
Office of Inspector General

Audit Report

VULNERABILITIES EXIST IN IMPLEMENTING INITIATIVES UNDER MAP-21 SUBTITLE C TO ACCELERATE PROJECT DELIVERY

Office of the Secretary
Federal Highway Administration
Federal Transit Administration

Report Number: ST2017029
Date Issued: March 6, 2017



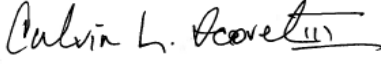


Memorandum

U.S. Department of
Transportation
Office of Inspector General

Subject: **ACTION:** Vulnerabilities Exist in Implementing Initiatives Under MAP-21 Subtitle C To Accelerate Project Delivery
Office of the Secretary of Transportation
Federal Highway Administration
Federal Transit Administration
Report No. ST2017029

Date: March 6, 2017

From: Calvin L. Scovel III 
Inspector General

Reply to
Attn. of: JA-30

To: Secretary of Transportation
Federal Highway Administrator
Federal Transit Administrator

The Moving Ahead for Progress in the 21st Century Act of 2012¹ (MAP-21) was the first long-term surface transportation authorization enacted since 2005. The act's Subtitle C requires the U.S. Department of Transportation (DOT) to implement initiatives to accelerate delivery of projects funded by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), and to report on the initiatives' progress. DOT developed a plan with 42 actions to meet Subtitle C requirements (Sections 1301-1321 and 1323). The Fixing America's Surface Transportation Act of 2015 (FAST Act)² reauthorized and changed some of the MAP-21 initiatives and includes project delivery initiatives for the Federal Railroad Administration (FRA).

MAP-21's Subtitle C Section 1323 requires the Office of Inspector General to assess DOT's implementation of these initiatives and submit an initial and final report to Congress. In May 2013, we issued our first report,³ and in September 2013, we testified⁴ before the Senate on the status of DOT's 42 planned actions to address Subtitle C requirements. This final report presents the results of our latest audit to assess DOT's progress. Our audit objectives were to (1) provide the status

¹ Public Law No. 112-141 (2012).

² Public Law No. 114-357 (2015).

³ *Letter to Congress on the Status of MAP-21, Subtitle C: Acceleration of Project Delivery*, OIG Report Number CC-2013-007, May 22, 2013.

⁴ *Status of the DOT's Actions to Address Subtitle C of MAP-21*, OIG Report Number CC-2013-031, September 18, 2013.

of DOT's actions to carry out MAP-21 Subtitle C provisions and (2) identify possible vulnerabilities in DOT's implementation of these actions.

We conducted this audit in accordance with generally accepted Government auditing standards. For our work, we reviewed Federal regulations, DOT guidance, policies and status reports for Subtitle C provisions, and surveyed a random sample of FHWA Division Offices from California, Georgia, Oregon, and Pennsylvania. We interviewed officials at DOT Headquarters and regional offices, and the Texas State Department of Transportation, and representatives from American Association of State Highway Transportation Officials and American Road and Transportation Builders Association. See exhibit A for further details on our scope and methodology.

RESULTS IN BRIEF

DOT has completed 27 of its 42 planned actions for implementation of Subtitle C—including issuance of rulemakings, guidance, and reports. However, the Department has had to delay full implementation because it must revise a large number of these actions to comply with the more recent FAST Act. In accordance with the FAST Act, the Department is altering 19 of its planned actions, which include 10 of the 27 actions already completed under MAP-21. According to documentation we received from FHWA officials, the FAST Act affects 4 of the 9 mandated rules it planned under MAP-21, including amending a January 2014 rule implementing Section 1317—Categorical Exclusion for Projects for Limited Federal Assistance.⁵ These delays could impact the Department's ability to achieve the intended benefits under MAP-21 initiatives, such as accelerating project delivery and reducing the costs of transportation projects. See exhibit B for the 22 project delivery initiatives under MAP-21 Subtitle C and a summary of DOT's 42 planned actions for implementation.

DOT faces vulnerabilities in its implementation of certain planned actions for Subtitle C. These vulnerabilities include FHWA's lack of (1) a required application for meeting project eligibility for an increased share of Federal funds under Section 1304—Innovative Project Delivery Methods; (2) a performance assessment of States that assume environmental review responsibilities under Section 1313—the Surface Transportation Project Delivery Program; and (3) a defined process to implement required reporting to Congress in 2017 on the use of categorical exclusions (CE)⁶ under Section 1323—Review of Federal Project Delivery Program. In addition, State participation in programs under some Sections is low due to factors outside of DOT's control. For example, the Section 1304 program to promote the use of innovative construction, safety, and quality

⁵ The final rule, reflecting FAST Act changes, was issued on May 31, 2016.

⁶ CEs are actions that meet the definition contained in 40 C.F.R. § 1508.4, are based on experience with similar actions, and do not involve significant impact to the environment.

technologies has been in effect for 4 years and produced only 34 projects in 9 States. According to FHWA officials, the Section's lack of financial incentive may contribute to low participation. These vulnerabilities in implementation of Subtitle C could inhibit achievement of the full benefits envisioned for the DOT's accelerated project delivery initiative.

We are making recommendations to address vulnerabilities in DOT's implementation of Subtitle C provisions.

BACKGROUND

MAP-21 Subtitle C provisions include advancing the use of best practices, expanding early acquisition of property prior to completion, using the construction manager/general contractor (CM/GC) method of contracting, and establishing a relocation streamlining demonstration program. See Table 1 for a summary of MAP-21 Subtitle C provision.

The FAST Act reauthorizes and changes some of the MAP-21 initiatives while adding project delivery initiatives for FRA. For example, the FAST Act codified FHWA's Every Day Counts (EDC) initiative, which the Agency began in 2009, to accelerate project delivery, enhance road and bridge safety and durability, reduce traffic congestion, and improve environmental sustainability.⁷ The FAST Act also includes a number of changes to Federal law intended to streamline the environmental review process, such as expedited environmental review for reconstruction in the aftermath of emergencies.

⁷ As part of the EDC, every 2 years, FHWA is expected to work with State Departments of Transportation, local Governments, tribes, private industry, and other stakeholders to identify and select new sets of innovative technologies and practices that warrant widespread deployment.

Table 1. MAP-21 Subtitle C Acceleration of Project Delivery Initiatives

Subtitle C	Description
Section 1301	Declaration of policy and project delivery initiative
Section 1302	Advance acquisition of real property interests
Section 1303	Letting of contracts
Section 1304	Innovative project delivery methods
Section 1305	Efficient environmental reviews for project decision-making
Section 1306	Accelerated decision-making
Section 1307	Assistance to affected Federal and State agencies
Section 1308	Limitations on claims
Section 1309	Accelerating completion of complex projects within 4 years
Section 1310	Integration of planning and environmental review
Section 1311	Development of programmatic mitigation plans
Section 1312	State assumption of responsibility for categorical exclusions
Section 1313	Surface transportation project delivery program
Section 1314	Application of categorical exclusions for multimodal projects
Section 1315	Categorical exclusions in emergencies
Section 1316	Categorical exclusions for projects within the right-of-way
Section 1317	Categorical exclusion for projects of limited Federal assistance
Section 1318	Programmatic agreements and additional categorical exclusions
Section 1319	Accelerated decision-making in environmental reviews
Section 1320	Memoranda of agency agreements for early coordination
Section 1321	Environmental procedures initiative
Section 1323	Review of Federal project and program delivery

Source: MAP-21.

DOT HAS IMPLEMENTED OVER HALF OF THE PLANNED ACTIONS FOR SUBTITLE C INITIATIVES

The Department has implemented 27 of its 42 planned actions, including issuance of rulemakings, guidance and reports, and deleted 4 planned actions. However, because it is revising a large number of its planned actions to comply with the FAST Act, the Department has delayed the complete implementation and has not established target completion dates for 7 of the remaining 38 planned actions. As a result of these delays, the Department may not achieve all of the intended benefits under MAP-21 initiatives such as accelerating project delivery, reducing costs, and

ensuring that the planning, design, engineering, construction, and financing of transportation projects are done in a more efficient and effective manner.

Based on data from FHWA officials, the Department is also altering 19 of its 42 planned actions to comply with the FAST Act including 10 of the 27 actions it has already completed and has eliminated 4 action items due to its updated plan. See Table 2 for a status of the Department's actions and the FAST Act impacts.

Table 2. Status of DOT's Planned Actions for Implementing MAP-21 Subtitle C and FAST Act Impacts

MAP-21 Actions ^a	Completed	In Progress	Affected by FAST Act
Rulemakings			
Mandated Rulemakings	7	1	4 ^b
Other Rulemakings	3	3	4
Reporting			
Congressional Reports	3	1	
Other Report	1		
Guidance	10 ^c	6	10 ^d
Other Initiatives^e	3	0	1
Totals	27	11	19

^a DOT subsequently decided that of the 42 original planned actions, 4 actions were not needed.

^b DOT had completed three of the four mandated rulemakings affected by the FAST Act and the other one is in progress.

^c FHWA divided one action into 2 parts, 35 and 35(b), both of which are completed.

^d Affected actions include 4 completed guidance actions.

^e Other initiatives include entering into a memorandum of understanding, conducting a survey, and implementing a standard operating procedure.

Source: OIG analysis derived from DOT documentation.

DOT's completed actions fall into the following categories:

Rulemakings: DOT's 42 planned actions included 9 required rulemakings designed to streamline the environmental review process used on Federal highway and transit projects. The Department has completed seven of these actions. It combined two rulemakings and has one in progress. However, the FAST Act will affect four of these rulemakings, including three of the seven that the Department had completed. For example, in January 2014, the Department finalized a rulemaking on Section 1317—Categorical Exclusion for Projects for Limited Federal Assistance—and has amended the rule due to the FAST Act.

Reports: DOT has completed three of four planned actions related to reports to Congress on the status of its environmental actions taken. The fourth report—due

to Congress by October 2017—must present results of an evaluation of project completion timeframes for environmental impact statements, environmental assessments, and CEs.

Guidance: Sixteen of DOT’s 42 planned actions call for issuance of new or modified guidance to assist States and others managing Federal projects. As of November 2016, the Department had completed 10 of these 16 planned actions and has 6 in progress. However, the FAST Act may affect 10 of these planned actions, including 4 completed actions.

VULNERABILITIES EXIST IN IMPLEMENTING PLANNED ACTIONS FOR SOME SUBTITLE C INITIATIVES

Vulnerabilities exist in FHWA’s implementation of planned actions for certain Subtitle C initiatives. FHWA does not require sufficient documentation as part of its implementation of Section 1304—Innovative Project Delivery Methods. The Agency also does not assess the effectiveness of the Surface Transportation Project Delivery program, and has not clearly established a process to implement required reporting on categorical exclusions to Congress in 2017. Lastly, low State participation may affect implementation of certain initiatives.

FHWA Implementation of Section 1304 Does Not Require Sufficient Documentation for Approved Projects

FHWA does not require sufficient documentation for its implementation of Section 1304—Innovative Project Delivery Methods. Section 1304 builds on FHWA’s similar EDC program to promote the use of innovative technologies and practices that increase the efficiency of construction, improve safety, and extend the service life of highways and bridges. States with projects that FHWA determines to be eligible may increase the projects’ share of Federal funds up to 5 percent of the total project cost, not to exceed 100 percent.⁸ According to FHWA’s guidance, to qualify under Section 1304, technologies and practices should be truly innovative to the State or local agency—new technologies or practices are ones that have rarely been used and represent significant improvement to the State or local agency’s practice. FHWA’s guidance also states that each application for an increased Federal share should identify the innovative technology or practice; describe how the technology or practice will accelerate construction, increase its efficiency and improve safety and quality; and explain how the technology or practice meets Section 1304 eligibility requirements. However, the guidance encourages but does not require States to use applications for project approval. As a result, one FHWA Division Office participating under

⁸ Under 23 U.S.C. § 120, projects’ Federal shares are usually capped at 80 to 90 percent.

Section 1304 stated that they did not use applications because it was not a FHWA requirement.

FHWA officials stated that they collaborate with their counterparts at State DOTs to identify innovative technologies and practices and to discuss whether these technologies and practices meet Section 1304 eligibility requirements. They also stated that they do not always document these discussions because FHWA guidance does not require them to do so. Due to this lack of documentation, we could not independently identify innovative technologies or practices, or the intended benefits from using them for some of the projects in our review under Section 1304. A FHWA program official concurred that a clearly defined application process is a best practice and stated that he was “developing new guidance that will most likely require the use of an application in the future.”

Additionally, according to FHWA officials, after issuing the guidance in 2012,⁹ they realized that development of a comprehensive list of innovations for the guidance was not practical. Therefore, in October 2014, FHWA officials deemed the guidance outdated, but they did not update the guidance to convey that it would not include a comprehensive list of innovations. FHWA issued updated guidance for Section 1304 in August 2016, but this guidance does not require States to submit a written application to participate under the Section. This lack of documentation from States that apply for increased Federal share under Section 1304 makes it difficult for FHWA to be sure that approved projects meet program eligibility.

FHWA Does Not Assess States’ Performance Under the Surface Transportation Project Delivery Program

FHWA does not assess the effectiveness of States’ environmental review performance under Section 1313–Surface Transportation Project Delivery. Section 1313¹⁰ allows States to assume responsibilities under the National Environmental Policy Act of 1969¹¹ (NEPA) for environmental reviews, consultation, and compliance for Federal highway projects. FHWA conducts audits and monitors State participants to evaluate States’ compliance with their Section 1313 memoranda of understanding in accordance with FHWA and environmental requirements. However, the Agency has not developed a plan to assess the effectiveness of the environmental review performance of the States that assume the responsibilities under Section 1313.

⁹ FHWA’s Guidance: Innovative Project Delivery Methods Questions & Answers, September 2012.

¹⁰ Section 1313 makes the Surface Transportation Project Delivery Program established under SAFETEA-LU a permanent program.

¹¹ Public Law No. 91-190 (1969).

According to FHWA officials, States that participate in this program are not required to use the Agency's environmental tracking system to collect and track environmental review data and the length of time taken to complete environmental impact statements (EIS) and environmental assessments (EA).¹² State DOTs make this information available to FHWA only upon request. Another FHWA program official informed us that the Division Offices would rely on memoranda of understanding between FHWA and State DOTs to govern program activities.

While MAP-21 does not require FHWA to measure performance regarding the environmental review process for States assuming NEPA responsibilities, the lack of data collection and tracking inhibits FHWA's ability to measure the effectiveness of the program in accelerating project delivery and identify project delivery problems for those States that have assumed these responsibilities.¹³

FHWA Has Not Established a Process to Implement Required Reporting on Categorical Exclusions

FHWA has not established a process for collection of data on States' categorical exclusion completion times which it must report to Congress in 2017 under Section 1323—Review of Federal Project and Program Delivery. Section 1323 requires that in 2017, FHWA report to Congress on the time State DOTs take to complete EISs, EAs, and CEs. According to FHWA, in March 2013, it developed Project and Program Action Information System (PAPAI) to comply with requirements under Section 1323. According to FHWA headquarters officials, in early 2015, the Agency changed its policy to not require Division Offices to collect CE data using PAPAI because the Agency realized that tracking CE information would be difficult for Division Offices. After it changed its policy, FHWA planned to use a statistically valid sample for its 2017 reporting to Congress. However, the Agency has not finalized this plan and FHWA officials are still looking for an alternative method. As a result, the Agency does not currently have a plan in place to collect and report the required CE information to Congress in 2017.

¹² NEPA requires Federal agencies to prepare EISs for projects with major actions that significantly affect the quality of the human environment. An EIS details the process through which a transportation project was developed, includes consideration of a range of reasonable alternatives, analyzes the alternatives' possible impact, and demonstrates compliance with other environmental laws and Executive Orders. Agencies prepare EAs to: (1) provide sufficient evidence and analysis for determining whether to prepare EISs or findings of no significant impact; (2) aid compliance with NEPA when EISs are not necessary; and (3) facilitate preparation of necessary EISs.

¹³ One goal of MAP-21 was to improve and report on initiatives to accelerate project delivery and processing times from initiation of EIS, EAs and CEs to approval of final decisions. The FAST Act requires the Government Accountability Office to assess and report on DOT's progress on accelerating project delivery by October 1, 2017. Data collection and analysis, and tracking State participation and project activities will be needed to fulfill this Congressional request.

In addition, two of five Division Offices surveyed provided us with outdated or incorrect information on their use and understanding of PAPA. Although it changed its policy for using PAPA, FHWA did not update its written policy. In addition, FHWA's Website incorrectly states that PAPA determines total processing times from initiation of EISs, EAs, and CEs to approval of final decision documents, and that environmental reviews should be entered in PAPA. FHWA's lack of a current policy makes it difficult for the Agency to be sure that its Division Offices use PAPA as intended.

Low State Participation May Affect Implementation of Certain Subtitle C Initiatives

State participation is currently low in certain initiatives and as a result, DOT has not achieved all of MAP-21's intended benefits. The five FHWA Division Offices we surveyed reported several factors outside of DOT's control that may contribute to this low participation including: (1) requirements for State legislatures' approval; (2) nominal financial incentive; (3) a lack of resources; and (4) risks associated with waiving sovereign immunity. For example:

Section 1303—Letting of Contracts—Construction Manager/General Contractor (CM/GC). FHWA officials told us that State legislatures must approve the use of CM/GC on highway construction contracts. Of the five FHWA Division Offices we surveyed, only two States were participating.

Section 1304—Innovative Project Delivery Methods. Two States from the five FHWA Division Offices surveyed were participating under Section 1304. When we began our audit, seven States were participating under Section 1304, including the two in our survey, with 24 approved projects. In October 2016, FHWA headquarters officials informed us that nine States were participating with 34 approved projects. FHWA officials further informed us that participation has been lower than expected primarily due to lack of adequate financial incentive for States to participate. According to FHWA, it has been promoting the use of technologies and practices through EDC since before MAP-21's enactment. Additionally, FHWA recently took steps to increase awareness of this provision by highlighting it on its Website and believes its communication and outreach efforts may enhance awareness of and participation in Section 1304.

Section 1313—Surface Transportation Project Delivery Program. Two of five States from the surveyed FHWA Division Offices were participating. Nationwide, only one more State was participating at the time of our audit. However, FHWA officials informed us that Utah and Alaska have applied for participation in the program. According to an FTA official, no State has requested the assignment of FTA environmental review authority for transit projects because of the States' unwillingness to risk waiving sovereign immunity in the event of litigation and

because most transit project sponsors are not States. According to FHWA officials we surveyed, their States are reluctant to take on this initiative because they (1) do not have the resources; (2) are unwilling to risk waiving sovereign immunity in the event of litigation; (3) do not have qualified legal staff to defend litigation in Federal court; and (4) use CEs on most projects and already have the authority to approve CEs through agreements with their FHWA Division Offices.

CONCLUSION

MAP-21's Subtitle C directs the Department to identify and promote reforms that will reduce the time and funding required to plan, design, and construct transportation projects, including streamlining the environmental review process used on Federal highway and transit projects. Over the past 4 years, DOT has taken steps to implement more than half of the Subtitle C initiatives, but there have been delays in completing its planned actions and further delays will occur as DOT adjusts to changes brought about by the FAST Act. Moreover, some program initiatives may be affected by low State participation that is outside of DOT's control. By completing all planned actions, the Department increases the chances of successful implementation of the initiatives and achievement of the full range of Subtitle C's intended benefits.

RECOMMENDATIONS

We recommend that the Federal Highway Administrator:

1. Require Division Offices to have documentation substantiating how each innovative technology and practice meets eligibility requirements for the projects under § 1304 at the time of approval.
2. Develop and implement an oversight mechanism to periodically evaluate the performance of States that assume DOT's environmental review responsibilities under § 1313.
3. Finalize a plan for collecting and tracking data on CEs to meet mandatory reporting requirements for § 1323.
4. Establish target completion dates for the remaining planned actions for MAP-21 Subtitle C provisions that are in progress.
5. Update the policy and FHWA Website to clearly reflect and convey the most current requirements for the use of Project and Program Action Information System (PAPAI).

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided OST, FHWA and FTA a copy of our draft report on January 11, 2017, and received the Department's formal management response on February 10, 2017, which is included as an appendix to this report. In its response,¹⁴ the Department concurred with all our recommendations, and agreed to implement the actions as written for recommendation 1 by March 31, 2018, and recommendations 2 through 5 by April 30, 2017. We therefore consider recommendations 1 through 5 resolved but open pending the Department's completion of the planned actions.

We appreciate the courtesies and cooperation of the Office of the Secretary, Federal Highway Administration and Federal Transit Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-1959, or Barry J. DeWeese, Assistant Inspector General for Surface Transportation Audits, at (202) 366-5630.

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cc: DOT Audit Liaison, M-1
FHWA Audit Liaison, HCFB-32
FTA Audit Liaison, TBP-30

¹⁴ The Department also indicated that it had completed another planned action, but we have not verified the status of that action.

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work between January 2016 and September 2016 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit objective was to evaluate the effectiveness of DOT's implementation of several initiatives to accelerate highway and bridge project delivery under MAP-21 Subtitle C. Specifically, we (1) provided the status of the Department's actions to carry out MAP-21 Subtitle C provisions, and (2) identified possible vulnerabilities in the Department's implementation of these actions.

To obtain evidence on the status of DOT's actions to carry out MAP-21 Subtitle C provisions, we reviewed Federal regulations, FHWA guidance, policies and status reports for Subtitle C provisions and OST, FHWA and FTA Headquarters. We obtained and analyzed the Department's 42 Planned Actions to Implement MAP-21 Subtitle C as of November 2015, February 2016, and May 2016.

We visited the FHWA Texas Division Office and Texas Department of Transportation (TxDOT) in Austin, TX,¹⁵ and FTA Region 6 in Ft. Worth, TX, and professional transportation associations in Washington, DC to discuss MAP-21 Subtitle C, and any obstacles or concerns related to the Department's implementation of the provisions. We conducted this fieldwork to better understand the Department's role, policies, and procedures related to MAP-21 Subtitle C Sections. We also surveyed FHWA Division Office officials from California, Georgia, Oregon, and Pennsylvania based on a random sample selection.

We selected a random sample and surveyed FHWA Division Offices personnel about the Department's implementation of the provisions. To develop the sample universe, we collected each State's fiscal year 2014 FHWA apportionment data under MAP-21 Subtitle C. We stratified the universe of FHWA Division Offices representing 50 States and the District of Columbia into 3 strata for a total of 51 States: Stratum 1 consisted of States with approved projects under Section 1304; Stratum 2 consisted of States with approved projects under Section 1313; and Stratum 3 consisted of States that were not attributed to either Section. We selected a probability proportional-to-size sample for which size was a State's apportionment of 1 out of 6 States from Stratum 1, 1 out of 3 States from Stratum 2, and 2 out of 42 States from Stratum 3 for a total of 4 out of 51 States. Our

¹⁵ We selected FHWA Texas Division and TxDOT for site visits because they developed the first permanent projects under Subtitle C.

sample included \$6.9 billion or 18.1 percent out of a universe of \$37.8 billion. Our sample selection was unbiased but not large enough to project results to the universe of all 51 States.

EXHIBIT B. DOT'S 42 PLANNED ACTION ITEMS FOR MAP-21 SUBTITLE C IMPLEMENTATION AS OF NOVEMBER 2016

MAP-21 Subtitle C Sections	Action Item	Status of MAP-21 Action Item	MAP-21 Deliverable	Impacted By the FAST Act?
1301- Declaration of Policy and Project Delivery Initiative	1	Completed	Identify and advance the use of best practices.	Yes. Updated FTA Standard Operating Procedures for environmental reviews. Completed August 11, 2016.
	2	Completed	Guidance.	No.
	3	Completed	Work plans approved for three States' participation.	No.
1302 - Advance Acquisition of Real Property Interests	4	Completed	Guidance.	No.
	5	Completed	Regulation on the advance acquisition of right-of-way (ROW).	No.
1303 - Letting of Contracts – CM/GC	6	<i>In progress</i>	Regulation on CM/GC.	No. Target Completion Date for the final rule December 31, 2016.
1304 - Innovative Project Delivery Methods	7	Completed	Guidance.	Yes. Updated guidance to provide further examples and clarification regarding innovative project delivery. Completed August 15, 2016.
1305 - Efficient Environmental Reviews for Project Decision-making	8	<i>In progress</i>	Required rulemaking to allow for the use of programmatic approaches to conduct the	Yes. Draft regulations are prepared and awaiting clearance from OST. Target Completion Date Spring 2017.

MAP-21 Subtitle C Sections	Action Item	Status of MAP-21 Action Item	MAP-21 Deliverable	Impacted By the FAST Act?
			environmental review process.	
	9, 10, 11	<i>In progress</i>	Guidance on designation on lead agency for multimodal projects, efficient environmental reviews, and environmental approaches.	Yes. Revised draft guidance under development. Target Completion Date to be determined.
1306 - Accelerated Decision-making	12	Completed	Report to Congress.	<i>No.</i> Next report due February 2017.
	13	Completed	Guidance on dispute resolution.	Yes. Revised guidance in accordance with FAST Act provision. Target Completion Date Summer 2017.
	14	Deleted ^a	Rulemaking on dispute resolution referrals and time limits.	<i>No.</i>
1307 - Assistance to Affected Federal and State Agencies	15	<i>In progress</i>	Guidance on MOA with Federal and State agency.	Yes. Draft guidance under development. Target Completion Date Spring 2017.

^a DOT subsequently decided the planned action was not needed.

1308 - Limitations on Claims	16	<i>In progress</i>	Rulemaking on revising the deadline for filing a claim for judicial review to 150 days.	Yes. Combine with other items for rulemaking under other FAST Act Subtitle C provisions. Target Completion Date Spring 2017.
	17	<i>In progress</i>	Guidance on filing deadline for judicial review.	Yes. Revised draft guidance under development. Target Completion Date to be determined.
1309 - Accelerating Completion of Complex Projects Within 4 Years	18	Deleted	Rulemaking on enhanced technical assistance for complex projects.	<i>No.</i>
	19	<i>In progress</i>	Guidance on enhanced technical assistance for complex projects.	Yes. Revised draft guidance under development. Target Completion Date to be determined.
1310 - Integration of Planning and Environmental Review	20	Completed	Guidance on integration of planning and environmental review.	<i>No.</i>
	21	Completed	Rulemaking on integration of planning and environmental review.	Yes. FAST Act Planning rulemaking. Completed May 27, 2016.
1311 - Development of Programmatic Mitigation Plans	22	Completed	Rulemaking.	Yes. FAST Act Planning rulemaking. Completed May 27, 2016.

1312 - State Assumption of Responsibility for CEs	23	Completed	Updated guidance on State assumption of responsibility for CEs.	<i>No.</i>
1313 - Surface Transportation Project Delivery Program	24	Completed	Required rulemaking to update regulations.	Yes. DOT will incorporate needed changes from FAST Act § 1308 into the rulemaking on § 1309. Target Completion Date to be determined.
	25	Completed	Guidance on State assumption of NEPA responsibilities.	<i>No.</i>
1314 - Application of CEs for Multimodal Projects	26	Completed	Updated Q&A and issued guidance on the application of CEs for multimodal projects.	Yes. OST is taking the lead on developing guidance for FAST Act § 1310 – Multi modal CEs. Target Completion Date December 31, 2016.
1315 - CEs in Emergencies	27	Completed	Required rulemaking to qualify emergency repair projects as CE.	<i>No.</i>
	28	Completed	Required regulation on evaluation of alternatives for repeated repair or reconstruction for facilities.	<i>No.</i> Completed October 24, 2016.
	29	Completed	Required regulation on evaluation of alternatives for repeated repair or	<i>No.</i>

	30	Deleted	reconstruction for facilities. Required regulation on evaluation of alternatives for repeated repair or reconstruction for facilities.	No.
1316 - CEs for Projects Within the Right-of-Way	31	Completed	Publicize required regulations for operational right-of-way CE projects.	No.
1317 - CE for Projects of Limited Federal Assistance	32	Completed	Publicize required regulations to designate projects with limited Federal assistance as CEs.	Yes. Final rulemaking. Completed May 31, 2016.
1318 - Programmatic Agreements and Additional CEs	33	Completed	Survey DOTs' use of CEs since 2005, publish survey results, and solicit requests for new CEs.	No.
	34	Completed	Required rulemaking to add new CEs suggested by others and as listed in the statute.	Yes. Final rulemaking. Completed May 31, 2016.

1319 - Accelerated Decision-making in Environmental Reviews	35	Completed	Issued interim guidance on accelerated decision making on environmental reviews.	Yes. Revised draft guidance under development. Target Completion Date to be determined.
	35(b)	Completed	OST issued guidance on accelerated decision making on environmental reviews applicable to entire Department.	No.
	36	<i>In progress</i>	Regulation on accelerated decision making on environmental reviews.	Yes. This change has been included in the NPRM that addresses MAP-21 § 1305 and FAST Act § 1304. Target Completion Date Spring 2017.
1320 - Memoranda of Agency Agreements for Early Coordination	37	Completed	Guidance on memoranda of agreements for early coordination.	No.
	38	Deleted	Rulemaking on memoranda of agreements for early coordination.	No.

1321 - Environmental Procedures Initiative	39	Completed	Establish initiative to review and develop consistent procedures for environmental permitting and report results for formula grant funds distributed.	<i>No.</i>
1323 - Review of Federal Project and Program Delivery	40	Completed	Report to Congress on results of review of Federal project and program delivery for CEs, EAs, and EISs for pre-2005 projects.	<i>No.</i>
	41	In progress	Report to Congress on results of review of Federal project and program delivery for CEs, EAs, and EISs for post-2005 projects.	<i>No.</i> Two reports evaluating project completion timeframes for CEs, EAs, and EISs (from 2005 to adoption of MAP-21 and post MAP-21). Target Completion Date October 1, 2017.
	42	Completed	Report to Congress on types and justifications for additional CEs under § 1316 and § 1317.	<i>No.</i>

Source: OIG compilation of information provided by FHWA.

EXHIBIT C. ENTITIES VISITED OR CONTACTED

Office of the Secretary of the U.S. Department of Transportation

Headquarters, Washington, DC

Federal Highway Administration (FHWA)

FHWA Headquarters, Washington, DC

FHWA Texas Division, Austin, TX

FHWA California Division, Sacramento, CA

FHWA Georgia Division, Atlanta, GA

FHWA Oregon Division, Salem, OR

FHWA Pennsylvania Division, Harrisburg, PA

Federal Transit Administration (FTA)

FTA Headquarters, Washington, DC

FTA Regions 6, Ft. Worth, TX

State Department of Transportation

Texas Department of Transportation, Austin, TX

Professional Transportation Associations

American Association of State Highway Transportation Officials,
Washington, DC

American Road and Transportation Builders Association, Washington, DC

EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Dave Pouliott	Deputy Assistant Inspector General for Surface Transportation Audits
Krystal Patrick	Supervisory Auditor
Michael Masoudian	Senior Analyst
Ryan Sanders	Senior Analyst
Anne-Marie Joseph	Senior Engineer
Fritz Swartzbaugh	Associate Counsel
Petra Swartzlander	Senior Statistician
Susan Neill	Writer Editor

APPENDIX. AGENCY COMMENTS

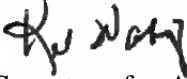


**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: INFORMATION: Management Response to DOT
Office of Inspector General (OIG) Draft Report
Vulnerabilities Exist in Implementing Initiatives Under MAP-21
Subtitle C To Accelerate Project Delivery

From: Keith Washington 
Deputy Assistant Secretary for Administration

To: Barry J. DeWeese
Assistant Inspector General for
Surface Transportation Audits

The Department of Transportation (DOT) has successfully implemented the majority of the project delivery provisions set forth in Subtitle C of the Moving Ahead for Progress in the 21st Century Act (MAP-21). The Department prioritized implementation of those provisions that had statutory deadlines and those that improved the efficiency and effectiveness of the project delivery process. In December 2015, we began to adapt and modify the MAP-21 Subtitle C implementation plan to meet the new project delivery requirements under the Fixing America's Surface Transportation (FAST) Act. The Office of the Secretary, Federal Highway Administration (FHWA), Federal Transit Administration, and Federal Railroad Administration moved quickly to address the FAST Act project delivery requirements while continuing to meet the requirements of MAP-21 Subtitle C. The Department does not view modifications to its implementation of MAP-21 Subtitle C, to adapt to the FAST Act provisions as vulnerabilities or as inhibiting benefits, but as a means for continued progress towards improving project delivery. Further, the Department believes that good progress has been made in completing the MAP-21 project delivery requirements, including those affected by the FAST Act. We have reviewed the draft report and offer the following comments in response to the OIG's findings and recommendations:

- For Section 1323, FHWA finalized a plan for collecting and tracking data on categorical exclusions (CEs) to meet mandatory reporting requirements within this section. This step is critical for standardizing the collection of information on CEs from States and FHWA Divisions.

- Related to the use of Project and Program Action Information (PAPAI) System, FHWA is in the process of updating its policy and website to clearly reflect and convey the most current requirements.
- For Section 1313, FHWA conducts annual audits during each of the first four years of a State's participation in the program. The FHWA has conducted audits in Texas and Ohio, and is preparing for audits in Florida and Utah. Following the fourth year, FHWA monitors the State's compliance with the written agreement and conducts monitoring for the States. States that participate in the program also perform individual self-assessments separate from the individual audit/monitoring conducted by FHWA.
- The FHWA actively promotes Section 1304 as a resource in presentations on its innovative deployment program, and through its Accelerating Innovation website¹⁷ and detailed Frequently Asked Question posted online.¹⁸ The FHWA has and will continue to capture the use of increased federal share for innovation on an annual basis through its Federal-aid Division Offices. As of October 2016, 10 individual State DOTs have used the innovative project delivery methods in section 1304 on over 30 projects for approximately \$68 million in increased Federal share.
- Since the Appendix B chart was prepared in November 2016, DOT has completed an action implementing Section 1303 with the issuance of a final rule on December 2, 2016 on Construction Manager-General Contractor contracts.

Based upon our review of the draft report, we concur with all recommendations as written and will take action to address these as the Department continues implementation of the MAP-21 and FAST Act project delivery requirements. Specifically, FHWA plans to implement recommendation 1 by March 31, 2018, and recommendations 2, 3, 4, and 5 by April 30, 2017. Please contact Gerry Solomon, Deputy Director, Office of Policy Development, Strategic Planning and Performance, Office of Transportation Policy, at (202) 366-1361 with any questions.

¹⁷ <https://www.fhwa.dot.gov/innovation/resources/>

¹⁸ https://www.fhwa.dot.gov/innovation/resources/increased_federal_share.cfm