



June 25, 2014

U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Federal Highway Administration

RE: Notice of Proposed Rulemaking for the National Performance Management Measures; Highway Safety Improvement Program – Docket No. FHWA-2013-0020

I. Introduction

The Association of Metropolitan Planning Organizations (AMPO) submits these comments in response to the Federal Highway Administration *Notice of Proposed Rulemaking (NPRM)*, Docket Number FHWA-2013-0020 (March 11, 2014), regarding the National Performance Management Measures; Highway Safety Improvement Program authorized by *Moving Ahead for Progress in the 21st Century (MAP-21)*. As a national association representing the interests of federally established metropolitan planning organizations (MPOs), AMPO appreciates the opportunity to provide comments to proposed rulemaking.

II. Comments on the Notice of Proposed Rulemaking

AMPO would like to provide the following overarching comments regarding the proposed rulemaking:

- This is one of the early rulemakings related to the new performance-based provisions of MAP-21. We respectfully request that this rulemaking be made compatible with other performance-based rulemaking from MAP-21.
- With several upcoming rulemakings, AMPO requests that consideration and reconciliation of these various plans into the MPO process be resolved in the recently released Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning—Docket No., FHWA-2013-0037.

- No two metropolitan regions are alike. AMPO stresses the need for flexibility to meet different situations and sizes of agencies.

AMPO would like to provide the following specific comments regarding the proposed rulemaking related to the MPO role:

1) Annual Targets

- The rule requires that states establish safety targets annually. Would that require MPOs to also take an annual action to either adopt quantifiable targets, or plan and program safety projects which contribute to the state targets? It seems that if an MPO chooses to establish targets by endorsing the state targets, this can be done once without the need for an annual action. Or is it the intent that MPOs would indeed have to take an annual action to endorse the new state target? Some clarity on this process would be welcome.
- The NPRM states that “State DOT targets [are] to be set annually, for the following calendar year.” This seems to be a particularly short time-frame for target setting, especially considering that the measures being used are (proposed) 5-year rolling averages.
- MPOs and state Departments of Transportation (DOTs) will need to coordinate extensively to establish targets. AMPO welcomes language that encourages this.
- AMPO supports the language giving MPOs flexibility in establishing targets within their planning areas and for establishing their own targets if they choose.

2) Target Setting

- AMPO’s understanding of the rule is that MPOs have two choices: to establish their own quantifiable targets or to plan and program safety projects that contribute to the accomplishment of the state targets. For MPOs that already work cooperatively with their states on safety planning, we appreciate the flexibility the rule provides to continue to support the state targets.

There is a question on what it means to plan and program safety projects that support the state’s targets. Currently, projects which are focused on behavioral and enforcement programs, either through the National Highway Traffic Safety Administration (NHTSA) or the states’ Strategic Highway Safety Plans (SHSPs) are not included in Transportation Improvement Programs (TIPs).

There is also a concern if the expectation of this requirement was that MPOs would be expected to program the very limited regionally allocated Surface Transportation Program (STP) funds toward additional specific projects in support of the state’s targets. The interest is in maintaining what AMPO sees as the rule’s flexibility, given that states generally select all of the projects to be programmed with federal safety funds.

- Regarding the MPO option to set a target by “planning and programming safety projects” toward a state target, AMPO requests the following:

- Specifically allow MPOs to set a numerical target for individual performance measures and support the state target on remaining ones.
- Consider phasing in a requirement for MPOs to set numerical targets.
- Provide additional clarification as to how MPOs will be held to any targets.
- Provide additional clarification on whether the MPO targets can be for a different time horizon than a state.

AMPO is pleased to see that the MPOs have an additional six months beyond the state target setting to set the MPO targets. While AMPO members anticipate being engaged in collaborative target setting processes with their state(s), the extra six months will provide the necessary time to work with our boards, after state adoption, to take action on the adoption of the MPOs performance measure targets.

III. Responses to Specific Questions in the NPRM

1) 5-year rolling average (versus 3 or 4 years)

AMPO supports the 5-year rolling average. This is especially true for analyses of smaller geographies and/or subsets of the total, i.e. fatal crashes. A 5-year rolling average would smooth out the extreme variations that may be due to factors beyond the control of MPOs and states.

2) Implementation of a Non-motorized Transportation Safety Performance Measures

The preamble to the proposed rule requests comments on how USDOT could address separate non-motorized performance measures. AMPO understands that USDOT has already received much input on this topic.

In light of the phrase “what gets measured gets managed,” AMPO supports a discussion on a process toward establishing a separate national performance measure for non-motorized travel. We understand the problems with establishing a rate-based measure for non-motorized travel because of the current lack of non-motorized travel volume data. For the immediate future, perhaps performance measures on non-motorized fatality and serious injury numbers are appropriate to communicate the importance, especially within urban areas, of specifically addressing this growing mode of transportation. At the same time, more work should be put into establishing data on non-motorized travel volumes in order to set rate-based measures in the future.

3) Serious Injury Determination

The NPRM proposes to shift the determination of serious injuries away from the KABCO scale to a MMUCC method. This proposal shifts the determination away from a law officer making a judgment

call regarding injury severity to a medical doctor using standardized definitions. While generally supportive of this transition, AMPO is concerned about two factors.

First: Although crash reports do currently contain some personal information, some MPOs are restricted from the release of crash information except for specific circumstances (this varies greatly by state). These restrictions tend to inhibit our ability to analyze regional crash trends or problem locations. Once medical records are introduced into the equation, however, and patient information is attached to the crash report, there is significant concern about additional restrictions being placed upon crash records as a result of the Health Insurance Portability and Accountability Act (HIPAA.) The concern also extends to making sure that patient information is protected and that the requirements outlined in the NPRM do not become a backdoor method of gaining unauthorized access.

Second: AMPO acknowledges that a system can ultimately be developed that limits unauthorized access to personal medical information while permitting MPO and State DOT access to appropriate information necessary for Performance-Based Planning and Programming (PBPP) requirements. Development of this system, however, will likely take much longer than the 18 months given for states to comply (note Michigan example from American Association of State Highway and Transportation Officials (AASHTO) comments, page 19).

IV. Points of Clarification or Concern

AMPO would like to pose the following points of clarification or concern regarding the proposed rulemaking:

- Please clarify what is meant by a “relevant MPO” paragraph 79 FR 13871. AMPO believes that states should coordinate with all MPOs in the setting of state targets, and does not understand why the term “relevant” is used here.
- Many MPOs will not have the resources and expertise to analyze safety data and will be dependent on their state. This will also impede the ability of the same MPOs to select and program effective projects.
- Consider aligning reporting requirements with existing planning schedules.
- AMPO is concerned that there will be issues with how multi-state MPOs set targets, coordinate, report, etc.
- There is a time lag in the Federal Analysis Reporting System (FARS) and Highway Performance Monitoring System (HPMS) data availability.
- There is a 5-year lag between setting a target and any adjusted spending levels:
 - a. State DOT sets target in CY 2016 (submitted by 8/31/16) for CY 2017.

- b. Final FARS and HPMS data for CY 2017 available in December 2019.
- c. FHWA would notify state DOT on achievement/significant progress by 3/1/2020.
- d. If determined that State DOT has not “overall achieved or made significant progress,” then the state must adjust its FY 2021 spending to meet FY 2016 levels.

What if the level of funding in 2021 is substantially lower than in 2016?

- AMPO encourages FHWA and NHTSA to coordinate on how safety issues are approached.
- Significant progress evaluation. The method proposed in the NPRM appears to have lost the connection between the target and the measure of significant progress. The proposed method is entirely based on a projection of the historical trend line.
- Is there an assumption that “significant progress” would be based on the amount of progress made toward meeting a longer-term target, not the degree to which a short-term target was actually met? This is not connected to target.
 - Consider error bar around the target, or percentage of the difference between the previous year measure value and the target versus the actual value.
 - Prediction interval only includes variation in past changes (no other sources of error are considered). If the past trend just happens to fit a line perfectly, “significant progress” will be evaluated against perfectly replicating that past trend.
 - Consider basing significant progress on some calculation of error other than just the “goodness of fit” of past trends to a line.
 - Consider additional methods for determining significant progress as proposed by the AASHTO, including adopting non-linear models and accounting for unforeseen events.
 - What if the projection point is less than zero?
- Scale of Analysis. The NPRM is silent regarding the scale of analysis, although the language seems to imply that the scale is either statewide or metropolitan. Some clarification to this end would be helpful. We have had some local feedback that supports corridor or project-level analysis as a way to justify (or reject) a particular improvement. Our concern is that, due to the relatively small number of crashes, such analyses would be highly variable from year to year and with the possible exception of the highest volume roadways, not statistically valid.

V. Conclusion

For a half century, metropolitan transportation planning has been rooted in a cooperative and collaborative relationship. MPOs believe that the development of performance provisions to meet the regulations and spirit of MAP-21, setting the direction for future transportation policy and

investment decision making, will best be done by continuing this tradition of collaboration. AMPO also firmly believes that the Joint Metropolitan and Statewide Planning Rule is the proper vehicle to reconcile the potential incorporation of Transit Asset Management and Transit Safety goals, targets and investment plans with other MAP-21 required rulemaking into metropolitan planning process and document requirements.

Thank you for the opportunity to provide our input and comments. We look forward to working with USDOT in implementing the performance management provisions of MAP-21.

Should you have any questions or seek further input from AMPO on the information provided above, please contact me at (202) 624-3680 or at dhardy@ampo.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D Hardy". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

DeLania Hardy, Executive Director