

C Anonymous - Comments

This is a Comment on the **Federal Highway Administration (FHWA)**
Proposed Rule: **National Performance Management Measures:
Assessing Pavement Conditions and Bridge Conditions for the
National Highway Performance Program**

For related information, [Open Docket Folder](#) 

[Comment Now!](#)

Due Apr 6 2015, at 11:59 PM ET

ID: FHWA-2013-0053-0074

Tracking Number: 1jz-8h9s-fccl

Comment

The FHWA determination that this rule making would not affect a taking of private property (EO 12630 Taking of Private Property) is not considering that repaving and certain pavement maintenance activities requires bringing facilities in conformance with the Americans with Disabilities Act of 1990 (ADA). Often ROW is required for these upgrades, and the cost of ADA facility upgrades can often exceed the costs of the repaving activities alone. Section 1B of EO 12630 requires "Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate". The EO 12630 preamble states "in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government". I am concerned that ADA ROW & Facility Costs that are part of the asset maintenance costs, are omitted from the assessment and actual financial and hourly burdens (Paperwork Reduction Act) for implementing the rulemaking, and will be actually much larger than the rulemaking predicts. These increased costs may invoke violation of the Unfunded Mandates Reform Act of 1995 despite FHWA declaring the rulemaking would not.

I suspect "lack of funding" will be cited as why pavement and bridge assets were allowed to decline. The Unfunded Mandates Reform Act of 1995 states "in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying". In the rulemaking, FHWA speaks of imposing financial penalties for non-compliance. If an asset owner cannot fiscally meet physical requirements of the rulemaking, how does this not invoke the situation that Unfunded Mandates Reform Act of 1995 addresses?

ADA was not mentioned in this rulemaking, and I believe needs to be.

TNS

Document Information

Date Posted:

Feb 19, 2015

RIN:

2125-AF53

[Show More Details](#) 

Submitter Information

Submitter Name:

Anonymous Anonymous