AMERICAN ASSOCIATION OF
STATE HIGHWAY AND
TRANSPORTATION OFFICIALS

AASHTO

THE VOICE OF TRANSPORTATION

# TESTIMONY OF

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**ON BEHALF OF**

## THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

**REGARDING**

## *IMPLEMENTING MAP-21: THE STATE AND LOCAL PERSPECTIVE*

**BEFORE THE**

## SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
## COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
## UNITED STATES HOUSE OF REPRESENTATIVES

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Chairman Petri, Ranking Member DeFazio and Members of the Subcommittee, I thank you for the opportunity to share the American Association of State Highway and Transportation Officials' (AASHTO) views on implementation of the Moving Ahead for Progress in the 21st Century Act – MAP-21. My name is Mike Lewis and I am Director of the Rhode Island Department of Transportation. I am also President of AASHTO and today I am testifying on behalf of AASHTO. AASHTO is a non-partisan, non-profit association that represents the departments of transportation (DOTs) of all 50 states, Washington, D.C. and Puerto Rico.

First, I would like to thank you, Mr. Chairman and this Committee for your role in enacting MAP-21 which was the product of a bicameral, bipartisan agreement on a common set of policy objectives and fundamental program reforms – consolidation and reduction in the number of programs categories; further environmental streamlining; performance measurement, monitoring and reporting; and expanded opportunities for leveraging existing dollars with a much larger Transportation Infrastructure Finance and Innovation Act (TIFIA) Program.

MAP-21's transformational reforms will give States, which are the owners and operators of the most heavily used highway facilities and rural transit systems, additional flexibility to effectively and efficiently deploy resources to best meet needs while ensuring accountability and transparency. We applaud these policy and program reforms and believe that they provide a solid framework and direction for future reauthorization measures.

Implementation of MAP-21 has been underway since its enactment in July, 2012. However, with one hundred and twenty-six different action items and deadlines that extend out to 2017, implementation will continue well beyond the two-year life of the bill. To date, most of the required guidance and regulations to implement MAP-21 are a work in progress so it is still early to render any final judgment on the implementation effort. Nevertheless, the State DOTs are working in collaboration with the U.S. Department of Transportation (U.S. DOT) to put in place interim processes and procedures that reflect and conform to MAP-21's policy reform expectations.

Today, Mr. Chairman, I can report to you that we are pleased with the progress being made in implementing MAP-21, and we are optimistic that the flexibilities delegated to the States and the reforms envisioned by the drafters of MAP-21 will be appropriately reflected in future guidance and regulations. We are also pleased with the level of active engagement with the State DOTs in the implementation process. Collaboration between U.S. DOT and their State DOT partners, the owners and operators of the Nation's transportation network, is essential to the successful implementation of MAP-21.

## Principles for Implementation of MAP-21

AASHTO recommends these core principles to guide implementation of MAP-21:

- ***Engage to the maximum extent possible the transportation system owners and operators -- State DOTs, local governments and transit operators -- in the implementation process.*** States, transit agencies and local governments own, construct, maintain, operate and manage the nation's highway and transit systems. Therefore these

transportation partners are more than mere stakeholders in the implementation process and unique collaboration between us and U.S. DOT is essential. AASHTO appreciates that U.S. DOT has engaged the States, transit agencies and local governments in the implementation process and we hope that the Committee will urge them to continue that collaboration with us as partners, not merely stakeholders, in delivering a safe, economic, efficient and environmentally sound surface transportation system.

- ***Guidance and regulations should adhere to the statutory language in MAP-21.*** AASHTO believes that guidance and regulations should not introduce additional requirements beyond the letter and intent of MAP 21.
- ***Provide maximum administrative program flexibility.*** To the extent practicable and permissible, AASHTO recommends that U.S. DOT seek to maximize State discretion in administering the federal highway and transit programs.
- ***Expedite implementation of project delivery provisions***. Among MAP-21's reforms are provisions to expedite project delivery. AASHTO recommends that U.S. DOT give priority to implementing these provisions, in order to expedite the economic, social and environmental benefits that derive from improving our transportation system.
- ***Simplify and streamline administrative approval and oversight processes for routine and recurring activities.*** MAP-21's reforms provide a framework to broadly reevaluate and overhaul administrative requirements which could also expedite procurement and contracting processes.
- ***Utilize existing processes, practices, data sets and programs to the extent practicable.*** MAP-21's substantial reforms will require several years and iterative steps to fully implement. To the extent that existing processes, practices and data sets can be adapted rather than replaced, implementation can proceed more quickly.
- ***Limit national performance measures to a credible, minimum set, and implement performance measurement through an iterative process that allows time for experimentation and innovation without fear of penalties.*** One of MAP-21's most transformational reforms is the establishment of a process for measuring performance. Performance measurement will bring greater accountability and transparency to the federal surface transportation programs. It is essential that implementation occur iteratively, allowing ***for a process of continuous improvements,*** without fear of penalties.

## Accelerated Project Delivery

MAP-21 enacted a comprehensive set of reforms to expedite project delivery. This package included measures to broaden the use of categorical exclusions, expedite environmental reviews for complex projects, encourage linkage of transportation planning and environmental reviews, encourage earlier acquisition of right-of-way, and provide greater flexibility in contracting. Together, these reforms have the potential to reduce project delivery times substantially. But effective implementation is critical to their success.

AASHTO is closely monitoring implementation of the project delivery provisions in MAP-21 and is providing input and feedback to U.S.DOT when given the opportunity. Overall, we believe U.S. DOT's initial implementation steps have been positive, but we do have concerns in

a few areas. In addition, we note that much remains to be done, including potentially significant rulemakings and guidance documents that affect transportation planning, environmental review, right-of-way acquisition, and contracting.

Below is a discussion of AASHTO's perspectives on U.S. DOT's implementation of the project delivery provisions in MAP-21. Our comments address the rulemakings and guidance that have been issued to date, as well as the additional rulemakings and guidance that we expect to be issued in the future.

***Increased Use of Categorical Exclusions (CEs) for Projects with Minor Impacts.*** Under the National Environmental Policy Act, federal agencies can adopt categorical exclusions (CEs) for projects that have no significant environmental impacts. In MAP-21, Congress directed the U.S. DOT to make a series of changes that would expand the availability of CEs for transportation projects. These changes included creating new CEs, modifying existing CEs, and increasing the availability of programmatic agreements that allow States to make CE determinations. These changes all require rulemakings by FHWA and FTA.

Since enactment of MAP-21, FHWA has begun to implement these changes by completing one rulemaking and initiating another. Additional rulemakings are expected later in 2013.

Categorical Exclusions for Emergency Projects

Section 1315 of MAP-21 directs U.S. DOT to create a categorical exclusion (CE) for projects to repair or reconstruct highway facilities damaged in declared emergencies. FHWA and FTA issued a proposed rule implementing this provision on October 1, 2012. In our comments, we recommended that the final rule retain the flexibilities existing prior to MAP 21 and also ensure that the new CE applies to projects that include upgrades to meet current safety standards and to address impacts from extreme weather events when repairing or reconstructing transportation facilities. ***AASHTO is pleased that the final rule, published on February 19, 2013, substantially addresses our concerns and incorporates our recommendations.***

Section 1315 also requires "periodic evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities." We understand that U.S. DOT intends to address this requirement as part of its implementation of MAP 21's asset management provisions. ***AASHTO recommends that U.S. DOT not develop a single prescriptive approach but rather give states the flexibility to undertake a risk-based approach that considers the purpose and function of the facility and conditions unique to each facility and to each state.***

Categorical Exclusions for Projects within the Existing Operational Right of Way

Section 1316 of MAP-21 directs U.S. DOT to develop a CE for projects within an "existing operational right-of-way." The statute requires this new CE to be included in 23 CFR 771.117(c). On February 28, 2013, FHWA and FTA issued proposed regulations creating this new CE, as well as the new CE required by Section 1317 for "projects with limited federal assistance." Comments on the proposed regulations are due April 29, 2013.

AASHTO has two main areas of concern: (1) the proposed regulations would define the scope of the CEs more narrowly than we believe Congress intended, and (2) the proposed regulations increase the documentation requirements, above and beyond the level required for similar CEs.

One example of our concern involves the proposed CE for projects within the existing operational right-of-way. Section 1316 defines operational right-of-way to include lands "*acquired*" for transportation purposes. The proposed rule narrows the scope of the CE by applying it to land "*acquired, needed, and used*" for transportation purposes. Specifically, the proposed regulations would allow the CE to be used for projects within the existing right-of-way only if the affected lands were "disturbed for an existing transportation facility or are regularly maintained for transportation purpose"; the CE could not be used if the project affected lands within the existing right-of-way "that are not currently being used or not regularly maintained for transportation purposes." Our basic concern with this proposal is that it inserts additional restrictions that were not included in the statute. These restrictions could limit the usefulness of the CE, and also could create confusion about whether the CE is able to be used for a project.

New Categorical Exclusions

Section 1318 of MAP-21 directs U.S. DOT to survey the use of CEs for transportation projects since 2005, solicit requests for new CEs, and then to propose new CEs based on the results of the solicitation. In September 2012, FHWA issued a request for information regarding the use of existing CEs and proposed new CEs. AASHTO responded to the U.S. DOT request for information and submitted suggested new CEs. We are awaiting publication of the proposed list of new CEs. ***AASHTO has recommended that the proposed list of new CEs be comprehensive, and apply to both highway and transit projects, and that the existing CE list be substantially expanded without imposing additional conditions such as documentation.***

***Changes to Environmental Review Process for Complex Projects.*** MAP-21 included several provisions that are intended to streamline environmental reviews for complex projects - that is, projects requiring the preparation of an environmental impact statement (EIS) under NEPA. Overall, U.S. DOT is in the early stages of implementing these provisions. Our comments below address current and anticipated implementation activities related to several issues: (1) condensing the Final EIS and combining it with the Record of Decision (ROD); (2) modifying the environmental review process that was created in Section 6002 of SAFETEA-LU; and (3) providing technical assistance to complete EISs within four years.

Condensed Final EIS; Combining Final EIS and Record of Decision (ROD)

Section 1319 of MAP-21 seeks to streamline the preparation of an EIS in two ways. First, it allows a "condensed" format to be used for the Final EIS, if the comments on the Draft EIS are found to be "minor." With the condensed format, the Final EIS consists of errata pages to the Draft EIS, which avoids the need to publish an entirely new document. Second, it

directs U.S. DOT to issue the Final EIS and ROD as a single document, to the maximum extent practicable, unless the Final EIS makes "substantial changes" to the proposed action, or there are significant new circumstances or information.

Issuing the Final EIS and ROD as a single document can reduce the time needed to complete the NEPA process by several months. FHWA and FTA issued interim guidance in December 2012, which describes the circumstances under which a condensed format can be used and a Final EIS can be combined with the ROD. We were pleased that the guidance recognizes that the Final EIS and ROD "shall" be combined, unless a specific finding is made that it is "impracticable" to combine them. This interpretation is consistent with the intent of the statute. ***Overall, we are pleased with the direction that U.S DOT has taken in the Interim Guidance under Section 1319.***

Changes to the "Section 6002" Environmental Review Process

Section 6002 of SAFETEA-LU established a comprehensive process that U.S. DOT and other federal agencies must follow when an EIS is prepared for a transportation project. This process defined the roles of "lead agencies" and "participating agencies"; required the development of a coordination plan; required opportunities for public and agency input at key points; and created a process for resolving interagency disputes. In MAP-21, Congress modified this process to make it more flexible while also increasing accountability. Implementation of these changes will require an update to FHWA's guidance and also will require a rulemaking to modify FHWA and FTA's environmental review regulations. The legislation does not specifically set a deadline for a rulemaking.

To date, FHWA and FTA have not issued updated guidance or proposed regulations implementing the changes to the Section 6002 environmental review process. We remain hopeful that FHWA and FTA will implement these changes promptly - and in full accordance with the spirit of MAP-21. We also are urging U.S. DOT to ensure that the changes in MAP-21 do not inadvertently *increase* regulatory burdens. For example, lead agencies have the option - but not the requirement - to include a project schedule as part of a coordination plan in the Section 6002 process. Under SAFETEA LU, the schedule only required "consultation" with the participating agencies; MAP 21 requires the lead agencies to obtain "concurrence" of all participating agencies in the schedule, if the schedule is included as part of the coordination plan. ***AASHTO recommends that new guidance and/or rulemaking developed by U.S. DOT related to this process should clarify that a coordination plan is not required to include a schedule.***

Technical Assistance to Complete EIS in 4 Years

Section 1309 of MAP-21 allows U.S. DOT to provide technical assistance to assist in completing an EIS within 4 years after initiation of the NEPA process. This program is open to ongoing EISs that have been under way for at least two years; it requires adoption of a schedule that allows for completion within four years from initiation of the study.

This program does not require a rulemaking, so it can be implemented immediately. To date, FHWA has only issued Q&As that describe this program, but the Q&As do not provide guidance on how a State can apply to receive technical assistance under this program. We are not aware of any other actions taken by FHWA to solicit participation in this program. ***AASHTO encourages U.S. DOT to make information available to States about how to apply for technical assistance to expedite the completion of ongoing EISs.***

***Using the Transportation Planning Process to Support NEPA Reviews.*** In addition to making changes to the NEPA process itself, MAP-21 also sought to expedite project delivery through changes in statewide and metropolitan transportation planning. The transportation planning process is led by States and metropolitan planning organizations (MPOs), and involves the development of long-range transportation plans and transportation improvement programs (TIPs) for States and metropolitan areas. Transportation planning typically occurs before the NEPA process begins. Several of the project delivery provisions in MAP-21 encourage efforts to use transportation planning to help improve and expedite the NEPA process. We expect that these provisions will result in one or more rulemakings, and potentially in new guidance as well. These rulemakings would likely focus on the transportation planning regulations (23 CFR 450), and may also involve changes to the environmental review regulations (23 CFR 771).

Linking Planning and NEPA

Section 1310 of MAP-21 provides new authority to expedite environmental reviews by allowing the NEPA process to adopt analyses and decisions made by States and MPOs during the transportation planning process. Prior to MAP-21, this authority existed in the transportation planning regulations (23 CFR Part 450). Section 1310 provides, for the first time, explicit statutory authority for this practice. It also includes a savings clause, which preserves the States' ability to link planning and NEPA under the existing procedures in 23 CFR Part 450. ***AASHTO welcomes the new authority provided in MAP-21, and also was pleased that Congress included the savings clause to preserve existing authority.***

FHWA has issued Q&A guidance on its website confirming that States can continue to follow the existing planning-NEPA linkage procedures in 23 CFR Part 450. AASHTO is pleased that FHWA has recognized that MAP 21 did not displace existing authority to link planning and NEPA.

We anticipate that FHWA and FTA will be conducting a rulemaking to update its transportation planning regulations based on the new planning-NEPA linkage provisions in Section 1310. FHWA and FTA have not announced a timetable for such a rulemaking. AASHTO intends to be actively involved in the rulemaking process when it occurs. From our perspective, the over-arching issue in the rulemaking process will be ensuring that any new regulations clearly preserve the flexibility that existed under pre-MAP-21 regulations. In short, we welcome the new authority provided in Section 1310 of MAP-21, but also believe the savings clause in that provision is critical to ensuring that Section 1310 does not have the unintended effect of reducing flexibility that existed under pre-MAP-21 procedures.

Programmatic Mitigation Plans.

Section 1311 of MAP-21 creates a new 23 USC Section 169, which allows States and MPOs to develop "programmatic mitigation plans" as part of the statewide or metropolitan transportation planning process. A programmatic mitigation plan "may be developed on a regional, ecosystem, watershed, or statewide scale" and "may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat." While the recommendations in a programmatic mitigation plan are not binding, the statute does confirm that a Federal agency may consider those recommendations when determining appropriate mitigation for a project as part of the NEPA process.

While Section 1310 does not specifically require a rulemaking, it involves an activity that would be carried out as part of statewide and metropolitan planning. Therefore, implementation of this provision could involve amendments to the transportation planning regulations in 23 CFR Part 450. Implementation also could involve issuance of guidance or other informational materials. To date, FHWA has issued informal Q&A guidance on its website, but no other implementation steps have been taken. AASHTO recommends that U.S. DOT make implementation of this provision a priority. AASHTO also encourages U.S. DOT to reach out to State DOTs, transit agencies, MPOs, and local governments for input during the development of any proposed regulations or guidance regarding programmatic mitigation plans.

In addition, while we welcome this new authority, we also note that Section 1310 does not actually require environmental agencies to consider programmatic mitigation plans when making permitting decisions. As a result, environmental agencies can completely disregard the recommendations in the programmatic mitigation plans. We encourage the committee to monitor implementation of this provision, and if appropriate, consider legislation to ensure that programmatic mitigation plans - if developed - are actually considered and used during the permitting stage of project development.

Early Coordination.

Section 1320 of MAP-21 requires the USDOT and other Federal agencies, at the request of a State or local planning agency, to provide technical assistance on accomplishing early coordination activities. It also states that the U.S. DOT may, at the request of a State or local planning agency, enter into memoranda of agreement with the project sponsor, State, and local governments and to accomplish early coordination activities. These provisions have the potential to streamline environmental reviews through better coordination before the NEPA process begins. These provisions can be implemented right away, without the need for a rulemaking. However, to date, FHWA and FTA have not issued guidance or other informational materials to inform States and other potential applicants about how to seek assistance under this program. ***We encourage the Committee to monitor implementation of this program to ensure that technical assistance is made available and to encourage U.S. DOT to enter into early coordination MOUs when requested.***

***Earlier Acquisition of Right-of-Way.*** Section 1302 amends 23 USC 108 to broaden States' ability to acquire right-of-way prior to completion of the NEPA process, using both Federal and non-Federal funds. AASHTO anticipates that this provision will require amendments to FHWA's right-of-way regulations in 23 CFR 710 and may also involve amendments to the environmental review regulations in 23 CF 771. FHWA has not yet announced a timetable for rulemakings to implement this provision. ***AASHTO encourages the Committee to monitor implementation of this provision to ensure that States have the ability to begin exercising the increased authority provide by MAP-21 for early acquisition of right-of-way.***

***Contracting Flexibility.*** Section 1303 of MAP-21 directs USDOT to promulgate regulations as are necessary to allow States to enter into two-phased contracts that include preconstruction and construction services. ***There is no deadline for this rulemaking, but because this provision has the potential to yield substantial benefits in expediting project delivery, we urge the Committee to monitor and encourage implementation.***

## MAP-21 Performance Measures

Section 1203 of MAP-21 defines national goals for the Federal-aid highway program. It also requires that performance measures be established through the federal rulemaking process and subsequent target setting and performance reporting by the State DOTs. These requirements of national-level performance measures will potentially transform the federal-aid highway program and provide a means to the most efficient investment of federal funds. This is done by refocusing on national transportation goals, increasing the accountability and transparency of the federal-aid highway program and improving project decision making through performance-based planning and programming.

The State DOTs, along with their Metropolitan Planning Organizations (MPOs) partners, have been engaged with FHWA and FTA for the past five years in discussing, promoting and testing performance measures and performance-based planning and programming. Much of the focus has been on the technical details addressing everything from data collection and analyses to program and project level performance assessment techniques. ***Given the vast amount of technical and collaborative work already undertaken with federal transportation agencies, AASHTO would ask that the results of these efforts be given substantial weight and consideration by U.S. DOT in implementing the performance measurement requirements of MAP-21.*** The practical advice and input from the State DOTs and their metropolitan, local and transit partners into the performance measure process should be given appropriate weight. As owners, builders, operators and managers of the nation's highways, roads and transit systems, State DOTs, transit agencies, metropolitan and local agencies have the ultimate responsibility to invest in ways to deliver on the performance expectations of their customers who use the system.

State DOTs have a strong history of developing and using performance measures within their organizations to report to the public, improve operations, and plan better projects. For the last decade, many State DOTs have implemented comprehensive and robust performance management systems to balance investment decisions against resource limitations. States such as Michigan, Colorado, North Carolina, Utah, Minnesota, and Maryland have created programs to manage their physical assets and focus on the principles of transportation asset management and not a worst-first approach. Other states such as Missouri, Washington State, and Virginia have well-known

performance management programs that go well beyond physical assets. Missouri's *Tracker Program* is a tool to assess how well Missouri DOT delivers services and products to its customers. Washington State's *Gray Notebook* is the Washington State DOT's quarterly accountability report which has been in existence since 2001. And, Virginia DOT helped to pioneer the transportation dashboard concept.

Most recently, Florida DOT published its 2013 MAP-21 Performance Report based upon the recommended AASHTO performance measures. This clearly demonstrates that State DOTs are more than capable of reporting on national level performance measures. More information on the Florida DOT report is available here: http://www.dot.state.fl.us/planning.

***Performance Measure Implementation***

As we embark on this journey together to develop national performance measures and implement the requirements of MAP-21, it is imperative that the process be viewed as fair, rational, achievable, and most of all – based upon the years and years of work already completed. The performance focus must evolve over time with increasing sophistication and continuous improvements along the way.

The requirements for the development of, setting targets to, and reporting on national-level performance measures will take a number of years to implement. The two years of MAP-21 is not sufficient to accomplish all three aspects of the performance measure process. ***AASHTO recommends no additional requirements be included in the next authorization bill related to performance measures until such time as the full extent of the MAP-21 requirements are understood and implemented over the next 2 to 5 years.***

There are currently three major areas that AASHTO is addressing with regard to implementing the requirements of MAP-21: Development of National Level Performance Measures, Target Setting, and Transportation Asset Management.

Development of National Level Performance Measures

AASHTO worked with a broad range of its members to develop a credible set of national-level performance measures. In developing the recommended list of national-level performance measures, the group was guided by six overarching principles on how national performance measures should be developed and implemented. These six principles are as follows:

1. **There is a Difference**—National-level performance measures are not necessarily the same performance measures State DOTs will use for planning and programming of transportation projects and funding.
2. **Specificity and Simplicity**—National-level performance measures should follow the SMART and KISS principles:
   - **SMART**—Specific, Measurable, Attainable, Realistic, Timely
   - **KISS**—Keep it Short and Simple
3. **Possession is 9/10ths of the Law**—National-level performance measures should focus on areas and assets that States DOTs have control over.

4. **Reduce and Re-use**—The initial set of national-level performance measures should build upon existing performance measures, management practices, data sets and reporting processes.
5. **Ever Forward**—National-level measures should be forward thinking to allow continued improvement over time.
6. **Communicate, Communicate, Communicate**—Messaging the impact and meaning of the national-level measures to the public and other audiences is vital to the success of this initiative.

***The following 15 national-level performance measures grouped into the six performance measure areas identified within MAP-21 have been recommended by AASHTO:***

**Safety**

- **Number of Fatalities**—Five-year moving average of the count of the number of fatalities on all public roads for a calendar year.
- **Fatality Rate**—Five-year moving average of the Number of Fatalities divided by the Vehicle Miles Traveled (VMT) for a calendar year.
- **Number of Serious Injuries**—Five-year moving average of the count of the number of serious injuries on all public roads for a calendar year.
- **Serious Injury Rate**—Five-year moving average of the Number of Serious Injuries divided by the Vehicle Miles Traveled (VMT) for a calendar year.

**Pavement Condition**

- **Interstate Pavement in Good, Fair and Poor Condition based on the International Roughness Index (IRI)**—Percentage of 0.1 mile segments of Interstate pavement mileage in good, fair and poor condition based on the following criteria: good if IRI<95, fair if IRI is between 95 and 170, and poor if IRI is greater than 170.
- **Non-Interstate NHS Pavement in Good, Fair and Poor Condition based on the International Roughness Index (IRI)**—Percentage of .1 mile segments of non-Interstate NHS pavement mileage in good, fair and poor condition based on the following criteria: good if IRI<95, fair if IRI is between 95 and 170, and poor if IRI is greater than 170.
- **Pavement Structural Health Index**—Percentage of pavement which meet minimum criteria for pavement faulting, rutting and cracking.

**Bridges**

- **Percent of Deck Area on Structurally Deficient Bridges**—NHS bridge deck area on structurally deficient bridges as a percentage of total NHS bridge deck area.
- **NHS Bridges in Good, Fair and Poor Condition based on Deck Area**—Percentage of National Highway System bridges in good, fair and poor condition, weighted by deck area.

**Freight**

- **Annual Hours of Truck Delay (AHTD)**—Travel time above the congestion threshold in units of vehicle-hours for trucks on the Interstate Highway System.
- **Truck Reliability Index ($RI_{80}$)**—The RI is defined as the ratio of the total truck travel time needed to ensure on-time arrival to the agency-determined threshold travel time (e.g., observed travel time or preferred travel time) on the Interstate Highway System.

**System Performance**

- **Annual Hours of Delay (AHD)**—Travel time above a congestion threshold (defined by State DOTs and MPOs) in units of vehicle -hours of delay on Interstate and NHS corridors.
- **Reliability Index ($RI_{80}$)**—The Reliability Index is defined as the ratio of the 80th percentile travel time to the agency-determined threshold travel time.

**Congestion Mitigation and Air Quality (CMAQ)**

- **Criteria Pollutant Emissions**—Daily kilograms of on-road, mobile source criteria air pollutants (VOC, NOx, PM, CO) reduced by the latest annual program of CMAQ projects.
- **Annual Hours of Delay (AHD)**-Travel time above a congestion threshold (defined by State DOTs and MPOs) in units of vehicle -hours of delay reduced by the latest annual program of CMAQ projects.

MAP-21 is specific in limiting system performance measures to Interstate and NHS roadways. AASHTO believes that MAP-21 also limits CMAQ performance measures to on-road mobile source emissions and congestion as related to projects utilizing CMAQ funds. Thus CMAQ-related congestion measures would not be applicable to the entire surface transportation systems. ***AASHTO urges the Committee to ensure that the use of these performance measures is not seen as an opportunity to introduce additional performance measures that are not related to the systems that State DOTs, local governments and transit agencies own, operate, and maintain.***

Target Setting

MAP-21 clearly recognizes that States DOTs are solely responsible for identifying performance targets for each of the national-level performance measures identified in the federal rulemaking. We believe that MAP-21 provides for the following as related to setting performance targets:

- A set of standard, consistent national performance measures established by U.S. DOT in collaboration with the State DOTs. The State DOTs then would have the flexibility to establish the target values for those measures. The term "consistent" applies to the performance measures, data methodologies (collection, processing and analysis), and performance reporting processes, but not target setting. Therefore, we believe that

Congress did not intend for performance targets to be consistent across state boundaries – rather the performance targets should be geared to specific local conditions and needs and set at the discretion of individual State DOTs and MPOs.

- States must submit biennial reports on progress toward target achievement for each national measure.
- Regarding the Highway Safety Improvement Program, States that have not made significant progress towards meeting established targets will face reductions in funding flexibility and additional reporting requirements.
- Regarding the National Highway Performance Program (NHPP), States that do not make significant progress towards meeting their established targets for asset condition or performance will be required to report actions that they will undertake to achieve the targets.

AASHTO recommends the following with regard to setting performance targets:

- ***State DOTs be given maximum flexibility in setting performance targets***. Every state and municipality faces different constraints and opportunities affecting their transportation system. Funding levels and sources vary, as do environmental conditions, population growth trends, and legislative and gubernatorial mandates and priorities. Flexibility in target setting allows states and municipalities to face the realities of their unique situations. Furthermore, accountability should be based on what states can accomplish with their shares of federal funding.
- ***States DOTs should be encouraged to adopt performance targets that are attainable and realistic.*** These targets should be periodically reevaluated and adjusted to reflect risks, revenue expectations, and strategic priorities. In addition, the State DOTs agree that ***consistent data collection and analysis methods are essential to ensure that national-level measures and reporting use comparable data.***
- The establishment of performance targets can provide a focal point for action and a basis for accountability. However, it is important to recognize that for several of the national-level performance measures, State DOTs have relatively limited control over outcomes. There are many externalities that could affect a State DOT attaining certain performance targets from economic to social forces. For example, the effect of background changes in traffic related to economic conditions can overwhelm any deliberate actions on the part of a state to improve safety or reduce traffic delay. Generally speaking, State DOTs have more control over achieving targets related to asset condition and less control over performance measures associated with safety and system performance. ***AASHTO recommends that rules and guidance to implement MAP 21's performance provisions reflect this reality.***

## Transportation Asset Management

While MAP-21 establishes national-level performance measures, the use of performance measures is part of a broader context of performance management that includes an on-going system of establishing strategic goals, objectives, and performance measures for an organization, monitoring progress on achieving the goals and objectives through target setting and making decisions based on performance data to ensure achieving the goals and

objectives. Transportation asset management (TAM) is one of the most advanced examples of the application of performance management principles in the transportation industry. At the most basic level, TAM applies performance principles for the long-term cost-effective maintenance, preservation, rehabilitation, and reconstruction of the physical assets. At its fullest, TAM applies performance management principles to the long-term cost effective preservation of physical assets to enhance their value, preserve, renew, and enhance them for the lowest reasonable lifecycle cost so they provide the needed level of service to meet mobility, safety, environmental and economic objectives.

Asset Management Approach

Much of the initial work on defining the core principles of what is now called performance management grew out of AASHTO and FHWA efforts to promote a strategic approach to TAM. The analytic tools, data, and experience in applying performance management principles are more advanced in asset management than in many other aspects of transportation. TAM takes a strategic approach to allocating scare resources in order to better management the physical condition of transportation assets. The strategic approach is not based solely upon condition, but incorporates other aspects including risk, utilization, etc. Thus, decisions about what type of treatments to make to bridges in need of repair or which roadways to reconstruct because the pavement is in poor condition is not based solely upon the condition of those assets (this is commonly called a *worst-first approach*) but rather includes other data points such as traffic volume over a bridge or section of road or risk that a catastrophic event may occur requiring that asset to be critical to the safe evacuation of an area.

MAP-21 establishes minimum condition levels for bridges and requires U.S. DOT to establish minimum condition levels for Interstate pavement condition. Both of these requirements may drive State DOTs to employ a worst-first approach rather than a TAM approach where State DOTs are required to spend money on certain assets regardless of their overall strategic importance to the functioning of a comprehensive transportation system. For example, setting minimum condition level for bridges would require a State DOT to improve the condition of bridges in poor condition regardless if they are not heavily utilized or pose some other risk to the agency. In this situation, it may be better for a State DOT to simply close a bridge and use the funding that would have been used to improve the under-utilized and low risk bridge and spend it on keeping other more strategically important bridges from getting to a poor condition rating. ***AASHTO recommends the establishment of an ongoing, comprehensive and inclusive dialogue about how to better integrate and balance an asset management approach with a minimum condition approach.***

## Performance-based Planning

MAP-21 Sections 1201, 1202 and 1203 include new requirements for performance-based planning in both statewide planning and metropolitan planning. The principal change to the statewide planning statutes made by MAP-21 is the requirement for a performance-based approach to transportation decision-making. The changes require States to establish a statewide planning process that includes the establishment and use of a performance-based approach to

transportation decision-making. The performance-based process should support the seven national goal areas listed in MAP-21's performance management section. MAP-21 requires the statewide transportation plan include a description of the performance measures and performance targets used in assessing the performance of the transportation system. In addition, a system performance report evaluating the progress made towards reaching the targets must be developed. In addition, the statewide transportation improvement program (STIP) must include, to the maximum extent practicable, a discussion of the expected effect of the STIP toward achieving the performance targets that were established in the statewide plan.

State DOTs remain concerned with the increasing number of plans required under MAP-21. As State DOTs begin to implement the performance-based approach, ***AASHTO recommends that State DOTs be given maximum flexibility in developing interrelated plans such as the Long Range Plan, the Asset Management Plan, Financial Plans, Freight Plans and other plans regarding the sequence and timing of these multiple requirements. In developing guidance and eventual rules related to MAP-21, AASHTO recommends that U.S. DOT consider the relationships among the Long Range Plan, the Asset Management Plan, the Strategic Highway Safety Plan, and Statewide Transportation Improvement Program, and seek to minimize duplication, eliminate conflicts, and streamline planning and reporting requirements.***

Implementation of the new performance-based planning requirements will require amendments to the transportation planning regulations in 23 CFR Part 450. The regulations will need to be revised to address the procedural aspects of performance-based planning - for example, the process for adopting and updating performance targets, and for reporting on progress toward those targets. It is possible that these changes to the planning regulations will be developed as part of a more comprehensive rulemaking involving other changes to 23 CFR Part 450 (such as planning-NEPA linkage and programmatic mitigation plans, which are discussed above). Regardless of how the rulemaking process is structured, we expect that there will be significant rulemaking activity involving the transportation planning process. ***AASHTO encourages the Committee to monitor implementation of the full range of rulemaking activities related to the transportation planning, and to encourage the U.S. DOT to reach out to States, MPOs, and others during the development of proposed regulations.***

## Safety

Mr. Chairman, there can be no higher priority for the State DOTs than safety. AASHTO has embraced the national goal of reducing crash-related fatalities by half over the next two decades. But, since even one death is one too many, AASHTO has also been a leader in advancing a Toward Zero Deaths (TZD), a strategy for a long-term highway safety national program in which we and some 30 other national organizations are reviewing the progress already made and have committed to continuously improving safety on our Nation's roadways.

### Highway Safety Improvement Program

Federal guidance related to the Highway Safety Improvement Program (HSIP) has provided flexibility in the way states allocate HSIP funds, in the development of the Strategic Highway

Safety Plans (SHSPs), and when the SHSPs are updated. This allows states to ensure SHSPs are tools that can be used to plan according to their individual needs. Challenges to implementing HSIP efforts vary across the states; for example, though HSIP funds can be used on all public roads, state laws vary with respect to the ability to use federal funds off the State roadway system.

Safety Behavioral Programs.

The safety partnership with the Federal Highway Administration and the National Highway Traffic Safety Administration (NHTSA) has been positive over many years, and AASHTO appreciates the collaborative approach to implementing MAP-21. However, some of MAP 21's provisions related to the NHTSA behavioral programs are creating disincentives rather than the intended effect of incentives to address specific aspects such as distracted driving.

- MAP-21 identifies explicit required conditions that must be met in order to qualify for funding from six different national priority safety incentive grant programs under Section 405 of title 23. The statutory language is very specific, but NHTSA's interim guidance released in January, 2013, adds additional requirements. For example, in order to qualify for a graduated licensing incentive grant, states must, among other things, require driver education, have a nighttime restriction of 10 pm to 5 am in addition to the requirements under MAP-21. ***AASHTO recommends that NHTSA limit its guidance to the requirements in MAP 21 and not impose additional conditions.***

- NHTSA's timing for the state application process for behavioral safety grant programs – i.e., March 23rd for FY 13 funds and July 1st for FY 2014 funds – means that States have to demonstrate progress in meeting the fourteen annual safety performance measures required for the behavioral safety programs is being made over a three-month period. ***AASHTO recommends that U.S. DOT provide as much flexibility as possible in applying these performance requirements.***

- Conditions associated with the NHTSA grant programs, especially the State Graduated Driver Licensing Incentive Grant Program are so specific that no State currently will qualify for these funds. In addition, only a small number of States will meet the necessary conditions for the Distracted Driving Program. ***AASHTO recommends that U.S. DOT provide as much flexibility as possible to enable the State to have access to these incentive grant programs to address the safety issues the programs were intended to incentivize.***

- U.S. DOT's interim guidance to implement the behavioral safety grant programs was released on January 23, 2013. States had until March 23rd to submit applications for Section 402 and 405 safety grants for FY 2013 and will have until July 1st to submit applications for FY 2014 funding. Because more than half of the states have 60-90 day legislative sessions, in many cases the states legislatures have not had sufficient time to enact the necessary changes needed to enable the states to meet the legislative conditions to quality for the grants. ***We recommend that U.S. DOT provide as much flexibility as***

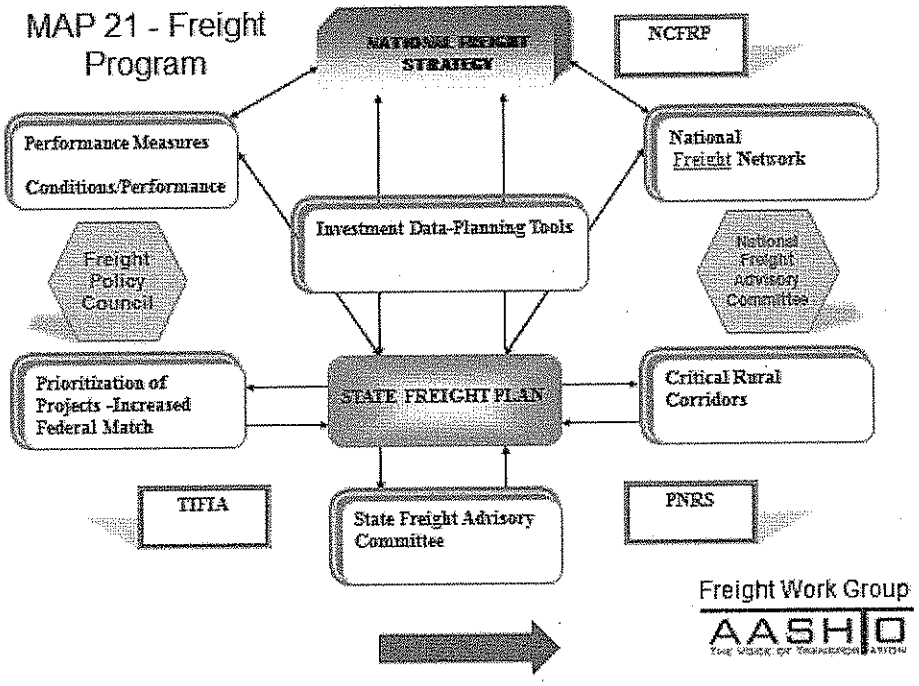
***possible and additional time to enable required legislative requirements to be put in place.***

## MAP-21 Freight Programs

***Background.*** Over 30 state DOTs now have a dedicated freight office or identified freight lead in their respective organizations. In recent years, many states have also developed freight strategies, plans, programs and projects and have incorporated freight considerations into their basic planning and project development processes. States have benefited from the strong partnership with the Federal Highway Administration (FHWA) Office of Freight Management and Operations, as well as good working relationships with the Federal Railroad Administration (FRA), the Maritime Administration (MARAD), Federal Motor Carrier Safety Administration (FMCSA), and other federal agencies with jurisdiction over key elements of the national freight transportation system.

AASHTO applauds this Committee and Congress for the significant emphasis given to freight in MAP-21. AASHTO is also pleased that the U.S. DOT has continued the spirit of partnership in the implementation of the freight provisions of MAP-21.

MAP-21 contains a number of freight provisions calling for: freight plans, freight advisory committees, freight performance measures, a national freight network, state critical freight corridors a freight condition and performance report, and a national freight strategy. The diagram below illustrates how these and other MAP-21 provisions are interrelated. The diagram is useful for seeing both the number of these provisions, and their complexity. It also makes the point that the freight provisions need to be managed as a whole at the U.S. DOT and within the state DOTs.



It is important to note that there is no specific funding provided for freight projects, planning, capacity building, or research. There is only the possibility of enhanced federal match for freight projects funded from a state's apportionment.

In addition to the legislated items the diagram shows two actions taken by the Secretary, the creation of an internal Freight Policy Council and external National Freight Advisory Committee, both of which are supported by AASHTO.

***Implementation of MAP-21 Freight Provisions***

State Freight Plans

- MAP-21 states that the Secretary shall encourage the development of freight plans and freight advisory committees; no requirement for States to develop plans and committees is mandated in the law. At minimum, the U.S. DOT should not discourage the development of State Freight Plans and State Freight Advisory Committees. Beyond the minimum, ***U.S. DOT should support development of such plans and councils with resources including data, planning tools, technical assistance, and active collaboration.***

- While the law identifies "minimum" contents of state freight plans, the encouragement is directed to all states and therefore the focus, emphasis, priorities, analysis, scope, and complexity of plans will and should vary among the states depending on their size, economies, transportation systems, and state-determined objectives. ***AASHTO recommends that initially the contents of the state freight plans—required or recommended be limited to the six items listed in MAP-21.*** These six items represent a broad and heavy responsibility. Adding to them with additional items or with additional requirements within the six topics in the law will discourage the development of state freight plans.

- As part of the interim process, ***AASHTO recommends that the U.S. DOT and AASHTO collaborate in a program that will encourage the development of state freight plans and, based on State-experience to-date and national objectives for freight transportation, provide insight into how state differences can be accommodated within general guidelines for plans.***

Freight Advisory Committees

MAP-21 instructs the Secretary to encourage states to form freight advisory committees. A number of State DOTs have established freight advisory committees or their equivalent principally for the purpose of involving the private sector in freight strategies, plans, programs, and projects. What is important is the function. A State freight advisory council may take many forms depending upon the given state. Varieties of institutional relationships exist between State DOTs and freight advisory committees, councils and advisory groups, and have generally proven effective.

Freight advisory committees are structured and work in a variety of ways. From groups that are organized and managed by the DOT, to external groups that actively champion freight and advise the DOT through development agencies, to the utilization of regional planning relationships, to transient committees and groups that are formed for special projects and freight planning activities then disbanded, to freight advisory committees that are established and required by State law.

- ***AASHTO recommends that the guidance and implementation on State Freight Advisory Councils reflect this diversity of institutional arrangements and range of membership that participate on these groups.*** Existing groups external to the agency, but functioning as a State Freight Advisory Council are not defined in the U.S. DOT's preliminary guidance.

- ***Further, AASHTO recommends that the States should have the discretion to create and disband advisory committees for specific freight projects and planning activities, rather than convene a standing advisory group when State activities and investments may not warrant the time investments of private sector advisors. Existing committees should have discretion of membership based on their experiences and proven approaches. The guidance should not specify membership beyond what is established in the law.***

Freight Performance Measures

One of the most important core elements of MAP-21 is the performance management system, which establishes a process for developing and applying performance measures in several areas, including freight movement on the Interstate system. Through a lengthy and rigorous process ***AASHTO developed and has recommended two freight performance measures – one to calculate delay and the other reliability***. (See Performance discussion.) These measures are consistent with those recommended by AASHTO in the related area of system performance and will provide a feasible and useful tool for estimating national performance of the Interstate system for freight movement and for incorporation in a state DOT's overall performance management system. In addition to these measures (Section 1203) the Secretary is directed to prepare "Freight Transportation Conditions and Performance Reports" within two years of enactment of MAP-21 and then every two years thereafter. U.S. DOT has indicated that it will develop measures to gauge the performance of all modes of transportation.

Multimodal Freight Mechanisms

U.S. DOT is working to reduce the silos among the freight modes through mechanisms such as the Freight Policy Council and the National Freight Advisory Committee and through the Freight Transportation Conditions and Performance Reports and the National Freight Strategic Plan. It is important to develop a complete view of the freight transportation system(s) and to understand how highway, rail, maritime, and aviation perform and interact. However, significant elements of MAP-21 are limited to highways, including the primary freight network, the critical rural freight corridors, high priority projects eligible for enhanced federal match, and the Section 1203 freight performance measures.

U.S. DOT and the States have a good start on implementing the MAP-21 freight provisions. The revised freight plan guidance is expected soon as is the proposal for the primary freight network to be followed by guidance for the States on the designation of the critical rural freight corridors. ***Success with these and with the program in general will depend on maintaining a strong partnership between the States, U.S. DOT, and other major stakeholders and proceeding in a flexible fashion recognizing major differences among the States and the need to evolve the program based on experience.***

## Buy America

MAP-21 includes a provision in Section 1518 that clarifies that the Buy America requirements in 23 USC 313

> "apply to all contracts eligible for assistance under this chapter for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969…, regardless of the funding source of such contracts, if at least 1 contract for the project is funded with amounts made available to carry out this title."

First, Mr. Chairman, I want to be perfectly clear that AASHTO and the State DOTs support the Buy America Act and the philosophy behind it. We understand and support the economic benefits. However, we – and the utility companies -- have been caught off guard by the interpretation of this provision by U.S. DOT. U.S. DOT has concluded that this provision would include all agreements with utility companies, which are made with the States in order to reimburse the utilities for the costs associated with utility relocations or disturbances that may be required in preparation for highway or transit construction, reconstruction, or rehabilitation.

We believe that it is important to note that if a utility is unwilling or unable to certify compliance of their materials with the new Buy America provisions, a state DOT cannot just find an alternative vendor. In this case, a State DOT is left with the consequences resulting from a situation over which the state DOT has no control – i.e., the State DOT cannot force the utilities to comply. The result, which we are only beginning to see as the construction season is just beginning, is that projects are being put on hold, either indefinitely or until – and if -- the utilities are able to make adjustments to their material suppliers and supply chains and complete the documentation process to certify product content. Meanwhile, the economic, social and environmental benefits which would accrue from these highway and transit projects are not being realized.

Again, AASHTO fully supports Buy America but we believe that there is a need to step back and engage all parties – the U.S. DOT, State DOTs, transit operators, local governments and utilities – in a constructive dialogue to arrive at an approach that respects and promotes Buy America, is consistent with the intent of MAP-21, and is reasonable and practical, in both content and timeline, for the utility compliance.

## Conclusion

Mr. Chairman, in conclusion, on behalf of the State DOTs, we applaud and thank you and your Committee for enacting the bipartisan MAP-21 legislation with its transformational policy and program reforms. We believe that MAP-21 will set a sound policy course for years to come. We also recognize that the process for implementing MAP-21 is still in progress and will extend even beyond the end of MAP-21's two-year authorization period. Nevertheless, we are pleased with U.S. DOT's commitment to collaboration with their State DOT partners and their aggressive stakeholder outreach and involvement process.

I thank you for the opportunity to testify and will be happy to answer any questions from the Committee.