



U.S. Department of Transportation  
Federal Highway Administration

# Key Environmental Provisions

Moving Ahead for Progress in  
the 21<sup>st</sup> Century Act  
(MAP-21)

September 2012

# MAP-21 Themes

- Strengthens America's highway and public transportation systems
- Creates jobs and supports economic growth
- Supports the Department's aggressive safety agenda
- Simplifies and focuses the Federal program
- **Accelerates project delivery** and promotes innovation
- Establishes a performance-based Federal program

# Authorization

MAP-21 authorizes FHWA program through FY14

- Some provisions need additional guidance for implementation
- Some new provisions go into effect on October 1<sup>st</sup>
- Some provisions need rulemaking before going into effect

SAFETEA-LU provisions still in effect unless revised or replaced by MAP-21

# Key Environmental Provisions





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- Categorical exclusions (CE)
- Environmental review assignment
- Planning and environmental linkage (PEL)
- Environmental review process and accelerating project delivery
- Environmental issue resolution process
- Initiatives and reports



# Declaration of Policy and Project Delivery Initiative (Sec. 1301)

- Declares it is in the national interest to expedite delivery of surface transportation projects by substantially reducing the average length of the environmental review process.
- Advances the use of best practices to accelerate project delivery, reduce costs across all modes, and expedite the deployment of technology and innovation.
  - Engage interested parties and stakeholders.
  - Establish a clearinghouse for new innovative approaches and best practices.
  - Disseminate information on innovative approaches and best practices.
  - Provide technical assistance to public transportation stakeholders.

# Categorical Exclusions



## New CE: Projects to repair roads damaged in declared emergency (Sec. 1315)

- Applies to repair or reconstruction actions of any road, highway, or bridge in operation or under construction when damaged by the event.
- Propose rulemaking not later than 30 days after October 1, 2012.
- Provision includes requirement “for periodic evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction.”
- Effective after the completion of the rulemaking process.




## New CE: Projects within existing operational right-of-way (Sec. 1316)

- Projects eligible for assistance under 23 U.S.C. located in the existing operational right-of-way.
- Promulgate regulations not later than 150 days after October 1, 2012.
- Effective after the completion of the rulemaking process.

# New CE: Projects receiving limited Federal assistance (Sec. 1317)

- Applies to projects:
  - Receiving less than \$5 million in Federal funds, or
  - With a total estimated cost of not more than \$30 million and Federal funds comprising less than 15% of total estimated project cost
- Promulgate regulations not later than 150 days after October 1, 2012.
- Effective after the completion of the rulemaking process.



## Survey use of CEs and solicit potential new CEs (Sec. 1318(a)-(b))

- Survey the Department's use of CEs in transportation projects since 2005.
- Publish a review of the Survey.
- Solicit proposed new CEs from stakeholders.
- Complete not later than 60 days after October 1, 2012.



# Redesignation of some (d) list CEs to (c) list (Sec. 1318(c))

- Publish a notice of proposed rulemaking to move three types of actions from (d) to (c) list in 23 CFR 771.117
  - Modernization of a highway (771.117(d)(1))
  - Highway safety or traffic operations improvements (771.117(d)(2))
  - Bridge rehabilitation, reconstruction, or replacement projects (771.117(d)(3))
- Effective after completion of the rulemaking process.



# Programmatic Agreements for CEs (Sec. 1318)

- CE programmatic agreements (PA) allow States to make CE determinations on FHWA's behalf.
- PAs may identify types of CE projects in addition to CEs listed in 23 CFR 771.117.

# Environmental Review Assignment



# State Assumption of Responsibility for CEs (Sec. 1312)

- States may use existing flexibility in project delivery methods with 23 U.S.C. 326 assignment.
- Allows for the State to terminate at will by providing FHWA with a notice not later than 90 days before the date of termination.
- Allows a State that has assumed CE responsibilities to use Federal-aid funds for attorney's fees.

# Surface Transportation Project Delivery Program (Sec. 1313)

- Turns pilot program to a permanent program in 23 U.S.C. 327 and is open to all States.
- State may also request environmental responsibilities for railroad, public transit and/or multimodal projects.
- Renewable MOU to be signed for up to 5 years.
- Oversight includes audits years 1-4; monitoring for years 5 +
- State may terminate participation with 90 days notice.
- State may use existing flexibility in project delivery methods.
- Allows a State that has assumed responsibilities to use Federal-aid funds for attorney's fees.

# Planning and Environmental Linkage



# Planning-Environment Linkage (PEL) (Sec. 1310)

- MAP-21 amends 23 U.S.C. by adding a new Section 168 for the integration of planning and environmental reviews. The new section allows Federal lead agencies to adopt and use of planning products in the environmental review process of a project.
- Examples of planning decisions and analyses that may be adopted are provided in statute.
- Section 138(d) establishes the requirements for the adoption of the planning products.
- Planning products adopted through the process may be relied upon and used by other Federal agencies in carrying out reviews for the project.

# Related MAP-21 Provisions

- Sec. 1310 – Integration of Planning and Environment Review
  - Currently developing guidance on this section
- Sec. 1311 – Programmatic Mitigation Plans
  - Mitigation plan may be developed on a regional, ecosystem, watershed or statewide scale
  - Scope determined by State or MPO in consultation with resource agencies and project sponsors.
- Sec. 1320 – Memoranda of Agency Agreements
  - Early coordination activities

# Environmental Review Process & Accelerating Project Delivery



# Environmental Impact Statements (EIS) and Record of Decisions (ROD) (Sec. 1319)

- Encourages the use of an errata sheet attached to the Draft EIS in-lieu of a Final EIS under certain conditions.
- Allows FEIS and ROD combined in certain conditions.
- Effective October 1, 2012.

# Complex EIS Projects (Sec. 1309)

- Establishes procedures intended to accelerate the environmental review process for EIS projects that have taken longer than 2 years from the Notice of Intent to prepare an EIS.
- Full implementation will require guidance to clarify the process.
- Covered projects
  - Ongoing EIS projects
  - At least 2 years elapsed from Notice of Intent without issuance of a ROD
- Resources and technical assistance will be provided upon the request by project sponsor or a State Governor.

# Programmatic Approaches (Sec. 1305(a))

- Promote use of Programmatic Approaches
  - Eliminate repetitive discussions
  - Focus on issues ripe for analysis
- Secretary shall ensure that programmatic reviews
  - Promote transparency of analyses and data
  - Use accurate and timely information
  - Describe the relationship between programmatic analysis and future tiered analysis
  - Describe the role of the public in the creation of future tiered analysis.
- Rulemaking to be initiated



## Limitation of Claims (Sec. 1308)

- Statute of Limitations (SOL) timeframe to initiate claims reduced from 180 days to 150 days
- Applies to all SOL notices published on or after October 1, 2012.

# Environmental Issue Resolution Process



## Accelerated Decisionmaking (Sec. 1306)

- Establishes a process to obtain assurances from participating agencies that decisions on the environmental review will be made on the established schedule.
- Within 30 days after the close of the public comment period of a Draft EIS the Secretary may convene a meeting of the parties to assure that the project is on schedule.
- If agencies cannot provide assurances, the Secretary may initiate the Issue Resolution process.



## Issue Resolution Process (Sec. 1306)

- Provides for an issue resolution process.
- Federal lead agency, project sponsor, Federal agency with jurisdiction, or State Governor may request an issue resolution meeting.
- Lead Agency convenes a meeting within 21 days.
- If issues are not resolved within 30 days after the meeting, then the issue is elevated to the Secretary who convenes a meeting with the heads of the agencies involved.
- If issues are not resolved within 30 days of the meeting, then issue is referred to CEQ and another meeting is convened.
- If issues are not resolved within 30 days of the CEQ meeting, then issue is referred to the President or his/her designee.

# Initiatives and Reports

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- Environmental Procedures Initiative (Sec. 1321)
- Review of State Environmental Reviews and Approvals (Sec. 1322)
- Review of Federal Project and Program Delivery (Sec. 1323)
- Reports for Issue Resolution (Sec. 1306), review of CE current use (Sec. 1318) and for two new CEs (Sec. 1316 and Sec. 1317)



Questions?