

MAP-21 FACT SHEET

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SUBJECT: MAP-21: Early Design

PROBLEM STATEMENT:

The innovative contracting provisions of MAP-21 (Construction Manager/General Contractor (CM/GC) method of contracting) includes language to allow for "Early Design". Section 1303 – Letting of Contracts, Amended 23 USC 112 (b), (4), (C), (iv) "Design Activities" would allow for a contracting agency to proceed, at its own expense, with design activities at any level of detail, for a project prior to completion of the NEPA process, without affecting subsequent approvals required for the project. These "early design" activities would then be eligible for Federal reimbursement, as a project expense, in accordance with Section 109(r).

However 23 USC 112(b), (4), (C), (ii) Construction Services Phase, includes ambiguous language, stating that a contracting agency shall not proceed with the award of a the construction services phase of a contract and shall not proceed or permit any consultant or contractor to proceed with final design or construction until the completion of the environmental review process required by NEPA.

Additionally, Section 109(r) (MAP-21, Section 1504 – "Standards") does not relate to reimbursement of "early design" activities; rather it relates to "pavement markings".

So there is confusion as to whether or not early design is, in fact, permitted for projects using CM/GC contracting and there are no provisions for how these early design activities, if permitted, would be federally reimbursed.

RECOMMENDATION:

It is recommended that the language in MAP-21 be amended to clarify the intent of "early design" activities and how they would be federally reimbursed.

BACKGROUND:

The version of MAP-21 received by the Senate on 4/19/12 (HR4348, Section 605 – "Standards") provided clear language explaining how Section 109(r) would allow a State to carry out "early design" activities prior to the completion of NEPA and how these activities would be federally reimbursed. However in the enrolled version, signed by the President, Section 109(r) was completely re-written having no apparent connection to reimbursement of design activities. In the enrolled version of MAP-21, Section 1504 -"Standards" amends Section 109 of title 23 USC as follows:

(r) Pavement Markings – The Secretary shall not approve any pavement markings project that includes the use of glass beads containing more than 200 parts per million of arsenic or lead, as determined in accordance with EPA testing methods 3052, 6010B or 6010C.

These discrepancies in MAP-21 have been discussed, within the Department, with Legal and Legislative Affairs who both agree that clarifying language is needed.

Additionally, these issues have been brought to the attention of AASHTO and they are working with FHWA to resolve these and other MAP-21 related issues.

PROPOSED IMPLEMENTATION SCHEDULE:

Follow-up contact was made with AASHTO last week requesting an update on the status of these issues however we have not yet received a reply.