



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Office of Inspector General  
Washington, DC 20590

May 22, 2013

The Honorable Barbara Boxer  
Chairman, Committee on  
Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Bill Shuster  
Chairman, Committee on  
Transportation and Infrastructure  
United States House of Representatives  
Washington, DC 20515

The Honorable David Vitter  
Ranking Member, Committee on  
Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Nick J. Rahall, II  
Ranking Member, Committee on  
Transportation and Infrastructure  
United States House of Representatives  
Washington, DC 20515

Dear Chairmen and Ranking Members:

We are writing to provide you with an early assessment of the Department's plans to carry out the provisions within the Moving Ahead for Progress in the 21st Century Act (MAP-21), requiring the Acceleration of Project Delivery (Subtitle C).<sup>1</sup> MAP-21 is the first long-term surface transportation authorization since 2005, providing \$105 billion for fiscal years 2013 and 2014. The Act's Subtitle C is designed to increase innovation in surface transportation project delivery and efficiency of project planning, design, construction, and financing. The Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Office of the Secretary of Transportation (OST) are working together to implement numerous MAP-21 provisions, including Subtitle C. MAP-21 requires our office to assess the Department's steps taken to administer Subtitle C and report periodically to your Committees. This is the first review in a series of audits using a three-phase approach to assess the Department's progress in implementing MAP-21's project delivery reforms.<sup>2</sup>

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<sup>1</sup> Pub. L. No. 112-141 (2012), Division A, Title I, Subtitle C.

<sup>2</sup> OIG Audit Announcement: "Audit Initiated of DOT's Implementation of MAP-21 Acceleration of Project Delivery Provisions," November 28, 2012.

We conducted our initial review to proactively address our mandate and assess the Department's plan and progress as of March 27, 2013.<sup>3</sup> Accordingly, we are providing you with our results, which we discussed with your respective staffs on April 22, and 25, 2013. The scope of our review included (1) reviewing the Department's plans to carry out Subtitle C provisions, (2) assessing the status of those planned actions, and (3) identifying challenges that could delay the Department's implementation efforts.

In summary, the Department developed a plan with 42 actions to meet Subtitle C requirements. These actions mostly involve environmental issues that occur during the planning and design phase of highway and transit projects. The Department completed five actions, and most of the remaining actions are in progress. For example, in the first month that the law went into effect, the Department issued guidance in the form of questions and answers on a wide range of topics, including innovative project delivery, and a proposed rulemaking on using categorical exclusions (CE)<sup>4</sup> to expedite projects after disasters or emergencies (the rule was finalized in February 2013). However, its plan does not assign estimated completion dates for all the planned actions without milestones specified by statute.<sup>5</sup> These include final rulemakings, new guidance to States managing Federal projects, a congressionally mandated report, and other program initiatives such as identifying and disseminating best practices. Without estimated completion dates, the Department lacks a sufficient management tool to track timely completion of these efforts, and it will be difficult for Congress, States, and other stakeholders of Federal projects to gauge the Department's progress. Finally, while the Department met certain MAP-21 rulemaking milestones, it faces challenges to complete all required rulemakings within the statutorily set dates. For example, many of these rulemakings require coordination with other agencies, which typically extends the timeframe, and the Department is already experiencing delays with some mandated rules.

We conducted this review from December 2012 to May 2013 in accordance with generally accepted government audit 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. Attachment 1 shows the 42 actions planned by OST, FHWA, and FTA to implement Subtitle C as well as the details of our scope and methodology.

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<sup>3</sup> This date represents the last date for which we verified status and gathered data for our audit.

<sup>4</sup> A categorical exclusion is a category of actions that do not individually or cumulatively have a significant effect on the human environment. In these cases, an environmental impact statement or an environmental assessment is not required.

<sup>5</sup> While Subtitle C identifies specific dates for many NPRMs, final rules, and reports, it does not specify dates related to non-legislative requirements, such as Department guidance.

## **BACKGROUND**

MAP-21 Subtitle C, which has a legislative life of 2 years, contains key provisions<sup>6</sup> to accelerate the delivery time of surface transportation projects and reduce costs. According to FHWA, complex federally funded highway projects can take approximately 13 years to complete (from planning to construction). Subtitle C directs the Department to identify and promote reforms that will reduce the time and funding required to plan, design, and construct surface transportation projects. Most of the project delivery reforms relate to environmental issues during the planning and design phase of highway and transit projects. For example, Subtitle C expedites the National Environmental Policy Act (NEPA) review process by broadening States' ability to acquire or preserve right of way parcels prior to a review's completion. MAP-21 also expands the use of CEs for other types of projects, such as those that are multi-modal, pertain to roads damaged in a declared disaster, are within an existing operational right-of-way, or receive limited Federal assistance.

The process by which the Department's agencies develop and issue regulations is spelled out in the Administrative Procedure Act (APA). APA generally requires agencies to publish a notice of proposed rulemaking (NPRM) in the Federal Register, allow a comment period, issue a final rule with a statement of its basis and purpose, and publish a final rule at least 30 days before it becomes effective. APA allows agencies to issue final rules without the use of an NPRM in certain cases, including when the agency determines for "good cause" that notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest." Under Executive Order 12866 (reaffirmed by Executive Order 13563), the Office of Management and Budget (OMB) reviews "significant"<sup>7</sup> proposed and final rules from agencies, other than independent regulatory agencies, before they are published in the Federal Register. OMB ultimately determines whether a rule is significant—an action that can extend the time to complete a rulemaking.

## **THE DEPARTMENT COMPLETED FIVE OF THE ACTIONS DEFINED IN ITS PLAN, AND MOST OF THE REMAINING ACTIONS ARE IN PROGRESS**

The Department completed 5 of 42 actions (see attachment 1) from October 1, 2012, (when MAP-21 went into effect) through March 27, 2013, including rulemakings, guidance, and other initiatives to implement MAP-21 Subtitle C. Most of the remaining actions are in progress. In addition to its planned actions, the Department

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<sup>6</sup> These provisions include advancing the use of best practices, expanding early acquisition of property prior to completion, using the construction manager/general contractor method of contracting, and establishing a relocation streamlining demonstration program.

<sup>7</sup> Significant rulemakings are those that have an annual economic effect of \$100 million or more; could adversely affect the environment, public health or safety, actions of another agency, or a government program or policy; or create a legal issue or other material impact.

has completed question and answer guidance for States and others managing Federal projects on 19 sections related to Subtitle C. Many of these sections will also include additional Department-initiated rulemakings and new or modified departmental guidance. We assessed the status of DOT's completed and planned actions as follows:

- The five completed actions include publishing an NPRM and final rule for Section 1315(a) on the use of CEs to expedite projects after a disaster or other emergency, issuing question and answer guidance on innovations to improve project delivery identified in Section 1304, surveying and reporting on the use of CEs for Section 1318, completing interim guidance on accelerated decision making for environmental reviews for Section 1319, and publishing an initial report to Congress on the status of environmental studies as required in Section 1306.
- According to the Department, 34 of the 42 planned actions are underway,<sup>8</sup> and it has made substantial progress on many of them. For example, for Section 1305, the Department drafted guidance that will designate a lead agency for multimodal projects. This action is ongoing because the guidance is under review by the Department's program offices. In addition, for Sections 1316 and 1317, the Department issued an NPRM within the statutory deadline but has not completed the final rule, which relates to the use of CEs for projects within the right-of-way and projects with limited Federal assistance. Lastly, the Section 1318 rulemaking on the use of additional types of CEs is in progress but significantly behind schedule. In this instance, Department officials explained that an NPRM for Section 1318 cannot be completed until an analysis is performed on the survey results, which is still being conducted.
- Department officials told us that they did not begin work on 3 of the 42 planned actions. These actions include establishing a best practices clearing house related to accelerated project delivery, developing guidance on integrating planning and environmental reviews, and reporting on the types of and justification for additional CEs. The Department stated that it has not begun these three actions because other actions either have a higher priority or need to be completed before it can start these actions.

## **THE DEPARTMENT DEVELOPED MAP-21 PLANS BUT DID NOT ASSIGN COMPLETION DATES FOR SEVERAL ACTIONS**

The Department developed plans (with 42 separate actions) to implement all required sections within MAP-21 Subtitle C (Sections 1301-1323).<sup>9</sup> These plans identify how

<sup>8</sup> The reported status of the 34 actions shown as "in progress" is based on information provided by the Department. We did not perform audit procedures to confirm the actual status of the planned actions since this was beyond the scope of our initial review.

<sup>9</sup> Section 1322 requires actions from GAO, not the Department, so we have not included this Section as an action required in our summary of Department's action plans.

the Department will complete rulemakings, issue reports, or take other actions related to the acceleration of project delivery. However, as of March 27, 2013, the Department has not assigned estimated completion dates to a number of planned actions. These include final rulemakings, new guidance, and other program initiatives. Without estimated completion dates, the Department lacks a sufficient management tool to track timely completion of these efforts, and it will be difficult for Congress, States, and other stakeholders of Federal projects to gauge the Department's progress. OST, FHWA, and FTA are coordinating all of the Department's plans, which fall within the following five general categories:

**Congressionally Required Rulemakings:** The Department plans to issue eight rules to meet congressional requirements. The eight rules will, in general, streamline the environmental review process used on Federal highway and transit projects. Of the eight, three have a statutory deadline to issue an NPRM, and the remaining five NPRMs have deadlines set by the Department. For the final rulemaking phase, one has a statutory deadline to issue a final rule, four have deadlines set by the Department, and the three remaining do not have final deadlines. The Department prioritized congressionally required rules in order to meet the statutory deadlines. For example, the Department issued an NPRM and a final rule for Section 1315, which qualified emergency repair projects to be eligible for categorical exclusions.

**Department-Initiated Rulemakings:** The Department plans to develop three additional rules to implement certain sections of Subtitle C, including early acquisition of right-of-way, contract letting, and environmental planning. For example, the Department will issue a new rule to implement Section 1303, which will permit a newer type of contracting method called construction manager/general contractor. The Department has estimated NPRM completion dates for all three planned rules but did not set estimated dates for the publication of these final rules.

**Congressionally Mandated Reports:** The Department plans to issue five categories of reports to inform Congress or other interested parties of the status of environmental actions taken. For example, Section 1306 directs the Department to issue a report to Congress at least every 120 days on the NEPA status of projects. Four of the five report types have congressionally mandated due dates. However, the Department does not have a planned completion date for the remaining report, which will convey the results of a Departmental review, required by Section 1321, to assess and develop consistent environmental permit and procurement procedures.

**Guidance:** The Department identified 16 planned actions to issue new or modify existing guidance to assist States and others managing Federal projects. As of March 27, 2013, the Department has issued guidance for 2 of these 16 actions. However, the Department does not have estimated completion dates for the remaining 14 actions.

**Other Initiatives:** The Department has three other initiatives included in its plan—two to address Section 1301 and one covering Section 1318. For Section 1301, the Department must advance the use of best practices, which would reduce delivery time and project costs. Additionally, the Department must establish a relocation demonstration program. The Department has not formalized a schedule for the Section 1301 initiatives. The Department has completed the Section 1318 initiative by surveying and reporting on the Department’s use of CEs since 2005.

Department officials stated that their first priority is to publish statutorily required rules, focusing on those with congressionally mandated deadlines, and to prepare required reports with specified deadlines. The Department then plans to focus on self-initiated rulemakings for sections that either add new provisions or alter existing Federal regulations. After that, the Department will develop and publish guidance. At the same time, it will work on the other initiatives identified in its plans. In our view, the Department’s decision to focus first on rulemakings and required reports is reasonable.

According to the Department, it did not set some milestone dates for final rulemakings due to a number of factors. These include legal requirements in the rulemaking process, the inability to predict the time needed to complete the various rulemaking stages, and OMB’s designation of a rule as “significant.”<sup>10</sup> Department officials also stated that given the high priority placed on rulemakings, they had not set milestones for other planned actions at this time.

In our view, establishing milestone dates whenever feasible provides useful information to key stakeholders and is an important management tool for the Department. We also noted that, contrary to the Department’s assertions, the legal requirements of the rulemaking process do not preclude estimation of completion dates. Establishing such dates for final rules and for guidance and reporting requirements is important to help the Department better manage the rulemaking and guidance process and allow its stakeholders to effectively plan to implement the new rulemakings and guidance. For example, if a State can better gauge when FHWA plans to complete a certain action, it can more readily incorporate a new legislative provision in its project plans and specifications.

## **THE DEPARTMENT WILL BE CHALLENGED TO COMPLETE REQUIRED RULEMAKINGS BY THE STATUTORILY SET DATES**

The Department met certain MAP-21 rulemaking milestones and conducted considerable outreach in many forums.<sup>11</sup> However, it will be challenged to complete

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<sup>10</sup> OMB may define a rule as “significant,” which, according to the Department, would add 3 to 6 months of review time.

<sup>11</sup> The Department advised us that FHWA and FTA conducted about 50 webinars, Q&As, and other presentations to inform its stakeholders on MAP-21 provisions.

the remaining required rulemakings by the statutorily set dates.<sup>12</sup> Our review shows that the Department is already experiencing delays with implementing some mandated rules and has taken extended periods of time to issue prior rulemakings. Therefore, States and others managing Federal projects may be unable to fully achieve the benefits envisioned for Subtitle C in a timely manner. This is due, in part, to the fact that it can take considerable time to complete parts of the rulemaking process and coordinate on steps that involve other Federal agencies. For example, the Subtitle C environmental rulemakings require compliance with NEPA provisions, which include additional external coordination. One key external stakeholder is the Council on Environmental Quality (CEQ), which promulgates regulations implementing NEPA that are broadly applicable to all Federal agencies.<sup>13</sup> In addition, highway and transit industry associations and State officials stated that earlier, interactive communication with them may allow the Department to decrease the number of formal comments, thereby reducing the time to complete rulemakings.

**Timeframes for Completing Prior Department Rulemakings Were Longer Than 3 Years on Average:** Given the time periods involved in the Department's prior rulemakings, it may be unrealistic to assume that the Department can complete the remaining required Subtitle C rulemaking milestones established within the 2-year legislative life of MAP-21. A 2009 Government Accountability Office (GAO) case-study reviewed 16 Federal rulemakings at various agencies and found that they took approximately 4 years on average to complete, with the 4 rules completed by the Department averaging just over 3 years from initiation to final publication.<sup>14</sup> In addition, for illustrative purposes, we reviewed three other rules issued by FHWA and FTA, under the previous surface transportation authorization, which had similar results. These three rules took an average of just over 5 years from initiation to final publication.

**DOT Is Already Experiencing Delays in Preparing Subtitle C Rules:** We identified a number of delays that the Department is already encountering with issuance of some Subtitle C rules. For example:

- **Section 1313, Surface Transportation Project Delivery Program:** The Department plans to publish an NPRM for Section 1313 by May 24, 2013. This leaves approximately 30 days to issue the final rule by the legislatively set date of June 28, 2013. This will be a challenge for the Department, which stated that it may expand the surface transportation project delivery program to include multi-modal projects. If the Department expands the program, then it could become a

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<sup>12</sup> The completion dates specified in the legislation are within the 2 year legislative life of MAP-21.

<sup>13</sup> CEQ requires each Federal agency to develop NEPA procedures specific to actions undertaken by that agency.

<sup>14</sup> GAO Report, "Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews" GAO-09-205, April 20, 2009. The case study included the Department of Transportation and other agencies such as the Environmental Protection Agency, Food and Drug Administration, and Securities and Exchange Commission.

joint rulemaking that would require input from agencies, such as the Federal Aviation Administration, the United States Maritime Administration, and the National Highway Transportation Safety Administration in addition to the other modes that are already involved—FHWA, FTA, and the Federal Railroad Administration. In addition, this section may be designated as “significant,” which would require additional OMB reviews. This could cause the Department’s publication of a final rule to be delayed until after the congressionally mandated deadline.

- **Section 1318, Additional CEs Suggested by Stakeholders:** The Department already missed the congressionally mandated requirement to issue an NPRM by January 2013 for Section 1318. Department officials explained that there were many challenges to issuing this NPRM, including the requirement to complete the survey and publish a report after soliciting ideas for new CEs from stakeholders. These actions must be completed before it can issue a rule to further expand the types of CEs that can be used on Federal projects. In addition, this section may be designated as significant by OMB, which would require additional reviews. This action would further impact the timeframe for both the NPRM and the final rule.

**Transportation Industry Stakeholders Believe That Interactive Dialogue With the Department May Reduce Some Time Involved in Rulemakings:** The Department stated that it made considerable outreach efforts related to MAP-21 implementation. However, highway and transit industry associations<sup>15</sup> and State officials told us that any outreach efforts tended to be Web-based, public forums that did not allow for sufficient informal, peer-to-peer dialogue prior to the NPRM. They indicated that—similar to prior transportation authorizations—early, interactive dialogue with the Department might reduce the time to respond to formal comments. The State officials also noted a lack of notification thus far from the Department concerning upcoming NPRMs as well as guidance and other relevant documents on FHWA’s MAP-21 Web site. Department officials noted that additional communication with stakeholders on the planned changes is generally prohibited and that more communication on environmental requirements would not have provided new information since these provisions have been in development over the last several years. They also noted that there is no evidence that early involvement with stakeholders shortens the rulemaking process. We found that the Department is not prohibited from engaging in early, interactive dialogue, and transportation industry stakeholders advised that interactive dialogue related to accelerated project delivery prior to the NPRM would be beneficial.

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<sup>15</sup> The highway and transit organizations we spoke with are the American Association of State Highway and Transportation Officials (AASHTO) and the American Public Transportation Association (APTA).

## CONCLUSION

Approximately 9 months after Congress passed and the President signed MAP-21, the Department has taken action on many fronts to implement the legislation and has plans to complete 42 actions related to the acceleration of project delivery. While most of the Department's remaining Subtitle C actions are in progress, a lack of completion dates for some actions combined with delays in some rulemaking actions could impede the Department's ability to complete Subtitle C provisions in a timely manner. Sustained management attention will be critical to ensure the timely completion of rulemakings, guidance, other program initiatives, and reports to Congress. Timely completion of planned actions would help States and others managing Federal projects to fully realize the benefits of MAP-21's innovation and streamlining provisions.

We provided the Department with a summary of our audit results and the attached matrix showing the Department's planned actions to implement MAP-21 Subtitle C. The Department responded to our initial audit and provided us with technical comments, which we incorporated as appropriate. The Department also emphasized its strong commitment to addressing the provisions of MAP-21 in a timely manner. We are planning additional audits on Subtitle C implementation, consistent with the requirements defined in the statute. If you have any questions regarding this review, please contact me at (202) 366-5630 or Nathan Richmond, Director and Counsel for Congressional and External Affairs, at (202) 493-0422.

Sincerely,



Joseph W. Comé  
Assistant Inspector General for Highway and Transit Audits

Attachments (2)

cc: DOT Liaison (M-1)  
FHWA Liaison (HAIM-13)  
FTA Liaison (TBP-30)

## The Department's Planned Actions To Implement MAP-21 Subtitle C as of March 27, 2013

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1301: Declaration of Policy and Project Delivery Initiative	1-OST	FHWA, FTA	Initiative: Best Practices	Identify and advance the use of best practices.	None at this time	Not started. FHWA's Every Day Counts 2 creates inventory of best practices. OST may establish a "dashboard" site for posting best practices. FTA has not taken any action to implement this section.
	2-FHWA		Guidance	Guidance on Relocation Streamlining Demonstration Project to address 1301(b)(4).	None at this time	In progress. Initiating drafting of demonstration project in FHWA.
	3-FHWA		Initiative: MOAs	Solicitation / Memorandums of Agreement (MOAs) for Relocation Streamlining Demonstration Project to address 1301(b)(4).	None at this time	In progress.
1302: Advance Acquisition of Real Property Interests	4-FHWA		Guidance	Guidance on advance acquisition of real property interests.	None at this time	In progress. Draft under coordination in FHWA.
	5-FHWA		Rulemaking	Regulation on advance acquisition of ROW.	NPRM 10/13 FR None at this time	In progress. Early draft in coordination in FHWA.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1303: Letting of Contracts - Construction Manager / General Contractor	6-FHWA		Rulemaking	Regulation on Construction Manager / General Contractor contracting.	NPRM 8/13 FR None at this time	In progress. Draft NPRM and rulemaking schedule under development.
1304: Innovative Project Delivery Methods	7-FHWA		Guidance	Guidance on increased federal share for innovation.	10/1/2012	Complete. Guidance issued on 10/1/12 as a Q&A document.
1305: Efficient Environmental Reviews for Project Decisionmaking	8-FHWA	FTA, OST	<b>Required Rulemaking</b>	Rulemaking to allow for the use of programmatic approaches to conduct environmental reviews.	NPRM 6/14 FR None at this time	In progress. A future decision is pending to determine whether Section 1305 rulemaking will be initiated as separate rule, or incorporated into the "clean-up" rulemaking in connection with other MAP-21 provisions.
	9-FHWA	FTA	Guidance	Guidance on designation of lead agency for multimodal projects to address 1305(a).	None at this time	In progress. Guidance being developed to address multiple changes to 23 U.S.C. 139, including this section. Guidance drafted and in review by program offices.
	10-FHWA	FTA	Guidance	Guidance on efficient environmental reviews / federal lead agency to address 1305(b).	None at this time	In progress. Guidance on lead agency designation is expected as part of DOT NEPA Order that is in development. Guidance drafted and in review by program offices.
	11-FHWA	FTA	Guidance	Guidance on efficient environmental reviews to address 1305(c),(d), and (e).	None at this time	In progress. Guidance drafted and in review by program offices.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1306: Accelerated Decisionmaking	12-FHWA, OST		<b>Congressional Report</b>	Report to Congress at least every 120 days on NEPA status and projects of (1) projects requiring a financial plan and (2) sampling of at least 5% of projects requiring an EIS or EA in each State.	<b>Every 120 days. Initial report due: 2/1/13. Next due: 8/1/13.</b>	Complete. Initial report issued on March 14, 2013.
	13-FHWA, OST	FTA	Guidance	Guidance on dispute resolution referrals and time limits.	None at this time	In progress. Guidance drafted and in review by program offices. Coordination with affected Federal agencies is underway. Part of Section 1305 guidance effort.
	14-FHWA, OST	FTA	Potential Rulemaking	Rulemaking on dispute resolution referrals and time limits.	NPRM 6/14 FR None at this time	In progress. This is a potential rulemaking and may be addressed as part of the "clean-up" rulemaking as referenced in Section 1305 rulemaking effort.
1307: Assistance To Affected Federal And State Agencies	15-FHWA	FTA	Guidance	Guidance on MOA with Federal and State agency that establishes the projects and priorities to be addressed by the use of the funds.	None at this time	In progress. Guidance issued 9/25/12 as Q&A document. Determination on whether further guidance needed not yet made. Part of Section 1305 guidance effort.

<b>Section Title</b>	<b>Lead</b>	<b>Other Modes Involved</b>	<b>Type of Deliverable/ Action*</b>	<b>Deliverable According to the Department</b>	<b>Anticipated Completion Date (Bold = Statutory Deadline)</b>	<b>Status According to the Department</b>
1308: Limitations on Claims	16-FHWA	FTA	Rulemaking	Rulemaking on revising the deadline for filing a claim for judicial review to 150 days from 180 days.	NPRM 6/14 FR None at this time	In progress. This is part of a 23 CFR 771 "clean-up" rulemaking as referenced in Section 1305 rulemaking effort.
	17-FHWA	FTA	Guidance	Guidance on revising the deadline for filing a claim for judicial review to 150 days rather than 180 days.	None at this time	In progress. This section will be included in the Section 1305 guidance effort.
1309: Accelerating Completion of Complex Projects Within 4 Years	18-FHWA	FTA	Potential Rulemaking	Rulemaking on enhanced technical assistance for complex projects within 4 years.	NPRM 6/14 FR None at this time	In progress. This is a potential rulemaking at this time, and it may be addressed as part of the "clean-up" rulemaking as referenced in the Section 1305 rulemaking effort.
	19-FHWA	FTA	Guidance	Guidance on enhanced technical assistance for complex projects within 4 years.	None at this time	In progress. Part of Section 1305 guidance effort.
1310: Integration of Planning and Environmental Review	20-FHWA	FTA	Potential Guidance	Guidance on integration of planning and environmental review.	None at this time	Not started. Potential for further guidance.
	21-FHWA	FTA	Rulemaking	Rulemaking on integration of planning and environmental review.	NPRM 11/20/13 FR None at this time	In progress. Coordinating timing with performance measure rulemaking. This schedule may change as a result of further discussion within the Department.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1311: Development of Programmatic Mitigation Plans	22-FHWA	FTA	Rulemaking	Rulemaking on integration of planning and environmental review.	NPRM 11/20/13 FR None at this time	In progress. This section will be incorporated into the rulemaking discussed in Section 1310. This schedule may change as a result of further discussion within the Department.
1312: State Assumption of Responsibility for Categorical Exclusions (CEs)	23-FHWA	FTA	Guidance	Update guidance on state assumption of responsibility for categorical exclusions.	None at this time	In progress. Under development by program offices.
1313: Surface Transportation Project Delivery Program	24-FHWA	FTA	<b>Required Rulemaking</b>	Rulemaking to update regulations.	NPRM 5/24/13 <b>FR 6/28/13</b>	In progress; behind schedule. The Department is determining whether additional modes (e.g., FAA, MARAD, NHTSA) will participate in this rulemaking. Final rule deadline will not be met; they anticipate a final rule on 9/28/13.
	25-FHWA	FTA	Guidance	Update guidance on state assumption of responsibility for categorical exclusions.	None at this time	In progress.
1314: Application of CE's for Multimodal Projects	26-OST	FTA, FHWA	Guidance	Q&A guidance document(s) on the application of CE's for multimodal projects.	None at this time.	In progress. Q&A document(s) have been drafted and shared with modes for comment.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1315: CEs in Emergencies	27- FHWA	FTA, OST	<b>Required Rulemaking</b>	Rulemaking to qualify 'emergency repair' projects as CEs.	<b>NPRM 10/30/12</b> FR 2/19/13	Complete. NPRM was published on 10/1/12. Final rule was published in Federal Register, effective as of 2/19/13.
	28- FHWA	OST	<b>Required Rulemaking</b>	Regulation on evaluation of alternatives to facilities repeatedly requiring repair or reconstruction.	NPRM 11/20/13 FR None at this time	In progress. Agencies solicited comments on regulatory approach in NPRM for Section 1315(a). FHWA and FTA will be issuing rules separately. FHWA plans to implement the requirement in its Asset Management rulemaking, with an NPRM scheduled to publish 11/20/13.
	29- FTA	OST	<b>Required Rulemaking</b>	Regulation on evaluation of alternatives to facilities repeatedly requiring repair or reconstruction.	IFR 4/1/13	In progress. FTA is implementing the requirement through rulemakings for new Emergency Relief program (49 USC 5324). They will issue an Interim Final Rule (IFR) in place of a final rule.
	30- FTA	OST	<b>Required Rulemaking</b>	Regulation on evaluation of alternatives to facilities repeatedly requiring repair or reconstruction.	ANPRM 6/20/13 FR 10/1/14	In progress. Will be incorporated into the new Transit Asset Management program (49 USC 5326). Program office drafting ANPRM for Transit Asset Management Program.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1316: CEs for Projects Within the Right-of-Way	31- FHWA	FTA	<b>Required Rulemaking</b>	Promulgate regulations defining as CE projects in operational right-of-way.	<b>NPRM 2/28/13 Implement 3/30/13</b>	In progress; behind schedule. Combined rulemaking with Section 1317. NPRM published on 2/28/13. No schedule for final rulemaking.
1317: CE For Projects of Limited Federal Assistance	32- FHWA	FTA	<b>Required Rulemaking</b>	Promulgate regulations to designate projects of limited Federal assistance as CEs within 180 days of enactment.	<b>NPRM 2/28/13 Implement 3/30/13</b>	In progress; behind schedule. Combined rulemaking with 1316. NPRM published on 2/28/13. No schedule for final rulemaking.
1318: Programmatic Agreements and Additional Categorical Exclusions	33- FHWA	FTA, OST	Initiative: Survey & Solicitation	Survey uses of CEs by DOT since 2005, publish review of survey, and solicit requests for new CEs.	<b>11/30/12</b>	Complete. Survey conducted and review/report posted on 12/7/2012. Federal Register notice of availability of report published 12/13/2012.
	34- FHWA	FTA, OST	<b>Required Rulemaking</b>	Rulemaking to add new CEs suggested by others and as listed in statute.	<b>NPRM 1/29/13</b> FR 10/1/14	In progress; behind schedule. The Department now expects to publish the NPRM in August 2013. Program offices drafting rule.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1319: Accelerated Decisionmaking in Environmental Reviews	35- FHWA	FTA	Guidance	Interim guidance on accelerated decisionmaking on environmental reviews.	1/14/13	Complete. Internal interim guidance jointly issued by FHWA & FTA on 1/14/13.
	36- FHWA	FTA	Potential Rulemaking	Regulation on accelerated decisionmaking on environmental reviews.	NPRM 6/14 FR None at this time	In progress. This may be addressed as part of the "clean-up" rulemaking as referenced in Section 1305 rulemaking effort.
1320: Memoranda of Agency Agreements for Early Coordination	37- FHWA	FTA	Guidance	Guidance on memoranda of agency agreements for early coordination.	None at this time	In progress. No additional details provided by the Department.
	38- FHWA	FTA	Potential Rulemaking	Rulemaking on memoranda of agency agreements for early coordination.	NPRM 11/20/13 FR None at this time	In progress. Potential to be combined with rule for MAP-21 Sections 1310 and 1311. This schedule may change as a result of further discussion within the Department.
1321: Environmental Procedures Initiative	39- OST	FHWA, FTA	<b>Report</b>	For formula grant funds distributed, the Secretary shall establish an initiative to review and develop consistent procedures for environmental permitting and report results.	None at this time	In progress. No additional details provided by the Department.

Section Title	Lead	Other Modes Involved	Type of Deliverable/ Action*	Deliverable According to the Department	Anticipated Completion Date (Bold = Statutory Deadline)	Status According to the Department
1323: Review of Federal Project and Program Delivery	40- FHWA		<b>Congressional Report</b>	Report to Congress on results of review of federal project and program delivery, pre-2005 projects.	<b>10/1/13</b>	In progress. No additional details provided by the Department.
	41- FHWA		<b>Congressional Report</b>	Report to Congress on results of review of federal project and program delivery, post-2005 projects.	<b>10/1/17</b>	In progress. No additional details provided by the Department.
	42- FHWA	FTA	<b>Congressional Report</b>	Report to Congress on types and justifications for additional categorical exclusions under sections 1316-1317.	<b>10/1/14</b>	Not started. Awaiting rulemaking for Sections 1316 and 1317.

Source: OIG compilation of information provided and confirmed by U.S. Department of Transportation agencies including OST, FHWA, and FTA.

Key: NPRM = Notice of Proposed Rulemaking. ANPRM = Advanced Notice of Proposed Rulemaking. FR = Final Rule. IFR= Interim Final Rule.

Note: Statutory deadlines are in bold; all other deadlines are the Department's estimated completion dates.

Note: There are 42 actions included in the Department's current plans; however, some of the sections with anticipated rulemakings may eventually be consolidated. For example, the Department plans to issue one rule to cover Sections 1316 and 1317.

## OIG Review Scope and Methodology

We are congressionally mandated to assess the actions taken by the Department to carry out MAP-21, Subtitle C. Based on that requirement, we conducted this initial audit to proactively assess the Department's plans and progress to date. Our objectives were to (1) review the Department's plans to carry out Subtitle C provision, (2) assess the status of those planned actions, and (3) identify challenges that could delay the Department's implementation efforts. To address these objectives, we performed an initial audit from December 2012 through May 2013 in accordance with generally accepted Government auditing standards. This standard requires 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.

To review the Department's plans, we reviewed MAP-21 Subtitle C, Sections 1301 through 1323. We identified the actions that the Department needs to accomplish to implement this subtitle. We also reviewed the prior surface transportation authorization which is modified by new provisions specified in MAP-21. We obtained and reviewed the Department's Legislative Implementation Plans (plans) and related documents which are developed and updated by each agency. Using these plans, we conferred with the Department to develop a matrix which identifies each section and the corresponding 42 individual planned actions the Department will use to implement Subtitle C provisions. We also compared the Department's plans to the dates specified in Subtitle C for each of the 42 individual actions.

To assess the status of the 42 planned actions, we verified the publication of notices of proposed rulemaking and/or final rules included in the Federal Register. We also reviewed MAP-21 guidance presented on the Department's web sites. When reviewing the status of the Department's other planned actions which are in progress, we relied upon the Department's representations included in the plans. We also interviewed OST, FHWA, and FTA attorneys, planners, and administrative officials responsible for implementing these plans.

To identify challenges that could delay the Department's efforts to implement MAP-21 Subtitle C, we interviewed industry stakeholders from the American Association of State Highway Transportation Officials (AASHTO), including six member States, and the American Public Transportation Association (APTA). Additionally, we conducted analyses concerning the length of time the Department historically used to issue a final rule. Accordingly, we reviewed a 2009 GAO report<sup>16</sup> which provided insights into the Federal rulemaking process. We also reviewed three recent rules—two from FHWA

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<sup>16</sup> This GAO report is titled "Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews."

and one from FTA<sup>17</sup>—initiated as a result of the prior surface transportation authorization. We calculated the average number of days from initiation to the final rule and from the NPRM publication to the final rule to provide illustrative examples.

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<sup>17</sup> The FHWA rules we reviewed were the Indian Reservation Road Bridge Program and the Real-Time System Management Information Program. The FTA rule we reviewed was the Major Capital Investment Projects.