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By the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 511

RIN 2125-AF19

#### Real-Time System Management Information Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Summary of responses to request for comments.

**SUMMARY:** The final rule establishing the minimum parameters and requirements for States to make available and share traffic and travel conditions information via real-time information programs as required by Section 1201 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was published on November 8, 2010. In issuing the final rule, the FHWA also sought additional comments relating to the costs and benefits of the Real-Time System Management Information Program and general information about current and planned programs. Thirty-one entities provided responses to the Request for Comments and this document provides a summary of those responses.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Rupert, FHWA Office of Operations, (202) 366-2194, or via e-mail at [robert.rupert@dot.gov](mailto:robert.rupert@dot.gov). For legal questions, please contact Ms. Lisa MacPhee, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366-1392, or via e-mail at [lisa.macphee@dot.gov](mailto:lisa.macphee@dot.gov). Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

This document, all comments, and the final rule may be viewed on line through the Federal eRulemaking portal at: <http://www.regulations.gov>. The docket identification number is FHWA-2010-0156. The Web site is available 24 hours each day, 365 days each year. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual

submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

#### Request for Comments

The FHWA issued the final rule establishing requirements for the Real-Time System Management Information Program on November 8, 2010, at 75 FR 68418. The final rule document also sought additional comments relating to the costs and benefits of the Real-Time System Management Information Program and general information about current and planned programs. Although the Regulatory Cost Analysis found in the docket for the rulemaking attempts to capture the scope of costs and benefits associated with this rule, the FHWA sought further information to determine a comprehensive picture of costs and benefits given the flexibility of approaches that can be used and the limitations of the current studies.

The specific questions posed in the Request for Comments were:

(1) What are the costs and benefits of each individual provision required under rule? If some provisions have net costs, would certain modifications to those provisions lead to net benefits?

(2) What are the impacts of requiring these provisions on States and Metropolitan Areas (do some States and Metropolitan Areas realize net costs instead of net benefits)? If some States and Metropolitan Areas realize net costs, would certain modifications to provisions ensure net benefits?

(3) Is there a specific, alternative approach to calculating costs and benefits that would be more appropriate than the current use of the Atlanta Navigator Study?

(4) Although information dissemination to the public is not within scope of this rule, it is important to understand how information is typically disseminated so that the technologies used to collect and monitor data are compatible with technologies used to disseminate this information. This is especially important to keep up with new technological advances and to ensure that States use the most effective, low cost methods to both collect and disseminate information.

(A) What technologies will States use to collect and monitor information under this rule?

(B) What technologies are States planning to use to disseminate this

information or what are they already using?

(C) Do the technologies States plan to use present any interoperability issues? Do they allow for use of advanced technologies that could be the most cost-effective means of collecting and disseminating this information?

(D) Are there any structural impediments to using low-cost advanced technologies in the future given the provisions and specifications contained in this rule?

(E) Given the research investment into wireless communications systems in the 5.9 GHz spectrum for Intelligent Transportation Systems applications, to what extent could systems in this spectrum also be used to fulfill the requirements of this rule and/or enable other applications?

(F) Given that there are legacy technologies in place now, and that there are new technologies on the horizon that are being adopted, how can we ensure that investments made today to comply with this rule are sustainable over the long term?

(5) This rule defines Metropolitan Areas to mean the geographic areas designated as Metropolitan Statistical Areas by the Office of Management and Budget with a population exceeding 1,000,000 inhabitants. Is this population criterion appropriate, rather than considering traffic, commuting times, or other considerations?

#### Summary of Responses

Fourteen of the 31 parties that provided comments responded to at least some of the questions. Other comments provided discussions regarding real-time information or presented questions on specific provisions of the regulation. Clarifications are offered below in addition to summarizing the responses to the Request for Comments.

##### Comments on the Final Rule

Three of the general comments to the docket posed questions related to the roadways that are included under the Real-Time System Management Information Program and travel time reporting requirements. The program includes all the roads of the Interstate System (23 CFR 511.311) and other roads in metropolitan areas deemed to be "routes of significance" by the States (23 CFR 511.313). Similar to design exceptions permitted under 23 U.S.C. 103(c)(1)(B)(ii), highways on the Interstate System in Alaska and Puerto Rico may be granted exemptions from the requirements of the Real-Time System Management Information Program upon request from the States.

In metropolitan areas, the requirement for travel time information in metropolitan areas under 23 CFR 511.309(a)(4) only applies to roads of the Interstate System and routes of significance that are limited-access roads.

Seven of the comments posed questions related to the information requirements of the Real-Time System Management Information Program. There were two specific comments about the need for increased infrastructure or sensors to provide continuous roadway weather monitoring to comply with the requirements of 23 CFR 511.309(a)(3) for roadway weather observations. In addressing similar comments received to the Notice of Proposed Rulemaking, the Final Rule was revised to reduce the frequency and minimum level of roadway weather information required under the program so that observation-level (in contrast to electronically-monitored) information could comply with the requirement.

A couple of these commenters included questions related to determining the quality of the real-time information in meeting the requirements of 23 CFR 511.309(a)(5) and (6). Since the Real-Time System Management Information Program only includes requirements for information and does not include any specific technology or system design requirements, specific methods for measuring the quality of information cannot be included. The States, as designers or procurers of the systems that provide the information required under the program, are in the best position to decide upon the specific methods for gauging the quality of their information systems. Hence, the provision in 23 CFR 511.311(b) requires States to determine the methods to be used in measuring the quality of the real-time information and receive FHWA concurrence in the selected methods.

Finally, three commenters discussed specific aspects of system design or information dissemination related to the Real-Time System Management Information Program, including referring to private sector providers and detailed methods for determining locations. Since the program requirements do not include specific system design or dissemination, these comments, while providing good information and discussion about real-time information systems, are outside the scope of the regulation.

#### *Responses to the Request for Comments*

The responses to the first two questions were very similar in nature.

Responders noted that determining costs and benefits for individual provisions of the regulation was difficult if not impossible since, as noted by the South Dakota Department of Transportation, “\* \* \* the same infrastructure is used to satisfy multiple provisions, identifying individual costs is also very complex.” The Virginia Department of Transportation commented that the benefits of information depend largely on how such information will be used and decoupling data collection from data usage makes it challenging to properly define or quantify the benefits. In addition, the Minnesota Department of Transportation commented that it is very difficult to determine costs and benefits for the individual rule provisions since the various provisions are not normally implemented separately. Since these functions tend to be deployed simultaneously, separate determination of the costs and benefits is often impossible.

Three responders provided information related to costs to implement and operate various transportation management and information systems. Minnesota provided its costs for installing freeway management systems that include real-time traffic monitoring components but also include video cameras, dynamic message signs, and other components outside the scope of this regulation. Alaska provided costs related to its statewide information system, but also included costs related to highways of significance. Because Alaska does not have any major metropolitan areas (as defined in 23 CFR 511.303), there are no routes of significance subject to this regulation. Kansas provided detailed cost information for its traveler information systems, including costs related to additional installation of roadway devices for real-time monitoring in the Kansas City metropolitan area that reflect implementation across the entire Metropolitan Statistical Area (MSA). As noted later in the summary of responses to the fifth question and responding to concerns related to the expanse of the MSA, the FHWA will develop guidelines to provide assistance in consistent identification of affected roadways in metropolitan areas. This cost information, when examined for potential implementation of systems within the scope of this regulation, aligns with the cost assumptions presented in the rulemaking.

No responder was able to provide any readily-available quantifiable information about benefits of a real-time information program. The Kansas

Department of Transportation provided information from an analysis conducted for the Kansas City metropolitan area that indicated an eight to one (8:1) benefit to cost ratio for investments in the intelligent transportation systems (ITS) technologies used in the Kansas City area, but noted that the ratio would likely be lower for rural areas. The Kansas Department of Transportation also noted that potential modifications to the provisions to eliminate continuous reporting of construction, incident, and road condition information or increasing the timeliness of information to more than 20 minutes may reduce overall costs. The North Dakota Department of Transportation similarly commented on the challenges of providing continuous traffic and travel conditions, especially for rural States.

The Minnesota Department of Transportation commented that one consideration of costs and benefits is that for public sector transportation management systems, the benefits accrue to a different entity than the entity that pays the costs. The benefits accrue to individual drivers and to society as a whole, but do not provide funding back into the public agency's budget, although the public agency must manage the costs of installation, operation, and maintenance as part of its constrained budget. Minnesota further commented that one way to increase the benefit-to-cost ratio would be to increase the use of automation, thereby decreasing manual data entry. The personnel that manually enter data are the busiest with their other tasks at the very time the data needs to be entered. Meeting the rule timeliness requirements is most affected by availability of staff to ensure timely data entry, which is a cost consideration. The Alaska Department of Transportation and Public Facilities noted that a Federal requirement for real-time data management requires department-wide cooperation and collaboration at the State and local levels, and it cannot stress this as a benefit enough, considering the many stove pipe systems around the department that should coordinate.

There were four responses to the third question. The Pennsylvania Department of Transportation commented that it anticipated using its own benefit-cost analysis methods for any real-time information system implementations. The Virginia Department of Transportation commented that one alternative approach is to calculate costs and benefits within the contexts of different objective areas, for example, analyzing congestion relief along a

corridor or an urban area, improving traveler satisfaction, or improving the effectiveness of traffic incident management. The Kansas Department of Transportation reiterated the approach it used in determining the benefit-to-cost ratio of eight-to-one for the Kansas City area. The South Dakota Department of Transportation commented that an approach that is more clearly applicable to rural areas would be desirable since congestion is not the primary travel concern in rural States such as South Dakota.

The fourth question, with its six parts, was the most complex and received 12 responses. Not all responders commented on all parts of the question. The responses to the first two parts related to technologies used to collect and to disseminate information, indicated the use of traditional techniques such as manually-entered information, sensors, cameras, highway advisory radios, dynamic message signs, 511 travel information telephone services, and Internet web sites. Some responders noted the use of newer and emerging techniques such as gathering information from buses serving as traffic probes, acquiring information from private providers, using social media to provide information, electronic mail alerts, and developing applications for use by consumer mobile electronic devices.

Responders to the third part of the fourth question, related to interoperability issues of planned technologies, discussed the desire to use open platform based applications and approved ITS communications standards. The Pennsylvania Department of Transportation noted that interoperability issues associated with meeting the Real-Time System Management Information Program requirements would be similar to interoperability issues associated with deployment of a statewide ITS device command and control software application. The Chicago Department of Transportation noted that it is working with regional stakeholders to address the interoperability, technical, and comparability issues within the framework of the northeastern Illinois regional ITS architecture.

Responses to the fourth part of the fourth question indicated that there may be some challenges to using low-cost advanced technologies, especially related to State procurement or public-private partnership arrangements. The Pennsylvania Department of Transportation noted that a potential impediment may be State procurement laws that could determine how technologies may be obtained, and that

there are certain cases where proprietary hardware should be considered. The Minnesota Department of Transportation commented that a structural impediment exists in combining State-owned infrastructure-based information with purchased privately-sourced information. The use of purchased data from private sources to fill in gaps in coverage has been hindered by data ownership issues, necessitating a completely separate data system to ensure that the private-sourced data is not provided to competitors through the State's information dissemination system. These duplicate systems have not been practical, but in geographic areas with little State-owned infrastructure-based information this would be less of an impediment. The Kansas Department of Transportation commented that although it has had a positive experience with public-private partnerships, it is also aware of the risks associated with purchasing from or relying on third-party providers for critical infrastructure components needed for the rule.

The fifth part of the fourth question asked about the potential for 5.9 gigahertz (GHz) wireless communications to fulfill the requirements of the Real-Time System Management Information Program. In general, responders commented that 5.9 GHz communications holds potential for helping meet the regulation's requirements, but in cooperation with other wireless communications methods. The Vehicle Infrastructure Integration Consortium (VIIC) noted that it expects that vehicles and roadway infrastructure equipped with 5.9 GHz communications systems for safety enhancement ultimately could support the purposes of the Program and be used to fulfill some of the requirements of the rule. However, these cooperative communication systems are unlikely to be available widely on vehicles or the infrastructure by the November 2014 date for States to establish their information programs for interstate highways. The Minnesota Department of Transportation noted that, given the likely time frame for deployment of 5.9 GHz communications systems, it is too early to plan for 5.9 GHz as part of the implementation of the Real-Time System Management Information Program. The Virginia Department of Transportation commented that it envisions using 5.9 GHz communications as a component of its future ITS roadside applications since it could facilitate the collection and derivation of travel time information,

but Virginia is also testing other wireless technologies to capture travel times. The Illinois Department of Transportation noted that absent a system architecture and standards for this communication and data, there is a significant risk that stakeholders might invest in technologies that will depend on the 5.9 GHz spectrum that may be allocated to other users as the migration to comply with this requirement occurs. Other responders such as the Nebraska Department of Roads and the Alaska Department of Transportation and Public Facilities did not see a role for 5.9 GHz communications at this time.

The last part of the fourth question asked about ensuring that investments made today to comply with the Real-Time System Management Information Program are sustainable over the long term. In general, responders commented that sound planning for investments, including the appropriate use of established standards, offers the best opportunity to ensure that the investments made today and the investments needed in the future are sustainable. One responder commented that technology advancements should not discourage deployment of systems using technologies, but rather sound investments require that agencies and developers need to do a good job with the engineering of these systems. The Pennsylvania Department of Transportation commented that it is always transitioning to newer and more cost-effective technologies where applicable since ITS technologies are ever advancing. The replacement of today's technologies will be addressed as part of the on-going expansion and update of a State's ITS infrastructure, with effective planning, partner participation, and standardization for interoperability where possible assisting with program sustainability. The Chicago Department of Transportation also noted that the regional ITS architectures, the architecture planning process, and the continued engagement of operator-level stakeholders offers the best opportunity to insure that the investments made today and the investments needed in the future are sustainable. Chicago also noted that continued vigilance is required to make sure that changing technologies are appropriately considered in planning for, developing, deploying, and operating Intelligent Transportation Systems. The Minnesota Department of Transportation noted that there have always been legacy technologies and new technologies and it has sought out new technologies and adopted them as appropriate. Minnesota further

commented that it will use the best current technologies for new projects and upgrade legacy equipment through attrition, since it is not necessary to replace all the operational legacy equipment every time something new comes out. The Kansas Department of Transportation noted that using existing standards offers the greatest probability of future compatibility as States continue to stay up to date on new technologies, use non-proprietary equipment, support standards compatibility, and cautiously use non-proven technologies. Finally, the VIIC commented that related to the development of 5.9 GHz communications systems, Federal governance is necessary to avoid the implementation of divergent and conflicting requirements at the State or local governance levels, which would make deployment of a 5.9 GHz communications system impracticable for both system providers and users. The VIIC also commented that a Federal role is important to help assure long-term technological stability for these 5.9 GHz communications systems.

The 11 responses to the fifth question were consistent in identifying issues related to metropolitan areas. In general, there was agreement to using the metropolitan statistical area population of at least one million to determine which metropolitan areas should fall under the provisions of the Real-Time System Management Information Program. However, the comments identified issues related to the expanse of the geographic coverage of the roads within the metropolitan area. Because the geographic areas included under the Metropolitan Statistical Area (MSA) designations are expansive to include areas to provide nationally consistent delineations for collecting, tabulating, and publishing Federal statistics, there may be Interstate and other significant roads that rarely if ever experience congestion or variations in travel times. Four responses, three from States that do not include affected metropolitan areas, concurred with the use of the MSA for the Real-Time System Management Information Program. Three responses concurred with the use of the MSA but suggested flexibility be permitted to address the needs reflected by traffic patterns. Four responses suggested using the metropolitan planning boundaries or central counties for the geographic coverage of the Real-Time System Management Information Program. While there are no changes to the definition of metropolitan areas, these comments indicate a need for additional guidelines related to the

roadway coverage within the metropolitan areas. The FHWA will develop guidelines from these comments and in collaboration with States and other stakeholders to provide assistance in consistent identification of affected roadways in metropolitan areas for implementation of the Real-Time System Management Information Program.

#### Conclusion

The FHWA and other programs within the DOT will use the valuable information offered in the responses in shaping program activities and projects. Specifically, FHWA will use the information to help in developing further assistance in implementing the Real-Time System Management Information Program, including working with stakeholders to develop guidelines related to roadway coverage in metropolitan areas.

Issued on: July 11, 2011.

**Victor M. Mendez,**

*Administrator, Federal Highway Administration.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2550

#### RIN 1210-AB08

### Requirements for Fee Disclosure to Plan Fiduciaries and Participants—Applicability Dates

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Final rule; delay of applicability dates.

**SUMMARY:** This document delays specified applicability and effective dates of the Employee Benefits Security Administration's (EBSA) interim final rule concerning fiduciary-level fee disclosure and final rule concerning participant-level fee disclosure. These final rules were published in the **Federal Register** on July 16, 2010 and October 20, 2010, respectively. This document delays and more closely aligns the initial compliance dates of the two rules in order to provide regulated parties with more time to comply with the new disclosure requirements. This document adopts final amendments to the initial compliance dates for both rules.

**DATES:** The amendments made by this document are effective as of July 15, 2011 and the effective date for the interim final fiduciary-level fee disclosure rule published on July 16, 2010 (75 FR 41600) is delayed from July 16, 2011 to April 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Michael Del Conte, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On July 16, 2010, EBSA published in the **Federal Register** an interim final rule enhancing required disclosure from certain pension plan service providers to plan fiduciaries as part of a "reasonable" contract or arrangement for services under ERISA section 408(b)(2) (75 FR 41600) (the "408(b)(2) regulation" codified at 29 CFR 2550.408b-2(c)). EBSA subsequently published in the **Federal Register**, on October 20, 2010, a final rule concerning the disclosure of plan fee and expense information by plan administrators to plan participants and beneficiaries (75 FR 64910) (the "participant-level disclosure regulation" codified at 29 CFR 2550.404a-5). The participant-level disclosure regulation also modifies the disclosure requirements in the Department's regulation under ERISA section 404(c), at 29 CFR 2550.404c-1 (the "404(c) regulation"), in order to avoid duplication and to integrate its requirements with those of the new participant-level disclosure regulation.

As originally published, the effective date for the interim final 408(b)(2) regulation was July 16, 2011, as to both new and existing contracts or arrangements between covered plans and covered service providers. The Department received many requests that this effective date be delayed. A significant number of parties argued that more time is essential to update systems and procedures for information collection and disclosure. Pointing out that the Department had not yet published a final rule, parties explained that, if the Department modifies the current interim final rule, service providers will need additional time to make further changes to their systems and procedures for information collection and disclosure. Based on these concerns, the Department believed that an extension of the rule's effective date would allow time for improved compliance by plans and service providers, and thus would be in the interests of participants and