I. Highway Safety Improvement Program

MAP-21 makes relatively few changes to the Section 148 Highway Safety Improvement Program (HSIP). Funding for the HSIP is doubled: FHWA estimates that funding for the Sec. 148 program will be $2.3 billion in FY 2013 and $2.4 billion in 2014. There is no longer an earmark for high risk rural roads but there is a $220 million a year earmark for the Sec. 130 rail-highway grade crossing program.

In order to obligate safety infrastructure funding under Sec. 148, states must develop, implement and update a Strategic Highway Safety Plan (SHSP) (see below), produce a program of infrastructure safety projects and evaluate the Plan on a regular basis. As part of the HSIP requirements, states have to: have a data system with the ability to perform problem identification and countermeasure analysis; adopt strategic and performance-based goals that address both behavioral and infrastructure problems on all public roads; advance the capability for safety data collection, analysis and integration; determine priorities for the correction of hazardous locations, sections and elements; and establish an evaluation plan to analyze and assess results. States are required to submit a report that describes the progress being made to implement highway safety improvement projects and the effectiveness of those improvements with respect to fatalities and serious injuries.

If a state does not meet its performance targets after a two-year period, then it must use its HSIP apportionment only for safety infrastructure improvements and cannot transfer any of the HSIP funding into other federal-aid highway programs until such time as the Secretary determines that the state has met or made sufficient progress. In addition, the state must submit an annual implementation plan that: identifies hazardous road features and roadway safety improvement projects, describes how the proposed projects will allow the state to make progress toward its goals, describes actions the state will undertake to meet its performance goals.

Strategic Highway Safety Plans

The centerpiece of the Sec. 148 program, as it was under SAFETEA-LU, is the SHSP. State DOTs are required to produce an SHSP in consultation with: the governor’s highway safety representative; a regional transportation planning organization and metropolitan planning organizations, if any; representatives of the major modes of transportation; state and local law enforcement officials; the governor’s rail-grade crossing safety representative (e.g. Operation Lifesavers representative); the state’s MCSAP administrator; motor vehicle administration agencies; county transportation officials; state representatives of non-motorized transportation; and other major federal, state, tribal and local safety stakeholders.

The SHSP must analyze and make use of state, regional, local or tribal data. It must address engineering, management, operation, education, enforcement and emergency services elements. It must consider high fatality segments of all public roads, including non-state owned public roads as well as roads on tribal lands. The SHSP must consider the results of other state, local or regional transportation and highway safety planning processes (including the MCSAP and 402 planning processes). The SHSP must describe a program of categories (that is, emphasis areas) to reduce or eliminate safety hazards. It must be approved by the Governor or a responsible state agency. It must be updated and submitted to the Secretary (FHWA) for approval of the process.

Not later than one year after enactment, the Secretary must establish a schedule for “regular recurring updates” of the SHSPs. As part of the rulemaking, states will be required to consider: the findings of road safety audits; the locations of fatalities and serious injuries; the locations that possess risk factors for potential crashes even if there is no history of crashes; rural roads; pedestrian and bicycle fatalities and injuries; the cost-effectiveness of improvements; improvements to rail-highway grade crossings; and safety on all public roads including non-state owned roadways.

If the fatality and serious injury rate per capita for drivers and pedestrians over the age of 65 increases for the most recent two-year period for which data is available, the state must include, in a subsequent SHSP, strategies for addressing these increases, including those delineated in FHWA’s Older Driver Design Handbook.

Plan Approval

States will have to update their SHSPs in accordance with the DOT rulemaking and submit a detailed description of the process used to update the Plan. The Secretary (that is, FHWA) will approve the process if it is consistent with
the requirements under the rulemaking and the requirements regarding consultation in the development of the SHSP.

If a state does not have an updated SHSP with a process approved by the Secretary by August 1 of the fiscal year after the rulemaking is issued, then there is a cap on additional federal-aid highway apportionments (including Sec. 148 apportionments) for the state that are given out after August 1 of each fiscal year.

The Secretary is required to make the SHSPs available on the Department’s website.

II. Penalties and Sanctions

Section 154 Open Container Penalties
The new language has a look back provision and the amount of the penalty has changed under MAP-21.

In FY 2012 and every year thereafter, if state is not in compliance with the revised open container penalty provisions, then 2.5% of the National Highway System Performance Plan and the Surface Transportation Program funds will be transferred to Section 402 in the subsequent fiscal year. (The amount of the transfer may actually be larger than under SAFETEA-LU since the two core highway programs from which funds are transferred are actually larger.)

The state may elect to use all or a portion of the penalty transfer funds for activities eligible under the Section 148 Highway Safety Improvement Program. If the state does so, then the funds are transferred to the state department of transportation for the administration of those funds. SHSOs will no longer be required to track HSIP expenditures in that case.

Section 164 Repeat Offender Penalties
The changes described under the Section 154 transfer penalties also apply to the Section 164 penalties. In addition, the requirements for 164 compliance have changed under MAP-21.

The new language eliminates the 45-day hard suspension, requires limited driving conditions and exemptions to be set by state law and requires ignition interlock installation for at least one year. Specifically, a state must have a repeat offender law that suspends driving privileges for not less than one year or suspends driving privileges for one year, "allowing for the reinstatement of limited driving privileges subject to restrictions and limited exemptions as established by state law, if an ignition interlock law is installed for not less than one year on each of the motor vehicles owned or operated, or both, by the individual."

The impoundment/immobilization, assessment and community service/jail requirements remain unchanged.

Adjustments of Other Penalties and Sanctions
The amounts of several safety-related penalties and sanctions are changed under MAP-21 because the core federal-aid highway programs are actually larger from which funds are taken or transferred.

The Section 153 penalty for not having a seat belt law is lowered from 3% to 2%. The National Minimum Drinking Age sanction is lowered from 10% to 8%. The Section 159 Drug Offenders sanction is reduced from 10% to 8% and withheld funds can no longer be reapportioned to the state if it comes into compliance. For the zero tolerance sanction, the amount is lowered to 8%. For the requirement that every state have a .08 BAC law, the sanction is lowered to 8% for FY 2007 through FY 2011 and 6% for FY 2012 and thereafter. Since every state is in compliance with all of these sanctions and penalties (except the Section 153 one), these changes will have no impact.