Surface Transportation Funding and Programs Under MAP-21: Moving Ahead for Progress in the 21st Century Act (P.L. 112-141)

(name redacted), Coordinator
Specialist in Transportation Policy

(name redacted)
Specialist in Transportation Policy

(name redacted)
Analyst in Environmental Policy

(name redacted)
Specialist in Transportation Policy

(name redacted)
Analyst in Transportation Policy

September 27, 2012

Congressional Research Service
7-....
www.crs.gov
R42762

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

On July 6, 2012, President Barack Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141). The act authorized spending on federal highway and public transportation programs, surface transportation safety and research, and some rail programs and activities through September 30, 2014. MAP-21 authorized roughly $105 billion for FY2013 and FY2014 combined. It also extended FY2012 surface transportation authorizations to the end of the fiscal year, raising the total authorization to approximately $118 billion.

Most of the funding for surface transportation bills has been drawn from the highway trust fund (HTF) since its creation in 1956, but the HTF, which receives revenue mainly from federal motor fuel taxes, has, due to a sluggish economy and improvements in fuel efficiency, received revenue substantially below projections. For the past several years, HTF revenue has been insufficient to finance the government's surface transportation programs, leading Congress to delay reauthorization for 33 months following expiration of the last multi-year reauthorization. Although Congress was unable to agree on a long-term solution to the HTF revenue issue, MAP-21 did provide for the transfer of sufficient general fund revenues to the HTF to fund a two-year bill.

MAP-21 made major changes in the programmatic structure for both highways and public transportation and included initiatives intended to increase program efficiency through performance-based planning and the streamlining of project development. Among its major provisions, MAP-21 included:

- for the federal-aid highway program, research, and education, authorizations for FY2013 of $40.96 billion and for FY2014 of $41.03 billion;
- for public transportation, authorizations for FY2013 of $10.58 billion and for FY2014 of $10.7 billion;
- for the Transportation Infrastructure Financing and Innovation Act (TIFIA), which provides credit assistance for surface transportation projects, a significant expansion that could provide credit support of up to $6.9 billion for FY2013 and $9.2 billion for FY2014;
- major program restructuring, which reduced the number of highway programs by two-thirds and consolidated public transportation programs as well;
- more distribution of funding via apportionment to the states and less discretionary funding via the Department of Transportation (DOT) to individual projects;
- no project earmarks;
- no equity program, instead basing the distribution of highway funding on the FY2012 distribution such that each state will likely receive as much federal highway funding as its highway users paid to the highway account of the HTF; and
- changes in the National Environmental Policy Act (NEPA) compliance process intended to accelerate project delivery.

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MAP-21: Overview

Surface transportation authorization acts authorize spending on federal highway and public transportation programs, surface transportation safety and research, and some rail programs. The most recent multi-year authorization for federal surface transportation programs, the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), reauthorizes federal surface transportation programs and activities through September 30, 2014.

MAP-21 authorizes roughly $105 billion for FY2013 and FY2014 combined. It also extended FY2012 surface transportation authorizations to the end of the fiscal year, raising the act's total authorization to approximately $118 billion.

The comparatively short two-year authorization reflects the difficulty faced by Congress in funding surface transportation within a constrained budgetary environment. The highway trust fund (HTF) has provided most of the funding for surface transportation authorization bills since its creation in 1956. The HTF is supported mostly from taxes on gasoline and diesel fuel, but a sluggish economy and improvements in vehicle fuel efficiency have reduced fuels tax revenues below projections. The taxes were last raised in 1993 and are fixed in terms of cents per gallon, so revenues do not rise along with motor fuel prices. Consequently, Congress faced a choice of cutting transportation spending, increasing motor fuels taxes, or providing general fund transfers to supplement the HTF revenues. In the end, Congress chose to transfer money from the general fund to the HTF to fund a two-year authorization.

Congress also made major changes in the structure and formula of the highway and transit programs. The number of highway programs was reduced by roughly two-thirds. Mass transit programs were also reduced through consolidation. Although the eligibilities of many former programs were absorbed into new or modified programs under MAP-21, the changes have the potential to increase efficiency. The six large core programs under the previous authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA; P.L. 109-59), were consolidated into five. The new National Highway Performance Program absorbed the Interstate Maintenance, National Highway System, and Federal-Aid Highway Bridges programs. Off-system highway bridges were included in the Surface Transportation Program. The Congestion Mitigation and Air Quality Program (CMAQ) and the Highway Safety Improvement Program (HSIP) were both retained, and the Recreational Trails, Safe Routes to Schools, Transportation Enhancements, and certain other eligibilities were combined into a new core program, Transportation Alternatives (TA).

Roughly 92% of the highway program funding under MAP-21 is distributed by formula and is under the control of the state departments of transportation. The number of discretionary programs, formerly under the control of the Federal Highway Administration (FHWA), has been reduced. In addition, MAP-21 is free of project earmarking. These changes continue a long-term shift away from detailed federal control of project decisions to a policy of limited federal oversight of project control exercised at the state and metropolitan levels.

Unlike previous authorizations, MAP-21 does not use separate formulas to distribute funds for individual programs. Instead, it applies a broad initial calculation across virtually all the formula programs and then assigns a percentage of the available funding to each formula program. The initial calculation sets each state's apportionment share under most of the formula programs. In

place of the old formula factors, such as, for example, lane miles on principal arterial routes, MAP-21 relies on a performance-based approach to rewarding progress toward national goals.

MAP-21's use of the initial calculation eliminated the need for an equity bonus program to guarantee that each state would receive at least a proportion of its residents' payments into the HTF, as in SAFETEA.[1] Instead, MAP-21 sets each state's share in the initial distribution for FY2013 and FY2014 based on the apportionment it received in FY2012, adjusted in FY2014 to assure that each state receives 95% or more of its highway tax contribution to the HTF. This adjustment may not be necessary, as all states have received more in apportionments and allocations than their tax payments to the HTF in every year since FY2007.

MAP-21 also did not include the budgetary "firewalls" and spending guarantees that were maintained under both SAFETEA and its predecessor law, the Transportation Equity Act for the 21st Century (P.L. 105-178). These firewalls and spending guarantees made it difficult for surface transportation spending levels to be lowered during the annual appropriations process. Under MAP-21 the ability of the appropriators to lower authorized funding levels has been restored.

During the MAP-21 debate Congress considered funding sources other than grants. The act provides for a major expansion of the Transportation Infrastructure Financing and Innovation Act (TIFIA) and some modest changes in federal tolling provisions. TIFIA is touted as allowing for the leveraging of almost ten times the amount authorized. Tolling changes reaffirm the support for value and congestion pricing and allow for tolling of new Interstate route construction.

Public transportation is provided with slight spending increases under MAP-21. Transit programs have undergone significant structural change. The new State of Good Repair Program replaces the Fixed Guideway Modernization Program, and transit authorities are required to develop asset management systems. The Bus and Bus Facilities Program is funded at less than half the level of FY2012 and the funds are distributed by formula rather than being earmarked.

The federal program for freight transport proposed in the Senate surface transportation bill (S. 1813, 112th Congress) was not included in MAP-21 as enacted. The act did retain many planning provisions related to identifying infrastructure components most critical to freight, including the designation of the "primary freight network."

MAP-21 also seeks to accelerate transportation project delivery by altering the National Environmental Policy Act (NEPA) compliance process and other environmental reviews.[2] However, it is not certain that the enacted changes will speed project completion, and there is reason to think that some projects may face additional delay due to the new law.

[1] CRS Report R41869, *The Donor-Donee State Issue in Highway Finance*, by (name redacted).

[2] CRS Report R41947, *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, by (name redacted) and (name redacted).

Surface Transportation Finance and the Highway Trust Fund

The highway trust fund is financed from a number of sources including sales taxes on tires, trucks, buses, and trailers, as well as truck usage taxes. However, approximately 90% of trust fund revenue comes from excise taxes on motor fuels, 18.3 cents per gallon on gasoline and 24.3 cents per gallon on diesel. The HTF consists of two separate accounts—highway and mass transit. The highway account receives an allocation equivalent to 15.44 cents of the gasoline tax and the mass transit account receives the revenue generated by 2.86 cents of the tax.[3] Because the fuel taxes are set in terms of cents per gallon, rather than as a percentage of the sale price, their revenues do not increase with inflation. The fuel tax rates were last raised in 1993.

The period of sluggish economic performance that began in 2007 and improvements in vehicle fuel efficiency have reduced fuel tax revenue below the optimistic projections assumed in SAFETEA. The highway account has already required three transfers from the general fund totaling $29.7 billion,[4] without which the Federal Highway Administration (FHWA) might not have been able to pay states for work they completed. The mass transit account received a $4.8 billion general fund transfer in FY2010. Both accounts were projected to have insufficient resources to fulfill MAP-21 funding levels without further general fund transfers.

The finance provisions of MAP-21 met the need, providing general fund transfers of $6.2 billion and $12.6 billion for FY2013 and FY2014 respectively.[5] $2.4 billion of the accrued balance of the Leaking Underground Storage Tank Fund was also transferred to the HTF for FY2012. According to Congressional Budget Office estimates, the highway account of the HTF will retain a prudent balance of $4.1 billion at the end of MAP-21 (i.e., FY2014). The mass transit account, however, is expected to have a balance of $0.5 billion, only half the amount considered prudent.[6]

Projections indicate that HTF revenues will continue to be inadequate to support baseline spending on surface transportation programs after FY2014. This suggests that a reauthorization of MAP-21 would require an increase in the existing fuel taxes, continuing expenditures from the general fund, or reductions in the scope of the federal surface transportation program.

[3] A separate 0.1 cents per gallon tax on all fuels goes into the leaking underground storage tank (LUST) trust fund. LUST is administered by the Environmental Protection Agency and the states. It funds leaking underground storage tank cleanup and leak prevention activities. The authorization of this fund is not addressed in surface transportation legislation.

[4] In late FY2008, $8 billion was transferred to carry the highway account into the 2009 fiscal year (P.L. 110-318, September 15, 2008). In FY2009 the transfer was $7 billion (P.L. 111-46, August 7, 2009). The Surface Transportation Extension Act of 2010 (P.L. 111-148, March 18, 2010) transferred $14.7 billion more to the highway account. The third rescue package, P.L. 111-147, also transferred $4.8 billion to the mass transit account.

[5] Joint Committee on Taxation, *Estimated General Fund and Trust Fund Effects of the Conference Agreement for the Revenue Provisions Contained in Division D of MAP-21*, committee print, 112th Cong., 2nd sess., June 28, 2012, JCX-58-12, pp. 1-3.

[6] Congressional Budget Office, *Highway Trust Fund Projections: CBO August FY2012 Baseline 2011-2012*, August 22, 2012. Because requests for reimbursement from the HTF may occur at any time and because treasury transfers to the HTF occur only twice each month and requests for reimbursement from the states can vary from month to month, FHWA deems it prudent to maintain a $4 billion minimum in the highway account to prevent having to delay payments to states due to insufficient funds. The equivalent prudent balance for the mass transit account is $1 billion.

Budget Control Act of 2011 (P.L. 112-25)

The Budget Control Act requires sequestration of certain funding authorizations in the event a special joint committee of Congress fails to reach an agreement on spending reductions. The Budget Control "Super Committee" announced in November 2011 that it had failed to reach such an agreement. However, exemptions to the sequester process under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (codified in 2 U.S.C. §905 (j)), likely mean that sequestration would not significantly reduce any surface transportation spending authorized for years beyond FY2012. The surface transportation programs and activities exempted, to the extent that their budgetary resources are subject to appropriations bill obligation limitations, are:

- federal-aid highways;
- highway traffic safety grants;
- National Highway Traffic Safety Administration (NHTSA) operations and research and National Driver Register;
- motor carrier safety operations, programs, and grants; and
- transit formula and bus grants.

The $739 million of annual contract authority that is typically exempt from the obligation limitation appears to be subject to sequestration. The Federal Transit Administration (FTA) New Starts program, supported with general fund revenues, also appears to be subject to sequestration.

Highways

The Federal-Aid Highway Program (Highway Program) is an umbrella term for an array of programs administered by FHWA. The Highway Program is primarily state-run. The state departments of transportation (state DOTs) largely determine where and how money is spent, but have to comply with detailed federal planning guidelines. The state DOTs award the contracts and oversee project development and construction. States and/or local governments usually must provide a matching share, typically 10% for Interstate System projects and 20% for other roads.[7]

[7] Federal Highway Administration, *MAP-21: Federal Highway Administration*, Washington, DC, 2012, http://www.fhwa.dot.gov/map21/. This website provides information on the highway portion of MAP-21, including funding tables, bill summary, and program fact sheets.

Highway Program Terminology

Distribution of funds is FHWA notification of the availability of federal funds, usually for four years. The states do not actually receive federal money for highway project spending up front.

Apportionment is the distribution of funds among the states as prescribed by a statutory formula.

Allocation is an administrative distribution of funds (often for specific projects) under programs that do not have statutory distribution formulas.

Reimbursement occurs once a project is approved, the work is started, costs are incurred, and the state submits a voucher to FHWA. The reimbursable structure is designed to curb waste, fraud, and abuse.

Contract authority is a type of budget authority that is available for obligation even without an appropriation (although appropriators must eventually provide **liquidating authority** to pay the obligations).

Obligation of contract authority for a project by FHWA legally commits the federal government to reimburse the state for the federal share of a project. This can be done prior to an appropriation.[8]

Limitation on obligations, known as ObLim or Oblimit, is used to control annual FHWA spending in place of an appropriation. The ObLim sets a limit on the total amount of contract authority that can be obligated in a single fiscal year. For practical purposes, the ObLim is analogous to an appropriation.[9]

Federal-Aid Highways

- MAP-21's highway and research titles authorize $81.99 billion over two years, $40.96 billion for FY2013 and $41.03 billion for FY2014 (see **Table 1**).
- MAP-21 eliminates the Equity Bonus Program. Instead the bill provides, for FY2013, a state with the same total apportionment as it received in FY2012. For FY2014, the total available for distribution is based on states' FY2012 share of apportionments with an adjustment, if necessary, to assure a 95 cent return on each dollar that a state's highway users pay to the highway account of the HTF.
- MAP-21 does not include highway program earmarks.
- MAP-21 eliminates or consolidates most discretionary programs.

[8] For a more detailed discussion see Federal Highway Administration, *Financing Federal-Aid Highways*, (Washington, 2007), pp. 9-10, http://www.fhwa.dot.gov/reports/financingfederalaid/approp.htm#b.

[9] Ibid., pp. 19-22. To be contract authority the authorization must refer to Title 23, Chapter 1 of the *U.S. Code*, and it must be funded out of the highway trust fund.

Table 1. Highway Authorizations: MAP-21

(contract authority from the highway account of the HTF, except as noted, in millions of dollars)

Program	FY2013	FY2014	Total
Title I: Federal-Aid Highways	37,477	37,798	75,275
Transportation Infrastructure Finance and Innovation Program (TIFIA)	750	1,000	1,750
Tribal Transportation Program	450	450	900
Federal Lands Transportation Program	300	300	600
Federal Lands Access Program	250	250	500
Territorial and Puerto Rico Highway Program	190	190	380
Federal Highway Administration Administrative Expenses	454	440	894
Emergency Relief	100	100	200
Projects of National & Regional Significance [Gen. Fund]	500	-	500
Construction of Ferry Boats and Ferry Terminal Facilities	67	67	134
Tribal High Priority Projects Program [Gen. Fund]	30	30	60
Total Authorizations: Division A	40,568	40,625	81,193
Federal-Aid Highway Program Obligation Limitation	39,699	40,256	79,955
Title II Research and Education	400	400	800
Total Authorizations	40,968	41,025	81,993

Source: Federal Highway Administration, *MAP-21: Federal Highway Administration; Funding Tables*, Washington, DC, 2012, http://www.fhwa.dot.gov/map21/funding.cfm. For breakout of formula programs, see **Table 2**.

Notes: The $500 million authorized for Projects of National and Regional Significance for FY2013 and the annual $30 million for Tribal High Priority Projects can be expended only with an appropriation.

Formulas and Apportionments

Unlike SAFETEA and earlier authorization acts, MAP-21 does not use individual program formulas to determine each state's apportionments under each core program. Instead, MAP-21 has an annual authorization for each major programs and a single funding formula, as follows:

First, for FY2013, each state's "initial amount" is determined by multiplying the total amount available for apportionment for the year by each state's share of total nationwide apportionments and allocations received for FY2012. For FY2014, the total amount available for distribution is divided among the states based on their FY2012 shares of the whole. However, for FY2014, should any state receive less than 95 cents for every dollar contributed the highway account of the HTF the state's share is raised to that level. Given the excess of federal highway spending over HTF revenues in recent years, it is unlikely that any adjustments will have to be made.

Second, an amount for each state's apportionments from the Metropolitan Planning and CMAQ programs is set aside from each state's initial amount, based on the relative size of the state apportionments for FY2009 for these programs.

Third, the remainder of each state's "initial amount" is divided among the three remaining core programs as follows: 63.7% is apportioned to the National Highway Performance Program,

29.3% to the Surface Transportation Program, 7% to the Highway Safety Improvement Program ($220 million annually is set aside from HSIP for the Rail-Highways Crossings Program).

The Transportation Alternatives (TA) Program is then funded via a series of setasides at a level of 2% of all MAP-21 authorized federal-aid highway and highway research funds. Each state's core formula program and Metropolitan Planning apportionments are reduced proportionally to fund each state's TA.

Table 2 shows the dollar amounts of the aggregate programmatic split.[10]

Table 2. Apportioned Programs (Contract Authority)

(millions of dollars)

Program	FY2013	FY2014	Total
National Highway Performance Program (NHPP)	21,752	21,936	43,687
Surface Transportation Program (STP)	10,005	10,090	20,095
Highway Safety Improvement Program (HSIP)	2,390	2,411	4,801
Congestion Mitigation & Air Quality Improvement Program (CMAQ)	2,209	2,228	4,437
Metropolitan Transportation Planning	312	314	626
Transportation Alternatives (TA)	809	820	1,629
Total	**37,477**	**37,798**	**75,275**

Source: Federal Highway Administration. The MAP-21 programmatic split is estimated. $220 million is set aside annually for Railway-Highway Crossings from HSIP.

Core Highway Formula Programs

MAP-21 reduces the number of discrete funding programs by two-thirds to roughly 30 programs. Most of this reduction is accomplished by absorbing formerly separate activities and eligibilities into the new core programs discussed below. The core programs also have many areas of overlapping eligibility. Under MAP-21, the five core programs plus metropolitan transportation planning are authorized at $37.477 billion for FY2013 and $37.798 billion for FY2014.

National Highway Performance Program (NHPP; §1106)

NHPP has become the largest of the restructured federal-aid highway programs, with authorizations of $21.8 billion for FY2013 and $21.9 billion for FY2014. The program supports improvement of the condition and performance of the National Highway System (NHS),[11]

[10] Federal Highway Administration, *MAP-21: Federal Highway Administration; Funding Tables*, Washington, DC, 2012, http://www.fhwa.dot.gov/map21/funding.cfm. This site includes tables that set forth the estimated apportionments over the life of MAP-21 on a state-by-state basis.

[11] Section 1104 redefines the components of the NHS, which already included all Interstate highways and most major roads, allowing for the incorporation of additional principal arteries not previously included in the NHS and eliminating the national mileage limit on the designations. It also adds the strategic highway network to the NHS and sets forth clarified rules for modifications to the National Highway System and the Interstate System.

combining the former Interstate Maintenance Program, the National Highway System Program, and the Highway Bridge Program's on-system component. NHPP includes projects to achieve national performance goals for improving infrastructure condition, safety, mobility, or freight movement, consistent with state or metropolitan planning; construction, reconstruction, or operational improvement of highway segments; construction, replacement, rehabilitation, and preservation of bridges, tunnels, and ferry boats and ferry facilities; inspection costs and the training of inspection personnel for bridges and tunnels; bicycle transportation infrastructure and pedestrian walkways; intelligent transportation systems; and environmental restoration, as well as natural habitat and wetlands mitigation within NHS corridors. If Interstate System and NHS bridge conditions in a state fall below the minimum conditions established by the Secretary of Transportation, certain amounts of funds would be transferred from other specified programs in the state. NHPP funds may be used for Appalachian Development Highway System projects with no state match.

Surface Transportation Program (STP; §1108)

STP remains the federal-aid highway program with the broadest eligibility criteria. Funds can be used on any federal-aid highway, on bridge projects on any public road, on transit capital projects, on non-motorized paths, and on bridge and tunnel inspection and inspector training. MAP-21 authorized $10 billion for FY2013 and $10.1 billion for FY2014. Although Transportation Enhancements are funded under the new Transportation Alternatives program, these types of projects can also be funded under STP if a state wishes. MAP-21 also allows STP funds to be used for Appalachian Development Highway System Projects with no state match.

Half of each state's STP funds are to be distributed within the state based on population. The remainder may be spent anywhere in the state. STP funds equal to 15% of the state's highway bridge apportionment for FY2009 are to be set aside for off-system bridges. MAP-21 included a special rule allowing some STP funds reserved for rural areas to be used on minor collector roads.

Highway Safety Improvement Program (HSIP; §1112)

HSIP remains largely as it was under SAFETEA, supporting projects that improve the safety of road infrastructure by correcting hazardous road locations, such as dangerous intersections, or making road improvements such as adding rumble strips. HSIP is funded at $2.39 billion for FY2013 and at $2.41 billion for FY2014. The Rail-Highway Grade Crossing Program was continued through a $220 million annual setaside.

Congestion Mitigation and Air Quality Program (CMAQ; §1113)

Under Map-21, CMAQ is authorized at roughly $2.209 billion for FY2013 and $2.411 billion for FY2014. Eligibility was expanded to include demand-shifting projects such as telecommuting, ridesharing, and road pricing.

Transportation Alternatives Program (TA; §1122): Transportation Enhancements/Non-Motorized Transportation Alternatives

In MAP-21, Congress changed the Transportation Enhancements program and other non-motorized transportation programs,[12] compromising between the positions of groups that wanted more funding for these programs and groups that wanted to eliminate these programs entirely. The compromise eliminated certain types of activities from the list of eligible transportation enhancements,[13] renamed the transportation enhancements group of activities "transportation alternatives," and combined this group of activities with the former Recreational Trails and Safe Routes to Schools programs under one umbrella program called Transportation Alternatives (TA). TA fund also may be used for "planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways." TA is a set-aside from each state's NHPP, STP, HSIP, CMAQ, and Metropolitan Planning apportionments amounting to roughly 2% of total highway funding. The amount available to each state is equal to the amount the state was required to set aside for Transportation Enhancements in FY2009. MAP-21 reduced the total amount set aside for these programs, from $1.2 billion in FY2011 to $809 million in FY2013 and $820 million in FY2014.[14]

There is no specific funding level for any of the programs within this group.[15] States are required to allocate 50% of the funds to local entities for obligation. If states do not obligate the remaining 50% of funding, they then may use these funds for any TA- or CMAQ-eligible projects once the unobligated amount accumulates to 100% of the state's annual TA set-aside.

MAP-21 also makes bicycle facilities and pedestrian walkways eligible expenses under the National Highway Performance Program, the Surface Transportation Program; and the Highway Safety Improvement Program.

Transferability Among the Core Programs (§1509)

MAP-21 permits states to transfer up to 50% of any apportionment to any other apportionment program. However, no transfers are permitted of funds that are suballocated to areas by population (such as STP) or of Metropolitan Planning funds.

[12] §1122.

[13] Funding for transportation museums, scenic or historic highway programs, acquisition of scenic or historic easements and sites, and pedestrian and bicycle safety and education programs was eliminated.

[14] The new set-aside is equal to the amount set aside for transportation enhancements in FY2009. There is also a provision that allows states to use a portion of this funding for other purposes, under a particular circumstance: 50% of the funds are to be suballocated to local government authorities, and if the state does not use the remaining 50%, then in subsequent years the state may use the amount in excess of one year's funding for any project eligible under CMAQ. As an example, if the Transportation Alternative set-aside for a state is $20 million, the state must suballocate $10 million to local governments, and then may use any funds in excess of the remaining $10 million balance for other CMAQ projects.

[15] Each state is required to obligate the same amount for recreational trails that it was apportioned for recreational trails in FY2009—but states are allowed to opt out of that requirement.

Other Highway Programs

Emergency Relief (ER) Program

Section 1107 clarifies eligibility criteria regarding roads and bridges damaged by natural disasters or catastrophic failures from an external cause. Roads already closed to traffic or already scheduled for the construction phase in the approved statewide transportation improvement plan at the time of the disaster are not eligible for ER funds. It also reiterates that ER funds can only be used on federal-aid highways. Within two years of a natural disaster or catastrophic failure, the state must apply and provide a comprehensive list of all eligible project sites and repair costs. The total cost of an ER project may not exceed the cost of repair or reconstruction of a comparable facility. The U.S. territories may not receive more than $20 million in a single fiscal year. Section 1508 allows the 180-day emergency period during which the federal government pays 100% of repair costs to be adjusted for time lost due to lack of access to damaged facilities. Also, 90% federal share may be allowed at the discretion of the Secretary of Transportation if the cost to repair exceeds the annual state apportionment under 23 U.S.C. 104. FEMA, not FHWA, will fund debris removal for major disasters declared under the Stafford Act. In the past, ER funds were often used for first-pass debris removal on disaster-impacted federal-aid highways.

Territorial and Puerto Rico Highway Program

Section 1114 funds the Puerto Rico and Territorial Highway programs at $150 million and $40 million annually, respectively, for both FY2013 and FY2014.

Appalachian Development Highway System Program (ADHS)

MAP-21 eliminates the ADHS as a freestanding program, incorporates its eligibilities into NHPP and STP, and provides for a 100% federal share for ADHS projects to encourage spending from these programs to complete the system. Within one year of enactment, each state represented on the Appalachian Regional Commission is to establish a plan for completion of the designated corridors within the state, including performance targets and a target completion date. In addition, to encourage states with significant uncompleted ADHS route miles to maintain their efforts toward completion, MAP-21 requires that if a state's estimated cost to complete its unfinished portion of the ADHS exceeds 15% of the total cost to complete of the entire system's unfinished mileage, then the state's completion plan may not reduce the state's obligated funds for the ADHS for any subsequent fiscal year.

Projects of National and Regional Significance (PNRS)

Section 1120 establishes a program similar to the program of the same name in SAFETEA. Budget authority, not contract authority, of $500 million is provided for FY2013. This discretionary program would require an appropriation before funds could be made available. The purpose is to fund critical high-cost surface transportation infrastructure projects that are difficult to complete with existing funding but would generate national and regional economic benefits, increase global competitiveness, reduce congestion, improve roadways vital to national energy security, improve the movement of freight and people, and improve transportation safety.

Construction of Ferry Boats and Ferry Terminal Facilities

Section 1121 changes the existing Title 23 discretionary Ferry Boats and Ferry Terminal Facilities Program into a formula program that includes no set-asides for specific states, as became the practice under the discretionary program.[16] MAP-21 provides the program with $67 million annually for FY2013 and FY2014. The funding is to be apportioned according to this formula: 20% based on a ferry system's total passengers for the most recent fiscal year relative to the number of passengers carried by all ferry systems; 45% based on the number of vehicles carried per day by the system relative to the number of vehicles carried by all systems; and 35% based on the total route miles serviced by the ferry system relative to the total route miles serviced by all ferry systems. Ferry boats and ferry facilities would also be eligible for formula funds under the National Highway Performance Program.

Federal Lands and Tribal Transportation Programs

Section 1119 restructures several programs to create the Federal Lands and Tribal Transportation Program. The new program has three main components:

- the Tribal Transportation Program, authorized at $450 million annually, replaces the Indian Reservation Roads Program;
- the Federal Lands Transportation Program, authorized at $300 million annually, combines the Park Roads and Parkways Program and the Refuge Roads Program;
- the Federal Lands Access Program, authorized at $250 million annually, replaces the Public Lands Highways Program.

The Tribal Transportation Program uses a new statutory formula for distributing some of the funds among tribes. This formula, to be phased in over four years beginning in FY2013, is based partly on road mileage and tribal population and partly on the relative need and population factors used under SAFETEA. MAP-21 also authorizes the Tribal High Priority Projects Program to fund a tribe's most important projects that cannot be completed with a regular annual allocation or for a project which is the result of an emergency or disaster. This is a new discretionary program, but compares with a setaside from the former Indian Reservation Roads Program. MAP-21 authorizes $30 million from the general fund for this program for FY2013 and FY2014.

Funding for the Federal Lands Access Program is allocated among the states by a formula that takes into account the amount of federal land, the number of recreational visitors, the number of miles of federal roads, and the number of federally owned bridges. From the funding for the Federal Lands Transportation Program $240 million is made available to the National Park Service and $30 million to the Fish and Wildlife Service. The remaining funding will be allocated among three other federal land management agencies, the Forest Service, the Corps of Engineers, and the Bureau of Land Management.

[16] The program is part of the Federal-Aid Highway Program because it is designed to permit federal participation in the construction of ferry boats and terminal facilities where it is not feasible to build a bridge, tunnel, or other normal highway structure in lieu of the use of a ferry.

Tolling

Law previous to MAP-21 allowed tolling of non-Interstate federal-aid highways. However, toll-free Interstate Highways, other than bridges or tunnels, could be converted to toll roads only under a pilot program limited to three projects. No states have applied to use tolls to fund new Interstate routes under the Interstate System Construction Toll Pilot Program, but some states are adding express toll lanes to existing roads and imposing congestion pricing under the Express Lanes Demonstration Program and the Value Pricing Pilot Program.

MAP-21 allows for the construction of totally new Interstate Highways as toll roads, essentially mainstreaming the Interstate System Construction Toll Pilot Program. It also allows for the addition of toll lanes on an existing Interstate Highway as long as the total number of "free" lanes is not reduced. The act eliminates the long-standing requirement that a toll agreement be executed with the FHWA prior to tolling a facility under the mainstream tolling programs. The act requires that by October 1, 2016, all federal-aid highway toll facilities implement interoperable tolling technology.

Tolls are important revenue streams for many public private partnerships and alternative financing mechanisms. The continued support in Congress for using congestion pricing fits well with expanded tolling of HOV and express lanes as well as the now allowable tolling of extended Interstate routes. Congress, on the other hand, did not expand the Interstate Reconstruction and Rehabilitation Pilot Program following public statements by participants that they were hoping to direct as much of the burden of tolls to interstate travelers as possible.

Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

The TIFIA program provides secured loans, loan guarantees, and lines of credit for major surface transportation projects. Loans must be repaid with a dedicated revenue stream, typically a project-related user fee. MAP-21 greatly enlarges TIFIA by increasing its funding from $122 million annually to $750 million in FY2013 and $1 billion in FY2014. DOT estimates that after administrative costs and application of the obligation limitation it will have $690 million for credit subsidy support in FY2013 and $920 million in FY2014.[17] Assuming an average subsidy cost of 10%, this may provide DOT with the capacity to lend $6.9 billion in FY2013 and $9.2 billion in FY2014.[18] MAP-21 also increases the maximum share of project costs that TIFIA may provide from 33% to 49%, probably lowering the share of nonfederal resources leveraged with federal loans.

[17] Department of Transportation, "Letters of Interest for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program," 77 *Federal Register* 45411-45415, July 31, 2012, http://www.fhwa.dot.gov/ipd/pdfs/tifia/fy2013_tifia_nofa_073112.pdf.

[18] The subsidy cost is "the estimated long-term cost to the government of a direct loan or a loan guarantee, calculated on a net present value basis, excluding administrative costs," Federal Credit Reform Act of 1990 (FCRA), §502 (5A).

Another change made by MAP-21 is permitting TIFIA credit assistance to be provided for a program of projects secured by a common security pledge. This would be accomplished through a "master credit agreement." Prior to MAP-21, TIFIA only allowed agreements on a project-by-project basis. The Los Angeles County Metropolitan Transportation Authority (Metro), for one, has sought this change to accelerate the financing of 12 transit projects (known as the 30/10 Initiative).[19] The master credit agreement also establishes a way to make a commitment of future credit assistance contingent on the availability of funds.

The threshold cost for a single project to be eligible for TIFIA assistance remains $50 million, or $15 million for intelligent transportation system projects, except that MAP-21 includes a threshold of $25 million for rural infrastructure projects.[20] MAP-21 also sets aside 10% of program funds to assist rural projects. Additionally, whereas loans for urban projects must be charged interest not less than the Treasury rate, rural projects that are assisted by the rural setaside are to be offered loans at half the Treasury rate. Rural projects are defined very expansively to include any project in an area other than a city with 250,000 or more inhabitants.

Prior to MAP-21, projects seeking TIFIA assistance were evaluated by DOT on eight criteria.[21] MAP-21 eliminates these selection criteria and now permits TIFIA assistance for any eligible project. One of the key eligibility criteria is creditworthiness. To be eligible, a project's senior debt obligations and the borrower's ability to repay the federal credit instrument must receive an investment-grade rating from at least one nationally recognized credit rating agency. The TIFIA assistance must also be determined to have several beneficial effects: fostering a public-private partnership, if appropriate; enabling the project to proceed more quickly; and reducing the contribution of federal grant funding. Other eligibility criteria include satisfying planning and environmental review requirements and being ready to contract out construction within 90 days after the obligation of assistance. Applications for assistance must be accepted by DOT on a rolling basis.

Changes to the TIFIA program, particularly the big increase in funding, have generally been well received. Nevertheless, there is some concern that the increase in TIFIA's share of project costs to 49% will reduce the non-federal share of project costs and possibly also "crowd out" private financing. Although DOT's ability to administer quickly such a large funding boost is also a concern, the agency acted to begin ramping up credit assistance by issuing a notice of funding availability just several weeks after MAP-21's enactment.

[19] Los Angeles County Metropolitan Transportation Authority (Metro), *Metro's 30/10 Initiative*, http://libraryarchives.metro.net/DB_Attachments/100524_30_10_Initiative.pdf.

[20] The law also provides eligibility for projects whose total expected costs are 33.3% of the amount of federal highway assistance apportioned in the most recent fiscal year to the state in which the project is located. This is unchanged in MAP-21.

[21] These were the amount of private participation; environmental impact; national or regional significance; project acceleration; creditworthiness; use of new technologies; reduced federal grant assistance; and consumption of budget authority.

MAP-21 does not contain other major alternative financing provisions, such as federal funds to capitalize state infrastructure banks or increased volume limits on private activity bonds. Nor were there provisions to create a national infrastructure bank or to reinstate Build America Bonds.

Transit

The public transit provisions of MAP-21 are contained in Division B, the Federal Public Transportation Act (FPTA) of 2012. Like MAP-21 as a whole, the FPTA authorizes funds for the remainder of FY2012 and for FY2013 and FY2014. Moreover, like MAP-21 as a whole, the transit provisions simplify the structure of the public transit program, eliminate discretionary programs in favor of formula programs, and introduce performance management.[22]

Funding

For federal transit programs the bill authorizes $10.578 billion in FY2013 and $10.695 billion in FY2014, slight increases in nominal terms from the $10.458 billion in FY2012. About 80% of the authorized funds are from the mass transit account of the highway trust fund, with the remaining 20% authorized to come from the general fund (**Table 3**).

Program Restructuring

FPTA restructures the federal transit program. The Fixed Guideway Modernization Program is replaced with a new State of Good Repair (SGR) Grant Program. Funding for the SGR Program is increased to $2.136 billion in FY2013 and $2.166 billion in FY2014 from the $1.667 billion allotted to Fixed Guideway Modernization Program in FY2012. The new State of Good Repair program, funded from the mass transit account of the highway trust fund, has two components:

- The **High Intensity Fixed Guideway SGR Program** distributes 97.15% of the funding by formula for maintaining fixed guideway transit systems in a state of good repair. Funding is distributed by a new formula that uses fixed guideway vehicle miles and route miles that are at least seven years old.
- The **High Intensity Motorbus SGR** program distributes the remaining 2.85% of the funds by formula for public transportation provided on a high occupancy vehicle (HOV) facility. Funding is distributed by a formula that uses high-intensity motor bus vehicle miles and route miles for revenue services that are at least seven years old.

[22] Federal Transit Administration, *MAP-21: Federal Transit Administration*, Washington, DC, 2012, http://www.fta.dot.gov/map21/index.html. This website includes general Map-21 information on public transportation, as well as program fact sheets and apportionment information.

Linked with the intentions of the SGR program, transit agencies are required by FPTA to develop an asset management system, including an asset management plan with performance targets based on performance metrics developed by the Secretary.

The Bus and Bus Facilities Program is retained in MAP-21, but at a much reduced funding level. Funding is authorized at $422 million in FY2013 and $428 million in FY2014, down from $984 million in FY2012. Additionally, funding from this heavily earmarked discretionary program is now to be distributed by formula with each state and territory receiving a minimum allocation and the remaining funds distributed according to population and service levels. A provision passed by the House Transportation and Infrastructure Committee to distribute bus program funding to providers of bus transit in urbanized areas that do not offer rail services was not adopted.

Another significant change in MAP-21 is the combination of the Elderly Individuals and Individuals with Disabilities Program and the New Freedom Program, which provides formula funding for the disabled, into a single program. The new combined program is called the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This program is authorized at $255 million in FY2013 and $258 million in FY2014 compared with $226 million for the Elderly and Disabled and New Freedom programs combined in FY2012. Funds in the new combined program are distributed by formula in the way that New Freedom funding was distributed: 60% is apportioned to large urbanized areas, 20% to small urbanized areas, and 20% to rural areas. Apportionments to specific areas are based on the number of elderly and disabled residents. Requirements for a locally developed, coordinated human services transportation plan are maintained.

Table 3. Public Transit Funding Authorized by MAP-21

(thousands of dollars)

Program	FY2013	FY2014
Total	**10,578,000**	**10,695,000**
Trust Funded Programs	**8,478,000**	**8,595,000**
Urbanized Area Formula Program	4,397,950	4,458,650
Passenger Ferry Boat Program (discretionary)	*30,000*	*30,000*
Operational Support of State Safety Oversight	*21,990*	*22,293*
State of Good Repair	2,136,300	2,165,900
High Intensity Fixed Guideway	*2,075,415*	*2,104,172*
High Intensity Motorbus	*60,885*	*61,728*
Rural Area Formula Program	599,500	607,800
Public Transportation on Indian Reservations	*30,000*	*30,000*
Appalachian Development Public Transportation	*20,000*	*20,000*
Rural Transportation Assistance Program (RTAP)	*11,990*	*12,156*
Projects of National Scope	*1,799*	*1,823*
Growing States and High Density States Formula	518,700	525,900
Bus and Bus Facilities (now §5339)	422,000	427,800
Mobility of Seniors and Individuals with Disabilities	254,800	258,300
Planning	126,900	128,800
Pilot Program for Transit Oriented Development	10,000	10,000
National Transit Institute	5,000	5,000
National Transit Database	3,850	3,850
Bus Testing Facility	3,000	3,000
General Funded Programs	**2,100,000**	**2,100,000**
New Starts	1,907,000	1,907,000
FTA Administration	104,000	104,000
Research, Development, Demonstration, Deployment	70,000	70,000
Low and no emissions buses	*45,500*	*45,500*
Low/no emissions bus facilities and equipment	*7,000*	*7,000*
Transit Cooperative Research Program (TCRP)	7,000	7,000
Technical Assistance and Standards Development	7,000	7,000
Human Resources and Training	5,000	5,000
Emergency Relief Program	ssaan	ssaan

Source: Federal Transit Administration, MAP-21 Fact Sheet: Funding Summary.

Notes: ssaan = such sums as are necessary.

The Jobs Access and Reverse Commute (JARC) formula program is eliminated in MAP-21, but the activities carried out under this program are made an eligible expense under the Urbanized and Rural Area Formula programs. MAP-21 also eliminates several discretionary programs including the Clean Fuels Grant Program, the Transit in Parks Program, the Over-the-Road Bus Program, and the Alternatives Analysis Program.

The Growing States and High Density State Formula Program is maintained at a somewhat higher funding level. Funding distributed through this formula is authorized at $519 million in FY2013 and $526 million in FY2014, up from $465 million in FY2012.

The Urbanized Area Formula Program is maintained largely as it was before MAP-21, but at an increased funding level. Funding is authorized at $4.398 billion in FY2013 and $4.459 billion in FY2014, up from $4.160 billion in FY2012. The Small Transit Intensive City (STIC) setaside from the Urbanized Areas Formula Program is increased from 1% to 1.5%. In addition, 0.5% is set aside for the state safety oversight program grants. MAP-21 also creates a new discretionary ferry boat grants program with $30 million set aside from the Urbanized Area Formula Program.

Similarly, the Rural Area Formula Program is maintained (although the name is changed from the Non-Urbanized Area Formula Program) and funding is increased from $465 million in FY2012 to $600 million in FY2013 and $608 million in FY2014. The formula used to apportion Rural Area program funds that has traditionally been based on rural land area and population is changed in MAP-21 to incorporate vehicle revenue miles and low-income individuals. Setasides from the rural formula program for the Rural Transit Assistance Program (RTAP) and the Public Transportation on Indian Reservations Program are maintained, and a new $20 million setaside for Appalachian Development Public Transportation Assistance is added. This new program mirrors the existing highway program for Appalachian development. MAP-21 doubles the amount set aside for Public Transportation on Indian Reservations from $15 million to $30 million annually. Of the $30 million, $25 million is distributed by formula and $5 million competitively.

MAP-21 creates the Public Transportation Emergency Relief Program that, like the Appalachian Development Public Transportation Assistance Program, mirrors an existing highway program. The emergency relief program, akin to the existing Highway Emergency Relief Program, would provide funding for capital and operating costs in the event of a natural or man-made disaster. The bill authorizes such sums as may be necessary to carry out this new program.

MAP-21 did not include proposals to increase the federal share of bus and bus facilities capital projects for transit systems that contract out at least 20% of fixed route bus service. However, MAP-21 does direct the Secretary of Transportation to promote private sector participation in public transit by providing technical assistance and education to transit agencies and by identifying impediments to public-private partnerships.

New Starts Program

MAP-21 reauthorizes the New Starts Program that provides funding to build new fixed-guideway transit systems and add to existing systems. Funding for the New Starts program in MAP-21 is authorized at $1.907 billion for both FY2013 and FY2014, a slightly reduced level from the $1.955 billion authorized in FY2012. As was previously the case, funding is authorized from the general fund.

MAP-21 makes substantial changes to the New Starts program. To begin with, the bill allows New Starts program funds to be used for substantial investments in *existing* fixed guideway systems that increase the capacity of a corridor by at least 10%. These types of projects are termed "core capacity improvement projects." It also authorizes the evaluation and funding of a program of interrelated projects.

MAP-21 simplifies the New Starts process by reducing the number of major stages from four to three. The new stages are termed project development, engineering, and construction.[23] To enter the project development phase, the applicant now only needs to apply to FTA and initiate the NEPA process. The bill eliminates the alternatives analysis that is separate from the alternatives analysis required by NEPA. Along with the NEPA work, during project development the project sponsor must develop the information needed by FTA to review the justification and the local financial commitment. Generally, the applicant has two years to complete project development. MAP-21 requires FTA to use an expedited process to review a sponsor's technical capacity if it has successfully completed a fixed guideway or core capacity project in the recent past.

The project is permitted to enter into the engineering phase once the NEPA process is concluded, the project is selected as the locally preferred alternative, the project is adopted into the metropolitan plan, and the project is justified on its merits. After engineering, a project is eligible to enter into a full funding grant agreement with FTA and to move into the construction phase. MAP-21 also tries to advance projects more quickly using special warrants for projects of which the federal share is $100 million or less or 50% or less of the total project cost. According to FTA special warrants are "ways in which projects may qualify for automatic ratings on the project justification criteria."[24]

For Small Starts projects, those requesting $75 million or less in federal assistance and costing in total $250 million or less, there are just two phases, project development and construction. Small Starts are also defined to include corridor-based bus rapid transit, a rail-like service that does not for the most part operate in a separate right of way. Unlike SAFETEA, which reserved $200 million of the overall program authorization for Small Starts, MAP-21 does not reserve funds for Small Starts projects in FY2013 and FY2014. This may change the mix of New Starts and Small Starts projects that are funded, particularly because the newly permitted grants for core capacity projects could reduce the amount of funding available for other projects.

MAP-21 creates a pilot program for expediting New Starts project delivery, limited to three projects. A common criticism of New Starts is that it takes too long to develop and deliver projects, a criticism that MAP-21 seeks to address. An issue going forward, therefore, will be whether the changes made in MAP-21 do actually speed the process.

Operating Assistance

For the most part, MAP-21 maintains the prohibition on the use of federal funds for transit operating expenses in urbanized areas of 200,000 or more residents. However, it adds an exception to this general prohibition that is generally known as the "100 bus rule." MAP-21

[23] Previously, the New Starts process involved four major phases: planning and alternatives analysis; preliminary engineering; final design; and construction.

[24] Federal Transit Administration, *Fact Sheet: Fixed Guideway Capital Investment Grants ("New Starts"), Section 5309*, http://www.fta.dot.gov/documents/MAP-21_Fact_Sheet_-_Fixed_Guideway_Capital_Investment_Grants.pdf.

permits transit systems in these larger urbanized areas operating 76 to 100 buses in peak service to use 50% of their Urbanized Area apportionment for operating expenses. For transit systems operating 75 or fewer buses in the peak period, the allowable amount is 75%.

Transportation Planning and Performance Management

Arguably the biggest change made by MAP-21 in transportation planning is a requirement for the use of performance management throughout the planning process. Performance management requires establishing performance measures and setting targets. MAP-21 makes changes in planning requirements at the national, state, and metropolitan levels.

National Planning

MAP-21 establishes seven national goals that states and MPOs must address in their planning. The seven national goals are: safety; infrastructure condition; congestion reduction; system reliability; freight movement and economic vitality; environmental sustainability; and reduced project delivery delays. MAP-21 generally requires performance measures and targets in support of these national goals to be developed by states, metropolitan planning organizations (MPOs), regional planning organizations, and public transit agencies.

In some areas of transportation system performance MAP-21 requires DOT to develop measures and standards. These include the condition of pavements on the Interstate System; the condition of pavements and bridges on the National Highway System, excluding the Interstate System; the performance of the National Highway System, including Interstates; the number of serious injuries and fatalities, and the rate of serious injuries and fatalities per vehicle mile traveled; traffic congestion; on-road mobile source emissions; freight movement on the Interstate Systems; transit asset state of good repair; and transit vehicle safety.

At the national level, MAP-21 also requires DOT to develop a national freight strategic plan. Among other things, the plan is required to include an assessment of the conditions and performance of the national freight network, forecasts of freight volumes over the next 20 years, identification of highway bottlenecks and the costs associated with addressing them, barriers to improving freight performance, and best practices for improving the national freight network.

Statewide Planning

In many respects, MAP-21 leaves state planning requirements as they were. Each state is still required to develop a statewide transportation plan and a statewide transportation improvement program. However, there are some changes (§1202). States are required to incorporate a performance-based approach into transportation planning in support of national goals (§1203). Performance targets are to be set by each state in coordination with MPOs. Each state must include in its statewide plan an evaluation of progress toward achieving its performance targets. Each state's transportation improvement program is also required to include a description of how its investment priorities will help achieve the stated performance targets.

As part of the new National Highway Performance Program (§1106), each state is required to develop a risk-based asset management plan for the National Highway System that includes performance targets and an investment strategy. A state that fails to make significant progress toward achieving its targets has to submit a description of actions it will undertake to achieve them. As part of the planning, DOT must set minimum standards for the condition of Interstates and bridges on the National Highway System. If the condition of a state's Interstates and NHS bridges falls below that minimum, the state is required to redirect its federal apportionments to bring those facilities up to par. Additionally, if a state fails to adequately develop and implement a risk-based asset management plan, the maximum federal share of projects under the program is reduced to 65%.

The Highway Safety Improvement Program (§1112) requires each state to develop a strategic highway safety plan which, among other things, "describes a program of strategies to reduce or eliminate safety hazards." Failure to have an updated plan approved by DOT may lead to a loss of some highway program funds. Additionally, each state must also set performance targets for reducing the number of serious injuries and fatalities, and serious injuries and fatalities per vehicle mile traveled using measures developed by DOT. Failure to make significant progress toward meeting these targets may lead to a loss of flexibility in the use of highway funds and extra reporting requirements.

MAP-21 provides for states to create regional transportation planning organizations as planning entities in nonmetropolitan areas, somewhat akin to MPOs in urbanized areas.

Metropolitan Planning

MAP-21 did not include several proposed changes concerning MPOs, particularly alterations in population thresholds for various activities. Consequently, MAP-21 leaves metropolitan transportation planning requirements much as they were. MPOs are still required in urbanized areas, places of 50,000 or more residents, and these MPOs are still required to develop long-range plans and transportation improvement programs.

As with statewide planning, the biggest change in metropolitan planning is the requirement for a performance-based approach to support national goals. MAP-21 requires MPOs to establish performance targets that support the national goals and to set performance targets that address the performance measures established by DOT. Each MPO must include in its plan an evaluation of the region's progress toward achieving its performance targets. Moreover, each MPO's transportation improvement program must be designed to make progress toward the targets.

MPOs in transportation management areas with over 1 million residents that are in non-attainment or maintenance for air quality must also develop performance plans that link CMAQ funded projects with performance targets for emissions and congestion reduction, using measures developed by DOT. MAP-21 also includes provisions for the optional development by MPOs of multiple scenarios, sometimes known as blueprint planning.

In many respects MAP-21 initiates a shift to outcome-based planning. Implementation issues, including the development of goals and performance measures, will be likely to preoccupy many MPOs for the foreseeable future. The requirements in MAP-21 contain little in the way of enforcement against those MPOs that fail to follow Congress's direction.

Accelerating Transportation Project Delivery

Transportation project development is initiated and completed largely at the local, tribal, or state level, with ultimate project approval at the federal level from FHWA or FTA. Generally, the stages include initial project planning, preliminary design/engineering and environmental review, final design and rights-of-way acquisition, construction, and facility operation and maintenance. Although issues that may delay project delivery can occur at any of phase of development, legislative efforts during the reauthorization debate focused on expediting overall project delivery by streamlining the environmental review process.[25]

For surface transportation projects approved for funding under federal-aid highway or public transportation programs, the environmental review process involves FHWA or FTA working with other federal and state or tribal agencies to ensure project compliance with all local, state, tribal and federal environmental requirements. This interdisciplinary undertaking is accomplished largely by documenting DOT's consideration of a proposed project's environmental impacts as required under the National Environmental Policy Act (NEPA, 42 U.S.C. §4321 et seq.).[26]

Procedures necessary to document compliance with NEPA were the primary focus of legislative efforts to expedite overall environmental compliance in MAP-21.[27] However, the act also includes provisions not entirely applicable to the NEPA process, but relevant to other processes likely to take place during the planning or preliminary design phase.

Requirements Applicable to the Environmental Review Process

Before a project can be approved for funding under DOT programs, FHWA or FTA must ensure that the project will comply with all state, tribal, and federal requirements—including those intended to consider, prevent, or minimize the project's impacts to the environment.[28] For a given surface transportation project, environmental requirements may apply to a project as a result of its impact on a resource that is subject to some level of protection under Titles 23 or 49 (e.g., DOT's prohibition on the approval of transportation projects that use parkland or historic sites)[29] or under other federal law (e.g., the National Historic Preservation Act, the Clean Water Act, or Endangered Specifies Act, to name a few). In addition to federal requirements, a project may be subject to various local, state or tribal laws or regulations.

Provisions in MAP-21 intended to accelerate project delivery focus primarily on elements of the NEPA compliance process, but may extend beyond NEPA. Generally, those provisions fall into one of the following categories:

[25] For more information, see CRS Report R41947, *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, by (name redacted) and (name redacted).

[26] CRS Report R42479, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress*, by (name redacted).

[27] Under Title I, Federal-Aid Highways, Subtitle C.

[28] Requirements broadly referred to as "environmental" requirements may involve those that arise as a result of the proposed project's impact to an affected community or to certain natural, cultural, or environmental resources.

[29] Pursuant to the "Preservation of parkland requirements" under 23 U.S.C. Section 138, more commonly referred to as "Section 4(f)."

- statements of national policy and codification of existing policies, processes, or procedures;
- amendments to selected requirements pertaining to the environmental review process established under SAFETEA;
- directives to DOT to designate certain projects as categorical exclusions (CEs) from NEPA review, or to apply the CE determination process in a certain way; and
- directives to DOT to establish programs and gather information.

On balance, a complex range of factors will affect the degree to which the changes enacted in MAP-21 will accelerate environmental reviews and ultimately project delivery. It is possible that they that might instead slow project delivery by removing mechanisms to coordinate the potentially complex environmental compliance process or by adding requirements to that process.

Statements of National Policy and Codification of Existing Requirements

Compliance with NEPA is demonstrated pursuant to regulations promulgated by both DOT and the Council on Environmental Quality (CEQ).[30] Several provisions intended to accelerate project delivery in MAP-21 codify regulations that are currently included in either CEQ or DOT regulations implementing NEPA. MAP-21 also includes several provisions that state national policies or priorities similar to procedures or practices those currently being implemented by DOT (under existing regulation or through programs such as DOT's Every Day Counts program).[31] Those provisions include:

- Section 1301, Declaration of policy and project delivery initiative.
- Section 1310, Integration of planning and environmental review.
- Section 1311, Development of programmatic mitigation plans.
- Section 1319, Accelerated decision making in environmental reviews.
- Section 1320, Memoranda of agency agreements for early coordination.

Amendments to Environmental Review Requirements Enacted Under SAFETEA

Several provisions in MAP-21 amend requirements applicable to the environmental review process enacted under SAFETEA, mainly in Section 139 of Title 23, "Efficient environmental reviews for project decisionmaking" (hereinafter §139). Provisions that may lead to appreciable changes in the NEPA environmental review process are Sections 1306 and 1309.

[30] CEQ requirements at 40 C.F.R. Sections 1500-1508 apply broadly to all federal agencies and apply explicitly to NEPA compliance. DOT's regulations, "Environmental Impact and Related Procedures," build on the CEQ requirements as necessary to ensure DOT compliance with NEPA.

[31] For examples of DOT programs intended to streamline the NEPA and overall environmental review process, see information on FHWA's "Environmental Streamlining and Stewardship" at http://environment.fhwa.dot.gov/strmlng/index.asp and DOT's "Every Day Counts" initiative at http://environment.fhwa.dot.gov/integ/edc.asp.

Section 1306, "Accelerated Decisionmaking," amends Section 139(h), Issue Identification and Resolution, to create an issue resolution process that may be initiated by DOT to ensure that project deadlines are met. The process would apply to projects that require an environmental impact statement (EIS) under NEPA if an agency with jurisdiction over some project-related decision cannot provide "reasonable assurances" the agreed-upon deadlines will be met. It also establishes financial penalties that could be imposed on an agency that fails, within a certain time frame, to issue or deny a permit, license, or other approval required under any federal law. This section thus authorizes DOT to impose a penalty on an agency that is exercising authority under law within its, not DOT's, jurisdiction (e.g., the U.S. Army Corps of Engineers' obligation to issue a permit for projects affecting navigable waterways pursuant to the Clean Water Act). Also, requirements in Section 1306 are structured in a way that may actually delay certain approvals. If an agency faces a possible penalty unless it acts on an application by a certain date, the agency may have an incentive to simply deny the approval.

Section 1309 amends Section 139 to add "Enhanced Technical Assistance and Accelerated Project Completion." Under these provisions certain projects involved in EIS preparation may receive technical assistance from DOT to resolve outstanding issues and project delays. Technical assistance may include providing additional staff, training, and expertise or supplying onsite assistance.

Additional amendments to Section 139 are included in MAP-21 under Sections 1305, "Efficient environmental reviews for project decisionmaking," 1307, "Assistance to affected federal and state agencies," and 1308, "Limitations on claims." Those sections largely involve requirements that may not appreciably change the environmental review process because they involve minor changes to the process or include requirement being implemented by DOT under current regulations or programs. For example, under Section 1305(a), DOT is directed to promulgate regulations to allow for programmatic approaches to the environmental review process. Such approaches are already allowed, and encouraged, under CEQ regulations.[32] DOT has already developed several nationally applicable programmatic evaluations that states may use in completing the environmental review process for certain types of projects[33] and has entered into programmatic agreements with individual state DOTs to expedite the process for documenting and demonstrating compliance with various federal requirements.

MAP-21 also amends the following NEPA-related programs created pursuant to SAFETEA:

- **State assumption of responsibility for categorical exclusions** (23 U.S.C §326). As originally enacted under SAFETEA, states were allowed to assume federal authority for determining whether certain designated activities are CEs. To assume DOT authority in this area, a state was required to enter into a memorandum of understanding (MOU) setting forth the responsibilities to be assigned to that state.[34] MAP-21 Section 1312 amends Section 326 to specify that DOT shall not require states to forego project delivery methods that are

[32] See 40 C.F.R. §1508.29.

[33] For information regarding FHWA's national programmatic evaluations for transportation enhancements, see http://www.fhwa.dot.gov/environment/transportation_enhancements/guidance/gmemo_program.cfm; for projects that require an evaluation under Section 4(f), see http://www.environment.fhwa.dot.gov/4f/4fnationwideevals.asp.

[34] Pursuant to directive included in SAFETEA, DOT established an MOU template and guidance to states that wanted to accept federal authority to process CEs, available online at http://www.fhwa.dot.gov/hep/6004moutemplate.htm.

"otherwise permissible for highway projects" as a condition of allowing states to assume responsibility for CE determinations.

- **Surface Transportation Project Delivery Pilot Program** (23 U.S.C. §327). As originally enacted under SAFETEA, the pilot program allowed DOT to assign, and five states (Oklahoma, California, Texas, Ohio, and Alaska) to assume, the federal responsibilities under NEPA for one or more highway projects in that state. MAP-21 Section 1313 amends Section 327 to make permanent the pilot program, to allow all states to participate, and to expand the program to include NEPA responsibilities with respect to one or more railroad, public transportation, or multimodal project.

Provisions Pertaining to Categorical Exclusions

Projects eligible for CEs are those that, based on past DOT experience with similar actions, normally do not *significantly* impact the environment.[35] MAP-21 includes provisions that are broadly intended to expand the potential universe of projects processed as CEs. The degree to which those requirements will accelerate the environmental review process for projects processed as CEs will likely depend largely on how much the new provisions differ from current DOT or state DOT practices.

Under Section 1318, "Programmatic agreements and additional categorical exclusions," DOT is directed to survey projects processed as CE since 2005 and state agencies to suggest new CEs and, based on its findings, add projects to the regulatory list of CEs. This survey may identify categories of projects that were not routinely identified as CEs. However, DOT previously could add to its list of CEs at any time, as it deemed necessary. Also under Section 1318, DOT must propose a rulemaking to move certain highway, bridge, and highway safety projects from the group of CEs listed as those that require appropriate documentation to be approved as a CE to the list of projects that normally require limited documentation.[36] The actions listed in MAP-21 involve a potentially broad range of projects and are those that DOT has identified, from past experience, as potentially involving unusual circumstances. Regardless of whether such an action is listed among those that normally require limited NEPA documentation, DOT's obligation under NEPA to ensure that a CE determination for an individual project is appropriate will not change.

MAP-21 also includes directives to DOT to designate the following broad categories of action as CEs and to promulgate regulations applicable to each designation:

- **Emergencies** (§1315). The repair or reconstruction of any road, highway, or bridge that is in operation or under construction when damaged under certain declared emergencies or disasters.
- **Projects within a right-of-way** (§1316). Any project located within an existing operational right-of-way.

[35] Such as actions that do not induce significant impacts to planned growth or land use for the area or have a significant impact on any natural, cultural, recreational, historic or other resources (23 C.F.R. §771.117(a)).

[36] Those projects are to be moved from 23 C.F.R. §771.117(d) to §771.117(c).

- **Projects of limited federal assistance** (§1317). Projects that receive less than $5 million of federal funds or with a total estimated cost of not more than $30 million, if federal funds are less than 15% of total estimated project cost.

With regard to emergencies, projects that likely meet the criteria described under Section 1315 are currently identified as CEs and may be exempt from NEPA altogether.[37] For categories of actions that would be processed as CEs due to their locations within a right-of-way or receipt of federal funds below a certain threshold, several factors call into question whether such a designation would result in an appreciable change to the environmental review process. A specific project proposed under CE designations described in MAP-21 Sections 1316 and 1317 would likely already be included among actions processed as CEs.[38] If not, individual projects seeking CE approval under either designation would still have to demonstrate that they have no significant environmental impacts and involve no unusual circumstances that may require an environmental assessment or an EIS. Additionally, such a project would still be subject to additional state, tribal, or federal laws or regulations, including any requirements to obtain permits, evaluations, consultations, or approvals. As a result, explicitly designating such actions as CEs may have little effect on either the NEPA or the broader environmental compliance requirements applicable to such projects.

Directives to DOT and GAO

MAP-21 also includes directives to DOT to establish certain programs and to DOT or GAO to gather certain information and report to Congress. To meet the directives, state DOTs may be required to gather data that may be burdensome, if not impossible, to collect or may yield results that do little to accelerate project delivery. Those directives to DOT include

- **Section 1321, Environmental Procedures Initiative.** DOT is required to establish an initiative to "review and develop consistent procedures for environmental permitting and procurement requirements." With regard to environmental permitting, procedures applicable to such requirements would be established by state or tribal agencies or federal agencies outside DOT (no environmental requirements under Title 23 involve permitting). DOT would have limited authority to develop procedures applicable to those requirements. Beyond reviewing potentially applicable permitting requirements, DOT activity to respond to this directive may be limited to issuing guidance applicable to permitting procedures (which DOT has already done for federal permitting requirements). It is unclear how procurement requirements may be related to environmental procedures.

[37] "Emergency repairs under 23 U.S.C. §125" are explicitly listed as 23 C.F.R. §771.117(c)(9). Under 23 U.S.C. §125, "Emergency relief," a source of funding is provided for projects related to *emergencies,* as declared by a governor, and for *disasters*, as declared under the Stafford Act. Emergency relief projects are largely identical to the types of projects described in MAP-21 Section 1315. The Stafford Act waives NEPA procedures for certain federal actions taken or carried out within a presidentially declared emergency or disaster area. Regardless of their funding source or potential status as an "emergency," projects similar to those described in Section 1315 would likely meet the criteria applicable to actions already identified on by DOT as a CE, particularly bridge reconstruction or replacement and highway restoration, rehabilitation, or reconstruction.

[38] Such as bridge rehabilitation or reconstruction; highway resurfacing, restoration, rehabilitation, or reconstruction; construction of bus transfer facilities in a commercial area; or highway safety or traffic operations improvement projects.

- **Section 1323. Review of federal project and program delivery.** This section requires DOT to compare the completion times for CEs, EAs, and EISs initiated after 2005 to those prepared during a period prior to calendar year 2005; and to compare completion times for CEs, EAs, and EISs initiated from January 1, 2005 to July 6, 2012 to those initiated after July 6, 2012. DOT must report this information to Congress within one year after enactment. Data necessary to make such comparisons are not easily available. State DOTs generally do not measure the time it takes to complete individual stages of project development or extract data specific to the time it takes to complete NEPA documents. Data may be available for EISs, but not for the vast majority of surface transportation projects approved with a CE or EA. For future projects, a requirement to track and measure the time to complete NEPA documents may add a potentially burdensome level of bureaucracy to projects otherwise subject to limited documentation and reporting to DOT. Also, if such information could be collected, the completion times for NEPA documents may reveal little about efforts to expedite the environmental reviews, since the review process may start, stop, and restart for a number of factors unrelated to NEPA.

Provisions in Section 1322, Review of State Environmental Reviews and Approvals for the Purpose of Eliminating Duplication of Environmental Reviews, direct GAO to

- review state laws and procedures for conducting environmental reviews for surface transportation projects and identify states that have environmental laws that provide environmental protections and opportunities for public involvement that are equivalent to those provided by federal environmental laws;
- determine the frequency and cost of carrying out federal environmental reviews duplicative of state reviews; and
- report to Congress within two years describing the results of the review and determination.

This directive reflects some misperceptions regarding the federal environmental review process as implemented pursuant to NEPA. State environmental review programs are not necessarily identical to the federal NEPA process. However, pursuant to NEPA regulations, any analysis, review, or consultation prepared for a state environmental review may be incorporated by reference into the necessary NEPA document. Further, the NEPA compliance process forms the framework under which *any* potentially duplicative state, tribal, or federal requirements applicable to a project, not just those related to environmental reviews, are identified. If a state frequently carries out federal environmental reviews duplicative of state reviews, such duplication of effort could indicate a misunderstanding of the compliance process required under DOT's NEPA regulations. Additionally, the directive to determine costs associated with such efforts imposes a data-collection burden on state DOTs. State DOTs generally do not track costs of individual components of project development, including elements of the environmental review process. It may, therefore, prove difficult for states to 1) identify specific elements of the federal environmental review process that are duplicative of state requirements and 2) to extract project costs explicitly related to such a duplication of effort.

Non-environmental Provisions Accelerating Project Delivery

Outside of the environmental review process, MAP-21 makes two main changes to existing law in an attempt to speed project delivery. First, in Section 1303, MAP-21 adds specific authority for state DOTs to enter into construction manager/general contractor (CM/GC) contracts. According to FHWA, CM/GC contracts occupy a middle ground between the traditional design-bid-build construction method and the more innovative design-build method in which a single contractor is responsible for all the design and construction work.[39] With a CM/GC contract, a state DOT employs a general contractor to provide advice during the design phase. If agreement can be reached on price and other details, the same firm may then be employed to build the project. With intimate knowledge of the project, it is believed the contractor is able to enter into such an agreement and can begin construction tasks before the design work is complete, thereby accelerating the delivery of the project.

Second, MAP-21 would increase the federal funding share (normally 90% for Interstate Highway projects and 80% for other projects) by 5% on highway projects that use some method for accelerating project delivery (§1304). This applies to projects funded from the National Highway Performance Program, the Surface Transportation Program, and Metropolitan Planning (the increased federal share is limited to 10% of a state's apportionments under these programs). Examples of methods listed in MAP-21 that may speed project delivery include use of prefabricated bridge elements and design-build and CM/GC contracting methods.

Another provision (§1301 (b)(4)(c)) required DOT to establish a demonstration project to streamline the process of relocating households and businesses displaced by transportation projects by permitting lump-sum payments for acquisition and relocation if elected by the displaced occupant. Other proposed changes to the relocation provisions in current law,[40] including permitting advance payment of moving costs and a lump-sum payment for acquisition and relocation costs, were not enacted in MAP-21.

Amendments to the CMAQ Program

The Congestion Mitigation and Air Quality Improvement (CMAQ) Program was established to fund projects and programs that may reduce emissions from transportation-related pollutants, particularly in nonattainment and maintenance areas. Pursuant to the Clean Air Act, the Environmental Protection Agency (EPA) has set ambient air quality standards for certain pollutants. Of relevance to transportation planning agencies are the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide, and particulate matter (distinguished as coarse and fine particulate, referred to as PM_{10} and $PM_{2.5}$, respectively).[41] A geographic area that meets or exceeds NAAQS for a criteria pollutant is considered to be in "attainment"; an area that does

[39] Federal Highway Administration, "Every Day Counts Initiative: Accelerated Project Delivery Methods," http://www.fhwa.dot.gov/everydaycounts/projects/methods/index.cfm.

[40] Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

[41] "Mobile sources," such as cars, trucks, buses, and other vehicles, are considered significant sources of these pollutants. NAAQS have also been established for lead and sulfur dioxide, but mobile sources are not significant sources of those pollutants.

not meet a standard is in "nonattainment." A "maintenance" area is one that was previously in nonattainment, but is currently attaining the NAAQS subject to a maintenance plan.[42]

MAP-21 Section 1113 amends the following CMAQ program requirements:

- **Eligible Projects (§149(b)).** Explicitly includes the addition of turning lanes to the projects eligible for funding.
- **Special Rules (§149(c)).** Allows a state to obligate its CMAQ funds for a project in a nonattainment area regardless of the criteria pollutant the project aims to reduce; and specifies that CMAQ funds could be used for electric and natural gas vehicle infrastructure.
- **States Flexibility (§149(d)).** Specifies that a state with a nonattainment area may use a certain amount of its apportioned STP funds for projects eligible under the CMAQ program, determined in relation to 2009 funding levels for projects funded under the CMAQ program.
- **Evaluation and Assessment of Projects (§149(i))**. Directs DOT to develop and maintain a database to disseminate information describing CMAQ projects and, in consultation with EPA, evaluate the cost-effectiveness of a range of projects. States and MPOs are required to consider this information in selecting projects or developing performance plans (as required under amended Section 149(l), discussed below).
- **Optional Programmatic Eligibility (§149(j))**. Allows technical assessment of selected program or projects, conducted at the discretion of MPOs, to demonstrate emissions reductions. That data could be used to show that similar projects meet CMAQ eligibility requirements.
- **Priority for Use of Funds in $PM_{2.5}$ Area (§149(k)).** In nonattainment or maintenance areas for $PM_{2.5}$, states and MPOs shall prioritize CMAQ fund distribution for projects proven to reduce those pollutants, including diesel retrofits.
- **§149(l) Performance Plan**. Requires MPOs to prepare performance plans for CMAQ-funded projects.
- **§149(m) Operational Assistance.** Allows states to obligate apportioned CMAQ funds for operating costs of transit projects or systems previously eligible for funding under the CMAQ program.

[42] The Clean Air Act Amendments of 1990 directed EPA to establish the NAAQS. The following year, under provisions in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the CMAQ program was established under 23 U.S.C. §149. The program was amended and program funding was reauthorized in both TEA-21 in 1998 and SAFETEA in 2005. For information about the program, see FHWA's "Air Quality" web page at http://www.fhwa.dot.gov/environment/air_quality/cmaq/.

Safety Programs

National Highway Traffic Safety Administration (NHTSA)

NHTSA is the agency primarily responsible for highway safety. NHTSA promotes safety in two ways: through addressing driver behaviors that contribute to crashes (e.g., driving while intoxicated, speeding, and distracted driving), and through addressing the safety aspects of passenger vehicles (e.g., requiring seat belts, air bags, and electronic stability control).

Driver behavior is a state matter, not under federal control. Consequently, when Congress addresses driver behavior issues, it does so by encouraging states to act. NHTSA's driver behavior programs are primarily grants to states to help pay for state actions addressing these issues. In MAP-21, Congress authorized essentially level funding for highway traffic safety grant programs: $670 million in FY2013, up 1% from $660 million in FY2012 (see **Table 4**).

Congress also made changes to NHTSA's safety grant program structure in MAP-21. It eliminated the state safety belt incentive grant program (most states had already qualified, and the one which had not was expected to qualify in the near future), consolidated two other occupant protection grant programs into one, and created two new grant programs:

- Distracted driving incentive grant program: to make grants to states that implement a law making distracted driving or texting while driving a primary offense (meaning that drivers can be stopped and ticketed for that offense). Thirty-five states already have laws making texting while driving a primary offense;[43] in the first year, DOT is allowed to use up to 25% of the funds to make grants to states that already have such laws or are not otherwise eligible.
- Graduated driver licensing incentive grant program: to make grants to states that implement graduated driver licensing laws that limit the use of cell phones, driving at night, and carrying passengers not related to the driver.

In MAP-21, Congress prohibited states from using any of their federal highway safety formula (popularly referred to as "Section 402") grant funding to purchase, operate, or maintain automated speed or red light cameras.

[43] Governors Highway Safety Association, "Cell phone and texting laws," http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html.

Table 4. NHTSA Highway Traffic Safety Grant Program Funding in MAP-21

(millions of dollars)

	2012	2013	2014
State Formula Grants (§402)	$235.0	$235.0	$235.0
Highway Safety Research & Development (§403)	105.5	110.5	113.5
National Safety Priorities (§405)		265.0	272.0
Occupant Protection Grants	80.5	42.4	43.5
State Traffic Safety Information System Improvements Grants	34.5	38.4	39.4
Impaired Driving Countermeasures Grants	139.0	139.1	142.8
Ignition Interlock Incentive Grant		20.9	21.42
Distracted Driving Grants	—	22.5	23.12
Motorcyclist Safety Grants	7.0	4.0	4.1
State Graduated Driver Licensing Grants	—	13.3	13.6
National Driver Register	4.8	5	5
High Visibility Enforcement Program	29.0	29	29
Administrative Expenses	25.3	25.5	25.5
Total	**$660.6**	**$670.0**	**$680.0**

Source: P.L. 112-441, §31101 & 31105; FY2012 figures from NHTSA's FY2013 Budget Estimates volume and from P.L. 112-55, 125 STAT. 657-658.

Notes: Due to MAP-21 program changes and additions, some FY2013 programs are not directly comparable to FY2012 programs. In the table, three separate occupant protection grant programs are consolidated for FY2012 for comparability to FY2013 & FY2014.

Congress also provided additional powers to DOT and increased penalties to address vehicle safety issues.

Federal Motor Carrier Safety Administration (FMCSA)

FMCSA is responsible for safety in the commercial motor vehicle industry; that is, generally, commercial interstate freight trucking and interstate bus passenger travel. FMCSA promotes safety in two ways: by addressing commercial driver qualifications and activities, such as work hours, and by addressing the condition of commercial motor vehicles.

In MAP-21, Congress kept FMCSA's program structure roughly the same as under SAFETEA, and authorized roughly level funding for the agency's grant programs (see **Table 5**).

Table 5. FMCSA State Safety Grant Program Funding in MAP-21

(millions of dollars)

Program	FY2012	FY2013	FY2014
Motor Carrier Safety Assistance Grant Program	$212	$215	$218
Commercial Driver License Program Implementation Grant Program	30	30	30
Border Enforcement Grant Program	32	32	32
Commercial Vehicle Information Systems and Networks Grant Program	25	25	25
Safety Data Improvement Grant Program	3	3	3
New Entrant Audit Grant Program	29	32	32
Performance and Registration Information System Management Grant Program	5	5	5
Total	**$336**	**$342**	**$345**

Source: P.L. 112-141 §32603; FY2012 figures from FMCSA FY2013 Budget Estimates volume.

Congress added several new provisions intended to promote commercial motor vehicle safety. These include:

- a requirement that every commercial vehicle involved in interstate commerce and operated by a driver subject to the hours of service and record of duty requirements be equipped with an electronic onboard recorder (also known as a "black box") to improve compliance with hours of service regulations. This requirement will take effect around 2015;[44]
- increased enforcement penalties and powers for dealing with carriers operating without registration and "reincarnated" carriers (carriers which resume operation under a different name after having been shut down for safety violations);
- a directive to DOT to establish minimum entry-level training requirements for commercial drivers; and
- a directive to DOT to establish a national clearinghouse for controlled substance and alcohol test results of commercial drivers in order to improve compliance with commercial driver's license standards.

Motorcoach Safety

MAP-21 made several changes to the safety standards for motorcoaches, including requiring

- electronic stability control systems to reduce the risk of rollover crashes;
- increased roof strength to protect occupants in the event of rollover crashes; and
- seat belts for passengers.

Congress also directed DOT to consider requiring:

[44] §32301. The Secretary of DOT is required to prescribe regulations for the devices within one year after passage of MAP-21; the regulations shall apply to commercial motor vehicles beginning two years after the regulations are published as a final rule. The deadline to install the devices thus depends on when DOT completes the regulation.

- tire pressure monitoring systems in order to reduce the risk of crashes caused by underinflated tires;
- improved tire performance standards; and
- stronger window standards to reduce the risk of passengers being thrown from motorcoaches during crashes.

Other Provisions

Congress directed DOT to establish accelerated licensing procedures to help veterans who received safety training and operated qualifying motor vehicles during their military service to obtain commercial driver's licenses.

FTA Transit Safety Oversight Program

The federal government has long regulated the safety of air travel, intercity passenger rail travel, interstate passenger bus travel, and interstate freight transportation by truck or rail. When Congress began to provide federal assistance for public transit, though, it specifically prohibited the federal government from regulating transit operations, including safety practices.[45] Public transit generally has an extremely low rate of fatalities, but the National Transportation Safety Board had identified weaknesses in transit agencies' safety practices and recommended federal regulation to improve the situation. In recent years, high-profile incidents on heavy-rail transit systems in Washington, DC and Chicago led to increased pressure for federal regulation.

In MAP-21, Congress directed FTA to create and implement a national public transportation safety plan, to include safety performance criteria for all modes of public transportation and minimum safety performance standards for public transportation vehicles not otherwise regulated by the federal government.

Congress also gave FTA the authority to set and enforce minimum safety standards for transit rail systems and to oversee state safety oversight programs. MAP-21 authorized $22 million annually for formula grants to eligible states' safety oversight programs to help pay for participation in the new safety program. This funding may be used for operational expenses, including employee training.

Freight Policy

Whether the federal government should make a more focused effort towards funding freight improvements was a major policy question leading up to the reauthorization debate. The Senate version of MAP-21 (S. 1813) created a separate funding program for freight transport but this was not enacted in the final bill. Instead, the local cost share for freight specific projects was reduced to 5% in the case of projects on the Interstate Highway System and 10% for other projects.

[45] Commuter rail services, which operate on the national rail network, are subject to regulation.

MAP-21 enacted many planning provisions related to identifying infrastructure components most critical to freight transport.[46] This includes designation of a "primary freight network" (PFN) consisting of 27,000 centerline miles of existing roadways, based primarily on freight volume and in consultation with shippers and carriers (for comparison, the existing Interstate Highway System consists of approximately 47,000 centerline miles). The Secretary of Transportation can designate up to an additional 3,000 centerline miles of existing or planned roads as part of the PFN based on their future importance to freight movement. States can designate "critical rural freight corridors" based on the density of truck traffic if they connect the PFN or Interstate System with sufficiently busy freight terminals. A larger National Freight Network (NFN) will include the critical rural freight corridors, portions of the Interstate System not designated as parts of the PFN, and roads in the PFN. DOT, in consultation with partners and stakeholders, will develop a national freight strategic plan that will include identification of highway bottlenecks. DOT is required to report every two years on the condition and performance of the NFN.

Each state is encouraged, but not required, to create a state freight advisory committee made up of representatives of the freight community and a state freight plan "that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight" (§1118). Among other things, a state's freight plan is to describe how it will improve the ability of the state to meet the national freight goals established by DOT.

Truck Size and Weight

No major changes to current truck size and weight provisions are included in MAP-21, but a new study and inventory of current state laws is required.[47] The act increases the weight allowance for truck idle reduction technologies from 400 lbs. to 550 lbs. and allows states to issue overweight permits to trucks carrying relief supplies if a major disaster is declared.[48]

Freight Broker Financial Security

The surety bond filing requirement for truck brokers and ocean freight forwarders was raised from $10,000 to $75,000 with the intention of fighting fraud in the industry.[49] Truck brokers and freight forwarders marry shippers (cargo owners) with carriers on an individual shipment basis. Small brokers contend this change is unnecessary and is being used by larger firms as a means of putting them out of business. Since brokers do not own any transportation assets, entry and exit in the industry is relatively easy. The bond is employed as a means of ensuring brokers have sufficient financial stake in the business and/or as a means of paying creditors when firms do go out of business.

Harbor Maintenance

Section 1536 of MAP-21 states as a non-binding Sense of Congress that the Administration should request and Congress should fully expend each year all of the revenues collected in the

[46] See §1115-1118.

[47] §32801 and §32802.

[48] §1510 and §1511.

[49] See §32918.

harbor maintenance trust fund for the operation and maintenance of the nation's federally maintained ports.[50] The provision also expresses the importance of protecting other critical Army Corps programs, including inland navigation, flood and coastal storm protection, and ecosystem restoration, from funding reductions.

The provision also directs the Administration to provide an annual estimate of national harbor maintenance needs, including an estimate of the percentage of waterways that will be available for use based on the annual budget request as well as how much funding would be needed to achieve 95% availability of the nation's ports and waterways within three years.

U.S. Flag Shipping Requirement Relaxed

Section 100124 reduces the percentage of U.S. food aid that must be shipped on U.S.-flag ships (which must be owned and crewed by U.S. citizens) from 75% to 50% and repeals the requirement that 25% of bagged or processed food aid be shipped through Great Lakes ports. The purpose of this so-called "cargo preference" law is to promote U.S.-flag shipping because the ships may be used to deploy military hardware and supplies during war or national emergency. Operating expenses under the U.S. flag are significantly higher than those under many foreign flags, which is why Congress supports U.S.-flag vessels through cargo preference, with the additional shipping cost paid by DOT's Maritime Administration. Section 100124 repeals a provision of the Food Security Act of 1985 (P.L. 99-198, subtitle C), which increased the cargo preference requirement from 50% to 75% of food aid tonnage.[51]

Author Contact Information

(name redacted), Coordinator
Specialist in Transportation Policy
#redacted#@crs.loc.gov, 7-....

(name redacted)
Specialist in Transportation Policy
#redacted#@crs.loc.gov, 7-....

(name redacted)
Analyst in Environmental Policy
#redacted#@crs.loc.gov, 7-....

(name redacted)
Specialist in Transportation Policy
#redacted#@crs.loc.gov, 7-....

(name redacted)
Analyst in Transportation Policy
#redacted#@crs.loc.gov, 7-....

[50] For background information, see CRS Report R41042, *Harbor Maintenance Trust Fund Expenditures*, by (name redacted), and CRS Report R41961, *Army Corps Fiscal Challenges: Frequently Asked Questions*, by (name redacted) and (name redacted).

[51] The origin of the U.S. flag shipping requirement for food aid cargo dates to two 1954 Acts: P.L. 83-480 and P.L. 83-644.