

Moving Ahead for Progress in the 21st Century Act

# IMPLEMENTATION PLAN



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## Introduction

The Moving Ahead for Progress in the 21st Century federal surface transportation authorization bill (MAP-21) was passed by the United States Congress on June 29, 2012 and became Public Law 112-141 on July 6, 2012 with President Obama's signature.

The legislation reauthorizes federal programs for highways and mass transit through September 30, 2014. For Fiscal Years 2013 and 2014, MAP-21 authorizes appropriations of \$105.2 billion for transportation programs. Further, MAP-21 authorizes the continued imposition of highway user and fuel taxes through September 30, 2016.

For the Texas Department of Transportation (TxDOT), the passage of MAP-21 represents new opportunities to improve and expedite the delivery of projects and services for the public we serve.

Consistent with the Texas Transportation Commission's identified priorities, MAP-21 includes several reforms and changes that will greatly enhance TxDOT's ability to fulfill its mission:

- **Rate of return**  
MAP-21: Increases the rate of return of federal fuel taxes, though net funding is held constant.
- **Expansion of funding options**  
MAP-21: Reauthorizes the Transportation Innovation Finance and Infrastructure Act (TIFIA) credit assistance program and significantly increases the program's funding level. Further, the bill emphasizes Public-Private Partnerships for multiple modes of transportation.
- **Clearly defined goals and performance measurement**  
MAP-21: Establishes national transportation goals related to safety, infrastructure conditions, congestion reduction, reliability, freight movement and economic vitality.
- **Consolidate programs and provide funding flexibility**  
MAP-21: Consolidates federal programs by 60 percent with funds directed to core highway programs. Greater funding flexibility is provided and the Surface Transportation Program (STP) is expanded to include the activities of the consolidated programs.
- **Strengthened partnerships**  
MAP-21: Reserves toll project development decision authority for states/local governments and expands the ability of states to use federal funds for toll roads for new Interstate capacity. Further, the bill reserves Public-Private Partnership decision authority for states/local governments.
- **Expedite project delivery**  
MAP-21: Requires greater coordination among federal agencies reviewing projects and establishes firm time limits for federal review of projects. The bill reduces the time authorized for filing lawsuits on environmental documents and provides expedited procedures for approval of projects with minimal environmental impact. Additionally, the bill significantly expands the number and types of projects that can be excluded from the federal environmental process.
- **Address international freight movement**  
MAP-21: Establishes a National Freight Policy and directs the Secretary of Transportation to develop a National Freight Strategic Plan. The bill requires the identification of the most critical freight routes and provides incentives to states to complete freight plans.

MAP-21 provides funding stability and certainty for TxDOT for the next two fiscal years, and enables the department to continue our work on behalf of the State of Texas.

## IMPLEMENTING MAP-21

With the passage of MAP-21, the real work begins for TxDOT. Divisions and districts have identified within the legislation opportunities to improve project delivery and maximize transportation dollars. Significant areas of opportunity include:

### Environmental Streamlining

**Implementing Office:** Environmental Affairs Division (ENV) and Carlos Swonke, PE, ENV Director

**Federal Affairs Coordination:** Melissa Meyer

**Implementation Timeline:** Through October 1, 2017

**Definition of Success:** MAP-21 is implemented according to Congressional intent. TxDOT is able to use new processes and institutionalize them where appropriate.

**Summary of Implementation Duties:** MAP-21's environmental streamlining provisions provide a variety of opportunities to add efficiency to the environmental review process. From major construction projects to minor reconstruction and repairs, the legislation delivers time limits and expanded opportunities for categorical exclusions that are projected to significantly expedite the environmental review process—saving both time and resources.

TxDOT's Environmental Affairs Division will review and implement, as applicable, MAP-21 initiatives as well as review and comment on FHWA's proposed rule-making. ENV will coordinate with TxDOT's district offices to identify those projects that may benefit from the MAP-21 provisions and apply the MAP-21 program initiatives in areas such as planning, local government coordination, agency permitting, right-of-way acquisition and mitigation. Further, ENV and Federal Affairs (FED) will coordinate the department's participation in federal public comment processes related to the promulgation of regulations related to these provisions, and processes related to federal agencies' reports to Congress through October 2017 as mandated by MAP-21. ENV will also be considering the benefits and program requirements to pursue National Environmental Policy Act (NEPA) decision-making authority from FHWA. State Legislative Affairs (SLA) will work with the Texas Legislature as they consider statutory changes required to fully implement various environmental streamlining provisions. These changes would include Legislative authority to waive sovereign immunity in order for TxDOT to assume FHWA authority related to the NEPA activities.

### Program Consolidation

**Implementing Office:** Transportation Planning and Programming (TPP), Chief Planning and Projects Officer Russell Zapalac, and Planning Director Marc Williams

**Federal Affairs Coordination:** Robin Ayers

**Implementation Timeline:** Through October 1, 2014

**Definition of Success:** TxDOT fully maximizes available funding for priority projects.

**Summary of Implementation Duties:** The bill's consolidation of funding programs eliminated nearly 60 transportation programs, many of which were only applicable to a limited number of states and a tiny fraction of the nation's infrastructure projects. In addition, the legislation's funding flexibility provides the ability to shift resources to accommodate changing needs and growing population. As the department applies these revisions to its portfolio of pending and developing projects, these efforts will be led by TxDOT's Chief Planning and Projects Officer Russell Zapalac and Planning Director Marc Williams, in coordination with TxDOT's districts and divisions. This process will involve the identification of projects and priorities, the coordination of project readiness and funding availability, the tracking of time limits and restrictions applicable to available sources of funding, and processes related to SAFETEA-LU set-aside programs that were collapsed into larger programs under MAP-21. Further, the Commission will provide

policy guidance regarding those programs which remain eligible for federal funds, but are no longer required activities (for example, Recreational Trails, Safe Routes to Schools, Transportation Enhancements). Chief Financial Officer James Bass and Finance Division's (FIN) Letting Management will oversee obligation of federal funds. TPP will lead efforts to review and revise the Unified Transportation Program (UTP) categories to ensure alignment with MAP-21 funding categories and available federal funding. This initiative will be coordinated with FIN and with the state's Metropolitan Planning Organizations (MPOs).

### **Transportation Infrastructure Finance and Innovation Act (TIFIA)**

**Implementing Office:** Innovative Financing/Debt Management Office (DMO) and Innovative Financing/Debt Management Officer Benjamin Asher

**Federal Affairs Coordination:** Andrea Lofye

**Implementation Timeline:** Through October 1, 2014

**Definition of Success:** TxDOT secures maximum available TIFIA funding for priority projects.

**Summary of Implementation Duties:** Since the creation of the Transportation Infrastructure Finance and Innovation Act (TIFIA) program in 1998, Texas has secured more than a third of the total funds distributed nationwide—more than any other state. As a result, TxDOT is poised to benefit greatly from the MAP-21 expansion of the TIFIA program which has increased from approximately \$120 million annually to \$1.75 billion over the next two fiscal years. In the weeks since MAP-21 was signed into law, TxDOT has initiated the TIFIA application process for four pending projects and continues to actively work to identify additional projects that may benefit from this critical financing tool. These efforts are led by TxDOT's Innovative Financing/Debt Management Office (DMO) which will oversee the process to determine which projects would most benefit from TIFIA, development of applications, and development of financial assistance agreements, all in close coordination with the Strategic Projects Division (SPD), as applicable. The implementation tasks will include the development and streamlining of an integrated process for TIFIA project selection and application completion, to ensure that applications fully demonstrate the creditworthiness of TxDOT projects and are submitted in an efficient manner.

### **Tolling Programs**

**Implementing Office:** Director of Strategic Projects Ed Pensock and Strategic Projects Division, in conjunction with Toll Operations Division and Traffic Division

**Federal Affairs Coordination:** Melanie Alvord and Robin Ayers

**Implementation Timeline:** Through October 1, 2016

**Definition of Success:** TxDOT is able to develop tolling operations according to planned project development. Further, TxDOT meets all statutory deadlines related to reporting requirements and interoperability.

**Summary of Implementation Duties:** MAP-21 expands the ability of states to develop tolling programs to be used in conjunction with federal funding. The bill permits new capacity tolling on Interstate highways and non-Interstate federal-aid roads and permits states to convert High Occupancy Vehicle lanes to High Occupancy Toll lanes without restrictions. SPD will oversee feasibility studies of toll facilities for which federal participation is authorized. TxDOT's Toll Operations Division (TOD) will oversee implementation of tolling operations and both TOD and the Traffic Division (TRF) will develop audit processes to ensure maintenance metrics are met, HOV/HOT operations are compliant, and toll revenue activities are compliant with developing regulations. Further, the two divisions will work with FHWA and FED to ensure timely compliance with MAP-21's provisions requiring implementation of interoperable toll collection programs by October 2016.

## Performance Measures and Planning

**Implementing Office:** Deputy Executive Director/Chief Engineer John Barton, P.E; Chief Administrative and Strategy Officer Scott Leonard; with support from TxDOT's Operational Excellence Office and TPP

**Federal Affairs Coordination:** Debra Richmond

**Implementation Timeline:** Through October 1, 2017

**Definition of Success:** TxDOT incorporates the priorities, goals and metrics that accurately assess and measure the department's performance into planning processes and documents. TxDOT meets all deadlines related to federal agencies' reports to Congress and planning requirements. TxDOT actively works to ensure measurements reflect the state's immense and diverse geography, mix of urban and rural population distribution, and vast freight networks and port infrastructure.

**Summary of Implementation Duties:** TxDOT Deputy Executive Director John Barton will lead the department's efforts to develop and refine performance measures with Chief Administrative and Strategy Officer Scott Leonard. In addition, Deputy Executive Director Barton will serve as the department's representative with the American Association of State Highway and Transportation Officials and other partner organizations as they provide assistance to federal agencies during rulemaking processes. TxDOT's Operational Excellence Office (OPE) will serve in a support role to Mr. Barton efforts and as a collection point to evaluate current and proposed performance metrics, coordinate metrics with partners and stakeholders, develop a final system of data collection and reporting processes following USDOT promulgation of final rules and regulations, and will submit all required reports to USDOT. OPE will coordinate this process with TxDOT's Bridge Division (BRG), ENV, International Relations Office (IRO), Maintenance Division (MNT), TPP, TRF, and TxDOT's Chief Information Officer (CIO). TPP will ensure performance metrics are incorporated into the Statewide Long-Range Transportation Plan. Further, TPP will oversee compliance with final federal rules and regulations regarding all planning processes, and will oversee coordination and communication with all planning organizations related to these rules and regulations.

## Freight Planning and Partnerships

**Implementing Office:** TPP and Director of Planning Marc Williams

**Federal Affairs Coordination:** Andrea Lofye

**Implementation Timeline:** Through October 1, 2015

**Definition of Success:** TxDOT incorporates federal freight priorities, goals and metrics into planning processes to meet all federal criteria and maximize freight-related funding of TxDOT projects.

**Summary of Implementation Duties:** MAP-21's planning processes, prioritization of freight networks and corridors, and other provisions illustrate a federal emphasis on freight planning and movement. TxDOT shares this priority and has laid the groundwork with planning, advisory committees, and strategic relationships with freight partners throughout our state and region. With the completion of the Texas Rail Plan in 2010, Texas became one of the first states to complete the state rail planning process. Our state rail plan includes analysis of the state's freight system, with emphasis on connectivity and ports. As such, TxDOT is well-positioned to assist federal efforts to improve freight movement. Director of Planning Marc Williams and TPP will lead the department's efforts to develop a MAP-21-compliant Statewide Freight Plan, convene a Statewide Freight Advisory Committee, develop freight performance measures, incorporate freight planning into TxDOT's Transportation Planning Process, incorporate freight planning into the Statewide Long-Range Transportation Plan and related planning processes, in conjunction with other TxDOT divisions including, but not limited to, Railroad Division (RRD) and the updates to the Texas Rail Plan, data collected by IRO regarding border wait times for freight, freight traffic statistics collected at Texas ports by TxDOT's new Maritime Division, and related division information. FIN will work with divisions and districts to identify freight-related projects that are eligible for increased matching funding.

TxDOT will work collaboratively with stakeholders to develop advisory committees (utilizing successful working group and task force initiatives, structures and membership), and to assist FHWA with statutory provisions requiring the development of a National Freight Strategic Plan prior to October 1, 2015.

As TxDOT continues its efforts to implement these and other initiatives, staff will be working very closely with the representatives from FHWA, USDOT, and our federal partners who serve our region and our state. To guide this endeavor, TxDOT, FHWA and USDOT have developed an implementation working group to ensure our organizations have a coordinated, collaborative, and focused approach throughout the rulemaking and implementation process.

The implementation working group will cooperatively analyze and evaluate priority initiatives within MAP-21, identify opportunities, and address challenges, to ensure our common goals for our shared infrastructure investments are met.

## AFTER MAP-21

With the start of the 113th Congress in January 2013, Congressional committees will resume their efforts to draft the next federal surface transportation bill. With the adoption and implementation of MAP-21's many beneficial provisions achieved, TxDOT will work with our Congressional delegation and leadership to address the current and future challenges for surface transportation and infrastructure.

TxDOT maintains ongoing interest in securing a multi-year authorization bill. For the projects and initiatives developed by the department--encompassing billions of dollars and processes extending through decades—there must be continuing confidence in the federal commitment, partnership, and participation that cannot be achieved with short-term legislation or repeated extensions of current legislation.

In addition, with the consolidation of federal programs in MAP-21 and the ongoing blending of fuel taxes and General Fund revenue, an opportunity is provided in the next authorization bill to refine funding formulas and criteria to ensure federal dollars are precisely allocated to areas of need. Specifically, funding formulas should be targeted toward current populations, to reflect the nation's shifting populations, and the services provided by those states and regions accommodating new drivers and transit passengers.

Finally, as states increasingly utilize innovative tools such as comprehensive development agreements, alternative technical concepts, and design-build procurement processes to advance projects, federal processes for review and approval should be refined to enable these tools. Planning processes and environmental reviews should be conducted concurrently to ensure projects are not halted as they proceed to each step or incorporate innovations that conserve time or taxpayer dollars.

MAP-21 provides much-needed tools and reforms to address the transportation challenges of the current century. TxDOT efforts are underway to take full advantage of the opportunities provided by this legislation, to comply fully with new rules and regulations as they are developed, and to implement the many components of MAP-21.

## ABOUT THIS DOCUMENT

The MAP-21 Implementation Plan serves as a summary of the department's action plan for implementing the transportation provisions of MAP-21. Each section has been completed by the applicable division, or divisions, to reflect the analysis and consensus developed by department staff with regard to the actions required by the passage of MAP-21.

This document addresses major provisions of MAP-21. Sections related to definitions, minor technical corrections, short titles, or issues not within the purview of TxDOT have been omitted from this report.

This document has been published in advance of federal agencies' rule development and promulgation process. Hence, upon receipt of clarifying information from the U.S. Department of Transportation and its administrative agencies, TxDOT divisions and districts may be required to edit the current plans and strategies developed for implementation of MAP-21. This document is subject to change and revision.

Requests for changes and revisions should be directed to Andrea Lofye in Federal Affairs at [andrea.lofye@txdot.gov](mailto:andrea.lofye@txdot.gov) or (512) 475-1409.

The page numbers within this document refer to the enrolled version of MAP-21, H.R. 4348, final as passed by both the U.S. House of Representatives and the U.S. Senate. The bill can be located on the U.S. Government Printing Office website at:  
<http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>.

## Division A — Federal-Aid Highways And Highway Safety Construction Programs

### TITLE I — FEDERAL-AID HIGHWAYS

#### Subtitle A – Authorizations and Programs

#### Authorization of Appropriations

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1101, Page 10

**Agency Impact Classification:** High

**Summary of Section:** This section provides the national levels of authorization for MAP-21. There is also a minimum percentage (10 percent) of small business/Disadvantaged Business Enterprise (DBE) participation for most of the programs in MAP-21.

**Impact to TxDOT:** The amounts of authorization are higher than forecast by the department. More federal funds could be available, depending on actual appropriations by Congress. This will impact the 2013 and 2014 federal funds programmed in the Unified Transportation Program (UTP) and State Transportation Improvement Program (STIP).

**Federal Actions Required:** None

**State Actions Required:** The higher level of federal funds will need to be included in the Legislative appropriations Request (LAR).

**Relevant Deadlines for TxDOT and Related Agencies:** The 2013 UTP will need to be revised, possibly in October of 2012 (this would be an out of cycle UTP revision). The 2013-2016 STIP is being approved by the commission in August. The MAP-21 changes will not be able to be included in the STIP until the November revisions.

**Additional Information:** Transportation Infrastructure Finance and Innovation Act (TIFIA) Funding is provided at \$750 million for Fiscal Year 2013 and \$1 billion for Fiscal Year 2014.

## Obligation Ceiling

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1102, Page 12

**Agency Impact Classification:** High

**Summary of Section:** This section sets the obligation ceiling for the 2013 and 2014 federal highway programs.

**Impact to TxDOT:** The obligation limit or ceiling is higher than previous federal legislation. The impact is higher federal funds, depending, on annual appropriations by Congress. This will impact the 2013 and 2014 federal funds programmed in the UTP and STIP.

**Federal Actions Required:** None

**State Actions Required:** The higher level of federal funds will need to be included in the LAR.

**Relevant Deadlines for TxDOT and Related Agencies:** The 2013 UTP will need to be revised. The 2013-2016 STIP is being approved by the commission in August. The MAP-21 changes will not be able to be included in the STIP until the November revisions.

**Additional Information:** None

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## National Highway System

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1104, Page 18

**Agency Impact Classification:** High

**Summary of Section:** This section defines the National Highway System (NHS) as being the federal-aid system including the interstate. It includes urban and rural principal arterials; any border crossings that were previously not on the NHS before MAP-21, as well as connectors that provide access between arterials on NHS that were not previously included. The mileage cap of 178,250 miles for the NHS system was struck but the cap remains for the interstate. The requirement to include congressional high priority corridors after feasibility studies are complete has been struck. The section on state eligible projects has been struck. Makes changes to ISTEA legislation dealing with I-69. These changes allow segments of the designated I-69 corridor that meet interstate standards to be designated as I-69 even if they don't currently tie to an interstate as long as that connection will be made within the coming 25-year time frame.

**Impact to TxDOT:** NHS funds can be spent on a larger part of the federal-aid highway system. The department can designate signs on I-69 sections that meet interstate design standards without having to connect to an existing Interstate highway.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Apportionment

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1105, Page 23

**Agency Impact Classification:** High

**Summary of Section:** Changes the apportionment calculations and reduces the number of programs. The programs are – National Highway Performance Program, Surface Transportation Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Program (CMAQ) and Metropolitan Planning (PL). Interstate maintenance has been removed as a separate program. CMAQ and PL are apportioned based on the Fiscal Year 2009 ration the programs had to the total federal funds. For PL, there were no changes made in how the state would distribute the funds. The formula must still take into consideration population, status of planning, air quality attainment, metro area needs and “other factors”.

The major change is the requirement that bills be paid not later than 15 business days of receipt of bill. The current requirement is 30 calendar days.

**Impact to TxDOT:** The reduced number of federal programs will impact the number of categories in the UTP. This will require changes to the Texas Administrative Code, Chapter 16. In addition, the department will have to reimburse metropolitan planning organization (MPO) billings within 15 business days. This could have implications for additional interest payments on late bills.

**Federal Actions Required:** None

**State Actions Required:** The change in MPO billing reimbursement may impact the financial/accounting process. Existing procedures and standard operating procedures (SOPs) will have to be revised to reflect the shorter reimbursement period.

**Relevant Deadlines for TxDOT and Related Agencies:** TPP will work with the regions, districts, and the Finance division to revise procedures, manuals, and standard operating procedures by October 1, 2012.

**Additional Information:** None

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## National Highway Performance Program

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1106, Page 28

**Agency Impact Classification:** High

**Summary of Section:** This section replaces the Interstate Maintenance Program with the National Highway Performance Program. The program is concerned with the National Highway System (NHS). It allows for the preservation of the NHS, as well as construction of improved facilities. Each state has to develop a risk-based asset management plan, with performance targets. The Secretary has 18 months for developing rules for the asset management plan. The plan must be certified every four years by the Secretary. Up to 65 percent of the NHS funds could be withheld if a state does not develop or implement the plan. Penalties, including the withholding of funds, and associated restoration procedures are created to ensure that states do not have prolonged periods of not meeting minimum NHS condition levels.

**Impact to TxDOT:** The reduced number of federal programs will impact the number of categories in the UTP.

This will require changes to the Texas Administrative Code (TAC), Chapter 16. The department will have to develop a risk-based asset management plan.

**Federal Actions Required:** Federal rules are required within 18 months.

**State Actions Required:** Procedures will need to be developed for the asset plan, based on the Federal rules to be promulgated later. Changes to the administrative rules in Chapter 16 would likely be required to reflect the national performance goals, targets and reporting requirements established by FHWA.

**Relevant Deadlines for TxDOT and Related Agencies:** The department will need to wait on initial federal guidance, and then federal rules for the asset plan.

**Additional Information:** None

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## Emergency Relief

**Prepared By:** Paul Campbell, FIN

**MAP-21 Section and Page Number:** 1107, Page 33

**Agency Impact Classification:** Moderate

**Summary of Section:** Describes Emergency Relief program

**Impact to TxDOT:** TxDOT will proceed with obligating Emergency Relief funds under MAP-21 per federal guidance when distributed.

**Federal Actions Required:** USDOT will develop guidance.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Surface Transportation Program

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1108, Page 36

**Agency Impact Classification:** High

**Summary of Section:** This section makes changes to the Surface Transportation Program. There are several additions concerning program eligibility, such as, limiting new highways and bridges at new locations only on the federal-aid system, adding congestion pricing projects, and some limited surface transportation projects within the boundaries of a port terminal. The distribution formula is changed to reduce the STP funds, based on population, from 56 percent to 50 percent. The remaining 50 percent can be spent anywhere in the state. Outside of the MPO TMA's, regional transportation planning organizations (if any) must be consulted by the state before spending STP funds in their areas. Language is added to require a written agreement from the state to adhere to the funding and distribution requirements for STP. A minimum set-aside, of 15 percent, for off-system bridges is continued. Also allows for a small percentage of STP funds to be used on minor collectors.

**Impact to TxDOT:** More projects are eligible for STP funds. Port authorities may ask for STP funds for surface projects inside the port. The distribution formula will allow for more STP funds to be spent in areas as determined by the department. The department will have to work with regional transportation planning organizations (if any), which may be similar to or the same as rural planning organizations or councils of governments, outside of the MPO planning area. The department will have to provide a project agreement that certifies that all of the requirements of this section have been met.

**Federal Actions Required:** None

**State Actions Required:** State law does not recognize this type of entity. If the state desires to designate RTPOs, legislation would be required. Texas Administrative Code changes would occur after that happens.

**Relevant Deadlines for TxDOT and Related Agencies:** If the state desires to designate RTPOs, legislation would be required. The TAC revisions, if required, will be complete, along with other revisions as might be required by MAP-21, by January 2013.

**Additional Information:** None

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## Workforce Development

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1109, Page 40

**Agency Impact Classification:** Minimal

**Summary of Section:** Provides technical corrections to Section 140 of title 23, United States Code

**Impact to TxDOT:** None

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for Txdot and Related Agencies:** None

**Additional Information:** None

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## Highway Use Tax Evasion Projects

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1110, Page 40

**Agency Impact Classification:** Minimal

**Summary of Section:** Authorizes \$10 million per fiscal year for motor fuel tax enforcement activities and training.

**Impact to TxDOT:** None

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## National Bridge and Tunnel Inventory and Inspection Standards

Prepared By: Kelly Breazeale, BRG

MAP-21 Section and Page Number: 1111, Page 41

Agency Impact Classification: High

**Summary of Section:** This section of the act calls for the replacement, rehabilitation and preventive maintenance of deficient bridges to be based on overall asset management, using a data-driven, risk-based approach through the use of a performance-based bridge management system. The Secretary is required to inventory all bridges and tunnels on public roads and classify them according to serviceability, safety, essentiality for public use, and potential impacts on emergency evacuation and freight and passenger mobility. A risk-based priority for upgrading these bridges is to be established and the cost of rehabilitating or replacing each Structurally Deficient bridge is to be determined. In addition, the Secretary is directed to conduct a study on requiring element-level data collection for bridges not on the NHS. Within three years the Secretary is directed to develop national, risk-based inspection standards for bridges and tunnels. The standards would: specify inspection methods; establish inspection frequencies; set qualifications for inspectors; create a procedure for national certification of inspectors; and require reports on results of inspections to the Secretary. The Secretary is required to annually review state compliance with these standards. States that do not comply with these standards, after being provided an opportunity to remedy the noncompliance are to be required to use National Highway Performance Program (NHPP) and the Surface Transportation Program (STP) funds to meet the standards. Bridge and tunnel inspections and the training of inspectors are eligible for federal highway funding under the NHPP and the STP. The Secretary and state DOTs would be required to maintain a program to train bridge and tunnel inspectors. In addition, the Secretary is directed to conduct a study on requiring element-level data collection for bridges not on the NHS, which would definitely increase the number of such inspections, since we do not currently do them on off-system bridges. States will be required to complete an inventory of all bridges on and off the federal-aid highway system to determine their historic significance. Project costs for historic bridges no longer carrying traffic cannot exceed the cost of demolition. A state proposing to demolish a historic bridge must make it available to another entity if the accepting entity enters into an agreement to maintain the bridge and accept all future legal and financial responsibility. The Secretary will establish procedures for reviewing state compliance with inspection requirements, calculation of bridge load ratings, reporting of critical findings related to structural or safety of bridges and tunnels, and monitor corrective actions taken in response to critical findings. The Secretary will annually review state compliance with the standards established. Noncompliance will result in allowing states to develop a plan of corrective action or resolve the issue within 45 days of notification. A penalty for noncompliance will involve the state dedicating a portion of other funds in MAP-21 to correct the issue(s). The amount of funds needed will be determined by the state and approved by the Secretary. Within three years the Secretary shall update the inspection standards to cover inspection methods, training and qualifications for inspectors and frequency of inspection. The Secretary shall consider risk-based approaches in determining required inspection frequencies. Requires that critical inspection findings or safety related deficiencies on bridges and any actions to address the deficiencies be reported to the Secretary. Sets penalties for a state being out of compliance with inspection standards by requiring the transfer of funds to the inspection program until deficiencies are addressed. The Secretary is directed to update the inspection standards and consider a risk-based approach to determining the frequency for bridge inspections.

**Federal Actions Required:** Within three years the Secretary is directed to develop national, risk-based inspection standards for bridges and tunnels. The standards would: specify inspection methods; establish inspection frequencies; set qualifications for inspectors; create a procedure for national certification of inspectors; and require reports on results of inspections to the Secretary. The Secretary is to annually review state compliance with these standards.

**State Actions Required:** Within two years of enactment, reports are required from federal and state DOTs on bridge inspections using element-level data for the National Highway System (NHS).

**Impact to TxDOT:** The impact to the department is contingent upon the guidance and final rules developed by the Secretary. Final rules may require additional inspections, collection of additional information, and changes to systems and processes. A risk-based approach to inspection frequency would be of great benefit to the states by allowing states to focus their limited resources on the bridges most in need.

**Relevant Deadlines for TxDOT and Related Agencies:** Bridge inspection reports required within two years of enactment from states.

**Additional Information:** None

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## Highway Safety Improvement Program

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1112, Page 46

**Agency Impact Classification:** Moderate

**Summary of Section:** Amends existing Section 148 regarding the Highway Safety Improvement Program (HSIP) and sets content and updates requirements for the State Strategic Highway Safety Plan (SHSP). Includes new language that allows for HSIP funding for projects to maintain minimum levels of retroreflectivity consistent with the Federal Manual on Uniform Traffic Control Devices (MUTCD); includes road safety audits as an eligible project; allows projects designed to implement the FHWA's handbook for older drivers and pedestrians; requires states to have a safety data system that is capable of linking to other data systems in the state and on the federal level, requires the Secretary to determine a SHSP update schedule; sanctions a state for not having a conforming and updated SHSP; requires states to consider findings of road safety audits in the development of their SHSP; creates "special rules" that require states to obligate additional funding to the High Risk Rural Roads under certain conditions; requires a state to include strategies in the SHSP to address Older Drivers under certain conditions; requires states to continue to submit to the Secretary a HSIP report; provides for an exception to release of safety-sensitive data; requires states to dedicate obligation authority to the HSIP Program when a state has not made significant progress toward meet the performance targets established under Section 150(d).

**Impact to TxDOT:** TxDOT will be required to review our current HSIP program and ensure that future program calls are compliant with federal regulations and guidance. We will need to ensure that the state's SHSP is updated according to the USDOT's update schedule. We will also need to evaluate our state to determine if the special conditions related to older drivers and HRRR may be triggered.

**Federal Actions Required:** We assume that the FHWA will be required to evaluate existing 23 CFR Part 924 for updates and revisions as well as revising existing and developing new policy guidance.

**State Actions Required:** TRF will review the revised Federal Highway Safety Improvement Program (HSIP) guidelines to address any needed revisions to existing program processes and HSIP manual; review the revised Federal Strategic Highway Safety Plan (SHSP) guidelines to address any changes and develop an updated schedule for the SHSP to conform to the US DOT schedule; determine what the requirements are for the state safety data system and the capability of that system to link to other agencies.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Congestion Mitigation and Air Quality Improvement Program

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1113, Page 56

**Agency Impact Classification:** High

**Summary of Section:** This section makes changes to the CMAQ program. There are changes to project eligibility, such as projects that improve incident and emergency response. The Secretary, working with the EPA, must periodically evaluate the cost-effectiveness of CMAQ projects. MPO's over 1 million in population must prepare a performance plan for traffic congestion and mobile source emissions.

**Impact to TxDOT:** Changes in this section largely impact the non-attainment MPOs.

**Federal Actions Required:** The Secretary and EPA must prepare a table of CMAQ projects and their cost-effectiveness.

**State Actions Required:** None

Relevant Deadlines for TxDOT and Related Agencies: None

**Additional Information:** None

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## National Freight Policy

**Prepared By:** Jennifer Moczygemba, RRD; Marc Williams, TPP; and Caroline Mays, TPP

**MAP-21 Section and Page Number:** 1115, Page 64

**Agency Impact Classification:** Moderate

**Summary of Section:** The section requires the Secretary to create a National Freight Policy, identify the primary network (all roadways) and develop a strategic plan to promote freight transportation. The Secretary will establish a national freight network within one year. The network will be based on an inventory of freight volumes and will be limited to 27,000 centerline miles. Factors that will be used in designation include, tonnage, value, percent of AADT, truck percent of AADT on principal arterials, land and maritime ports, access to energy exploration, population centers, and network connectivity. The system will be re-designated every 10 years. States may designate a road a "critical rural freight corridor" if it's a principal arterial with 25 percent trucks, provides access to energy or connects to facilities that handle 50,000 20-ft equivalent units/year or 500,000 tons of bulk commodities/year. The Secretary, working with the states, must develop a National Freight Strategic Plan within three years. The Plan must indicate the condition and performance of the freight network and identify highway bottlenecks. The Plan must be updated every five years. The Secretary must also develop data and planning tools to use to evaluate freight related transportation projects.

**Impact to TxDOT:** The federal share of a transportation project may be increased up to 95 (Section 1116) provided the project is identified in the State Freight Plan (Section 1118) and addresses the national freight goals developed under this section 1115. The department will have to work with the Secretary on the freight network and the strategic plan. This work will need to be incorporated into the Statewide Long-Range Transportation Plan. This work could be used to select projects in the UTP.

**Federal Actions Required:** This is a completely new section that will require new federal regulations. The Secretary must prepare: (1) designation of the "primary freight network;" (2) national freight strategic plan; and (3) biannual report on the conditions of the national freight network.

**State Actions Required:** The Texas Administrative Code, Chapter 16, may need to be revised to include the freight network and strategic plan in the section on the Statewide Long-Range Transportation Plan.

**Relevant Deadlines for TxDOT and Related Agencies:** Any needed TAC revisions will be completed after federal rules are finalized.

**Additional Information:** None

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## Prioritization of Projects to Improve Freight Movement

**Prepared By:** Jennifer Moczygemba, RRD; Marc Williams, TPP; and Caroline Mays, TPP

**MAP-21 Section and Page Number:** 1116, Page 68

**Agency Impact Classification:** High

**Summary of Section:** This section allows federal share of eligible projects to increase to 95 percent on the interstate highway system and 90 percent for other projects.

**Impact to TxDOT:** This section could provide for additional federal funding on projects such as Highway/rail grade separations, ITS, improvement to intermodal connectors, roadway construction, reconstruction, rehab and operational improvements, among others, that directly improve freight movement.

**Federal Actions Required:** The Secretary must certify that the project meets the requirements of this section. They must contribute towards meeting performance targets for freight movement established under section 150(d) of title 23, USC and be in a state freight plan.

**State Actions Required:** The state must have a state freight plan and the projects must be identified in that plan.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## State Freight Advisory Committees

**Prepared By:** Jennifer Moczygemba, RRD; Marc Williams, TPP; and Caroline Mays, TPP

**MAP-21 Section and Page Number:** 1117, Page 68

**Agency Impact Classification:** Moderate

**Summary of Section:** This section encourages states to establish freight advisory committees made up of various stakeholders. Each state may establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders. The committee provides information and advice on freight transportation, including input to the state freight plan.

**Impact to TxDOT:** This section is not mandatory, but is consistent with TxDOT's goals for transparency and public and outside entity input into all plans developed by the department.

**Federal Actions Required:** None

**State Actions Required:** The committee, if established, will need to be added to the Texas Administrative Code.

**Relevant Deadlines for TxDOT and Related Agencies:** If state determines to establish a freight advisory committee, the TAC revision will be complete, along with other revisions as might be required by MAP-21, within nine months of determination.

**Additional Information:** TxDOT research 0-6297 recommended the establishment of a State Freight Advisory Committee. These already exist in the Houston and DFW regions. Railroads are not mentioned specifically, though could be included in the category of “carriers” – based on highway-centric nature of this bill, USDOT possibly intended “carriers” to refer to various trucking interests, or could have used the broad term to allow rail participation when states deem it appropriate.

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## State Freight Plans

**Prepared By:** Jennifer Moczygemba, RRD; Marc Williams, TPP; and Caroline Mays, TPP

**MAP-21 Section and Page Number:** 1118, Page 69

**Agency Impact Classification:** High

**Summary of Section:** This section recommends the development of state freight plans which would include a comprehensive short and long range freight transportation plan. The freight plan can contain policies, strategies, and projects concerning freight. The freight plan can be separate or part of the State-wide Long-Range Transportation Plan.

**Impact to TxDOT:** This section is not mandatory, but to not enact would not allow for the potential increase in federal funds to 95 percent for highways and 90 percent for other roadways which meet the criteria for improving the efficient movement of freight.

**Federal Actions Required:** None

**State Actions Required:** RRD is prepared to amend the Texas Rail Plan to meet the criteria as needed. TPP intends to use consultant services to develop the freight plan and include it in the Statewide Long-Range Transportation Plan.

**Relevant Deadlines for TxDOT and Related Agencies:** A TPP consultant team should be under contract by January 1, 2013. The plan should be complete by November 2014.

**Additional Information:** The development of a state freight plan could be utilized by TxDOT as a platform to make the case for investment in rail and waterway modes – particularly considering that Texas has the most miles of rail line in the country as well as a significant portion of the Gulf Intercoastal Waterway. Proper development of the plan and presenting specific rail and water projects that show a defined benefit to the public (and roads from freight diversion) could help leverage federal funds for those modes in the future. The role of the Port Authority Advisory Committee is to identify improvements between the ports and surface transportation. This goal could be used to tie rail and ports/waterways together as part of the freight network.

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## Federal Lands and Tribal Transportation Programs

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1119, Page 69

**Agency Impact Classification:** Minimal

**Summary of Section:** This section sets up a uniform policy for public federal and tribal transportation facilities. The appropriate Secretary will implement a transportation planning process consistent with US Title 23, Sections 134 and 135. The TIPs developed under this program (by the appropriate Secretary) will be approved by USDOT Secretary. These will be developed in cooperation with the state and the MPOs as appropriate and included in the state and MPOs plans and programs – as appropriate.

**Impact to TxDOT:** The changes in this section do not directly impact the department. The TIP's developed under this section as simply incorporated into the STIP.

**Federal Actions Required:** The appropriate Secretary will implement a transportation planning process, which will probably require rulemaking.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Projects of National and Regional Significance

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1120, Page 88

**Agency Impact Classification:** High

**Summary of Section:** This section amends Section 1301, Projects of National Significance, of SAFETEA-LU. It changes the eligible applicant from the state to state DOTs, or group of state DOTs, tribal governments, transit agencies, or multi-state/multi-jurisdictional groups. Selection criteria were amended to include projects that improve roadways vital to national energy security. The Secretary may not enter into agreements or commitments to fund projects if Congress enacts a joint resolution of disapproval for the project within 60 days of receiving notice of project selection. The Secretary will submit a report to Congress within two years to identify projects of national or regional significance.

**Impact to TxDOT:** The department will have an opportunity to select candidate projects which meet the criteria of the program.

**Federal Actions Required:** This will require federal rulemaking or policies and procedures for the report, including project evaluation guidance.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Construction of Ferry Boats and Ferry Terminal Facilities

**Prepared By:** Carolyn Dill, MNT

**MAP-21 Section and Page Number:** 1121, Page 89

**Agency Impact Classification:** Moderate

**Summary of Section:** This section creates the formula by which funds are allocated based on percentage of systems' numbers of ferry passengers, vehicles, and total route miles serviced. This formula replaces the previously discretionary program. Further, this section authorizes appropriation of \$67 million per fiscal year from the Highway Trust Fund for approved ferry construction activities.

**Impact to TxDOT:** Provides certainty of funding, but eliminates opportunity to apply for larger discretionary awards.

**Federal Actions Required:** National Ferry Database must be maintained.

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**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Transportation Alternatives

**Prepared By:** Mark Marek, DES; Marc Williams, TPP; Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1122, Page 90

**Agency Impact Classification:** High

**Summary of Section:** Changes the name of the program from Transportation Enhancements (TE) to Transportation Alternatives (TA). Definition of TA activities eliminated some TE activities (transportation museums, acquisition of scenic easements and scenic or historic sites, and scenic or historic highway programs) and consolidated others. Provides more flexibility in using TA funding. Directs that 50 percent of the funds allocated to the state for this program shall be obligated in proportion to population and 50 percent shall be obligated anywhere. The calculation includes set amounts for populations over 200,000, areas other than urban with population greater than 5000 and other areas of the state--just like the division of the STP program. The funds obligated to the over 200,000 areas may be obligated in the MPO planning areas. Any MPO projects will be carried out in consultation with the state. The department and the MPOs must develop a competitive process to allow eligible entities to submit projects for funding that achieve the objectives of program. MPOs choose projects within their area. Recreational trail funding will be held at Fiscal Year 2009 levels. States may begin to use unobligated funds for any Title 23 project in 2014 under certain circumstances.

**Impact to TxDOT:** TA activities appear more transportation-related and could therefore include activities currently funded under other departmental funding categories (Statewide Curb Ramp Program, vegetation management activities and some environmental activities, etc.). As interpreted by TRF, there will no longer be a dedicated funding source for the SRTS program. TRF has a competitive process in place and can issue a program call that is in compliance with the federal guidelines for the program should funding be available. TxDOT has a fully compliant SRTS program. If the department decides to fund the program, we can issue a statewide program call for new projects that is compliant with Sec. 1122.

**Federal Actions Required:** Unknown at this time whether federal code or rule revision will be required. Anticipate additional federal guidance by end of calendar 2012.

**State Actions Required:** No state legislative action anticipated. TAC rules may need administrative adjustments to recognize change in name. As specific activities are not currently listed, no change will be needed to address activities. MAP-21 directs 50 percent of funds for MPO selected projects. Existing TE rules already recognize this action. Any necessary rules changes would come after new federal program guidance.

**Relevant Deadlines for TxDOT and Related Agencies:** DES will work with federal officials to provide any requested input as federal guidance is developed. The department will need to develop the competitive process for TA project selection, which will require Texas Administrative Code changes. The administrative rules in Chapter 11 already allow for an MPO selection process. The rules will require revision to reflect the name change. Other revisions may be needed after federal guidance is issued. TRF has a competitive SRTS process in place and can issue a program call that is in compliance with the federal guidelines for the program should funds become identified and available.

**Additional Information:** None

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## Subtitle B – Performance Management

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### Metropolitan Transportation Planning

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1201, Page 96

**Agency Impact Classification:** High

**Summary of Section:** This section adds performance measures to the MPO process. The MPOs are responsible for developing performance targets in coordination with the state to ensure consistency for surface transportation and public transportation. They have 180 days after the state sets its performance targets to set their own. They will also integrate directly or by reference the state plans into their planning process. In addition to setting the performance measures they will develop a system performance report as part of their MTP. They are also able to do optional scenario planning as part of their MTP. Their TIP is to be designed to make progress toward meeting the performance targets and include a description of how the TIP will achieve the performance targets.

**Impact to TxDOT:** The performance measures and targets will involve coordination and cooperation between the department and the MPOs. TPP will incorporate the national goals and performance measures in the update to the Statewide Long-Range Transportation Plan. TPP has already begun discussions with the Texas Association of Metropolitan Planning Organizations (TEMPO) and with FHWA on this effort.

**Federal Actions Required:** There will be federal rules promulgated.

**State Actions Required:** The Texas Administrative Code will need to be amended after federal rules are finalized.

**Relevant Deadlines for TxDOT and Related Agencies:** The TAC revision will need to occur after the federal rules are finalized.

**Additional Information:** None

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### Statewide and Nonmetropolitan Transportation Planning

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1202, Page 110

**Agency Impact Classification:** High

**Summary of Section:** This section adds performance measures for statewide planning. Cooperation with regional transportation planning organizations is added for the development of the statewide plan – if applicable. The state needs to develop a consultative process for working with the nonmetropolitan elected officials and RTPOs (if any) that is separate and distinct from the public involvement process. The plan will include a description of the performance measures and targets and include a system performance report. Working with the RTPOs is also required for the STIP. Likewise the STIP will include a discussion of the anticipated effect the STIP will have on meeting the performance targets linking investment priorities to those targets. For rural areas, RTPOs have been added to the list of partners with whom the department will work cooperatively with on project selection – if applicable. The Secretary will develop criteria to evaluate the effectiveness of the performance-based process. The state is given the option to establish and designate regional transportation planning organizations.

**Impact to TxDOT:** This will involve coordination and cooperation between the department, RTPOs and the MPOs. The department has two years after the Secretary issues guidance on this to integrate the performance measures into the statewide planning process. TPP will incorporate the national goals and performance measures in the update to the statewide Long-Range Transportation Plan. TPP has already begun discussions with the Texas Association of Metropolitan Planning Organizations (TEMPO) and with FHWA on this effort.

**Federal Actions Required:** There will be federal rules promulgated.

**State Actions Required:** The Texas Administrative Code will need to be amended after federal rules are finalized. State law does not recognize RTPOs. If the state desires to designate RTPOs, legislation would be required.

**Relevant Deadlines for TxDOT and Related Agencies:** The TAC revision will need to occur after the federal rules are finalized.

**Additional Information:** None

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## National Goals and Performance Management Measures

**Prepared By:** Tonia Norman, OPE

**MAP-21 Section and Page Number:** 1203, Page 120

**Agency Impact Classification:** High

**Summary of Section:** Establishes new set of national goals for safety, infrastructure condition, congestion reduction, system reliability, freight movement and economic vitality, environmental sustainability, and reduced project delivery delays. Directs the Secretary to promulgate rules to establish performance measures and standards for the National Highway System (including the Interstate System), the Highway Safety Improvement Program, the Congestion Mitigation and Air Quality Program, and national freight movement on the Interstate System. Requires states to establish performance targets for the new national measures and report on the condition and performance of the NHS, the effectiveness of the investment strategies within the state's NHS asset management plan, progress in achieving performance targets, and ways the state is addressing congestion a freight bottlenecks within the state.

**Impact to TxDOT:** TxDOT is currently responsible for reporting NHS pavement and bridge condition and highway serious injuries and fatalities to the federal government. TTI reports congestion information for urban areas of the state. TCEQ reports on Texas mobile source emissions. This section will require TxDOT to improve its performance reporting mechanisms. TxDOT will be required to provide biennial performance reports. This may require upgrade to existing performance data capture and reporting systems. The related Section 1202 will require TxDOT to incorporate the performance standards, targets, and strategies into the statewide transportation plans and coordinate with MPOs and transit entities in the development of measures and performance targets. The related Sections 1106 and 1108 require TxDOT to develop an asset management plan for the NHS and other public roads in Texas and incorporate performance measures into that plan. Note: It is likely that some of our administrative rules in Chapter 16 will need to be revised to reflect the national performance goals, targets and reporting requirements established by FHWA.

**Federal Actions Required:** Working with states, MPOs, and transit providers, the Secretary must promulgate rules that establish performance measures and standards within 18 months of enactment and provide 90 days for public comment.

**State Actions Required:** No statutory changes are expected to comply with this section. TxDOT will need to develop internal policies and procedures for performance reporting. Under Section 1202 of the

Act, TxDOT will also need to develop policies and procedures for incorporating the performance measures, targets, and standards into the various transportation plans. In addition, it is likely that some of our administrative rules in Chapter 16 will need to be revised to reflect the national performance goals, targets and reporting requirements established by FHWA.

**Relevant Deadlines for TxDOT and Related Agencies:** Within one year of final rulemaking, the department must set performance targets. Further, the department will be required to report to the Secretary of Transportation by June 2016 regarding the condition and performance of the NHS, effectiveness of investment strategy document in the asset management plan for the NHS, progress in achieving performance targets, and ways in which freight bottleneck congestion is addressed.

**Additional Information:** TPP will incorporate the national goals and performance measures in the update to the Statewide Long-Range Transportation Plan. TPP has already begun discussions with the Texas Association of Metropolitan Planning Organizations (TEMPO) and with FHWA on this effort. A TPP staff member will be attending a FHWA/FTA workshop on performance-based planning in Denver in September. OPE will lead the evaluation of existing Texas performance metrics for their “fit” to MAP-21 listed measures. OPE (in partnership with the offices of corollary responsibility) will identify an initial set of reasonable performance targets for Texas, coordinate with Texas transportation partners (MPOs, industry, transit providers) on issue identification, priorities, and proposed targets, and develop TxDOT performance measure priorities and specific issues. OPE will work with FED as rules are promulgated to coordinate the implementation of the resulting federal transportation performance management program.

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## Subtitle C – Acceleration of Project Delivery

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### Declaration of Policy and Project Delivery Initiative

**Prepared By:** Ed Pensock, SPD

**MAP-21 Section and Page Number:** 1301, Page 123

**Agency Impact Classification:** High

**Summary of Section:** Section 1301 reinforces a long-standing focus to accelerate project delivery and reduce costs. This is to be done by implementing best practices, encouraging accelerated ROW acquisition, allowing use of construction manager or general contractor method of contracting, initiating a demonstration program to streamline the relocation process, and other innovative approaches. In doing so, the Secretary will have the lead role among federal agencies in carrying out the environmental process for surface transportation projects, each federal agency shall cooperate, project sponsors shall not be prohibited from preconstruction project development activities during the environmental review process, programmatic approaches will be used and the Secretary shall identify opportunities for project sponsors to assume responsibilities in a manner that protects public health, the environment and public participation.

**Impact to TxDOT:** This section greatly enhances the already proven record in Texas of accelerating project delivery, reducing costs and delivering projects in an efficient and effective manner. Having this level of support and focus at the federal level will aid Texas in advancing even more projects forward.

**Federal Actions Required:** Federal action includes the following:

- a. Secretary to carry out a project delivery initiative under this Section.
- b. Secretary shall develop a selection process that will be used to select eligible projects to apply experimental features and to test innovative project delivery technique.

- c. Once the project delivery initiative is finalized, federal rules and regulations shall be reviewed and updated accordingly.

**State Actions Required:** None noted at this time.

**Relevant Deadlines for TxDOT and Related Agencies:** None noted at this time.

**Additional Information:** TxDOT has a long-standing history of delivering successful alternative delivery and would be willing to discuss best practices and lessons learned on innovative methods.

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## Advance Acquisition of Real Property Interests

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1302, Page 120

**Agency Impact Classification:** High

**Summary of Section:** Amends right of way to real property interests; allows state DOTs to acquire real property interests before the completion of National Environmental Policy Act (NEPA) documents; allows for federal funds to be used for the acquisition under certain conditions, and after the NEPA process is complete.

**Impact to TxDOT:** This should result in faster project development because real property interests can be acquired at the department's expense, prior to the completion of the NEPA process. The department can also receive federal reimbursement after the NEPA process is complete.

**Federal Actions Required:** None

**State Actions Required:** The districts and ROW will need to determine a process for deciding when to acquire real property interests with state funds prior to the completion of the NEPA process. In order to obtain expanded advance acquisition authority for TxDOT (beyond the current use of option agreements) new legislation would be required.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Letting of Contracts

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1303, Page 127

**Agency Impact Classification:** Minimal

**Summary of Section:** This section modifies the contracting process to permit contracting agencies to award two-phase contracts to a construction manager or a general contractor for pre-construction and construction services for federal-aid highway projects. Pre-construction activities can begin prior to NEPA process completion. Contracts shall be awarded using a competitive selection process.

**Impact to TxDOT:** None identified at this time.

**Federal Actions Required:** The Secretary will promulgate regulations.

**State Actions Required:** None.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Innovative Project Delivery Methods

**Prepared By:** Ed Pensock, SPD and Marc Williams, TPP

**MAP-21 Section and Page Number:** 1304, Page 128

**Agency Impact Classification:** High

**Summary of Section:** Section 1304 establishes incentives for the state's use of innovative project delivery methods. It also clarifies that design-build can be used as an innovative project delivery method and does not appear to tie that to tolling in any way. Allows for up to 100 percent of federal funds for innovative technologies and practices such as: State-of-the-art intelligent transportation system technologies, elevated performance standards, and new highway construction business practices that improve highway safety and quality, accelerate project delivery, and reduce congestion related to highway construction; only for up to 10 percent of combined apportionments of NHS, CMAQ and Safety.

**Impact to TxDOT:** This section should result in less state and local funds needed to match federal projects that meet the criteria for this section and the availability of more federal funds for TxDOT projects using innovative delivery methods.

**Federal Actions Required:** The federal government will reimburse elements of a project up to 100 percent that show innovative project delivery methods for work zone safety; innovative technologies, processes, financing or contracting methods to improve quality, service life, or decrease long-term costs of maintenance; accelerates project delivery; or reduces congestion related to highway construction.

**State Actions Required:** The districts and Finance division will need to determine which projects to apply for 100 percent federal funds. Administrative rules and manuals will need to be updated to reflect that there may be an increase in the federal share payable for certain projects.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Efficient Environmental Reviews for Project Decisionmaking

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1305, Page 129

**Agency Impact Classification:** High

**Summary of Section:** This section requires rulemaking to allow for the use of programmatic approaches to conduct environmental reviews. Further, this section permits the Secretary to designate a single modal administration as the Federal Lead Agency if a project requires approval from more than one modal administration. Concurrence will be required from each participating agency if a schedule for completion of the environmental review process is included as part of the coordination plan required for an EIS.

**Impact to TxDOT:**

**Federal Actions Required:** The Secretary is required to consult with agencies and resources at the state and federal levels prior to promulgating rules.

**State Actions Required:****Relevant Deadlines for TxDOT and Related Agencies:** None**Additional Information:** None

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## Accelerated Decisionmaking

**Prepared By:** Carlos Swonke, ENV**MAP-21 Section and Page Number:** 1306, Page 131**Agency Impact Classification:** High

**Summary of Section:** This section outlines a process for accelerated decisionmaking and accelerated issue resolution. The lead agency is permitted to convene a meeting with participating agencies to ensure that reviews and approvals are proceeding on schedule. A dispute resolution escalation process is provided as are circumstances for holding meetings to resolve issues. For agencies failing to reach decisions within 180 days, the section provides for financial penalties in the form of rescissions of set amounts of funds. The section requires that adequate resources shall be devoted to ensuring environmental reviews are completed expeditiously. Further, the bill requires a report to Congress on the status and progress of projects and activities.

**Impact to TxDOT:** None identified at this time.**Federal Actions Required:** The President must submit a report to Congress every 120 days regarding affected projects.**State Actions Required:** None**Relevant Deadlines for TxDOT and Related Agencies:** None**Additional Information:** None

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## Assistance to Affected Federal and State Agencies

**Prepared By:** Carlos Swonke, ENV**MAP-21 Section and Page Number:** 1307, Page 135**Agency Impact Classification:** High

**Summary of Section:** Amends 23 USC 139(j) regarding USDOT funding of NEPA review staff positions in other federal agencies. The statute provides that the agency and the state must enter into a memorandum of understanding (MOU) that establishes the projects and priorities to be addressed by use of the funds.

**Impact to TxDOT:** TxDOT only recently gained authority to fund dedicated staffing at a federal agency. It is not anticipated that completing an MOU would be problematic in the event that TxDOT chooses to exercise this authority.

**Federal Actions Required:** Regulations must be developed to implement the requirements of this section.

**State Actions Required:** It is unclear what actions are needed in the absence of regulatory details. As noted below, TxDOT may need to supplement or modify several existing agreements if they are affected

by this section; it will not be clear which (if any) existing agreements are impacted until additional details are provided in regulations. Changes to the TAC, procedures, or policies may also be needed as a result of regulations.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Limitations on Claims

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1308, Page 135

**Agency Impact Classification:** High

**Summary of Section:** This section reduces the period during which a NEPA decision is subject to litigation from 180 days to 150 days.

**Impact to TxDOT:** No impact to the department projected at this time.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Accelerating Completion of Complex Projects within Four Years

**Prepared By:** Carlos Swonke, ENV; Ed Pensock, SPD; and Marc Williams, TPP

**MAP-21 Section and Page Number:** 1309, Page 135

**Agency Impact Classification:** High

**Summary of Section:** This section provides for accelerated completion of environmental impact statements for in-progress environmental impact statements for which at least two years have elapsed since the Notice of Intent (NOI) was issued without a subsequent Record of Decision (ROD). Further, the section requires the Secretary to provide additional technical assistance and expertise to resolve any outstanding issues and project delays for covered projects and to provide a scope of work to resolve the outstanding issues and project delays. The section requires the Secretary to establish and meet a schedule for completing any permit, approval, review, or study, required for the covered project. Completion must occur less than four years after the date issuance of the NOI, and requires the Council on Environmental Quality (CEQ) and all participating agencies or the project sponsor, as applicable, to concur on the schedule.

Finally, the schedule must reflect new information and changes in circumstances that may result in new significant impacts that could affect the timeline for completion of any required permit, approval, review, or study required for the covered project.

**Impact to TxDOT:** This provision should lead to completion of long-outstanding projects. Because the section applies to projects for which two years have passed since NOI, and because all necessary work must be completed within four years of NOI, all outstanding work on all relevant in-progress projects must be completed within less than two years. Resources may need to be diverted from other projects. This section is expected to save the state time and funds by moving complex EIS level projects to the ROD.

**Federal Actions Required:** Federal regulation and guidance are necessary to determine how the section applies to projects for which the NOI was issued more than four years ago. Regulation and guidance also are needed to establish procedures for adjusting schedules to accommodate unanticipated design or other changes, including regulatory changes that require extension of the schedule. This section requires USDOT to establish and enforce a schedule for the completion of any permit, approval, review, or study required for the project to ensure that the issues are closed within four years of the NOI. This section also requires the USDOT to consult, when appropriate, with resource agencies to propose methods to resolve outstanding issues and project delays as soon as possible. There will need to be policies and procedures developed by FHWA.

**State Actions Required:** If FHWA regulations end up being incompatible with state statute or rules, state statutory or rule changes may be needed. It is possible that state statute and rules will need to be changed to maintain parallelism with FHWA to prevent confusion and error in the environmental process. The department will identify eligible projects that could benefit from federal technical assistance.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** All current Environmental Impact Statements (EIS) in development are likely to have NOIs more than two years old, and can be identified in existing ENV databases. If an environmental document has not been submitted, it will be necessary to manually examine district project files for records of NOI. The provision for FHWA to provide technical assistance will have minimal positive impact on TxDOT operations. TxDOT already performs the bulk of technical work, and FHWA-TX relies on TxDOT because FHWA-TX lacks in-house staff to provide significant on-the-ground assistance. TxDOT therefore cannot realistically expect an increase in productive capacity as a result of this provision unless FHWA allocates additional funds for technical staff to FHWA-TX. The total four-year limit for completing the scope could be problematic because four years have already elapsed since NOI for an unknown number of projects.

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## Integration of Planning and Environmental Review

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1310, Page 136

**Agency Impact Classification:** High

**Summary of Section:** This section allows for the adoption of planning products for use in the environmental review process, subject to a number of conditions. The section further states that the planning process is not subject to NEPA.

**Impact to TxDOT:** No impact to the department projected at this time.

**Federal Actions Required:** May require federal rule promulgation or guidance.

**State Actions Required:** Guidelines on implementing this initiative may need to be developed.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Development of Programmatic Mitigation Plans

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1311, Page 139

**Agency Impact Classification:** High

**Summary of Section:** Permits states or MPOs to develop programmatic mitigation plans in conjunction with the transportation planning process.

**Impact to TxDOT:** TxDOT (ENV) is developing a more strategic response to mitigation needs. This provision may assist that initiative.

**Federal Actions Required:** May require federal rule promulgation

**State Actions required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## State Assumption of Responsibility for Categorical Exclusions

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1312, Page 141

**Agency Impact Classification:** High

**Summary of Section:** Allows a state DOT that assumes responsibility for categorical exclusions to continue to use existing project delivery methods for highway projects; adds termination language for both USDOT and the state DOT; allows for the use of CMAQ funds for legal expenses.

**Impact to TxDOT:** TxDOT is not likely to pursue the categorical exclusion responsibility. However, the use of CMAQ funds for legal expenses should result in more flexibility for project development.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Surface Transportation Project Delivery Program

**Prepared By:** Carlos Swonke, ENV; Marc Williams, TPP

**MAP-21 Section and Page Number:** 1313, Page 141

**Agency Impact Classification:** High

**Summary of Section:** Transforms an existing pilot program for state assumption of FHWA's NEPA responsibilities into a permanent program. The amendment adapts the duration of FHWA monitoring and the conditions for termination to the change from a pilot program to a permanent program and allows states to assume the NEPA responsibilities from the Secretary, including highway and multimodal projects. Transportation conformity responsibilities are not included. The amendment makes no other significant changes in the nature of the program.

**Impact to TxDOT:** Since FHWA review generally is sequential to TxDOT review, assumption of FHWA's NEPA responsibilities could result in time savings by eliminating a layer of review. Assumption of FHWA's responsibility can be applied across the board or to specific projects or classes of projects. Eliminating the layer of review also could produce a significant reduction of losses to inflation accrued during FHWA review. Although the reduction could be small on a per-project basis, reduction of total inflation costs could be very large at the portfolio level, depending on whether TxDOT assumes responsibility for the full spectrum of projects. This will accelerate project delivery, but additional staffing resources would be required.

**Federal Actions Required:** The federal government may take action to assign to the state, only upon the request of the state, the responsibilities of the Secretary with respect to one or more railroad, public transportation, or multimodal projects within the state under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) The Secretary will evaluate states' performance every four years.

**State Actions Required:** TxDOT participation requires state legislative action to waive sovereign immunity. The Transportation Code and corresponding rules would need to be changed to adjust statutory timeframes related to review by FHWA. It is likely that TxDOT policy changes will be needed to adjust the roles of the Districts and ENV to a new system, especially with respect to quality control, program monitoring, and self-assessments required by Federal statute. The nature of the adjustments would depend on the terms of the memorandum of understanding governing delegation of FHWA responsibility to TxDOT.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** Participation requires TxDOT to assume all of FHWA's liability for litigation under NEPA and separate environmental laws for which FHWA currently is the party responsible for compliance. Performance measurement is a major element of the application process for delegation. FHWA audit requirements and TxDOT self-assessment would require TxDOT to maintain detailed historical data. The historical data pertains not only to review and approval times and quality of NEPA documents, but also to TxDOT's performance complying with other federal environmental laws for which TxDOT would assume responsibility under delegation. The details of TxDOT's proposed data requirements, analytical procedures, and performance measures would be embedded in TxDOT's application for delegation, and finalized during negotiation of the memorandum of understanding under which delegation would occur. Interim and final FHWA audits published in the Federal Register indicate that FHWA had concerns about the quality of data underlying Caltrans' self-assessments despite Caltrans' implementation of a detailed database system. Anecdotal data from FHWA acknowledges high levels of improvement, but also indicates concern about inconsistency and accuracy of data entry by staff in the Caltrans regions. TxDOT will face similar issues. Development of proposed data requirements, analytical procedures, and performance measures for the application will be time consuming—development of the proposal for TxDOT's original draft application absorbed high levels of staff time over the period 2005-2007. High levels of staff time also were absorbed by development of other aspects of the application.

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## Application of Categorical Exclusions for Multimodal Delivery

**Prepared By:** Jennifer Moczygemba, RRD; Kelly Kirkland, PTN; Ed Pensock, SPD and Marc Williams, TPP

**MAP-21 Section and Page Number:** 1314, Page 143

**Agency Impact Classification:** High

**Summary of Section:** Section 1314 Amends Section 304 of Title 49, United States Code to allow CEs for "other components" of a multi-modal project. In order to qualify for a CE projects must meet the following criteria: Projects must be funded under one grant agreement, components of the project must require expertise of a cooperating authority, relevant component must have independent utility, the cooperating authority finds that a CE applies under NEPA, and the lead authority does not determine that significant impacts exist when considering the cumulative impacts of cooperating authorities. Multimodal

Project is defined as a project involving the participation of more than one USDOT administration or agency. Certain exclusions apply.

**Impact to TxDOT:** This should result in faster project development for multimodal projects. RRD believes impacts are undetermined but should be minimal for RRD. The majority of TxDOT projects are solely FHWA and therefore do not meet the definition (more than one USDOT administration or agency) of a multimodal project. RRD projects are primarily Federal Railroad Administration (FRA) funded and FRA already uses a simplified checklist to identify and apply a CE to a project. However, this will provide for the agency with the expertise to apply a CE to a multimodal project based on their rules where that project may be combined with another mode, instead of requiring a different mode, such as rail, to comply with FHWA rules.

**Federal Actions Required:** USDOT would work with the state to determine cooperating agencies and work with FHWA to declare projects eligible as CEs. Section 1314 does not establish any timelines or due dates for implementation of the regulation. The language of the bill states that the "lead authority may apply a categorical exclusion...", and therefore does not require ("may") the lead agency to apply a categorical exclusion or to make any changes to their existing procedures to allow a categorical exclusion by any process other than what is already in place.

**State Actions Required:** The state must identify multi-modal projects that qualify for this program. The state must develop Grant Agreements for multi-modal projects and determine if the project has independent utility. The state must determine the cooperating agency and obtain a cooperating agency agreement with the determined agency and FHWA that declares the project a Categorical Exclusion.

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## Categorical Exclusions in Emergencies

**Prepared By:** Carlos Swonke, ENV; Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1315, Page 145

**Agency Impact Classification:** High

**Summary of Section:** This section excludes repairs and reconstruction activity from environmental assessments or environmental impact statements if specific conditions are met related to emergencies declared by the governor of the state or for disasters and emergencies declared by the President. The repairs or reconstruction activity must be in the same location with same capacity, dimensions and design as the original road, highway, or bridge as before the declaration described. The activity must be commenced within a two-year period beginning on the date of a declaration.

**Impact to TxDOT:** Provides an opportunity to expedite repairs and reconstruction resulting from emergencies and conserve resources that would have been used for environmental assessments and environmental impact statements.

**Federal Actions Required:** The Secretary must publish a notice of proposed rulemaking within 30 days of bill enactment.

**State Actions Required:** TxDOT will be required to verify that relevant projects meet all criteria established by this section in seeking relief from environmental assessments and environmental impact statements.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Categorical Exclusions for Projects within the Right-of-Way

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1316, Page 145

**Agency Impact Classification:** High

**Summary of Section:** This section allows Categorical Exclusions for projects within existing right of way after 180 days of MAP-21 enactment. Rules are required within 150 days.

**Impact to TxDOT:** This should result in faster project development.

**Federal Actions Required:** Federal rules are required within 150 days.

**State Actions Required:** TxDOT will review, and provide comments if appropriate, the CE when it is proposed under rulemaking procedures.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Categorical Exclusion for Projects of Limited Federal Assistance

**Prepared By:** Carlos Swonke, ENV; Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1317, Page 146

**Agency Impact Classification:** High

**Summary of Section:** This section provides for Categorical Exclusion for projects receiving less than \$5 million in federal funds, or with total estimated costs of not more than \$30 million and federal funds comprising less than 15 percent of the total estimated project cost.

**Impact to TxDOT:** Could result in more rapid project development for smaller projects meeting these criteria.

**Federal Actions Required:** Federal rule promulgation is required within 150 days.

**State Actions Required:** TxDOT will review, and provide comments if appropriate, the CE when it is proposed under rulemaking procedures.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Programmatic Agreements and Additional Categorical Exclusions

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1318, Page 146

**Agency Impact Classification:** High

**Summary of Section:** This section requires the Secretary, within 60 days of enactment, to complete a survey of projects approved as Categorical Exclusions by USDOT since 2005. The Secretary will publish the results and requests received from the states for new CEs. The Secretary is further required to solicit new CEs from the states. The Secretary is required, within 120 days of enactment, to publish a notice of

proposed rulemaking to establish new CEs based on the review and pending requests. Three classes of CEs from projects that require FHWA approval are reclassified as projects that do not require CEs. Programmatic agreements are provided for to establish procedures to increase administrative efficiency and to make CE determinations on behalf of FHWA.

**Impact to TxDOT:** TxDOT's environmental program already operates under a programmatic agreement with FHWA.

**Federal Actions Required:** Secretary is required to complete a survey of States within 60 days and to publish a notice of proposed rulemaking within 120 days.

**State Actions Required:** TxDOT (ENV) submitted survey response on October 1, 2012.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Accelerated Decisionmaking in Environmental Reviews

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1319, Page 147

**Agency Impact Classification:** High

**Summary of Section:** This section streamlines the process for finalizing a final environmental impact statement. For minor changes to a final environmental impact statement, the attachment of errata sheets will be permitted. Lead agencies will be required to issue a single document consisting of a final environmental impact statement and a record of decision unless there are substantial changes to the proposed action or significant new circumstances or information relevant to the proposed action.

**Impact to TxDOT:** No impact to the department projected at this time.

**Federal Actions Required:** FHWA will likely promulgate new rules and regulations.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Memoranda of Agency Agreements for Early Coordination

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1320, Page 147

**Agency Impact Classification:** High

**Summary of Section:** This section requires early cooperation among agencies. Federal agencies are required, to the extent practicable and appropriate, to provide technical assistance on early coordination activities to the state and local planning agencies when requested at any time by the state or local planning agencies.

**Impact to TxDOT:** No impact to the department projected at this time.

**Federal Actions Required:** May require rule promulgation and guidance.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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### **Environmental Procedures Initiative**

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1321, Page 148

**Agency Impact Classification:** Moderate

**Summary of Section:** This section established an initiative to review and develop consistent procedures for environmental permitting and procurement requirements for all grant programs implemented by US-DOT agencies. The results must be published.

**Impact to TxDOT:** No impact to department projected at this time.

**Federal Actions Required:** USDOT must produce a published report of the initiative.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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### **Review of State Environmental Reviews and Approvals for the Purpose of Eliminating Duplication of Environmental Reviews**

**Prepared By:** Carlos Swonke, ENV

**MAP-21 Section and Page Number:** 1322, Page 149

**Agency Impact Classification:** High

**Summary of Section:** This section directs the U.S. Comptroller General to conduct a review of state environmental laws and procedures to determine whether there are state requirements or laws that provide environmental protections and opportunities for public involvement that are equivalent to those provided by federal environmental laws. The Comptroller's report will determine the frequency and cost of environmental reviews at the federal level that are duplicative of state reviews providing equivalent environmental protections and opportunities for public involvement.

**Impact to TxDOT:** No impact to the department projected at this time.

**Federal Actions Required:** The Secretary is required to report to Congressional committees the findings of the review within two years of bill enactment.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Review of Federal Project and Program Delivery

**Prepared By:** Ed Pensock, SPD

**MAP-21 Section and Page Number:** 1323, Page 149

**Agency Impact Classification:** High

**Summary of Section:** Section 1323 requires the Secretary to develop and report metrics comparing completion times of Categorical Exclusions (CEs), Environmental Assessments (EAs), and Environmental Impact Statements (EISs) that began prior to 2005, from 2005 to 2012, and projects begun after July, 2012. Not later than five years after July, 2012, a report shall identify changes in completion times and identify reasons for delays in excess of five years. New categorical exclusion categories shall be proposed based on the report. States shall submit a report on the effectiveness of the new regulations two years after the initial report to assess the effectiveness of the reforms. States are being requested to inventory the completion dates for CEs, EAs, and EISs over the three time periods ending five years after the enactment of this act. In evaluating these results the states will be required to submit various reports stating any reasons for delay, and improvements to completion time dues to provisions of this act.

**Impact to TxDOT:** This section could have a positive operational/fiscal impact and could help bring projects to construction more quickly.

**Federal Actions Required:** This section requires USDOT to develop and report metrics comparing completion times of CEs, EAs, and EISs that began prior to 2005, from 2005 to 2012, and projects begun after July, 2012. Not later than five years after July, 2012, the USDOT shall submit a report that shall identify changes in completion times and identify reasons for delays in excess of five years. New categorical exclusion categories shall be proposed by USDOT based on the report.

**State Actions Required:** The state will be required to issue a report to House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works that describes the results of the USDOT assessment.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Subtitle D – Highway Safety

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### Jason's Law

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1401, Page 150

**Agency Impact Classification:** Minimal

**Summary of Section:** Creates a new section to address the shortage of long-term parking for commercial motor vehicles on the National Highway System. Additionally, this section allows for the inclusion of electric and natural gas vehicle recharging/refueling facilities at parking facilities funded by MAP-21 or Title 23.

**Impact to TxDOT:** Eligible projects include promotion of availability of commercial motor vehicle parking on the National Highway System and could include possible use of dynamic messaging signs for this purpose.

**Federal Actions Required:** Not later than 18 months from bill enactment, the Secretary shall conduct a survey of States' commercial motor vehicle parking capacity, commercial motor vehicle traffic, and develop a system of metrics.

**State Actions Required:** No changes to existing state statutes are anticipated.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Open Container Requirements

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1402, Page 152

**Agency Impact Classification:** Minimal

**Summary of Section:** Amends existing Section 154 regarding open containers. Reduces the funding transfer amounts and allows a state to use some or all of the transferred funds under the HSIP program.

**Impact to TxDOT:** No impact --The Texas statute meets the federal requirements and we will not be subject to federal sanctions.

**Federal Actions Required:** Possible revision to 23 CFR Part 1270.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** OGC has confirmed that Texas has a conforming state law.

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## Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1403, Page 152

**Agency Impact Classification:** Minimal

**Summary of Section:** Amends existing Section 164 regarding repeat Driving While Intoxicated (DWI) offenders. States would be considered in compliance if state law suspended all driving privileges for a period of one year, or limited an offender's driving privileges for one year. The repeat offender would be required to have an ignition interlock device on any vehicle driven by the individual if limited driving privileges were restored during the one year suspension period.

**Impact to TxDOT:** Transportation Code, Section 521.426 states that if a person's license has been suspended after certain DWI convictions, the judge may restrict a person to the use of a vehicle equipped with an ignition interlock device for at least half of the suspension period. However, this does not appear to apply to a DWI repeat offender. OGC has confirmed that Texas has a conforming state law. The federal law lessens the time a person must serve a hard-time license suspension (not eligible for an occupational driver's license). The Texas statute is even more restrictive than the current federal language so we are in compliance and will not be subject to sanctions.

**Federal Actions Required:** Possible revision to 23 CFR Part 1275.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** OGC has confirmed that Texas has a conforming state statute.

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## Adjustments to Penalty Provisions

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1404, Page 153

**Agency Impact Classification:** Minimal

**Summary of Section:** Adds new language regarding funding transfer provisions for states without a conforming safety belt law, minimum drinking age law, a mandatory license suspension for convicted drug offender law, zero tolerance for minor's law, and a .08 Blood Alcohol Content law.

**Impact to TxDOT:** Anticipate limited impact on TxDOT. We already adhere to these provisions.

**Federal Actions Required:** Possible revision to 23 CFR Parts 1270 and 1275.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Highway Worker Safety

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1405, Page 156

**Agency Impact Classification:** Minimal

**Summary of Section:** Creates new Section 1405, Highway worker safety. Requires positive protective measures to separate workers from traffic where workers are afforded no means of escape and the use of temporary, longitudinal traffic barriers in certain situations. Not required if an analysis by the project sponsor determines otherwise or the project is rural and Average Daily Traffic load is less than 100 vehicles per hour.

**Impact to TxDOT:** Should have little or no impact on TxDOT. We already adhere to these guidelines and the new language should have little or no impact. We already use an engineering analysis to determine need.

**Federal Actions Required:** Federal guidelines for this item are already in place.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Subtitle E – Miscellaneous

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### Project Approval and Oversight

**Prepared By:** Mark Marek, DES; Ed Pensock, SPD

**MAP-21 Section and Page Number:** 1503, Page 157

**Agency Impact Classification:** Minimal

**Summary of Section:** Section 1503 describes the project approval and oversight of federal-aid highway projects. It lays out the requirement for states to have a value engineering program that is conducted before completing final design and the requirements for financial plans and annual updates to the financial plan. The section also encourages the state to use information compiled by the Secretary and made available to the public on the website of the department. The website information includes best practices on how states, public transportation agencies, and other public officials can work with the private sector in the development, financing, construction, and operation of transportation facilities. This section changes the construction dollar limits which require a value engineering study on projects from \$25 million to \$50 million for highway projects and from \$20 million to \$40 million for bridge projects. It excludes design-build projects from the value engineering requirement. Further, the section promotes the use of advanced modeling techniques with a requirement that the Secretary disseminate this information to accelerate project delivery. Finally, this section requires the Secretary to review the oversight program and assess the capability of the program to identify projects with cost or schedule overruns.

**Impact to TxDOT:** The changes to construction dollar limits requiring value engineering studies should have no impact on the department, nor should the requirements regarding financial plans. There may be reporting requirements related to the Secretary's review of the oversight program.

**Federal Actions Required:** The Secretary is required to review the oversight program and report to Congress within two years of bill enactment and must develop a comprehensive plan for the use of advanced modeling technologies for projects that receive federal funding. The Secretary must report to Congress on the efficiency of the use of federal aid highway funds. The Secretary must report to Congress annually on the annual expenditure of federal aid funds.

**State Actions Required:** None at this time.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** The Federal process for Value Engineering should be more flexible to promote innovative procurements. The definition of Value Engineering should be broadened to include certain competitive procurements, such as the Alternative Technical Concept process, or a Fixed-Price/Best-Value procurement. These processes should be allowed in lieu of a formal Value Engineering workshop if the state is able to demonstrate that the innovative process achieves the same goal. Some regions are willing to work through this with the states, but official guidance should be developed to provide for consistency in application.

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### Standards

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1504, Page 160

**Agency Impact Classification:** Moderate

**Summary of Section:** Prohibits use of pavement markings using glass beads containing more than 200 parts per million of arsenic or lead.

**Impact to TxDOT:** This revised standard is close to the current TxDOT requirement and the specifications of glass beads routinely manufactured for other DOTs.

**Federal Actions Required:** None

**State Actions Required:** TxDOT has drafted a revised Departmental Materials Specification, DMS-8290, for preliminary review and comment. The draft DMS has been presented to the Associated General Contractors of Texas and its relevant committees with a request for an expedited preliminary review. Upon approval, the DMS will become effective January 1, 2013.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Justification Reports for Access Points on the Interstate System

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 1505, Page 160

**Agency Impact Classification:** High

**Summary of Section:** This allows the Secretary to permit a state DOT to approve a justification report for a project that would add an access/exit point to the Interstate system.

**Impact to TxDOT:** This should result in faster project development since the department does not have to wait for federal approval of a justification report.

**Federal actions required:** May require promulgation process.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Construction

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1506, Page 160

**Agency Impact Classification:** Minimal

**Summary of Section:** This section provides clarifying language regarding the use of convict labor for federal-aid highway projects. References in the section to prison-produced materials address facilities located outside Texas. The section permits veterans hiring preference for contractors working on federal-aid highway projects.

**Impact to TxDOT:** None

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Maintenance

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1507, Page 161

**Agency Impact Classification:** Minimal

**Summary of Section:** This section provides minor clarifications and technical corrections related to preventative maintenance and pavement preservation programs and activities.

**Impact to TxDOT:** None anticipated

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Federal Share Payable

**Prepared By:** Paul Campbell, FIN

**MAP-21 Section and Page Number:** 1508, Page 160

**Agency Impact Classification:** Moderate

**Summary of Section:** Adds some activities as eligible for 100 percent federal funding.

**Impact to TxDOT:** TxDOT will obligate projects that are eligible for 100 percent federal share per federal guidance when distributed.

**Federal Actions Required:** Federal guidance will be issued.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Transferability of Federal-aid Highway Funds

**Prepared By:** Paul Campbell, FIN

**MAP-21 Section and Page Number:** 1509, Page 160

**Agency Impact Classification:** Moderate

**Summary of Section:** Addresses transferability of federal funds

**Impact to TxDOT:** TxDOT would need federal guidance published that describes policies and restrictions.

**Federal Actions Required:** Federal guidance will be issued

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Special Permits during Periods of National Emergency

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1511, Page 163

**Agency Impact Classification:** Minimal

**Summary of Section:** Would allow a state to temporarily permit overweight vehicles and loads during emergencies that have been declared major disasters by the President. Permits would be issued in compliance with state law and exclusively for vehicles and loads carrying relief supplies. Permits would expire in 120 days.

**Impact to TxDOT:** Language is permissive and could have no impact if TxDOT chooses not to utilize the permits.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Tolling

**Prepared By:** Ed Pensock, SPD

**MAP-21 Section and Page Number:** 1512, Page 160

**Agency Impact Classification:** High

**Summary of Section:** Section 1512 authorizes and defines activities permitted to receive federal funding for toll related transportation projects. Also defines limitations on the use of toll revenues and imposes an annual audit of all tolling facilities to be reported to the Secretary. If found to be out of compliance with this statute, tolling activities on the facility may be discontinued until an agreement is reached to achieve compliance. Loans of state funds are limited to amounts equal to or less than the amount of federal funds specifically dedicated to the project. Repayment of loans shall begin no less than five years after service commencement and the term of the loan shall not exceed 30 years with an interest rate at or below market interest rates. Finally, an electronic toll collection interoperability system must in place no later than four years after enactment of MAP-21. Allows for federal participation in initial construction of toll facilities and conversion to toll facilities that increase capacity (other than on the IH system) when the number of non-tolled lanes would not be diminished. It also lists reconstruction or replacement of a non-tolled bridge or tunnel and conversion of the bridge or tunnel to a toll facility, and reconstruction of a non-tolled highway (other than IH) on the federal system with conversion of those to tolled facilities. Also authorizes the use of federal funds for feasibility for toll facilities.

**Impact to TxDOT:** Negative operation / fiscal impacts may result from these requirements, including limitations on the use of toll revenues, requiring an annual audit of toll facility records and submitting audit report to the Secretary, limitations on conversion of HOV lanes, guidelines for loaning of state funds for use on publically or privately funded toll projects, and the implementation of an electronic toll collection interoperability system. There is no statement concerning any discounts or maintenance of free provisions for HOV's. The allowing for federal participation in initial construction of toll facilities and conversion to toll facilities seems to line up very well with Texas' tolling requirements, but conversion for reconstruction only may present a conflict with state requirements and prevent TxDOT from exercising that option. Feasibility is critical to effective planning. Allowing federal funds to participate is a positive expansion of the use of federal funds.

**Federal Actions Required:** The Secretary is required to establish procedures and guidelines for making loans under this section.

**State Actions Required:** State law should be changed to allow the same flexibility as proposed in MAP-21. Additionally, tolling entities (state or otherwise) are required to conduct an audit of toll facility records to verify adequate maintenance and compliance with Subparagraph A of this section and report the results of the audits to the Transportation Secretary, and make all records available for audit upon reasonable notice. In the case of a toll facility under the jurisdiction of a public authority of a state (other than the state transportation department), on request of the state transportation department and subject to such terms and conditions as the department and public authority may agree, the Secretary, working through the state department of transportation, shall reimburse the public authority for the federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as the department would be reimbursed if the project was being carried out by the department.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** Reporting requirements and reimbursement provision could require additional staff time for administration of the state actions listed above.

## HOV Facilities

**Prepared By:** Ed Pensock, SPD

**MAP-21 Section and Page Number:** 1514, Page 168

**Agency Impact Classification:** High

**Summary of Section:** As a condition for collecting tolls on a highway the state must provide a report attesting to the facilities' ability to accommodate traffic without degradation of the facility. Any degradation must be remedied within 180 days. Section 1514 appears to change some requirements on HOV/HOT by requiring sanctions if an HOV facility cannot be brought into compliance within six months (primarily average operating speed of the HOV lanes).

**Impact to TxDOT:** This section will require TxDOT to perform annual audits of any HOV system owned by TxDOT and implement specific measures within six months to bring the facility into compliance.

**Federal Actions Required:** This section will require the development of policies and procedures as to how this will be executed and what exact process must be followed by the state to meet these requirements. This section may require the revision of federal rules or regulations.

**State Actions Required:** SB 792 and SB 1420 would require revisions to allow TxDOT to adhere to these tolling policy changes.

**Relevant Deadlines for TxDOT and Related Agencies:** Annual reports will be required.

**Additional Information:** None

## Funding Flexibility for Transportation Emergencies

**Prepared By:** Paul Campbell, FIN

**MAP-21 Section and Page Number:** 1515, Page 168

**Agency Impact Classification:** Moderate

**Summary of Section:** Allows use of regular federal funds (excluding MPO planning and sub-allocated to MPOs) for emergency projects.

**Impact to TxDOT:** TxDOT would need federal guidance published that describes policies and restrictions.

**Federal Actions Required:** USDOT to develop guidance regarding the funds.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Defense Access Road Program Enhancements to Address Transportation Infrastructure in the Vicinity of Military Installations

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1516, Page 170

**Agency Impact Classification:** Low

**Summary of Section:** Requires the Secretary of Defense to consult with the Secretary of Transportation in assessing the impact of military reservation traffic.

**Impact to TxDOT:** Will provide greater involvement by the Office of the Secretary of Transportation in Department of Defense assessments related to Defense Access Road Program determinations of traffic impacts.

**Federal Actions Required:** Will require new federal processes for Department of Defense and USDOT.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Mapping

**Prepared By:** Gil Wilson, RRD; Marc Williams, TPP

**MAP-21 Section and Page Number:** 1517, Page 170

**Agency Impact Classification:** Minimal

**Summary of Section:** Sec. 1517 revises Title 23, Section 306 and directs the Secretary to use photogrammetric methods and private sector services for surveying and mapping whenever possible; and to provide oversight and monitoring of state government's compliance with that requirement. In addition, this section requires the Secretary to conduct a survey after 2 years to determine the percentage of projects that utilize commercial mapping services.

**Impact to TxDOT:** TxDOT uses both state and private resources for surveying and mapping services, generally depending upon project specifics and resource availability. Historically, RRD has used state resources for surveying services; primarily due to the limited services required, i.e., surveying of 1 mile or less on existing rights-of-way to establish control points for construction. RRD is using the services of a private sector contractor for surveying work in Presidio County, for the reconstruction of the South Orient rail line international rail bridge at Presidio. This project will require surveying services within Mexico. RRD staff typically produce any maps that are needed internally or for use in public meetings and presentations. In addition, this may impact the districts as they develop projects.

**Federal Actions Required:** The Secretary is directed to develop an annual process for oversight and monitoring of states' compliance with the guidance that was established under Title 23 Section 306. The Secretary is also directed to conduct a survey of the states within two years of enactment to determine what percentage of projects is using private commercial services.

**State Actions Required:** No statutory changes should be required. TxDOT policies may need to be revised to require private sector surveying and mapping services according to specific criteria, yet to be determined. RRD would suggest that criteria would be driven by the fiscal size of the project and/or whether new rights-of-way are required for the project.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** RRD frequently works with private sector railroads on projects that are wholly or mostly contained within the railroad's rights-of-way. In such instances, projects are often implemented using "railroad force account" procedures in which the railroad performs or contracts for the work directly and TxDOT involvement is limited to funding the project as it is completed. In such instances, TxDOT does not design, let, or build the project and these regulations would not apply. TxDOT should discuss this issue with appropriate federal entities to be certain that railroad force account projects do not adversely affect the report of percentage of projects that are in compliance. RRD can use private sector surveying services for future projects if required, provided regions or districts have an evergreen contract available for use. RRD mapping requirements are minimal in nature and should continue to be performed in-house.

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## Buy America Provisions

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1518, Page 170

**Agency Impact Classification:** Moderate

**Summary of Section:** Expands Buy America provisions to require application to projects that are divided into multiple contracts if at least a single contract receives federal funds.

**Impact to TxDOT:** May impact future projects and funding decisions

**Federal Actions Required:** The Secretary may develop guidance.

**State Actions Required:** The department will be required to ensure compliance.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Consolidation of Grants

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1527, Page 177

**Agency Impact Classification:** Moderate

**Summary of Section:** Recipients of multiple grants for one multimodal project may request a lead administering authority. FTA New Starts projects may only request FTA as the lead administering authority. The Secretary will transfer all awarded amounts to the lead administering authority after approving consolidation. Participation in this section is voluntary for recipients.

**Impact to TxDOT:** May provide streamlining for multi-modal projects.

**Federal Actions Required:** The Secretary may develop guidance. The Secretary must respond to consolidation requests within 30 days.

**State Actions Required:** The department may choose to pursue this option for multi-modal projects and alert recipients and sub-recipients for their relevant projects.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Notice of Certain Grant Awards

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1531, Page 179

**Agency Impact Classification:** Minimal

**Summary of Section:** The Secretary must provide notice at least three days before a grant is awarded to the Committee on Transportation and Infrastructure in the House and the Committee on Environment and Public Works of the Senate.

**Impact to TxDOT:** None

**Federal Actions Required:** The Secretary must comply with the three-day advance notice for Congress.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Prohibition on Use of Funds for Automated Traffic Enforcement

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 1533, Page 180

**Agency Impact Classification:** Minimal

**Summary of Section:** Prohibits the use of any funding apportioned under the HSIP program in 104(b) (3) for the use of automated enforcement. This prohibition does not apply to school zones.

**Impact to TxDOT:** No impact. The department's HSIP program already adheres to this provision.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Public-Private Partnerships

**Prepared By:** Ed Pensock, SPD

**MAP-21 Section and Page Number:** 1534, Page 180

**Agency Impact Classification:** Minimal

**Summary of Section:** Section 1534 encourages the state to use information compiled by the Secretary available to the public on the website of the department, best practices on how states, public transportation agencies, and other public officials can work with the private sector in the development, financing, construction, and operation of transportation facilities.

**Impact to TxDOT:** May provide useful information of innovative techniques and practices.

**Federal Actions Required:** The Secretary must develop model contracts for public-private partnerships within 18 months of MAP-21 enactment.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** TxDOT is in support of having this information available and will use this website as a reference throughout the program delivery process.

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## Rest Areas

**Prepared By:** Andrea Lofye, FED

**MAP-21 Section and Page Number:** 1539, Page 183

**Agency Impact Classification:** Moderate

**Summary of Section:** This section authorizes the Secretary to permit limited commercial activities within a rest area. The activities are limited only to customers using the rest area and are further limited to commercial advertising, items designed to promote tourism in the state, tickets for events or attractions in the state of a historical or tourism-related nature, travel-related information, and lottery machines. States may permit a private party to operate such commercial activities and may use any revenues received to cover the costs of acquiring, constructing, operating, and maintaining rest areas in the state. States may permit the installation of signs that acknowledge the sponsorship of rest areas within such rest areas or along the main traveled way of the system, provided that such signs do not affect the safe and efficient utilization of the Interstate system and the primary system.

**Impact to TxDOT:** May provide opportunities for revenue generation and public-private partnerships.

**Federal Actions Required:** The Secretary must develop criteria for sponsorship signs and may develop guidance.

**State Actions Required:** Commercial advertising and media displays would require solicitation of a vendor. Texas Administrative Code and Texas Civil Statutes would require amendments to allow for sale of specific items.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## TITLE II – AMERICA FAST FORWARD FINANCING INNOVATION

### Transportation Infrastructure Finance and Innovation Act of 1998 Amendments

Prepared By: Andrea Lofye, FED

MAP-21 Section and Page Number: 2002, Page 203

Agency Impact Classification: High

**Summary of Section:** Provisions in this section raise the proportion of project costs that TIFIA is permitted to fund from 33 percent to 49 percent. The previous use of evaluation criteria for project selection is removed and projects will now be funded based on eligibility criteria of creditworthiness, project readiness and inclusion in transportation plans and programs, and compliant with total project cost thresholds (equal or greater to \$50 million or \$25 million for rural infrastructure projects). Credit shall be repayable in whole or in part from tolls, user fees, payments owing to the obligor under a public-private partnership, or other dedicated revenue sources that also secure or fund the project obligations. The Secretary is required to establish a rolling application process under which projects that are eligible to receive credit assistance shall receive credit assistance if adequate funds are available to cover the subsidy costs associated with the federal credit instrument. If funding is not available in a fiscal year, project sponsors may elect to enter into a master credit agreement to await funds in a subsequent fiscal year. The Secretary must provide written notice to the applicant within 30 days of receipt of the application regarding whether the application is complete and what additional information or materials are needed to complete the application. Not later than 60 days, the Secretary is required to provide written notice informing the applicant whether the application has been approved or disapproved. The Secretary is required to waive non-subordination provisions for public agency borrowers financing ongoing capital programs and that have outstanding senior bonds under a preexisting indenture, provided that the TIFIA credit assistance is rated in the "A" category or higher, the credit assistance is secured and payable from pledged revenues not affected by project performance, and the TIFIA program share of eligible project costs is 33 percent or less.

**Impact to TxDOT:** Provides ongoing opportunity for application and significantly increased funding for program highly-utilized by the department.

**Federal Actions Required:** The Secretary must submit to Congress every two years a report summarizing the financial performance of the projects in receipt of TIFIA assistance. Further, not later than December 1, 2012, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House and the Committee on Environment and Public Works of the Senate a report that includes a list of all letters of interest and applications received from project sponsors during the preceding fiscal year. The Secretary may promulgate regulations to carry out this chapter.

**State Actions Required:** TxDOT's executive director has provided written comments to USDOT in response to the Notice of Funding Availability.

**Relevant Deadlines for TxDOT and Related Agencies:** Pursuant to the rolling application process, the department should develop and submit Letters of Interest for projects as early as possible to be entered into the queue of eligible projects waiting available funding.

**Additional Information:** Funding for this section is provided in Sec 1101 in the amount of \$750 million for Fiscal Year 2013 and \$1 billion for Fiscal Year 2014.

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## Division B – Public Transportation

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### Metropolitan Transportation Planning

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 20005, Page 224

**Agency Impact Classification:** High

**Summary of Section:** This section adds performance measures to the MPO process. The MPOs are responsible for developing performance targets in coordination with the state to ensure consistency for surface transportation and public transportation. They have 180 days after the state sets its performance targets to set their own. They will also integrate directly or by reference the state plans into their planning process. In addition to setting the performance measures they will develop a system performance report as part of their MTP. They are also able to do optional scenario planning as part of their MTP. Their TIP is to be designed to make progress toward meeting the performance targets and include a description of how the TIP will achieve the performance targets. A new pilot program for transit-oriented development is established. A state DOT may apply for a grant in the program.

**Impact to TxDOT:** The performance measures and targets will involve coordination and cooperation between the department and the MPOs. The department may want to apply for grants for TOD projects.

**Federal Actions Required:** There will be federal rules promulgated.

**State Actions Required:** The Texas Administrative Code will need to be amended after federal rules are finalized.

**Relevant Deadlines for TxDOT and Related Agencies:** The Texas Administrative Code will need to be amended after the federal rules are finalized.

**Additional Information:** None

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### Statewide and Nonmetropolitan Transportation Planning

**Prepared By:** Marc Williams, TPP

**MAP-21 Section and Page Number:** 20006, Page 239

**Agency Impact Classification:** High

**Summary of Section:** This section adds performance measures for statewide planning. Cooperation with Regional Transportation Planning Organizations (RTPOs) is added for the development of the statewide plan – if applicable. The state needs to develop a consultative process for working with the nonmetropolitan elected officials and RTPOs that is separate and distinct from the public involvement process. The plan will include a description of the performance measures and targets and include a system performance report. Working with the RTPOs is also required for the STIP. Likewise the STIP will include a discussion of the anticipated effect the STIP will have on meeting the performance targets linking investment priorities to those targets. For rural areas, RTPOs have been added to the list of partners with whom the department will work cooperatively with on project selection. The Secretary will develop criteria to evaluate the effectiveness of the performance-based process. The state is given the option to establish and designate regional transportation planning organizations.

**Impact to TxDOT:** This will involve coordination and cooperation between the department, RTPOs and the MPOs. The department has two years after the Secretary issues guidance on this to integrate the performance measures into the statewide planning process.

**Federal Actions Required:** There will be federal rules promulgated.

**State Actions Required:** The Texas Administrative Code will need to be amended after federal rules are finalized.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Urbanized Area Formula Grants

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20007, Page 248

**Agency Impact Classification:** High

**Summary of Section:** Modifies the Urbanized Formula Program (Sec 5307). Merges the Job Access Reverse Commute (JARC) Program (Sec 5316) into the Sec 5307 program and allows operating assistance in areas with population greater than 200,000 (known as the "100-Bus Rule.") The 100-Bus Rule permits transit systems with less than 75 peak-use vehicles to utilize up to 75 percent of their apportionment for operating assistance. Systems with 76-100 peak-use vehicles may utilize up to 50 percent of apportionment. If there are multiple 5307 agencies within a large urbanized area (UZA), the formula for operating funds includes a ratio of vehicle revenue hours. This section permits funds from other federal agencies to be used as local match and creates a competitive grant program for passenger ferries (No expected application to TxDOT, because the Galveston-Bolivar and Port Aransas- Aransas Pass ferries are not part of any urbanized area).

**Impact to TxDOT:** Will require revision of 43 Texas Administrative Code (TAC) 31.11 – State urban grant program and possible deletion of 31.17 JARC.

**Federal Actions Required:** Federal Transit Administration (FTA) will validate use of the 100-Bus Rule, especially in the DFW and HOU areas with both large and small transit agencies. FTA will implement a competitive grant program for passenger ferries and update the Sec 5307 circular.

**State Actions Required:** The Texas Administrative Code will need to be amended after federal rules are finalized. PTN will consult with the Public Transportation Advisory Committee, and possibly transit industry representatives and other stakeholders.

**Relevant Deadlines for TxDOT and Related Agencies:** The Texas Administrative Code will need to be amended after the federal rules are finalized.

**Additional Information:** Allowing money from other federal agencies to count as local match will benefit Sec 5307 agencies.

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## Fixed Guideway Capital Investment Grants

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20008, Page 252

**Agency Impact Classification:** Minimal

**Summary of Section:** Revises 5309 Fixed Guideway Capital Investment Grants program to cover only new and small starts (small starts are less than \$75 million in federal funds and less than \$250M in total capital cost; new starts are larger projects.) Rail modernization program is moved to Sec. 5337. Bus and bus facilities moved to Sec. 5339.

**Impact to TxDOT:** Since TxDOT does not fund these types of grants, it is unlikely there will be an impact to the department.

**Federal Actions Required:** There will be federal rules promulgated.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** Historically, TxDOT has not been involved with fixed guideway projects.

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## Fixed Guideway Capital Investment Grants

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20009, Page 252

**Agency Impact Classification:** High

**Summary of Section:** Revises formula grants program for the Enhanced Mobility of Seniors and Individuals with Disabilities (Sec 5310 also known as the Elderly and Disabled program). Merges the New Freedom Program (Sec 5317) into the Sec 5310 Program. Establishes thresholds for capital expenses at no less than 55 percent for meeting the needs of seniors and individuals with disabilities. Splits the apportionment along JARC and NF lines – 60 percent to large urbanized; 20 percent to small urbanized; 20 percent to rural - based on each area's share of the national population of seniors and people with disabilities determined by the Census Bureau (no specific period mentioned). Allows operating expenses at 50/50 and states that project selection method (competitive or not) is determined by the recipient. Previously the New Freedom program required a competitive selection process. Continues the requirement that the project be selected from a coordinated transit-human service plan. Requires the Secretary to recommend performance measures for the program to Congressional transportation committees with input from national organizations by summer of 2013.

**Impact to TxDOT:** The revisions to the program will impact TxDOT grant recipients and sub-recipients. TxDOT has already completed the statewide FY 2013 project selection process. Some agencies that were expecting to receive money may find decisions reversed based on allocations of funds to specific areas and new entities (specific grant recipients) overseeing funding decisions.

**Federal Actions Required:** FTA will develop apportionment methodology to conform to MAP-21, recommend performance measures to the Congress with possible implementation through rule-making, and modify the Sec 5310 circular to conform to MAP-21. In addition, FTA will rescind the New Freedom circular.

**State Actions Required:** 43 TAC 31.31 (Sec 5310 program) will need modification to conform to MAP-21 changes and 43 TAC 31.18 (New Freedom) may be eliminated. PTN will adjust FY 2013 selected projects to conform to new 60/20/20 split.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Formula Grants for Rural Areas

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20010, Page 276

**Agency Impact Classification:** Moderate

**Summary of Section:** Revises the 5311 Formula Grants for Rural Areas program by adding JARC to the list of eligible activities, reducing state administration cap from 15 percent to 10 percent (TxDOT already uses less than 10 percent), creating a new Appalachian Development Public Transportation Assistance Program (not applicable to Texas) and a new formula program for tribal entities (not applicable to Texas). In addition, apportionments will now be based on multiple allocation factors: 83.15 percent of the funds are split 80 percent rural population, 20 percent rural land area – decennial census based (note: states limited to 5 percent of national total based upon land area); 16.85 percent of the funds from following factors: Approximately 30 percent for land area – decennial census based (note: states limited to 5 percent of national total based upon land area), approximately 30 percent for vehicle revenue miles – National Transit Database (note: states limited to 5 percent of national total based upon mileage), and approximately 40 percent for low-income individuals – Census Bureau based – no specific period specified (not limited). Finally, intercity bus carriers can now use a portion of receipts from others parts of the service as in-kind match on a route subsidy project.

**Impact to TxDOT:** Will be a positive change for intercity bus carriers; i.e., use of certain receipts as in-kind match. The 5 percent limitation on some of the funding formula categories has a negative impact on Texas.

**Federal Actions Required:** FTA will develop new formulas for awarding Sec 5311 funds, implement Appalachian Development and Tribal Transit Formula programs, and modify Sec 5311 circular to comply with MAP-21 changes.

**State Actions Required:** Revisions will be required to 43 TAC 31.36 (Sec 5311 State program), possibly 31.11 (Sec 5311 Federal program) and probably repeal of 43 TAC 31.17 (JARC). PTN will consult with Public Transportation Advisory Committee and possibly transit industry representatives and other stakeholders regarding program changes, and will include new intercity bus in-kind source in annual call for projects.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Research, Development, Demonstration, and Deployment Projects

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20011, Page 282

**Agency Impact Classification:** Minimal

**Summary of Section:** Revises Sec. 5312 program to specifically include development and deployment projects.

**Impact to TxDOT:** None projected

**Federal Actions Required:** USDOT will develop competitive solicitation processes, and procedures for development and deployment projects that are new MAP-21 activities and conduct evaluation of projects and plans for implementation. An annual report to Congress on low or no emission vehicle deployment projects and updated applicable circular are required.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Technical Assistance and Standards Development

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20012, Page 286

**Agency Impact Classification:** Minimal

**Summary of Section:** Modifies the Technical Assistance and Standards of Development (Sec 5314) program by deleting demonstration grants for the Medical (Medicaid) Transportation Program and the National Technical Assistance Center for Senior Transportation. The section defines areas of Technical Assistance to include ADA assistance, coordination with HHS community, transportation needs of seniors, coordination with MPOs, and transportation equity. Requires an annual report to Congress.

**Impact to TxDOT:** TxDOT staff and grantees may benefit from these types of TA.

**Federal Actions Required:** USDOT may need to develop new procedures to comply with MAP-21 changes. Annual report to Congress required. May require changes to FTA circulars.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Private Sector Participation

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20013, Page 288

**Agency Impact Classification:** Minimal

**Summary of Section:** Secretary charged to promote better coordination between public and private sector public transportation providers, provide TA on use of private public transportation providers, assist new starts grantees (if requested) with alternate project delivery, identify impediments to public-private partnerships, improve transparency of public-private partnership agreements, and prepare a report to the relevant Congressional Committees on the effect of contracting out public transportation operations and administrative functions.

**Impact to TxDOT:** Report may provide useful information.

**Federal Actions Required:** Report to House and Senate Committees with transit jurisdiction required.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Bus Testing Facilities

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20014, Page 290

**Agency Impact Classification:** Minimal

**Summary of Section:** Secretary of Transportation charged with establishing bus testing performance standards via rulemaking, establishing bus safety performance standards linked to the safety program in Sec 5329, and establishing a pass/fail standard via rulemaking.

**Impact to TxDOT:** May affect procurement requirements placed upon sub-recipient transit agencies.

**Federal Actions Required:** USDOT will establish standards via rulemaking.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Human Resources and Training

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20015, Page 291

**Agency Impact Classification:** Minimal

**Summary of Section:** Modifies the Section 5322 program by moving the National Transit Institute (NTI) into the program and no longer specifying that the NTI be located at Rutgers University. Further, the section authorizes the Secretary to make funds available for programs that address workforce and human resource needs as they apply to public transportation activities. A competitive selection process is required.

**Impact to TxDOT:** None

**Federal Actions Required:** USDOT must develop a call for projects and accompanying competitive selection process for innovative workforce development activities. Provide relevant Congressional Committees a report on the measurable outcomes and impacts of funded activities. Modify applicable circular(s).

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** TxDOT and sub-recipients have utilized NTI courses.

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## General Provisions

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20016, Page 293

**Agency Impact Classification:** Minimal

**Summary of Section:** Eliminates the public hearing requirement, instead requiring only public notice regarding the program of projects in general. This section requires application of the Uniform Relocation and Real Property Acquisition rules – previously in Sec 5324. Also moves requirement from Sec 5324 re-

garding consultation with Department of Interior and Environmental Protection Agency on projects with possible substantial environmental impact. Changes federal match requirements for ADA and CAA vehicles from 90 percent to 85 percent. Allows private vanpool operator costs to be used as in-kind match under specified circumstances. Now allows 85/15 flat split on the cost of Americans with Disabilities Act (ADA) accessible/ clean air vehicles, which applies to entire purchase price. For facilities (and vehicles if chosen), the 90/10 split remains for those items supporting ADA or clean air initiatives. Permits the purchase of ROW in advance of completing the environmental review if otherwise allowed under federal law and requires private intercity bus and charter operators be given reasonable access to public transportation facilities.

**Impact to TxDOT:** May require a change to 43 TAC 31.31 (Sec 5310) and 31.36 (Sec 5311)

**Federal Actions Required:** May require modification of applicable circular(s).

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** Access to a multimodal facility has been an issue in one area of Texas (intermodal facility in San Angelo) for an intercity carrier.

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## Public Transportation Emergency Relief Program

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20017, Page 299

**Agency Impact Classification:** Minimal

**Summary of Section:** Establishes parameters for USDOT reimbursing Sec 5307 and 5311 agencies 100 percent of the cost of expenses not covered by FEMA. Replaces previous Sec 5324 provisions concerning limitations on grants and loans.

**Impact to TxDOT:** TxDOT would only be impacted if a rural agency requests reimbursement of emergency relief costs from USDOT.

**Federal Actions Required:** USDOT will execute a memorandum of agreement with Homeland Security per the requirements of this section by February, 2013, and will brief Congress on implementation of the memorandum. USDOT will develop policies and procedures for handling transit agency requests for assistance under this section. May require modification of applicable circular(s).

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Subject Title: Contract Requirements

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20018, Page 302

**Agency Impact Classification:** Minimal

**Summary of Section:** Requires, when practicable, that qualified veterans be given employment preference on construction requirements.

**Impact to TxDOT:** TxDOT's Sec 5311 sub-recipients may have construction projects, so PTN would be required to monitor compliance.

**Federal Actions Required:** Modification of applicable circular

**State Actions Required:** Review/revise related TxDOT documents such as the contract templates, state management plans, manuals, monitoring processes, etc.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Transit Asset Management

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20019, Page 303

**Agency Impact Classification:** Moderate

**Summary of Section:** Requires grant recipients to develop a transit asset management plan that covers capital asset inventories and condition assessments, decision support tools, and investment prioritization, and can be certified as meeting federal requirements. The USDOT must establish and implement a national transit asset management system that includes a definition of State of Good Repair (SOGR). Recipients then have three months to establish local performance targets to be applied to the national measures. This section replaces previous Sec 5326 concerning special procurements.

**Impact to TxDOT:** TxDOT will be required to develop a transit asset management plan.

**Federal Actions Required:** USDOT will issue final rules concerning the management system and its implementation by July 2013. USDOT may create a new circular on transit asset management or modify existing circular(s).

**State actions required:**

**Relevant Deadlines for TxDOT and Related Agencies:** Contingent upon USDOT implementation of Federal requirements.

**Additional Information:** Complexity of this task will depend on further information from FTA as to what exactly is required and how difficult it is to respond with targets within the 3 month time frame.

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## Project Management Oversight

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20020, Page 304

**Agency Impact Classification:** Minimal

**Summary of Section:** Modifications to the Federal Transit Administration's New Starts Program to delete requirements and streamline processes

**Impact to TxDOT:** None

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** TxDOT is typically not involved in New Starts projects authorized by this section.

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## Public Transportation Safety

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20021, Page 305

**Agency Impact Classification:** High

**Summary of Section:** USDOT is required to develop a safety plan to improve safety in all recipient systems including safety criteria, minimum performance standards, safety certification and the incorporation of a State of Good Repair (SOGR). USDOT will also establish a training program for certification. By October, the Secretary must establish interim provisions for the certification and training of safety personnel. Interim provisions will remain in place until publication of the final rule. One year after the final rule takes effect, recipients must have a comprehensive agency safety plan in place which is adopted by the board of directors or equivalent includes methods to identify safety risks and strategies to minimize exposure to hazards. The plan must also establish performance targets based on the safety performance criteria and SOGR, and assigns a safety officer reporting to the General Manager or equivalent. Sec 5307 and 5311 funds may be used for the training. Sec 5311 and small-urban Sec 5307 agencies may certify to a plan developed by TxDOT. USDOT is provided with the authority to conduct inspections, investigations, and audits related to system safety, and enforcement actions are authorized including issuing directives and withholding funds. The Secretary is directed to consider the cost-benefit analysis of proposed actions, to produce a National Public Transportation Safety Report, and to analyze the safety of bus routes on roads with speed limits of 45 mph or greater.

**Impact to TxDOT:** These provisions will impact TxDOT public transportation grant administration. The legislation is unclear on several critical points that make progress on the safety plan unproductive until FTA provides further clarification with interim guidance or rule promulgation. Minimally, PTN expects to offer training classes to TxDOT staff and sub-recipients.

**Federal Actions Required:** USDOT is required to develop a safety plan, certification and training program by October 2012. No deadline is specified for complete rulemaking. USDOT will be required to modify circulars.

**State Actions Required:** Depending on USDOT guidance, TAC changes may be required

**Relevant Deadlines for TxDOT and Related Agencies:** One year after final rule takes effect, TxDOT and TxDOT's sub-recipients are required to have in place a comprehensive safety plan.

**Additional Information:** None

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## Public Transportation Safety

**Prepared By:** Susan Hausmann, RRD

**MAP-21 Section and Page Number:** 20021, Page 305

**Agency Impact Classification:** High

**Summary of Section:** The section revises federal and state oversight of safety and security programs for rail fixed guideway systems. The section repeals the current 49 USC 5329 which is a very general federal oversight program. Further, Section 20030(e) of MAP-21 repeals the current 49 USC 5330 which is the state safety oversight program. (The repeal of 49 USC 5330 is effective three years after the Secretary issues new rules.) In place of the repealed sections, MAP-21 adds a new Section 49 USC 5329 that establishes a revised state safety oversight program with more stringent requirements. The additional requirements include a safety certification and training program for federal, state, and RTA employees performing safety audits and safety oversight functions. Further, the state safety oversight agency must have enforcement powers. The requirements will be established in a future federal rulemaking, and a state will then have three years to get its program approved by the Secretary.

**Impact to TxDOT:** TxDOT serves as the State Safety Oversight authority (SSO) for three fixed guideway systems in Texas: Dallas' DART light rail system, Galveston's Island Transit trolley system (currently not in operation), and Houston METRO's light rail system. TxDOT SSO staff (currently one FTE) will be required to participate in a federally-developed training and certification program. TxDOT's SSO program and staffing levels will require Secretary Approval, and TxDOT will be required to provide annual status reports.

**Federal Actions Required:** By December 30, 2012 FTA will establish interim training provisions for the certification and training of federal, SSO, and RTA personnel. Final rules to be developed, training and certification program to be developed, approval process for SSO plans and staff.

**State Actions Required:** Changes will likely be required to the Transportation Code, chapter 455, including granting enforcement powers to the state safety oversight authority. The state program may require more FTEs. Federal Transit Administration's promulgation of the rules will dictate the required changes or approvals by the Legislature.

**Relevant Deadlines for TxDOT and Related Agencies:** TxDOT must have an approved SSO program in place three years after the final rule for SSO is approved.

**Additional Information:** RRD anticipates potential issues with oversight of Galveston Island Transit Trolley, as a result of Galveston's 2010 Census population and new designation as a rural area. Galveston will now receive 5311 funds from TxDOT which will therefore create issues of noncompliance with this section's financial independence provisions. This section includes a waiver provision based on miles of service and passenger boardings that may address this issue, depending on the level of service provided by the system when operations resume. In addition, RRD will work with FED to produce a comprehensive list of activities for which TxDOT would pursue reimbursement under this program's developing grant program. These may include division salaries, administrative costs, and consultant fees. RRD will work with FED to maintain awareness of evolving issues. The TxDOT SSO Manager is a member of Secretary LaHood's chartered Transit Rail Advisory Committee for Safety. The Committee was chartered in 2010 in anticipation of passage of specific rail safety legislation to strengthen the current program.

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## Alcohol and Controlled Substances Testing

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20022, Page 313

**Agency Impact Classification:** Minimal

**Summary of Section:** Changes to this section permit the Secretary to withhold funds from grant recipients with non-compliant testing programs.

**Impact to TxDOT:** None

**Federal Actions Required:** Minor changes to circulars

**State Actions Required:** Continue ongoing monitoring and program reviews.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Nondiscrimination

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20023, Page 313

**Agency Impact Classification:** Minimal

**Summary of Section:** Changes to this section add “disability” to the list of protected groups. The Comptroller General will review FTA effectiveness in helping recipients comply with nondiscrimination requirements.

**Impact to TxDOT:** None

**Federal Actions Required:** Comptroller General to submit a report to Congress evaluating FTA’s complaint resolution processes and assistance to grantees.

**State Actions Required:** TxDOT will incorporate changes in ongoing monitoring and program reviews.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Administrative Provisions

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20024, Page 314

**Agency Impact Classification:** Minimal

**Summary of Section:** This section outlines administrative changes related to FTA activities. It permits the Secretary to prescribe terms for any Chapter 53 project (Public Transportation), but restricts the Secretary from regulating fares. Transfer of assets must comply with applicable laws and changes transfers to permissive versus required.

**Impact to TxDOT:** None

**Federal Actions Required:** May change FTA processes.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## National Transit Database

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20025, Page 314

**Agency Impact Classification:** Minimal

**Summary of Section:** This section provides minor revisions to current NTD requirements. Transit Asset Inventory or Condition Assessment data is added to the collectible information.

**Impact to TxDOT:** None

**Federal Actions Required:** USDOT must develop and implement appropriate internal control activities and ensure that public transportation safety incident data is reported accurately and reliably by public transportation systems and state safety oversight agencies.

**State Actions Required:** TxDOT may need to expand data collected from subrecipients.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Apportionment of Appropriations for Formula Grants

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20026, Page 315

**Agency Impact Classification:** Minimal

**Summary of Section:** This section revises the fixed guideway formula to include route miles operated outside of the urbanized area. The period of availability of funds is increased from three to five years. Thirty million dollars is allocated to the passenger ferry competitive grant program. Specified percentage rates for allocation to states with State Safety Oversight programs are incorporated into the apportionment formula between large and small urbanized agencies at a 75/25 ratio based on low income population to reflect the inclusion of JARC funding.

**Impact to TxDOT:** Minimal

**Federal actions required:** Federal guidance may be issued.

**State Actions Required:** TxDOT will continue to follow TAC requirements with regard to distribution of funds to Sec 5307 recipients in small urbanized areas. (Sec 5307 recipients in large urbanized areas receive funds directly.)

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## State of Good Repair Grants

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20027, Page 319

**Agency Impact Classification:** Minimal

**Summary of Section:** Replaces previous section dealing with apportionments to specific transit agencies with fixed guideway (F/G) operations. The new text, though renamed, continues to focus on fixed guideway, but now includes Bus Rapid Transit (BRT) in the F/G definition. High Intensity F/G SOGR is available only to agencies who received 5337 money in FY 2011. The new formula (in place of specified amounts) uses revenue miles and route miles as distribution criteria. High Intensity Motorbus SOGR applies to the BRT systems and uses revenue miles and route miles for formula distribution.

**Impact to TxDOT:** None

**Federal Actions Required:** FTA will need to develop new procedures for allocating funds to eligible agencies.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** TxDOT historically has not been involved in these types of projects, typically undertaken by transit authorities in large urbanized areas.

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**Authorizations**

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20028, Page 322

**Agency Impact Classification:** Moderate

**Summary of Section:** Outlines authorized funding levels for Federal Transit Administration (FTA) formula grants, Transit Cooperative Research Program, Emergency Relief Program, Capital Investment Grants, Research and related programs, Technical Assistance and Standards Development, Human Resources and Training, and FTA Administration.

**Impact to TxDOT:** The department will use TAC to distribute funds over which TxDOT has program control.

**Federal Actions Required:** USDOT will follow statutory formulas to allocate funds to programs and recipients.

**State Actions Required:** The department will follow 43 TAC Chapter 31 to allocate funds.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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**Bus and Bus Facilities Formula Grants**

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20029, Page 325

**Agency Impact Classification:** Moderate

**Summary of Section:** Replaces the alternatives analysis program. Eligible recipients are 5307 agencies that offer fixed route service, either directly or via contract. Each state receives \$1,250,000 (territories a lesser amount) and the remaining authorization for the section is apportioned to urbanized areas based on population, revenue miles and passenger miles.

The amount allocated to small urbanized areas remains under the Governor's control for distribution. The Governor can use the funds for rural projects (or urbanized). Sources of non-Federal share do not list TANF money, but this has not been a source of match for this type of funding in the past. Funds are available for three years.

**Impact to TxDOT:** Will need to develop procedures and TAC language to guide TxDOT handling of funds.

**Federal Actions Required:** Develop methodology/spreadsheets for distribution to eligible recipients.

**State Actions Required:** Amendments to the TAC will be required.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** A few small urbanized transit agencies do not have fixed route service and will not be part of FTA's funding formula.

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## Technical and Conforming Amendments

**Prepared By:** Kelly Kirkland, PTN

**MAP-21 Section and Page Number:** 20030, Page 326

**Agency Impact Classification:** Moderate

**Summary of Section:** Section specifies technical corrections to facilitate changes to the Code of Federal Regulations.

**Impact to TxDOT:** None

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Division C – Transportation Safety And Surface Transportation Policy

### TITLE I – MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT OF 2012

#### Authorization of Appropriations

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 31101, Page 328

**Agency Impact Classification:** Minimal

**Summary of Section:** Sets funding for the Section 402 Behavioral Safety Program at \$235 million for FY 2013 and FY 2014.

**Impact to TxDOT:** None projected

**Federal Actions Required:** None

**State Actions Required:** We will continue to operate the department's Texas Highway Safety Program within the federal apportionments resulting from federal law.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Highway Safety Programs

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 31102, Page 330

**Agency Impact Classification:** Moderate

**Summary of Section:** Requires each state to have a highway safety program approved by the Secretary and that conforms to the uniform guidelines issued by NHTSA and lists the required programs. Requires states to participate in two high-visibility law enforcement campaigns coordinated by the Secretary. Adds two new assurances (data driven enforcement program and coordination of the HSPP with the State Strategic Highway Safety Plan added). States may use their 402 funds to participate in 403 Research and Development projects. Allows a state to use their 402 funds in cooperation with neighboring States. Amends the penalties regarding states' approved highway safety programs. States may not use their 402 funds for automated enforcement. States are required to submit their approved HSPP by July 1st of the preceding year starting in 2014. Notes certain performance measures and other items that must be included in a state's HSP. Allows, but does not require, states to spend their 402 funds on teen safety programs.

**Impact to TxDOT:** TRF will be required to amend and push up our Traffic Safety Planning Schedule in order to submit our State Highway Safety Performance Plan (HSPP) by July 1st. We will also have to ensure that the HSPP includes all new required elements.

**Federal Actions Required:** Assume NHTSA would have to amend their program guidance and regulations related to the Federal Highway Safety Program. 23 CFR Parts 1200-1275.

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** We will be required to move up our current planning schedule in order to have a HSPP approved by the Commission and to NHTSA by July 1.

**Additional Information:** None

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## National Priority Safety Programs

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 31105, Page 337

**Agency Impact Classification:** High

**Summary of Section:** Sets funding allocations and eligibility requirements within Section 405 for Occupant Protection, Safety Information System Improvements, Impaired Driving Countermeasures, Distracted Driving, Motorcycle Safety, and Graduated Driver's License Laws.

**Impact to TxDOT:** Texas does not have a conforming state law that would allow us to qualify for a Dis-

tracted Driving Grant. Requires a statewide primary texting ban with a minimum fine for first offenders with increased fines for subsequent offense. We also do not have a primary law covering the use of wireless communications devices by drivers under the age of 18. Texas will not qualify for federal funds under the impaired driver and distracted driver programs. We would need to change our state statutes to have a statewide ban on texting and include an interlock requirement for all DWI offenses. We also could have issues with the Graduated Driver License program. Our state statute does not include all the requirements but rather allows DPS to establish them by rules. To ensure compliance, the Texas statute could be changed to include the minimum requirements.

**Federal Actions Required:** Possible revision to CFR 23 Part 1204.

**State Actions Required:** As noted above, if Texas wishes to maximize our federal traffic safety funding we may need revisions in existing or new state law.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## High Visibility Enforcement Program

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 31106, Page 351

**Agency Impact Classification:** Minimal

**Summary of Section:** Requires the NHTSA Administrator to conduct three high visibility enforcement campaigns. Allows Internet-based outreach.

**Impact to TxDOT:** Not a significant impact issue for TxDOT, although the number of enforcement campaigns we are expected to participate in will increase.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

## Division E – Research And Training

### TITLE II - INTELLIGENT TRANSPORTATION SYSTEMS RESEARCH

#### Use of Funds for ITS Activities

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 53001, Page 493

**Agency Impact Classification:** Minimal

**Summary of Section:** Amends Section 513 to define the state as an eligible entity. Defines “multijurisdictional group” to include a state government. Defines the purpose of the section as to develop, administer, communicate, and promote the products resulting from research, technology, and technology

transfer programs. Directs the Secretary to encourage the use of innovative ITS technologies that will improve the performance of the NHS. Directs the Secretary to develop a detailed and comprehensive plan in which incentives may be adopted through existing deployment activities.

**Impact to TxDOT:** Not a significant impact item for TRF or the department. The department's ITS program already operates under very similar guidance and direction from the FHWA.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Goals and Purposes

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 53002, Page 494

**Agency Impact Classification:** Minimal

**Summary of Section:** Sets goals and purposes of the ITS Program at the federal level.

**Impact to TxDOT:** Generally coincides with the TxDOT program and not considered an impact area. (Exceptions would be the purpose of introducing vehicle-based safety systems; and the development of a workforce capable of developing, operating and maintaining ITS.)

**Federal Actions Required:** Assume the Secretary would need to develop new federal regulation to any portion of the section that dictates new programs.

**State Actions Required:** We will need to ensure that the state ITS Program is compliant with any federal regulation or guidance resulting from the new section.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## General Authorities and Requirements

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 53003, Page 495

**Agency Impact Classification:** Minimal

**Summary of Section:** Creates new Section 515, General Authorities and Requirements. Sets the scope and policy of the program and directs the Secretary to conduct an ongoing ITS program. Requires US-DOT to cooperate with various entities including state governments and to consult with other federal officials. Directs the Secretary to maintain an ITS Clearinghouse. Creates a federal advisory committee which would include a representative of a state transportation department.

**Impact to TxDOT:** Not an impact item, although department staff could be asked to participate on the advisory committee at some point.

**Federal Actions Required:** None

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Research and Development

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 53004, Page 498

**Agency Impact Classification:** Minimal

**Summary of Section:** Creates new Section 516 calling upon the Secretary to conduct a comprehensive ITS research and development program.

**Impact to TxDOT:** No specific impact projected for TRF or the department.

**Federal Actions Required:**

**State Actions Required:** None

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## National Architecture and Standards

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 53005, Page 498

**Agency Impact Classification:** Minimal

**Summary of Section:** Secretary to develop and maintain a national ITS architecture and protocols to promote the use of systems in the widespread deployment and evaluation of ITS. Calls upon the architecture to promote interoperability among the systems implemented in the US. Calls upon the Secretary to ensure that the ITS projects carried out under this title conform to the appropriate regional ITS architecture, applicable standards and protocols.

**Impact to TxDOT:** TxDOT's ITS program conforms to the national architecture and all national standards. No specific impact is projected.

**Federal Actions Required:** Possible revision to 23 CFR Part 940.

**State Actions Required:** We will have to ensure that the ITS architecture conforms to any modifications resulting from this section. We have traditionally worked closely with the FHWA and local jurisdictions to ensure compliance.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None

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## Vehicle-to-Vehicle and Vehicle-to-Infrastructure Communications Systems Deployment

**Prepared By:** Jim Cotton, TRF

**MAP-21 Section and Page Number:** 53006, Page 500

**Agency Impact Classification:** Moderate

**Summary of Section:** Calls upon the Secretary to submit to Congress an assessment on the status of dedicated short range communications; analysis of the known and potential gaps in this technology and application; defining a recommended implementation path; and includes guidance on the relationship to the national ITS architecture and standards. Report due within three years.

**Impact to TxDOT:** This is an impact issue for the USDOT, not an immediate issue for TxDOT. However, there could be some implementation requirements for the national architecture based on the results of the required report.

**Federal Actions Required:** Possible revision to 23 CFR Part 940.

**State Actions Required:** At some point the report may impact the national ITS Architecture and we would be required to conform to those changes.

**Relevant Deadlines for TxDOT and Related Agencies:** None

**Additional Information:** None



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