

California Department of Transportation MAP- 21 Implementation Questions & Answers

As derived from the Jan. 29 – 31 and Feb. 6, 2013 MAP-21 Implementation Forums
Latest information as of March 22, 2013

The answers are divided into Transit and Highway sections. Please also refer to the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) pages as listed in the links below for the most up to date guidance and fact sheets.

FHWA: <http://www.fhwa.dot.gov/map21/>

FTA: <http://www.fta.dot.gov/map21/>

SECTION 1: TRANSIT

Question: What is the current status and timeline for the selection of the Federal Transit Administration (FTA) Section 5310 Designated Recipients for large Urbanized Areas (UZAs)?

Answer: In Fiscal Year (FY) 2013, Caltrans will be administering the program as we always have, but will honor the large urban, small urban and rural percentage splits identified by MAP-21 (60%, 20%, 20% respectively). In the spring of FY 2013, Caltrans will also be facilitating a dialogue using a third party consultant – the Mineta Transportation Institute, so that together with the Metropolitan Planning Organizations (MPO's) everyone can determine who the designated recipient(s) for the large urban area split (60% piece) should be. Then, in FY 2014, should both the MPO's and Department determine it appropriate for Caltrans to relinquish its current status as the designated recipient for the large urban portion of the 5310 program, the Department would then request the Governor change the designated status to the large urban area(s).

Question: Who will be the Designated Recipients for the large and small urban areas for FTA Section 5307, 5337 and 5339?

Answer: For large urban areas, the MPO will be the designated recipient for FTA Section 5307, 5337 and 5339 formula programs. These funds will flow to the MPO very similar to how they have flowed under the FTA Section 5307 program for SAFETEA-LU.

For the small urban areas, Caltrans will be (must be) as defined under MAP-21 October 16 Guidance, the designated recipient for FTA section 5307. This will not change the planning/programming relationship that small urban grantees have with/between the Metropolitan Planning Organization/Regional Transportation Planning Agency and the FTA.

However, the Caltrans Division of Mass Transportation (DMT) will have to provide correspondence to FTA stating DMT concurrence with the grant as submitted by the local agency (direct recipient). DMT will also be responsible for pinning the grant in TEAM – FTA's project reporting database.

Also for the small urban areas, Caltrans will be (must be) as defined under MAP-21 October 16 Guidance, the designated recipient, and the direct recipient for the FTA section 5339 program. This will not change the planning/programming-relationship that small urban grantees have with/between the Metropolitan Planning Organization/Regional Transportation Planning Agency and the FTA. However, the Division will have to provide correspondence to FTA stating DMT concurrence with the agency's grant request, will be responsible for pinning the grant in TEAM, and will execute supplemental agreements between Caltrans and the local agency. It should be noted that this administrative relationship may be changed congressionally at some point. Transit advocates are placing pressure on Congress to have the 5339 program administered exactly like the 5307 program, as was FTA's original intent.

For the \$1.25 million 5339 funding that's apportioned directly to the States, the Department is considering how best to administer these funds.

Question: What is Caltrans position on National Environmental Policy Act (NEPA) for transit projects?

Answer: According to FTA, Caltrans cannot be engaged unless the project is funded by a FHWA program. Agencies that received FTA resources for their projects will still seek NEPA clearance through the FTA. In addition, Caltrans is not currently resourced to provide NEPA project clearance for transit projects that are a result of FHWA moved to FTA.

Question: We need clarification of the eligibility of some sub recipients looking to use FTA Section 5316 funds for some projects.

Answer: The purpose of repealing, and then consolidating the Job Access and Reverse Commute (JARC) program with the Rural 5311 and urban 5307 programs was to create local flexibility. Eligible JARC-type projects will need to be identified and programmed by the region using traditional 5311 or 5307 process. Upon allocation of funds, the region will be responsible for ensuring all of their operators follow the 5311/5307 program rules that are published by FTA.

Question: Who are MAP-21 Transit Working Group members?

Answer: California Transit Association (Josh Shaw), California Association for Coordinated Transportation (Jackie Montgomery) and their member agencies, Jennifer Whiting from the California League of Cities and Caltrans Division of Mass Transportation (Brian Travis).

For more MAP-21 questions and answers, please visit the Federal Transit Administration (FTA) website: <http://www.fta.dot.gov/map21/>

SECTION 2: HIGHWAY

NATIONAL HIGHWAY SYSTEM

Question: Does the Asset Management Plan apply to National Highway System (NHS)? How does Caltrans expect to coordinate with local agencies? Who sets the performance measures for local roads on the NHS?

Answer: Asset management does apply to the National Highway System. MAP-21 created major challenges on the pavement side (asset management). MAP-21 stipulates all principal arterials will now be on NHS. Local agencies need to determine if local roadways now designated as part of the NHS should stay on system or be removed. FHWA has met with Caltrans to discuss Highway Performance Monitoring System (HPMS) data collection and how important it is now due to changes in MAP-21. We will reach out to local agencies to collect good data and partner with Caltrans to meet the requirement for Asset Management. There will information that will be forthcoming stating what will be required to submit. Submittals need to be complete, realistic and attainable. Performance measure rulemaking is done by USDOT and the Secretary of Transportation with input with various transportation agencies. Once the performance measures are developed through the rulemaking process, the state along with the regions will work together to create the targets that are attainable.

Question: Will there be a negative impact to a local city if they choose to remove an arterial from the NHS?

Answer: There could be a negative impact because they would become ineligible for certain federal funds but could still use Surface Transportation Program (STP) funds. It is up to the jurisdiction to weigh pros and cons.

Question: Since local principal arterials are now part of the NHS, do local agencies need to upgrade the facility to NHS standards even if local funds are used?

Answer: Local arterials are now part of the NHS. Local jurisdictions should work through their District Local Assistance Engineer (DLAE) for a design exception, where appropriate. If you are doing a project on the NHS, there might be requirements for design standards. But if it's already designed, we are not going to ask you to redesign. We will work with FHWA for a transition period for design standards. Go to Local Assistance Procedures Manual for guidance. Ultimately, local agencies need to determine if individual local arterials still need to be on NHS. There is a process for removing local arterials off the NHS. Please visit the following website for additional information. <http://www.fhwa.dot.gov/programadmin/contracts/tabover.cfm>

Question: Does the expanded NHS definition (to incorporate all principal arterials) impact NEPA/obligation procedures (i.e. LAPM paperwork) for the new arterials?

Answer: Caltrans will revise local assistance office bulletins and procedures manuals. At this time, we don't expect it to be more work for local agencies. It should not delay projects on NHS.

Question: How does one remove a road from the NHS?

Answer: The process for adding or removing a road from the NHS is explained here: http://www.fhwa.dot.gov/planning/national_highway_system/review/. All requests for change to NHS classification must first be sent to Caltrans before they can be forwarded to FHWA for approval. Questions about this process, or requests for NHS classification changes, should be directed to Rose Cuellar (rose.cuellar@ca.dot.gov).

It is important to note that NHS classification is independent of functional classification. On October 1, 2012, during a one time effort, all roads functionally classified as a principal arterial or above were identified as being part of the Enhance NHS as created under MAP-21. However, altering the functional classification of a road such that it is no longer a principal arterial will not automatically remove that road from the NHS. The only procedure to change NHS status is the one highlighted above. Functional classification requests for roads can still be made following the procedures highlighted here: http://dot.ca.gov/hq/tsip/hseb/func_clas.html

PERFORMANCE MEASURES

Question: How are performance measures being developed by FHWA and Caltrans?

Answer: Performance measure rulemaking is the responsibility of the United States Department of Transportation (USDOT) and the Secretary of Transportation with input from various transportation agencies. USDOT has 18 months to develop rulemaking, and then states have 12 months to develop targets for those performance measures. Caltrans will work with local governments to develop these performance targets. Caltrans can help influence performance measures that are being decided at national level. Caltrans is working with FHWA on that aspect. Local agencies can also work with their various advocacy groups such as AMPO to influence performance measures. FHWA has a presentation that is published at the following link that has more specifics in regards to the schedule for rulemaking: http://www.dot.ca.gov/hq/transprog/map21/Map-21%20Useful%20Links/13jan_trb_session185_paniati.pdf

Question: Will there be funding for data collection since we are moving to performance measures? Some small agencies don't have the funding for data collection.

Answer: Data collection is an eligible expense/activity for funding but no additional dollars have been identified to fund data collection. The process for collecting data on the expanded National Highway System which includes the local principal arterials does need to be addressed.

Question: If transportation funds are committed to projects and spent, how can penalties (resulting from not meeting targets established for performance measures) be applied?

Answer: First, we plan on setting targets that are achievable and within the funding that is available. But in order for our system to improve or maintain, there needs to be more funding. Fundamentally it is important to be able to collect good clear data in order to help set achievable targets. Penalties could be applied to future funding if the funds are spent on projects that do not help to reach the targets, and could result in reduced flexibility in the use of available funds.

HIGHWAY SAFETY IMPROVEMENT PROGRAM

Question: Which projects are eligible for Highway Safety Improvement Program (HSIP)? What is the nomination/application process for HSIP/Active Transportation Program (ATP)?

Answer: Regarding HSIP program eligibility, Caltrans will be doing a call for projects in early April or late March. This will be a data driven process which includes a cost benefit ratio process. When you go through the application process it will tell you if you are a likely candidate. Caltrans will administer the same way as in the past. Local agencies should plan on administering project selection the way we do currently. In addition, all HSIP funded projects must be consistent with the strategic priorities of the Strategic Highway Safety Plan.

Regarding the nomination/application process for ATP program see the answer below under ATP.

Question: How will HSIP take MAP-21 provisions and apply them to Senate Bill (SB) 375 in order to achieve the overall safety goals? Can HSIP be a focused program?

Answer: HSIP program is completely data driven. The goal is to reduce fatalities and serious injuries on all roads regardless of the transportation mode. HSIP will focus on data and safety.

ACTIVE TRANSPORTATION PROGRAM

Question: Is the Active Transportation Program (ATP) likely to be in the Governor's final budget? If so, will all projects need to undergo the Federal Transportation Improvement Program (FTIP) programming process?

Answer: The ATP program is in the Governor's budget proposal. Transportation Alternatives Program (TAP) and a portion of HSIP funds will be rolled into the ATP program. If there's federal money assigned for your project, you will be required to program your project in the FTIP. If it is a state only funded project and "not Regionally Significant", you do not need to program in FTIP. For a copy of the trailer bill go to the following link:

http://www.dof.ca.gov/budgeting/trailer_bill_language/forecasting_labor_and_transportation/

Question: Does ATP inclusion of TAP funding include all the TAP funds or just the 50% of TAP not based on population? In addition, will regions still get a share outright in the Governor's ATP proposal?

Answer: Proposal is to use the entire TAP funds and a specific additional amount of federal funds along with existing State Environmental Enhancement and Mitigation (EEM), Bicycle Transportation Account (BTA), and Safe Routes to School. This totals approximately \$134 million and will ultimately depend on the final federal apportionments. A portion of the program will be managed by the state and the remaining will be managed by the locals as stated below. According to the TBL, the California Transportation Commission (CTC) will develop detailed guidelines after consulting with the stakeholders and holding public hearings. The ATP process will include awarding a mixture of funds (state and federal). USDOT has developed interim guidelines that put forth certain requirements for the funds which are part of the TAP. One of the requirements will be that a certain portion of the money will be distributed by population to the MPOs and from that the MPOs shall select projects. The remaining funds will be administered by the State. Currently the FHWA interim guidance requires that the TAP funding for populations over 200,000 be distributed to the MPOs for them to administer a competitive process. The remaining funds are to be administered by the state. Below is a link to the FHWA interim guidance.
<http://www.fhwa.dot.gov/map21/guidance/guidecmaq.cfm>

Question: What is the nomination/application process for Active Transportation Program (ATP)?

Answer: According to the Trailer Bill Language in the Governor's website, the California Transportation Commission (CTC) will develop detailed guidelines after consulting with the stakeholders and holding public hearings.

BUY AMERICA

Question: Will there be a change or clarification in the interpretation of the Buy America provision of MAP-21 as it relates to utility relocations that are part of a federally funded project? Specifically, how can local agencies require, enforce and certify that utility companies have complied with Buy America for utility relocations that are completed at the utility company's expense and not paid with federal funds? What if local utility companies don't comply with Buy America?

Answer: Caltrans has made FHWA aware of the situation and will continue to work with them to determine if there is another solution. Until that time it is imperative we implement projects based on the current FHWA guidance. Visit the following websites for additional information:

<http://www.fhwa.dot.gov/map21/qandas/qabuyamerica.cfm>

http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm

Question: Does a Categorical Exclusion (CE) require Buy America in all phases as opposed to Environmental Assessment/Environmental Impact Studies (EA/EIS)?

Answer: Application of Buy America is not dependent on the type of NEPA decision document required for the project. Buy America is invoked when federal funds are authorized for any phase of a project.

Question: Is Buy America retroactive?

Answer: The effective implementation date of section 1518 is October 1, 2012. Thus, on or after October 1, 2012, if one contract within the scope of a NEPA document is awarded using Federal-aid funding, then the Buy America provisions would apply to all subsequent contracts within the scope of the NEPA document, regardless of the source of funding. FHWA anticipates issuing a Notice of Proposed Rule Making for those regulations in 2013. For more information on Buy America, go to:
<http://www.fhwa.dot.gov/map21/qandas/qabuyamerica.cfm>

Question: If utilities are under franchise (not federal reimbursement) do they really have to have “Buy America”? Some California utility companies have legally responded that they will not sign any agreement with this clause. Or if the local agencies pay, can the clause be eliminated?

Answer: The only way this provision will change is if the United States Congress changes MAP-21.

MISC

Question: How streamlined will NEPA Categorical Exclusions (CE) rules be? Will Caltrans still require environmental studies for projects that are entirely within existing right of way and/or have less than \$5 million in federal funding?

Answer: The proposed changes will add or modify CEs listed in 23 CFR 771.117 (c) and (d). However, rulemaking must occur before these new CE designations become effective. This includes the publication of a proposed rule and the publication of a final rule after consideration of public comments on the proposed rule. The final rule will establish the date when the new CEs become effective.

For Caltrans, the existing NEPA and CE Assignment programs allow Caltrans to determine if a project qualifies for a CE with the proper documentation. Section 1508.4 of the Council on Environmental Quality’s Regulations for Implementing NEPA (40 CFR 1508.4) defines a categorical exclusion as “a category of actions which to not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations.” Any new CEs will be subject to the same “unusual circumstances test” that applies to existing FHWA CEs (23 CFR 771.117(b)). Caltrans’ determination that the project meets the requirements of a CE is still required. The Caltrans Standard Environmental Reference has procedures in place for documenting the determination (<http://www.dot.ca.gov/ser/vol1/sec4/ch30ce/chap30ce.htm#def>). In

summary, Caltrans must comply with the requirements of 40 CFR 1508 and 23 CFR 771.117.

In addition, the streamlined federal CEs do not exclude agencies from complying with other federal agency requirements (i.e. Army Corp of Engineers, etc.) and the State environmental requirements.

Question: How has MAP-21 changed a State's duty to control junkyards?

Answer: California must now control junkyards located along highways on the National Highway System. Section 1404(b) amends section 136 of title 23 to include effective control of junkyards along all highways on the NHS, including the Interstate Highway System. Effective control, as defined by 23 U.S.C. 136(c), means that junkyards must be screened by natural objects, plantings, fences, or other appropriate means so that it is not visible from the main travel way of the system or must be removed from sight. The penalty for not providing effective control of junkyards, however, has been reduced by section 1404 from 10 percent to 7% of the funds in section 104(b)(1) through (5).

Question: For Transportation Enhancement Activities (TEA) projects programmed in the 2012 State Transportation Improvement Program (STIP), will they remain available for the project sponsors?

Answer: The Governor has proposed using TA funding for a new the Active Transportation Program. Assuming this occurs, the TA funds would not be available to fund STIP projects. The first issue for STIP TE projects in 2013-14 and beyond is that the projects would have to be limited to projects that can be funded with State Highway Account funds or possibly some type of federal funds. The second issue for 2013-14 STIP TE projects is overall STIP allocation capacity. For 2013-14 the California Transportation Commission (CTC) anticipates analyzing the ability to allocate to STIP TE projects in the context of the overall STIP allocation capacity. If there is sufficient overall STIP allocation capacity or close to it CTC will be able to go forward with allocations. If there is not sufficient STIP allocation capacity, the CTC will need to develop an allocation plan. In that event, CTC staff would propose a mode neutral plan.

Question: What is the role of the MAP-21 Working Group?

Answer: The MAP-21 Working Group was established in order for Caltrans to be able to communicate and collaborate with representation from California's transportation leaders to employ a vision for implementing MAP-21. The group met regularly since the passage of MAP-21 and will meet again once progress has been made on the Active Transportation Proposal (ATP) and to discuss a funding for the 2014 Federal Fiscal Year and beyond.

Question: When can we expect Caltrans to implement early acquisition and reimbursement on projects?

Answer: The provisions of MAP 21 went into effect on October 1, 2012 and are available to both the Department and the Local Public Agencies. Requests for Early Acquisition will be processed as Right of Way Manual Exceptions where possible. A memorandum describing an interim policy and procedure is being drafted, however, before it can be issued, the Department must complete its research to determine where state laws are more restrictive and would prevail. We encourage Local Public Agencies to coordinate with their District Right of Way Local Programs Agents. The existing Right of Way manual guidance in Chapter 17 regarding Early Acquisition takes into consideration California statutes.

Question: Once all 50 states turn in their State Freight Plans, will FHWA be the nexus to connect these plans into a National Freight Plan that will be funded in the next authorization bill?

Answer: Yes, FHWA will be using State Freight Plans to help inform the development of the National Freight Plan. States are strongly encouraged to develop Freight Plans, but not required to do so. There is a federal funding benefit for freight projects that are included within state freight plans in that they become eligible to request a 90 - 95% federal funding share depending on particular characteristics of the freight facility. However, there is no new funding associated with this higher funding level. It comes out of the State's federal transportation funds. While MAP-21 does not provide dedicated freight funding, many states anticipate that the next reauthorization will include a freight program with associated funding. Caltrans, working with the Business, Transportation and Housing Agency, is forming a State Freight Advisory Committee consistent with MAP-21 as associated guidance issued by FHWA.

Question: Can national freight program money be used to upgrade or rehab roads on the farm to market roads?

Answer: It depends. However, one can get a route designated as an intermodal connector. You have to prove you have a lot of freight moving on the local road. Once you get the design as an intermodal connector, you are on the NHS and that gives you the ability to use federal funds to upgrade that road. MAP-21 did not provide extra funds for NHS or for a specific national freight program.

Question: How much money is specifically allocated for small cities/agencies under MAP-21 program?

Answer: Funds are not specifically provided for small cities or agencies under MAP-21. There is a certain amount of formula Surface Transportation funds that FHWA requires to be used within areas of State based on certain population limits. In California, these funds are subvented to regions based on population and then regions distribute the funds for projects in each county to be implemented by cities, counties, and other transportation agencies. The regions use these funds to meet the needs of the regional transportation plans that include cities needs.

Question: Will the funding level for Safe Routes to School (SRTS) remain the same (even without a standalone program)?

Answer: Funding for SRTS is committed through 2013 and we are looking at transition plan after that. According to the Governor's budget proposal, SRTS will be a part of the ATP. See the trailer bill language for additional information. In addition, MAP-21 did not guarantee a funding amount for SRTS as a standalone program as had been in previous Acts so if there is not an ATP program the funding for SRTS may end up being less depending on how competitive the projects are for other funds sources.

Question: What is the implication of MAP-21 on the current Highway Bridge Program (HBP)? We have been proceeding with HBP the same way as before. What upcoming changes can we anticipate now?

Answer: Until the Performance Measures and targets are set the HBP will be managed the same as in the past. After Performance Measures and targets are in place bridge funding will be dependent on the funds needed to meet the targets.

Question: Can STP funds be distributed by a different formula?

Answer: The 50% by population share of STP funds must be distributed based on the formula that is set by MAP-21. For more specific information, see the following FHWA STP guidance. <http://www.fhwa.dot.gov/map21/guidance/guidestp.cfm>. Any area STP funds that might be distributed to the regions will need further discussion to determine a distribution formula if different than the population formula.