions:*** MAP-21 requires some new and modified categorical exclusions or CEs for transportation projects. CEs are the category of actions that generally do not require environmental documentation.
  - Emergency Projects (1315)
    - New CE for projects to repair or reconstruct highway facilities damaged in declared emergencies. Final rule published February 19, 2013 addresses concerns expressed by AASHTO in comments on the NPRM and incorporates many of our recommendations.

- Projects in the Right-of-Way (1316) and Projects with limited federal assistance (1317)
  - AASHTO submitted comments on the proposed regulations for these two new CEs on April 26<sup>th</sup> which included concerns about the narrow scope of the ROW CE and the increased documentation requirements for these CEs.
  - We expect the final rule to be published late summer or early fall, 2013.
- New Categorical Exclusions (1318)
  - MAP-21 requires U.S. DOT to survey the use of CEs for transportation projects since 2005, solicit requests for new CEs, and then to propose new CEs based on the solicitation results.
  - AASHTO responded to FHWA's request for information issued in September, 2012 regarding the use of existing CEs and proposed new CEs
  - An NPRM proposing new CEs is expected in late summer, early fall, 2013.
- Revisions to Existing Categorical Exclusions (1318)
  - MAP 21 requires U.S. DOT to move some CEs from the "(d) list" to the "(c) list" which would expedite projects by moving CEs to the more streamlined process associated with "(c) list" CEs.
  - Implementation of this provision will be included in the "new CE" rulemaking.
- ***Delegation (1312) and (1313)***
  - MAP 21 modifies the existing delegation program to allow states to take on delegation without losing any existing flexibilities, including for example, advanced ROW acquisition.
  - MAP 21 converts the full NEPA delegation pilot program into a permanent program and opens the program to all states, rather than the 5 that were authorized under the pilot program.
  - FHWA has Q&As regarding CE delegation and is developing an NPRM for the full delegation program. There is no deadline for this rulemaking and we do not expect to see the NRPM until later this year.
- ***Changes to Environmental Review Process for Complex Projects.***

MAP-21 included several provisions that are intended to streamline environmental reviews for complex projects.

  - Condensed Final EIS (1319 a); Combining Final EIS and Record of Decision (1319 b)
    - MAP-21 allows a condensing and combining environmental documentation under certain circumstances.
    - FHWA and FTA issued interim guidance on this topic in December, 2012 and we are pleased with the direction that FHWA has taken in the Interim Guidance.
  - Changes to the Environmental Review Process (1305, 1306, 1307)
    - MAP-21 makes changes to the environmental review process to make it more flexible.
    - FHWA is developing outreach documents, revising guidance and developing an NPRM to implement these provisions within the next year (general 771 update).
  - Technical Assistance to Complete EIS in 4 Years (1309)
    - MAP-21 allows USDOT to provide technical assistance to assist in completing an EIS within 4 years after initiation of the NEPA process.
    - FHWA issued Q&As on this program, but we are asking FHWA to provide guidance on how a State can apply to receive technical assistance under this program.

- **Planning and NEPA** MAP-21 makes changes in statewide and metropolitan transportation planning to accelerate project delivery.
  - Linking Planning and NEPA (1310)
    - MAP-21 provides statutory authority to allow the NEPA process to adopt analyses and decisions made during the transportation planning process- although the statutory process is very complex. Prior to MAP-21, this authority existed in the transportation planning regulations—and MAP 21 preserves this authority.
    - We expect to see addresses in the draft Statewide and Metropolitan planning regulations expected in September, 2013.
  - Programmatic Mitigation Plans (1311)
    - MAP-21 allows States and MPOs to develop “programmatic mitigation plans” as part of the statewide or metropolitan transportation planning process.
    - FHWA has issued Q&As on this topic and will be updating guidance documents and developing regulations to implement this section as part of the Statewide and Metropolitan planning regulations.
  - Early Coordination (1320)
    - MAP-21 requires DOT and other Federal agencies, at the request of a State or local planning agency, to provide technical assistance on accomplishing early coordination activities.
    - FHWA has issued Q&As on this topic and will be updating guidance documents to implement this section later in the year.
- **Earlier Acquisition of Right-of-Way (1302)**
  - MAP 21 broadens States’ ability to acquire right-of-way prior to completion of the NEPA process, using both Federal and non-Federal funds.
  - FHWA is developing a rulemaking on this topic that we expect to see in the next few months. (NPRM- 75%)
- **Contracting Flexibility (1303)**
  - MAP-21 directs USDOT to promulgate regulations as are necessary to allow States to enter into two-phased contracts that include preconstruction and construction services.
  - There is no deadline for this rulemaking.

## Public Transportation

- The Standing Committee on Public Transportation has held three meetings with the Federal Transit Administration (FTA) to discuss MAP-21 Implementation starting in August 2012 and most recently at the AASHTO Washington Briefing on March 1, 2013.
- **Safety and Asset Management**
  - The FTA posted On-Line Dialogue Sessions for Safety and Asset Management issues areas. AASHTO submitted Public Comments for both. It is anticipated that the FTA should issue proposed rulemakings in these areas mid-Summer with a final rulemaking early Fall 2013.
- In addition, the Standing Committee on Public Transportation has held two conference calls with FTA on other areas of MAP-21 Implementation including **Program Consolidation and State of Good Repair**. We expect FTA Circulars (or Guidance) on these topics to be released this summer and early fall, 2013.

- **Bus and Bus Facility Program.** Prior to enactment of MAP-21 the Bus and Bus Facility Program was a discretionary program. With MAP-21, the program was consolidated into the Urban and Rural Public Transit Formula Programs and with funding distributed accordingly. Unfortunately, the overall total of funding was reduced by more than half. Each year, \$65.5 million will be allocated with each State receiving \$1.25 million for the program. The remainder is apportioned under the urbanized area population and bus formula factors. This means that only \$1.25 million is available meet bus and bus facility needs outside of the urbanized areas.

## Freight

- **State Freight Plans and State Freight Advisory Committees**  
Interim guidance on State Freight plans and State Freight Advisory Committees was published on October 15, 2012. ASHTO submitted comments to the Register on November 13. There is no firm date for the issuance of final guidance.
- **Priority Freight Projects**  
The Federal Highway Administration (FHWA) provided guidance to Division Offices in October 2012. AASHTO included comments in the November 13 Register submission.
- **Freight Performance measures**  
Freight performance measures (travel time delay and reliability) were included in the general AASHTO submission to the FHWA. A preliminary rule from the U.S. DOT is expected in the fall of 2013 and a final rule in the spring of 2014.
- **Designation of the Primary Freight Network**  
The U.S. DOT will publish the proposed Primary Freight Network soon and solicit comments.
- **Designation of Critical Rural Freight Corridors**  
Following the publication of the proposed Primary Freight Network the U.S. DOT will publish guidance for states on the Designation of Critical Rural Freight Corridors.
- **Truck Studies**  
MAP-21 authorizes three truck studies
  - Comprehensive truck size and weight limits - underway, with a national listening scheduled for May 29.
  - Adequacy of truck parking - selection of a contractor is pending
  - Compendium of state truck size and weight laws. A request for information from potential contractors has been issued for the compendium of state laws.
- **National Freight Strategic Plan**  
The U.S. DOT will develop and issue the National Freight Strategic Plan no later than three years from enactment of MAP-21. Updates are then due every five years.
- **Freight Transportation Conditions and Performance Reports**  
The U.S. DOT will issue a Freight Transportation Conditions and Performance Report not later than three years from the enactment of MAP-21. Updates are due every two years.
- **Projects of National and Regional Significance**  
States will be surveyed this fall to identify possible Projects of National and Regional Significance

## Safety

- Two proposed rules from FHWA are expected in the third quarter of 2013:
  - The performance measure rule mentioned above
  - An update to the Highway Safety Improvement Program
- NHTSA's Interim Final Rule on highway safety plans was published in January, 2013 and AASHTO provided comments on April 23.

- FHWA has issued guidance on several issues, specifically:
  - Highway Safety Improvement Program, including eligibility and reporting.
  - High Risk Rural Roads program
  - Railway-Highway Crossings program reporting
  - Safety data systems
  - Open container and repeat offender penalty transfer provisions
  - Strategic Highway Safety Plans
- Some of this guidance is interim guidance, pending the rulemaking on performance measures and HSIP update.