

May 8, 2015

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re: Docket No. FHWA-2013-0053

To the Docket Comment Record:

The National Association of Regional Councils (NARC) is pleased to offer the following comments regarding the Notice of Proposed Rulemaking (NPRM) from the Federal Highway Administration (FHWA) regarding the National Performance Management Measures Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program.

NARC and the local elected officials who comprise NARC's policy board and the policy boards of Metropolitan Planning Organizations (MPOs) appreciate FHWA's work to implement the performance management provisions contained in MAP-21. NARC's members support the general approach in the rules to date, with some reservations as expressed in these and previous comments. A performance-based transportation program to support national goals can be implemented without fundamentally altering the MPO process or reducing the local autonomy that is the basis of the nation's transportation program.

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The following outlines key areas of the NPRM that are important for the nation's MPOs.

Flexibility

The performance management program creates new challenges for MPOs (and State DOTs), and NARC agrees with the assessment that simplicity and flexibility are worthwhile goals in the development of the performance regulations. Further, NARC appreciates FHWA's attempt to develop target establishment requirements that can be met by all MPOs, in light of their varying capacity and resources.

NARC appreciates the flexibility provided in section 490.105(f)(4), which gives an MPO options: either establish for itself a quantifiable target for its metropolitan planning area; or agree to plan and program projects that contribute toward the accomplishment of state-established targets. Further, NARC supports the flexibility in MPO target development, including the acknowledgement that local transportation priorities are a factor in establishing targets and that an MPO may elect to establish targets that represent a decline in pavement or bridge conditions, if dictated by local priorities. Further, additional factors such as population shifts, economic factors, and environmental conditions are important investment considerations and should be reflected to the extent possible in the target setting process outlined in this and other NPRMs. Finally, NARC appreciates the recognition of the burden an MPO faces in establishing targets and the allowance that MPOs not be required to establish two-year targets.

An MPO should also have additional flexibility in the timeline to establish and report targets. Under section 490.105(f)(1) an MPO has 180 days to establish targets after its State DOT has done so. Additional time would help ensure an MPO has adequate opportunity to appropriately consider and establish targets, given the significant collaboration the NPRM requires between an MPO and its State DOT and the data

collection requirements. In regards to reporting, an MPO should report targets in regularly developed plans rather than based on arbitrary timelines. NARC appreciate the flexibility provided in section 490.107(c) in regard to reporting; NARC supports the joint development of reporting requirements between an MPO and its State DOT and the allowance for reporting of baseline condition/performance and progress toward target achievement in the metropolitan transportation plan. Target setting and reporting timelines should be synchronized and existing plans and documents utilized whenever possible, to minimize the burden on MPOs and State DOTs.

The regulation should require that when a State DOT chooses to adjust its targets, as provided in sections 490.105(e)(6) and 490.107(b)(2), an MPO is not required to also adjust its own established targets. In addition, it should be explicitly stated that a State DOT is required to coordinate with its MPOs if it chooses to adjust its targets, just as it is required to do when setting targets initially.

State DOT and MPO Relationship

The success of the national performance management program will rely in part on the extent to which State DOTs and their MPOs are able to work together, establish common ground, and find complementary purpose. In the discussion of section 490.105(e)(2), FHWA states it “recognizes the need for State DOTs and MPOs to have a *shared vision* on expectations for future condition/performance in order for there to be a jointly owned target establishment process” (emphasis added). This phrase does not appear in the regulatory text itself, but raises issues nonetheless. In some cases, this “shared vision” is a difficult – if not impossible – standard. Therefore, NARC encourages FHWA to consider – outside of the rulemaking or guidance process – what a “shared vision” looks like, how it can be fostered, and how the performance management program can and will work in cases where it has not yet been achieved. At the same time, FHWA can take a deeper look – in case studies, peer exchanges, and other input from State DOTs and MPOs – at the requirement that State DOTs and MPOs coordinate in the development of targets. Proscriptive measures are not required, but this is an opportunity to explore existing relationships between MPOs and their State DOTs and suggest how to create stronger ties between the two.

When a State DOT chooses to establish separate urbanized and non-urbanized targets, as provided in section 490.105(e)(3), the State DOT should be required to coordinate those targets with relevant MPO(s) and rural transportation planning organizations.

Sections 490.107(c) and 490.105(e)(8) use the metropolitan planning agreement as the vehicle to outline procedures by which an MPO will establish, adjust, and report targets. Many MPOs feel that renegotiating metropolitan planning agreements is an onerous and lengthy legal undertaking. NARC suggests maximum flexibility in this regard. An MPO and its State DOT should determine between themselves the most efficient and effective manner to meet these requirements. If FHWA feels this is the appropriate vehicle in which to outline elements of this and other performance rules, however, NARC encourages FHWA to develop best practices and other information (outside of the rulemaking process) that consider challenges and solutions in the metropolitan planning agreement process.

Ownership

Section 490.105(d) requires that MPO and State DOT targets represent outcomes on the entire transportation system, “regardless of ownership.” As a result, an MPO could be responsible for the condition of facilities over which it has no ownership or control.



Missing Data

Section 490.313(b)(4) says that missing or invalid pavement data will result in a classification of “poor” for that segment. Such an approach should be reconsidered, as it will skew the true condition of the network and make calculation of network performance over time more difficult.

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NARC appreciates the opportunity to present these comments to you, and look forward to continuing to work with FHWA to develop the final rule. If you have any questions about these comments, please contact me at erich@narc.org or 202-618-5697.

Sincerely,

Erich W. Zimmermann
Director of Transportation Programs
National Association of Regional Councils