

National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program

Department of Transportation

Federal Highway Administration

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For decades, Congress has included clearly-defined national policy goals within surface transportation legislation. However, until the passage of MAP-21, states and metropolitan regions were not required to demonstrate that their programming decisions actually advanced these goals. The inclusion of performance management within MAP-21 is an important step to ensuring the federal government holds grant recipients accountable in a transparent and uniform fashion for advancing national policy goals.

This notice of proposed rulemaking, or NPRM, [RIN 2125-AF53] advances a performance management framework for the National Highway Performance Program, or NHPP, that is a significant improvement in two ways over the rule dealing with the Highway Safety Improvement Program, or HSIP. First, the NHPP proposed rule eliminates the 50 percent threshold, meaning states are required to make substantial progress on all statutorily mandated performance measures. Second, the NHPP proposed rule eliminates the problematic concept of a trend line and prediction interval. In place of these two shortcomings, the NHPP proposed rule advances a simplified framework that requires states and metropolitan planning organizations, or MPOs, to set performance targets and then track their progress toward meeting those targets.

At the same time, the proposed NHPP rule falls short in two key areas. First, it fails to hold MPOs accountable for their role in advancing national transportation policy goals. Second, the NPRM provides states with too much flexibility when setting performance targets.

On the issue of MPO accountability, the NPRM states: “MPOs are not directly subject to the requirement to evaluate the progress toward achieving NHPP targets.” The proposed rule adds that MPOs will not be required to set 2-year targets or be subject to a “substantial progress” determinations. Furthermore, the rule states that MPOs would be allowed to establish targets either by “(1) Agreeing to plan and program projects so that they contribute toward the accomplishment of the relevant state DOT targets, or (2) committing to quantifiable targets for their metropolitan planning area.”

This approach effectively removes MPOs from the entire performance management process by simply allowing them to make a general statement of intent to support state efforts. As a result, MPOs will not be held accountable in any meaningful way. This approach ignores both the intent and letter of the law. Section 1201 of MAP-21 [23 USC 134(h)(2)(B)(i)] states “Each metropolitan planning organization shall establish performance targets that address the performance measures in section 150(c).” In addition to setting quantifiable targets, Section 1201 states “PERFORMANCE TARGET ACHIEVEMENT—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.” In short, Congress clearly intended for MPOs to be held to the same standards of target setting, data collection, reporting, and accountability as states.

Regional leaders may argue that MAP-21 represents an unfunded mandate. Namely, MPOs are required to set targets and advance national policy goals without the resources necessary to achieve the task. This argument is not without merit. However, this line of reasoning should not serve as the basis for carving

out MPOs from accountability as clearly intended by law. Fortunately, the rulemaking process presents an opportunity to achieve accountability while also recognizing the limitations faced by MPOs. Specifically, MPOs should be judged based on the condition and performance of only the assets that their constituent jurisdictions control.

The NPRM states that DOTs and MPOs should “establish targets that represent performance outcomes of the entire transportation network required for proposed measures regardless of ownership.” This approach sets up a situation whereby MPOs are responsible for numerous assets that they do not own or control. For example, how can an MPO be expected to set a meaningful target for pavement conditions on the National Highway System, or NHS, when the majority of NHS facilities within their region are owned and controlled by the state DOT?

The rule should be revised to hold MPOs accountable for those assets under the direct control of their constituent local jurisdictions. This intuitive solution has the added benefit of being easily communicated to the public. By comparison, the approach proposed by the NPRM would require regional leaders to try and explain why they are being labeled as failing for choices made at the state level.

Holding MPOs accountable for their assets also recognizes the heterogeneity of ownership approaches across the country. Some states own nearly the entire highway network while others have delegated ownership and responsibility for large portions to local governments. And while MPOs receive almost no federal transportation funding, the local governments that make up the metropolitan planning area are not without transportation funding. Many local governments raise their own transportation revenues. In addition, virtually every state engages in some form of revenue sharing whereby revenues resulting from a state-level tax are passed back down to local governments. The extent of revenue sharing tends to parallel—though certainly not always—the degree to which local governments are responsible for asset maintenance.

Regarding state target setting, the proposed rule provides states with too much flexibility when setting performance management targets. MAP-21 established clear policy goals, including for asset conditions. Specifically, MAP-21 states the goal of federal policy is to “maintain the highway infrastructure asset system in a state of good repair.” Clearly, Congress did not intend for states to set their performance goals to include assets being in worse condition in the future than they currently are. The proposed rule would also allow states to redefine their four-year targets at the two-year mark as part of the biennial review. Yet, even if we grant that political and budgetary constraints make it necessary to allow states to set goals that includes deterioration, this substantial flexibility should not be added to by also allowing states to change their targets mid-cycle.

To be clear, transportation infrastructure is not a fast-moving field. The four-year performance period is of adequate length to allow states to make—or fail to make—progress. By comparison, allowing states to change targets during the biennial review practically ensures that state DOTs will game the system to avoid ever being labeled as having failed to make substantial progress.

In conclusion, the proposed NHPP rule should be revised in three ways. First, MPOs should be required to set quantitative performance targets in accordance with the clear statutory language. Second, MPOs should be held accountable for the condition and performance of only the assets their constituent jurisdictions control. Third, states should be held to their two- and four-year targets and not permitted to change the four-year target as part of the biennial review. Collectively, these changes will substantially strengthen the efficacy of performance management and ensure that grant recipients act as good stewards of federal dollars.

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