

# FHWA Ignores Congressional Mandates to Enact Safety Rules for More Than 2 Years



Safety on our highways has been a top priority for nearly 50 years. The Highway Safety Act of 1966 was the first major effort at the Federal level to reduce the number and severity of highway-related crashes. In recent years, the Federal Highway Administration (FHWA) established an Office of Safety with numerous safety programs such as the “FHWA Work Zone Mobility and Safety Program,” and the “Highway Safety Improvement Program” (HSIP). FHWA has displayed safety slogans on their site: “*Safe Roads for a Safer Future*” and “*Investment in roadway safety saves lives.*”

But as the old adage goes, talk is cheap. With all of this lip service to safety, FHWA has failed to take the necessary steps to ensure safety in the work zones on the National Highway System (NHS). FHWA has ignored Congressional mandates to enact safety rules under MAP-21 to the detriment of highway workers, motorists, and contractors.

## THE ISSUE

On July 6, 2012, MAP-21 was signed into law. Section 1405 of MAP-21 required the Secretary to modify the Code of Federal Regulations not later than 60 days after the date of enactment of the Act. It has now been more than 2 years since MAP-21 was signed into law—and FHWA still has not acted on these important changes.

Section 1405 of MAP-21 was strongly supported by contractors and unions to promote safety in the work zones. It specifically provides that positive protection shall be used on the NHS to separate work zones and traffic lanes for the safety of road users and workers, where the roadway carries an average daily traffic volume of 100 vehicles or more per hour, traffic is anticipated to pass through the work zone at 43 mph or more, and either:

- Workers are expected to be within 1 lane width of the edge of a live travel lane, or
- Workers have no means of escape (such as tunnels and bridges);

unless an engineering analysis determines otherwise. Positive protection shall include crashworthy devices, which provide speed appropriate physical separation between road users and workers. Such devices shall be paid for on a unit pay basis, unless otherwise reimbursed or provided.

## ACTION NEEDED

FHWA has no answer for why it has failed to act, and instead focuses on its research and safety initiatives. But new studies, statistics, and slogans don’t save lives – positive protection with crashworthy devices will stop the needless fatalities and injuries occurring in our work zones across the country.

The failure of FHWA to enact the MAP-21 provisions has been very costly for contractors who are now being sued for work zone fatalities and injuries. In recent years, contractors have been sued for wrongful death and alleged negligence arising from work zone accidents because there was no reimbursement for the acquisition of appropriate crashworthy devices under the low bid requirements of the state DOTs. The reported settlements from these work zone incidents are costing in the hundreds of thousands and sometimes millions of dollars.

The wait is over. It is time for FHWA to live up to its slogan of “*Safe Roads for a Safer Future*” by modifying the Code of Federal Regulations and enacting the provisions of Section 1405 of MAP-21. Only then will the investment in safety truly mean safer highways for all. ■

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INFORMATION

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