



NEW YORK STATE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

COMMENTS ON NOTICE OF PROPOSED RULEMAKING: FHWA-2013-0053

“National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program; Assessing Bridge Condition for the National Highway Performance Program.”

Please accept the following comments on behalf of the fourteen MPOs in New York State.

General Comments

NYSAMPO fully supports the performance -based planning and programming requirements created in Moving Ahead for Progress in the 21st Century (MAP-21). We agree that such an approach can result in the investment decisions made by MPOs and State DOTs being more transparent and oriented to positive outcomes for users. We caution that implementing these requirements is complex and potentially contradictory.

MPOs have broad responsibility for the transportation system in their region, meeting user needs for safe, efficient, and reliable transportation across modes and jurisdictions. They must always balance available resources among many needs.

- The Final Rule for all performance management requirements in MAP-21 must result in a balanced approach that accounts for the range of demands placed upon TIPs and STIPs. For example, too great a focus on the National Highway System, or on managing physical assets, can result in distorting the program.
- The Final Rule for all performance management requirements in MAP-21 must closely coordinate with the Final Rule on Statewide, Metropolitan, and Nonmetropolitan Planning, to make sure that planning resources are used wisely.
- The Final Rule must consider the demands being placed on MPOs and State DOTs for data collection, analysis, and reporting. Creating separate schedules for collecting data elements, and separate schedules for submitting reports to FHWA and FTA will create an enormous administrative burden for MPOs and DOTs. Ideally, performance reports should be coordinated with State and Metropolitan Transportation Plans and STIP/TIP adoption.

Sub-Part A

§490.101 – Definitions. No comments.

§490.103 – Data requirements. No comments.

§490.105 – Establishment of performance targets.

NYSAMPO is concerned in 490.105(d) that targets established by State DOTs and MPOs include the NHS system “regardless of ownership”. A significant portion of the NHS in New York is owned by local governments and public authorities; this is especially true in New York City. We note that the rule is silent on coordination with other owners, and would support language requiring such coordination. NYSAMPO supports the requirement in 490.105 (e)(2) that the State DOT shall coordinate target setting with the MPOs.

NYSAMPO notes the timelines in 490.105(e)(4). It is very important that FHWA coordinates all of the reporting and target setting timelines for each of the performance measure rules so that State DOTs and MPOs are not burdened with numerous reporting schedules that are out of synch with one another.

NYSAMPO supports the flexibility offered in 490.105(f)(4) to set targets that either contribute to the State DOT targets, or are independent of them.

NYSAMPO asks for clarification of 490.105(f)(8) regarding target adjustment. The language states “the MPOs may adjust its target(s) in a manner that is agreed upon and documented in the metropolitan planning agreement”. We generally find reopening the metropolitan planning agreement to be a burdensome legal exercise, and propose that FHWA permit other means for this action.

§490.107 - Reporting on performance targets

490.107(c) NYSAMPO agrees that the appropriate means of MPO reporting is the MTP System Performance Report. We request clarification on the timing of the initial report, given the variability of MTP adoption schedules.

NYSAMPO reiterates our concern with the use of the metropolitan planning agreement for reporting on performance targets to the State DOT. There are other means, for example through operating procedures, which will not require a lengthy process of legal and policy review.

§ 490.109 - Assessing significant progress toward achieving the performance targets for the National Highway Performance Program.

NYSAMPO notes that at the time this rule becomes effective, each State and MPO will have in place an approved STIP or TIP that includes pavement and bridge projects that may have been developed under a different rubric. While the State DOT or MPO may set initial targets to reflect this situation, FHWA should in the rule recognize that this is a contributing factor to performance in the first cycles.

Sub-Part C

§490.301-305 No comments

§490.307 National performance management measures for assessing pavement condition.

NYSAMPO is concerned with the selection of the % Good/% Poor performance measures. This limits the flexibility of State DOTs and MPOs in selecting asset management strategies. By focusing on % Poor, owners are encouraged to adopt a “worst first” methodology. New York has had success by investing in assets in Fair condition, thereby extending the service life of those assets, an approach referred to as “preservation first”. While allowing NHS assets to remain in Poor condition is undesirable, NYSAMPO supports an approach that encourages greater flexibility.

§490.309 – Data requirements

NYSAMPO notes that compared to the current HPMS requirements, the greater extent and greater frequency of some elements will result in greater expenditure of resources by State DOTs.

§490.311 – Calculation of pavement metrics

NYSAMPO supports the assertion of New York State DOT that a uniform 0.1 mile segment is not necessarily appropriate, and that use of logical pavement management segments with common characteristics will result in a better understanding of pavement conditions and needs, and better overall investments.

§490.313 – Calculation of performance management measures

NYSAMPO proposes that pavement segments with missing or invalid data should not automatically be classified as Poor. We understand that there are a variety of reasons for that to occur. FHWA should commit to a review process with State DOTs to understand the basis for the identification.

§490.315 – Establishment of minimum level for condition of pavements

NYSAMPO understands the intent to establish a single national standard for pavement condition, but expresses concern that this does not recognize certain underlying realities, including climate impacts and age of the system. Most of the Interstate Highway system in New York was constructed in the late 1950's through mid-1960s, and is therefore much older than comparable construction in the nation's Sunbelt. Similarly winter maintenance states like New York face greater challenges in maintaining their pavements. Since NHPP apportionments do not recognize these factors, we find it difficult to reconcile a single condition standard.

§490.317 - Penalties for not maintaining minimum Interstate System pavement condition.

NYSAMPO expresses concern that 490.317(d) establishes compliance on an annual basis. MAP-21 establishes the penalty determination from two consecutive reporting periods, but does not define "reporting period". The NPRM does, in Section 490.101 establish a definition for "Performance Period" which covers a 4-year period. The Performance Period applies to the reporting of pavement and bridge condition measures and metrics. Therefore, NYSAMPO proposes that the length of the "reporting period" for the purposes of assessing minimum pavement conditions should be changed to conform to the "Performance Period" of four years. Making this change would effectively postpone the application of any penalties for eight years, as MAP 21 specifies that conditions need to be assessed for two consecutive reporting periods before penalties are determined.

NYSAMPO expresses concern with the penalty in 490.317(f)(2) that requires transferring money from the Surface Transportation Program apportionment. We understand that this does not affect the amount sub-allocated to metropolitan areas, but recognize the value that STP investments bring to meeting important needs off the NHS throughout the state.

Sub-Part D

§490.401 – 403 No comments

§490.405 – Definitions

NYSAMPO supports NYSDOT's request that the definition of "structurally deficient" specifically exclude the condition of the bridge deck. Our MPOs frequently program projects for deck replacement on otherwise structurally sound bridges. As noted in our comment on §490.315, winter climate influences the deterioration rate of a deck, while strategies like bridge washing and painting reduce its impact on the structure.

§490.407 National performance management measures for assessing bridge condition.

NYSAMPO expresses the same concern raised with respect to performance measures for pavements, in that the use of Poor and Good will encourage use of a "worst first" approach to investment, and limit the flexibility of State DOTs to employ asset management strategies that do not follow that approach.

§490.411 – Establishment of minimum level for condition of bridges

NYSAMPO recognizes the metric of 10% structurally deficient by deck area of NHS bridges is established in MAP-21. We express concern that New York's attempt to meet this target and recognition of potential penalties will distort the Federal Aid Highway Program in the state. Because MPOs are responsible for mobility and safety throughout their metropolitan region, it is important that a single performance target not require an overwhelming share of resources. We believe it was not the intent of MAP-21 to create such consequences.

§490.413 – Penalties for not maintaining bridge condition

We restate the comment on §490.411 that the imposition of penalties will further distort the ability of NYSDOT and the New York MPOs to properly invest in the entire Federal Aid Highway System.