Pavement Condition Measure and Penalty Performance Measure

In order to avoid a penalty, states must meet the following minimum condition level: Interstate pavement condition not to exceed 5% poor condition.

Under MAP-21, a state that does not meet the minimum condition for two consecutive years is subject to the penalty however, passage of the FAST Act reduced the time from two years to one year. The funding penalty will apply during the following fiscal year and each year thereafter until WSDOT is in compliance. The state must obligate and set aside an amount to meet or exceed 50% of the apportionment in fiscal year 2009 ($155,987,505) for the Highway Bridge Program—from the NHPP apportionment—only for projects on NHS bridges. Based on the current project delivery plan the penalty would not result in changing project programming.

Sample Washington state penalty: Bridges

<table>
<thead>
<tr>
<th>Impacted federal-aid funding program</th>
<th>NHPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAST Act avg. statewide apportionment NHPP</td>
<td>$404,000,000</td>
</tr>
<tr>
<td>FAST Act avg. statewide apportionment STP</td>
<td>$200,000,000</td>
</tr>
<tr>
<td>Sample penalty NHPP (for 2017)</td>
<td>$109,000,000</td>
</tr>
<tr>
<td>Additional sample penalty STP</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Total Sample penalty (NHPP &amp; STP for 2017)</td>
<td>$119,000,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Penalty source</th>
<th>How penalty would be calculated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interstate Maintenance</td>
<td>NHPP Penalty Calculation (days beyond 2013 to determine amount for 2017)</td>
</tr>
<tr>
<td>NHPP</td>
<td>$101,116,232 x 3% = $3,033,487</td>
</tr>
<tr>
<td>$8,089,299</td>
<td>$101,116,332 - $8,089,299</td>
</tr>
<tr>
<td>STP Penalty Calculation</td>
<td>$101,116,232 x 2% = $2,022,324</td>
</tr>
<tr>
<td>NHPP Notice: No penalty has been assessed, for illustration purposes only. The Interstate Maintenance program no longer exists; it has been absorbed by the NHPP. FAST Act information was taken from Federal rule HCRB-11 dated Nov. 30, 2015 prior to post apportionment set-asides, penalties and sequestration and rounded to the nearest million, FHWA computer table for FY2009.</td>
<td></td>
</tr>
</tbody>
</table>

Are there System Performance, CMAQ and Freight rule penalties? Penalties for these rules do not include funding redistributions, but instead require WSDOT to document how it will achieve missed targets, and (for freight only) provide information on freight bottlenecks, policies and trends.

For more information

Title VI Statement to Public: The Washington State Department of Transportation’s (WSDOT) policy is to assure that no person shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities. Any person who believes their Title VI protection has been violated, may file a complaint with WSDOT’s Office of Civil Opportunity (OOO). For additional information regarding Title VI complaint procedures and information regarding our non-discrimination obligations, please contact OOO’s Title VI Coordinator at (360) 705-7082.

WSDOT MAP-21 webpage: http://wsdot.wa.gov/accounts/map-21

Note source: FHWA National Performance Management Measures, FHWA NHPP

The Fast Act replaces MAP-21, which was passed in 2012. The Fast Act builds on the changes made by MAP-21, including provisions to make the federal surface transportation more streamlined, performance-based and multi-modal. The Fast Act supports and continues the overall performance management approach by establishing two new provisions related to performance management. These provisions include requiring states to submit a plan of action to achieve targets if the freight performance targets are not met within two years after establishing the targets and shortens the time frame for States and MPOs to make progress toward meeting performance targets. Fast Act funds are apportioned to main (core) programs with specific dollar amounts set aside for funding transportation alternatives (TAP), State Planning and Research (SPR) and Rail-Highway Crossings (RHC). The states have some flexibility to transfer funds to other programs.

What about the penalties? The Fast Act, which continues the focus on performance management under MAP-21, assesses penalties for falling below the acceptable target. These “penalties” are actually redistributions that involve shifting funds to focus on regaining acceptable levels of performance as well as requiring the establishment of a formal plan of action for meeting the target. While penalties may mean a loss of flexibility with regard to how a state spends its FAST funds, the intent is to get back on target. Further, if states are already spending an amount greater than the required target, there would be no additional penalty.
### MAP-21 programs, statewide apportionments and set-asides

#### Core programs and their apportionments

**National Highway Performance Program (NHPP)**

The FHWA designates NHPP funds that may be used for transportation projects on the National Highway System. Eligible projects include roadway and bridge construction projects to improve infrastructure condition, safety, mobility, or freight movement toward the achievement of national performance goals.

- The Washington statewide apportionment for NHPP in FY2017 was $371,021,480. At WSDOT’s discretion, up to 50% of NHPP funds may be transferred to other programs.

**Metropolitan Planning (PL)**

The Metropolitan Planning Program provides funding for transportation investments in metropolitan areas. Funds are distributed to Metropolitan Planning Organizations and may be used for transportation planning activities that meet the objectives of their Transportation Improvement Program, including route studies to determine road condition and capacity, identifying the types and volumes of vehicles using a given route, or predicting the level and location of future population, as well as employment and economic growth.

- The Washington statewide apportionment for PL in FY2017 was $7,391,590, which may not be transferred to other programs.

#### Surface Transportation Program (STP)

The STP provides funds that may be used for construction, rehabilitation, and improvement of highways; bridge and tunnel rehabilitation and replacement projects on public roads; construction of new bridges and tunnels on federal-aid highways; pedestrian and bicycle infrastructure, and transit projects. Federal-aid highways include the National Highway System, its Interstate System and all other public roads not classified as local roads or rural minor collectors.

- The Washington statewide apportionment for STP-BIG in FY2017 was $180,294,550. Fifty percent of a state’s STP apportionment after set-asides is to be obligated to locals in proportion to their relative share of the state’s population. At WSDOT’s discretion, the remaining 50% may be obligated in any area of the state transferred to other programs.

#### Congestion Mitigation and Air Quality Program (CMAQ)

The CMAQ program provides funds that may be used for projects that generate an emissions reduction in areas that do not meet the National Ambient Air Quality Standards (non-attainment areas), as well as former non-attainment areas that are now in compliance with standards (maintenance areas). The CMAQ program provides funding for projects and programs that help regions meet the requirements of the Clean Air Act through intermodal emissions reduction, alternate fuel use, improvement of traffic flow, and transit investment.

- The Washington statewide apportionment for CMAQ in FY2017 was $36,635,619. At WSDOT’s discretion, up to 50% of CMAQ funds may be transferred to other programs.

#### Highway Safety Improvement Program (HSIP)

The HSIP provides funds that may be used for safety projects on public roads or public transit systems. Funds may be used for strategies, activities, and projects that address a highway safety problem to achieve significant reduction in traffic fatalities and serious injuries according to the state’s Strategic Highway Safety Plan: Target Zero.

- The Washington statewide apportionment for HSIP in FY2017 was $38,208,099. At WSDOT’s discretion, up to 50% of HSIP funds may be transferred to other programs.

### MAP-21 flexible funds and performance management penalties

Federal-aid funds are distributed to ensure funding of critical transportation projects. States have varying needs for federal-aid programs; some programs are allowed to transfer up to 50% of that program’s apportionment between programs (after set-asides and penalties). For example, a state may transfer NHPP funds to the STP program in order to obligate additional funding to projects on non-NHS roads. The transferred amount from NHPP must not reduce the amount set-aside for TAP; and must occur within the constraints of any penalties. State DOTs and local agencies rely on this flexibility to optimize the impact of their Obligation Authority in areas where funding is most needed. Penalties may impact apportionments and limit the flexibility of transfers. Some penalties are based on amounts budgeted in FFY2009 for SAFETEA-LU programs that no longer exist or have been absorbed by MAP-21 or FAST Acts programs. The chart below shows sample penalty calculations for pavement, bridge and safety based on FY2017 apportionments. No penalties have been assessed, the calculations are shown for illustration purposes only.

The MAP-21 and FAST Acts describe performance management targets related to these programs and proposes measurements that determine compliance with established targets. Penalties for noncompliance are designed to direct funds within programs and ensure that states improve transportation system performance in programmatic areas that are classified as deficient. If a state fails to meet performance targets or minimum condition levels of highway assets, penalties may impact apportionments. These funding-related penalties may constrain the obligation of funds in particular programs, potentially limiting the flexibility of transfers, or directly shifting funds by requiring the transfer of apportionment amounts between programs.

Performance management penalties included in the final federal rules refer to performance measures of pavement condition on the Interstate System, bridge condition on the National Highway System, and safety performance measures for all public roads. These penalties would impact the funding of three programs: National Highway Performance Program (NHPP), Surface Transportation Block Grant Program (STPBG) and Highway Safety Improvement Program (HSIP). A summary of each penalty and its impact on federal-aid funding is described here and on page 4.

**Safety Measures and Penalty Performance Measure**

In order to avoid a penalty, states must not exceed the baseline target, which will be established for the Rule of traffic fatalities per 100 million Vehicle Miles Traveled for rural roads.

If the traffic fatality rate increases consecutively during the most recent 2-year period for which data is available, the funding penalty will apply during the following year. Rural roads are classified as rural major and minor collectors and rural local roads.

**Penalty (Impacted federal-aid funding program: HSIP)**

The state must obligate in the next fiscal year for high-risk rural roads an amount at least equal to 300% of its FY2009 high risk rural road funds. (If a penalty had been assessed in Washington state in FY2017, the obligated amount would have been $3,144,572).