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May 15, 2014

Gregory G. Nadeau
Deputy Administrator, Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re: Docket No. FHWA-2013-0020

Dear Deputy Administrator Nadeau:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on Federal Highway Administration's (FHWA) "National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule" (NPRM), published in the Federal Register on March 11, 2014. Representing all 50 states, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between state departments of transportation and the federal government.

AASHTO and the State DOTs are supportive of the MAP-21 performance provisions and believe that the implementation of performance management principles within the transportation industry will be a positive step towards a safer and more efficient transportation system. However, this is only the beginning of a long journey that we will complete together as partners. There are some recognized challenges ahead and AASHTO and the State DOTs will continue to engage with FHWA, NHTSA, and FTA to address these challenges and work together.

Performance management, the development of performance measures, and establishing performance targets is not new to the State Departments of Transportation (DOTs). For the last decade, many State DOTs have developed and implemented comprehensive and robust performance management systems to balance investment decisions against resource limitations. An important aspect of this has been examining performance measures for a wide variety of areas from safety to asset condition to performance of the transportation system. State DOTs are concerned with all of these performance areas and must balance the funding of programs and projects across areas while at the same time meet stakeholder expectations during a time of financial uncertainty.

While State DOTs are examining a comprehensive set of performance areas, safety remains a top priority for AASHTO and for the State transportation agencies. AASHTO and its member departments are committed to developing and implementing data-driven safety programs that reduce fatalities and serious injuries on the U.S. transportation system. In fact, since peaking in the 1970s, roadway fatalities have been reduced to record lows not experienced since the early part of the 20th century. State DOTs have been among the leaders making these reductions a reality with their partners in the driver behavior, law enforcement, and emergency medical services communities.

However, over 33,000 people lose their lives on the nation's roads each year—and one life lost on a roadway is one too many. To this end, over thirty state DOTs have adopted a zero-based goal or vision, such as a *Toward Zero Deaths* policy, with the intent of eliminating all road-related fatalities. Building on state programs, AASHTO has participated in the development of the national safety initiative, *Toward Zero Deaths: A National Strategy on Highway Safety*. This national strategy has been developed in cooperation with associations representing state and local agencies whose members have responsibilities for various aspects of safety such as infrastructure programs, licensing, enforcement, education, commercial vehicle safety, and emergency medical services. The national strategy focuses on uniting all highway safety stakeholders to build on the safety programs that have been effective and promotes development of new countermeasures that will continue to reduce fatalities and serious injuries, and is therefore a tool that all stakeholders can use to enhance current national, state, and local safety planning and implementation efforts.

The following comments represent a substantial work effort among State departments of transportation to thoroughly review and comment on the NPRM. This included a coordinated effort to gather input from the AASHTO Standing Committees on Performance Management, Highway Traffic Safety and Planning.

AASHTO is supportive of the National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule. However, it is recommended that FHWA address the concerns we have outlined in the attachment to this letter and consider revisions to the proposed rule. We are particularly concerned with some provisions in the proposed rule which we believe would undercut the authority of State DOTs to set performance targets as set forth in MAP-21. We believe that the changes we recommend would strike an effective balance between encouraging State DOTs to measure and report on the safety of the transportation system at a national perspective without unduly burdening the States.

The comments are organized as follows:

- **Principal Comments**—There are seven principal comments for which AASHTO provides an in-depth analysis and discussion.
- **Section-by-Section Comments**—AASHTO comments on each major section and sub-section of the NPRM.
- **AASHTO Response to FHWA Requests**—AASHTO response to the nine questions specifically asked by FHWA in the NPRM.

- **Proposed Changes to Text**—Suggested changes to the NPRM text based upon AASHTO analysis.

We appreciate the opportunity to provide these comments and look forward to working with FHWA in the implementation of final rules. If you would like to discuss the issues raised in this letter, please contact Matthew Hardy, AASHTO's Program Director for Planning and Policy at (202) 624-3625 or Kelly Hardy, AASHTO's Program Manager for Safety at (202) 624-5868.

Sincerely,



Bud Wright
Executive Director, American Association of State Highway and Transportation Officials



Mike Hancock
President, American Association of State Highway and Transportation Officials
Secretary, Kentucky Transportation Cabinet

PRINCIPAL COMMENTS

1) PROVISIONS SHOULD MORE CLEARLY VEST TARGET SETTING AUTHORITY IN STATES

MAP-21 was clear in stating that each State shall set performance targets that reflect the measures developed by U.S. DOT. However, in the NPRM, FHWA proposes that the State's Highway Safety Improvement Program (HSIP) targets "shall be identical to the targets established by the State Highway Safety Office (SHSO) for common performance measures reported in the State's Highway Safety Plan (HSP), subject to the requirements of 23 USC 402(k)(4), and as coordinated through the State Strategic highway safety plan." Under 23 USC 402(k)(4), a State's HSP (regarding the highway safety grant programs of chapter 4 of title 23) is not in effect unless approved by U.S. DOT (in this instance NHTSA is the entity that approves the HSP). As a result, proposed 23 CFR 490.209(a)(1) would, in effect, subject the HSIP targets to U.S. DOT approval even though that is not required under 23 USC 150(d)(1).

There are two concerns that AASHTO has with making the State's HSIP targets the same as those reported in the State's HSP. First, MAP-21 is clear in stating that establishing targets for performance measures is the responsibility of the State DOTs and MPOs and that the targets do not need to be approved by U.S. DOT. Second, there are fundamental differences in the approach between NHTSA and FHWA when it comes to transportation safety. With one approach, a State DOT is expected to push the envelope and be innovative with regard to their safety targets encouraging a State DOT to take a risk in setting an aggressive target. However, another approach is where the emphasis is focused on ensuring that the funds that are spent on safety result in target achievement and best return on investment with the funding provided. Because of the penalties imposed by MAP-21 if a State DOT does not make significant progress towards their safety targets, State DOTs want to ensure they can still implement innovative safety projects and set aggressive targets without fear of penalties. AASHTO encourages NHTSA and FHWA to seek to compliment and coordinate a compatible approach to highway safety and adopt a culture of safety innovation, encourage setting aggressive targets, adopt evidence-based best practices and implement innovative safety projects.

Target setting is a data-driven and multidisciplinary process that is practiced by all States. Specific to safety, a comprehensive evaluation strategy of States' data is needed. Special rules focusing on a particular issue (high risk rural roads or non-motorized users) limit States' ability to use this comprehensive approach to use a data-driven approach to determine where the investment of limited resources can most effectively save lives and reduce serious injuries. AASHTO supports the U. S. DOT approach whereby States must only establish targets for the four measurement areas within their state boundary.

Furthermore, it is AASHTO's position that every State and municipality faces different constraints and opportunities affecting their transportation system. All States face different realities such as economic conditions (growing or declining), sources of funding, financing abilities, geographical and weather conditions, population growth trends, and legislative and

gubernatorial mandates and priorities. State DOTs will need to consider all of these realities when establishing safety targets. Consequently, it is essential that State DOTs have the flexibility to set safety targets that have performance holding steady, or in some situations declining, and are consistent with the realities present in their state. Allowing State DOT control over target setting, without approval from U.S. DOT, allows a State DOT and municipalities to face the political and economic realities of their unique situations. Accountability to these targets will be maintained by U.S. DOT through an assessment of States' progress towards meeting the targets.

AASHTO recommends the following as it relates to the target setting requirements:

- **The proposed rule should be modified to ensure State and local discretion in target setting, in accord with 23 USC 150.** One way to achieve this would be to strike “shall be identical” in proposed CFR 490.209(a)(1) and substitute “are encouraged, but not required, to be identical”. Such a change would not preclude U.S. DOT from requiring the same measures for fatalities and serious injuries for the section 148 and 402 programs. AASHTO expects that in many states the targets provided to NHTSA and to FHWA will be identical or similar even if the rule is changed as we recommend. However, to the extent there are variances, this is a consequence of the clear statutory directive in 23 USC 150 that states set the targets. Regardless, the decision of Congress to provide U.S. DOT with approval authority for a State’s 402 program does not establish control by U.S. DOT of State targets under the section 148 program.
- **FHWA efforts to build overall capacity among the State DOTs in target setting would be constructive.** FHWA’s guiding principles in the development of the NPRM indicate a desire for consistency in the process of setting targets and reporting expectations. While reporting is consistent via the HSIP, there is still little information on how best to set targets, beyond recommendations for collaboration and data-driven decision making. FHWA, NHTSA, or GHSA should develop information for best practices in data-driven target setting. This may include using preliminary data sources, forecasting techniques, and trend analysis. We acknowledge that capacity to perform these different levels of analysis varies by States, so having additional information on how States might conduct simple data-driven approaches would be helpful in their efforts to set targets.

2) METHODOLOGY FOR DETERMINING SIGNIFICANT PROGRESS

AASHTO generally supports the two-step evaluation process in which FHWA proposes to assess whether or not States are making significant progress towards target achievement. For the first step, AASHTO agrees that if a State has met two of the four targets (50% consideration) set for the four required performance measures, that State will be deemed to have made significant progress. This process enables FHWA to take into account unique circumstances within a State that would affect their ability to meet some targets and not others. This approach also enables a state to establish “aspirational” or “stretch” targets and avoid penalties should it fail to meet a more aggressive target. And, it is AASHTO’s position that the regulations should not be used to, in any way, discourage States from setting these more aggressive targets. For example, if a state has been a historically high performer, the proposed rule does not necessarily penalize a State DOT for failing to meet an aggressively set target.

For the second step, FHWA would assess whether a State DOT has made significant progress for those performance measures if the target is within the 70 percent of the upper bound of the prediction interval. There are two aspects that AASHTO would like to see addressed concerning this second step. First, additional language should be included to give the states the ability to account for unforeseen circumstances, such as extreme weather events, that could result in mass casualties and prevent a state from achieving or making significant progress toward achieving performance targets.

Second, AASHTO is concerned with the general complexity associated with using the historical straight line trend method because it relies too much on historical data and is focused on where a State has been in the past and not where it is headed in the future. If a State DOT does set “aspirational” or “stretch” targets for all of the performance measures, the historical straight line trend method may penalize the State DOT unfairly as well as discourage the setting of *Toward Zero Deaths* goals. Also, while states may continue to use historical trends when establishing safety targets, such trends are only one of many possible factors that will be considered. It is AASHTO’s assessment that the proposed straight line trend method for determining if significant progress has been made relies exclusively on the historical data and even with the 70 percent prediction interval, these data may not be directly connected to the target that a State DOT establishes for future years.

Further, the straight line trend method of target setting may not be appropriate for all states, especially those that have already made large gains in reducing fatalities and serious injuries. The problem may be especially acute for small states with historically low fatalities where a high statistical anomaly may affect even a 5-year rolling average. Basing this assessment on a linear trend line will likely penalize states that have made recent progress. For example, it is likely that a State that has seen a substantial decline in fatalities or serious injuries over the last ten years may see a slowing of that rate of decline. This slowing may be due to economic or program changes, modifications in state law, population and travel growth, data improvements, shifting strategies, etc. For States that are currently seeing a moderate decline, that same rate may be achievable for a number of years into the future. In addition, some States may be in the process of establishing programs and projects that will result in a more rapid decline in fatalities and serious injuries in upcoming years than what occurred in the past. For states that are or will experience an increase in the number or rate of fatalities and serious injuries, the straight line method makes little sense.

Given these different situations, AASHTO suggests FHWA work with the State DOTs to explore other types of evaluation methodologies for determining if significant progress has been made that would encompass both qualitative and quantitative components and would not rely solely on quantitative, historical crash data trends. For example, in order to identify making significant progress, an evaluation of each State’s safety programs could consider both qualitative (leading) and quantitative (lagging) indicators. Leading indicators would be the actions taken by a state to reduce severe crashes and the lagging indicators are the outcome of those actions such as reduced fatal and serious injury crashes. Using only the number of crashes over a ten year period, every state will be evaluated on a target that is highly impacted by a regression of the

mean phenomenon, which is well documented in traffic statistics. However, if FHWA is wedded to the use of relying on historical trend data, then additional types of line fits or methods should be considered to evaluate what qualifies as determining significant progress.

AASHTO recommends the following as it relates to the methodology for determining significant progress:

- **Insert additional language to account for unforeseen events.** Add a new paragraph (4) to proposed 23 CFR 490.211(b). It could read as follows:

“(4) The FHWA may also determine that a State has made significant progress towards achieving performance targets upon finding that the State likely would have achieved targets or achieved significant progress towards achieving targets within the meaning of paragraph (b)(2) but for extraordinary circumstances, including but not limited to naturally occurring hazards such as extreme weather events, forest fires, and earthquakes.”

- **Adopt additional non-linear models for evaluation and allow a state to change models with approval from FHWA.** The following example displays over 45 years of 5-year moving average fatality data for the state of Michigan and clearly demonstrates the need for additional data model options and approaches to assess whether significant progress has been made:

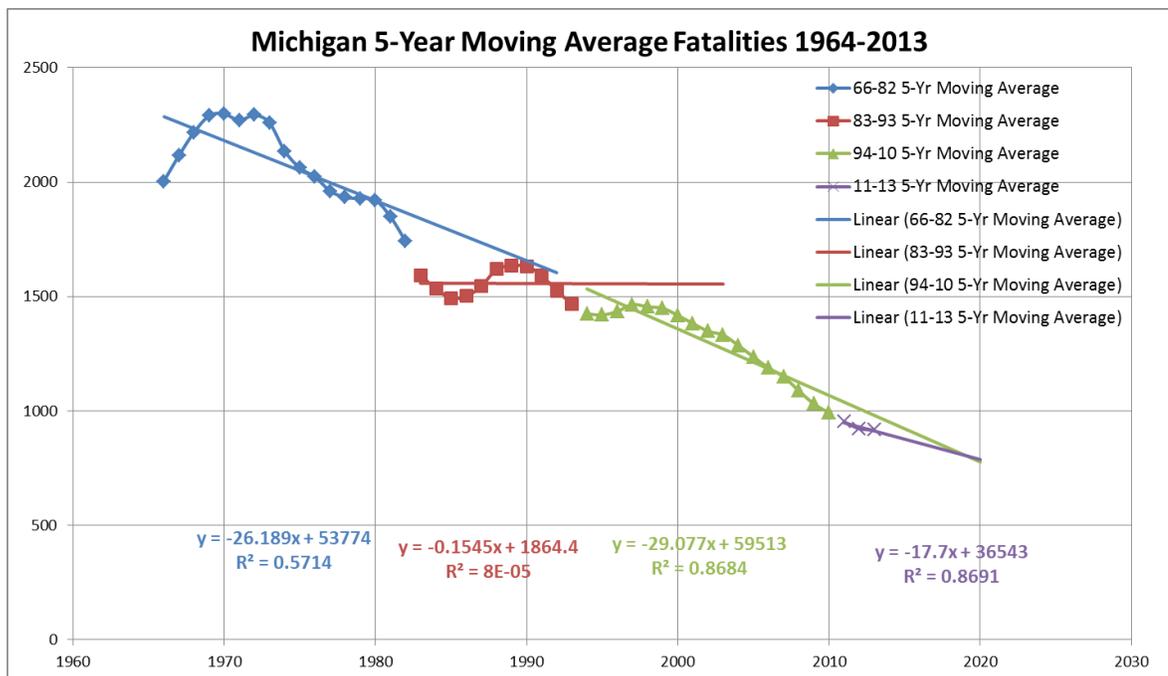


Figure 1: Michigan 5-Year Moving Average Fatalities 1964 to 2013

As seen in Figure 1, there is clear long-term downward trend in Michigan’s fatality rate. By any reasonable measure this should represent “significant progress;” however, had the

proposed rule been in place over this time period there are many years along this overall downward trend where Michigan would have been deemed to have not made significant progress. The measure of significant progress proposed by FHWA focuses only on the degree to which states come close to meeting annual targets, and loses sight of the notion that efforts should be focused on short-term activities that can move us toward attaining long-term goals. Allowing more flexibility before penalties are assessed or basing the determination of making significant progress on more than one year will ensure that the connection to a state's long-term targets remain.

The safety community recognizes that fatalities and serious injuries can be greatly influenced by external forces, such as economic downturns, that affect overall travel demand. As seen in Figure 1, despite the overall downward trend, the figure also shows several instances where the 5-year moving average slopes upward. In these instances, the proposed method used to determine significant progress would allow an even more rapid increase in fatalities before penalties are assessed, which is not consistent with the safety goals established in 23 USC 150. In addition, the turning points on the chart coincide closely with changes in national economic variables. This illustrates the problem associated with factors beyond the control of any state or State DOT that impact short-term trends in highway safety.

AASHTO would recommend consideration of the following four models and FHWA should work with each state individually to determine the appropriate evaluation methodology:

1. Exponential Model—This would be used for situations where a sharp decline in fatalities or serious injuries has occurred and the rate is decreasing.
 2. Straight-line Model—This is the model proposed in the NPRM.
 3. Logarithmic Model—This would be used for situations where sharp decline in fatalities or serious injuries is expected to occur and the rate will likely increase.
 4. Other Model—A different data driven model developed by a state and approved by FHWA to account for state specific circumstances that cannot be explained using one of the three models previously described.
- **Evaluate only the four required statewide targets.** If States choose to adopt additional optional targets for urbanized and non-urbanized areas or an MPO sets targets, these targets should not be considered in evaluating whether significant progress was made by a State. Otherwise, establishing additional targets may become a disincentive and may discourage some states or MPOs from adopting additional performance measures and targets. All states should be measured only on the same four required statewide targets, including the 50 percent consideration, and the optional performance measures and targets should not be included in the evaluation.
 - **Adopt a flat-line approach for States with increasing trend lines.** FHWA *strongly encourages* states to establish targets that represent improved safety performance in order to support national goals with the national goal clearly stating "a reduction in traffic fatalities and serious injuries." Thus, some States will be measured based on expectations of reductions (states with declining trends) whereas other States will be measured based

on expectations of increases (states with increasing trends). Both instances are demonstrated in the Michigan example provided. If states are encouraged to set targets based on trend analysis (or other data-driven approaches), it is not appropriate for some States to set targets that would allow higher crash frequencies or rates because trend lines and associated predictions have an increasing slope. In order to introduce more consistency and impartiality in performance measurement, AASHTO suggests using a flat trend line and 70% confidence interval when a trend is increasing. Here, the assumption is that the trend should remain flat for purposes of target evaluation. Even with increasing trends, the flat trend line would adjust each year in the event of an increase, making these targets reasonable from year-to-year.

- **Allow flexibility in determining if a state is achieving significant progress.** If a state is making progress toward achieving their target but the actual outcome falls above the 70 percent confidence interval, additional considerations should be made for determining if a state has achieved overall significant progress. AASHTO suggests the following alternatives for determining if a state is achieving significant progress:
 1. The State DOT saw a decrease in the 5-year rolling average from the previous year; or
 2. The State DOT saw a decrease in yearly number of fatalities or serious injuries from the previous year; or
 3. The trend analysis as proposed in the NPRM with the addition of non-linear models is met.
- **Allow flexibility in imposing penalties on a state that is not achieving significant progress.** There are many reasons why a State may or may not reach its targets. And, while the penalties imposed are not severe, they may unduly burden a State DOT through additional reporting that would best result in added safety improvements. AASHTO recommends the following:
 1. If a state fails to achieve significant progress in a single year, allow that state the option to maintain HSIP funding and programming of safety projects.
 2. If a state has met its targets for subsequent years based on preliminary data or can demonstrate that it has addressed the safety issues to demonstrate significant progress, allow FHWA to waive the penalty.
 3. If a state fails to achieve significant progress for two or more consecutive years, or three out of five years, require that state be penalized as suggested in the NPRM.

3) DELAY IN REPORTED DATA

An important tenant of performance management and performance-based planning and programming (PBPP) is a feedback loop whereby an evaluation of implemented programs and projects is conducted with that information being reported back into the decision-making process such that better decisions can be made on how to use limited resources. In order for this feedback loop to be effective, decision makers must receive timely and relevant information concerning the effectiveness of the investments they are making in their transportation system. Thus, the purpose of collecting and analyzing performance data is to help support the decision-making process. Unfortunately, the proposed rule does not support the timely analysis and feedback of the safety performance data and AASHTO is concerned about the significant time lag between

the establishment of targets and determination as to whether or not significant progress is being made.

Under the current rule, the determination of significant progress will take place three years after the year in question. For example, FHWA will assess 2017 data in 2020 and penalize a State in 2021 (if a determination is made that a State has not made significant progress). Meanwhile, States will have final or preliminary data available for the previous year at the time of making the annual HSIP Report and could take corrective action and meet their performance targets prior to the assessment of the penalty. This four-year delay is unacceptable since many States have more up-to-date fatality and serious injury data in their own databases (which are the source of data provided to the FARS database).

AASHTO supports drawing on both the Highway Performance Monitoring System (HPMS) and FARS data in support of the HSIP program and the setting of safety performance targets. HPMS data is continually collected throughout the year, and is submitted annually to FHWA. Currently this submittal occurs in June of each year for the previous year's data. Review, approval and acceptance of HPMS submittals are usually not completed until mid-December of the submittal year, e.g., 2013 submittal final acceptance may not occur until December 2014. This creates a minimum of a one-year lag in the VMT data that will affect a state's ability to set targets using this data. Regarding FARS data, most states already have both fatality and serious injury data for the previous calendar year by summer of the following year (CY2013 data is available by August 2014). In fact, many States have access to crash data essentially in real time.

In order for this rule to be as effective as possible in improving the safety of our transportation system, it is paramount that the time lag in using the data be addressed. AASHTO is very concerned that the time lag as proposed will inhibit the overall effectiveness of the rulemaking. Given this delay, FHWA should allow (even encourage) states to use the non-certified VMT, FARS and serious injury data available for the each reporting year until such certification is attained.

AASHTO recommends the following as it relates to the delay in getting the data:

- **Allow states to self-certify FARS and Serious Injury data.** As with the serious injury data, State-reported fatality data could be used to track progress against targets. While the state-based fatality data may differ slightly from the final FARS data, the difference will not be significant enough to affect decisions on the strategies and actions needed to address safety issues. Moreover, the disadvantage of the time lag far outweighs any benefit in the way of minor improvements in data quality. The FARS data could still be used by FHWA as a "check" when it becomes available, and any adjustments to strategies, actions, and funding, however unlikely, could be made at that time.
- **Base all measures on the most recent HPMS data available.** This may mean applying CY2014 FARS to CY2013 HPMS in order to calculate rates, but it is the experience of the States that rates change little (if at all) when annual HPMS VMT information becomes available. If this standard was implemented in all States, the data lag would be improved while maintaining consistency in reporting and performance measurement.

4) TRANSITION TO MODEL MINIMUM UNIFORM CRASH CRITERIA (MMUCC) AND LINKING MEDICAL RECORDS TO CRASH REPORTS

AASHTO is generally supportive of the transition of States to using the MMUCC definitions and the linking of medical records to crash reports for better data. However, there are two concerns that should be addressed. First, requiring that the “latest edition” in the regulations is problematic as any change in MMUCC will require states to go through the lengthy, time consuming and expensive process of redesigning and re-deploying crash forms to be compliant with the regulations. MMUCC definitions are subject to change from time to time, and so while a state may meet a MMUCC definition today, there needs to be flexible wording that does not immediately put a state out of compliance should that definition change.

Second, we do have concerns about the desire to shift to using medical data to determine the extent of injury classification. First, requiring use of the MMUCC definition for serious injury within 18 months of the effective date of this rule could be problematic for States. If a state is not currently using this definition, it will require a lengthy and resource-intensive process to work with law enforcement to change reporting processes, update manuals and training materials, and then train every law enforcement agency within each State that does crash reporting. Second, the use of a system like the Crash Outcome Days Evaluation System (CODES) that links collision and medical records to identify serious crash injury data has both benefits and drawbacks. The benefits will likely be better data but the drawback is a likely longer delay in reporting (up to 3 years) and possibly a loss of some data due to records not matching or Health Insurance Privacy and Portability Act (HIPPA) limitations. Finally, there is no dedicated funding for CODES or a similar system. Although the intent of CODES is excellent, CODES program has been increasingly problematic. This program needs serious work before being rolled out and part of the core requirement.

AASHTO recommends the following as it relates to the transition to MMUCC and linking medical records to crash reports:

- **Replace MMUCC, latest edition, with MMUCC, 4th Edition.** The NPRM specifies that the MMUCC, latest edition, should be used. AASHTO suggests that the MMUCC 4th Edition be established in the regulation such that State DOTs are not out of compliance once the next edition is available.
- **Give States 36 months to transition to MMUCC, 4th Edition.** This will give States that have not planned or are early in the process of switching more time to make the change without placing an undue burden on States already facing limited resources. Recommending that by 2020 all states use a system like CODES to identify serious injury crashes may not be the best answer.
- **Postpone the transition to CODES until further research can be conducted.** Neither the States nor FHWA are fully aware of the unintended consequences of using a medical record injury outcome reporting system that links injury outcomes from medical records to crash reports. Including a mandatory deadline of January 1, 2020 without such knowledge is not appropriate.

5) COORDINATION OF PLANNING DOCUMENTS

Transportation safety is the highest priority for all State DOTs and State DOTs support MAP-21's provisions that call for connecting the various safety plans (HSIP, HSP, SHSP, etc. as seen in Figure 2) into a comprehensive, state-wide safety plan. The stated goal of the federal-aid safety program is for states to provide the required leadership towards achieving a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands through a consultative approach and coordination.

In developing a comprehensive, state-wide safety plan, MAP-21 requires participation by local road jurisdictions in the development of the strategic highway safety plans (SHSPs). This includes:

- regional transportation planning organizations (RTPOs) and metropolitan planning organizations (MPOs);
- State and local traffic enforcement officials;
- county transportation officials;
- other major Federal, State, tribal, and local safety stakeholders; and
- other stakeholders.

MAP-21 requires coordination of other plans and programs with the SHSP. For example, MAP-21 requires that States coordinate their Highway Safety Plan (HSP), which is required by NHTSA on an annual basis, with the SHSP, which is required by FHWA to be updated at least every five years¹. The State's HSIP must also be coordinated with the SHSP. To obligate HSIP funds a State must develop, implement, and update an SHSP that identifies and analyzes highway safety problems and opportunities and highway safety improvement projects must be consistent with the State's SHSP. Likewise, the SHSP must be consistent with the requirements of the Statewide Transportation Improvement Program (STIP). The State must coordinate its HSP, data collection, and information systems with the SHSP. Other State transportation safety plans, such as the Commercial Vehicle Safety Plan (CVSP), the Statewide Transportation Plan, Metropolitan Transportation Plans, and local road and tribal safety plans, should be developed in coordination with the SHSP.

Notwithstanding the coordination requirement, many of the plans and reports have different due dates. For example, HSPs are due to NHTSA by July 1 of each year with an annual report of progress due within 90 days after the end of the fiscal year (December 31). The HSP include the targets that were established for the safety performance measures with the annual report containing an assessment of making progress towards those targets. An HSIP progress report, meanwhile, will be due by August 31 of year that describes the progress being made to implement the HSIP. This will require close coordination of both the State DOTs and state Highway Safety Offices (SHSOs).

¹ FHWA-2013-0019 specifies that a State's SHSP be updated, at a minimum, every five years.

These requirements and the need to develop a comprehensive, state-wide safety plan that integrates all aspects of safety will be an important, but resource intensive, process. And, these requirements are but one of many new ones coming out of MAP-21.

AASHTO recommends the following as it relates to the coordination of planning documents:

- **Ensure that FHWA and NHTSA have common expectations for performance time frames.** 23 CFR 490.209(a)(2) specifies that State DOT targets shall represent performance outcomes anticipated for the calendar year following the HSIP report date. The NHTSA interim final rule for safety grants appears to be silent on the definition of the year of the targeted performance outcome.
- **Provide waiver or delay in planning document deadlines.** FHWA should include a provision for a waiver for planning document deadlines if a State DOT suggests that the delay would facilitate coordination with other required plans.
- **Provide flexibility to establish a coordination structure.** Regarding the development of Strategic Highway Safety Plans, Highway Safety Plans, and establishment of targets, FHWA and NHTSA must allow states the flexibility to establish a coordination structure and process that is appropriate for each individual state. Figure 2 below illustrates how AASHTO envisions the various safety plans integrating with one other and with other transportation planning documents and programs.

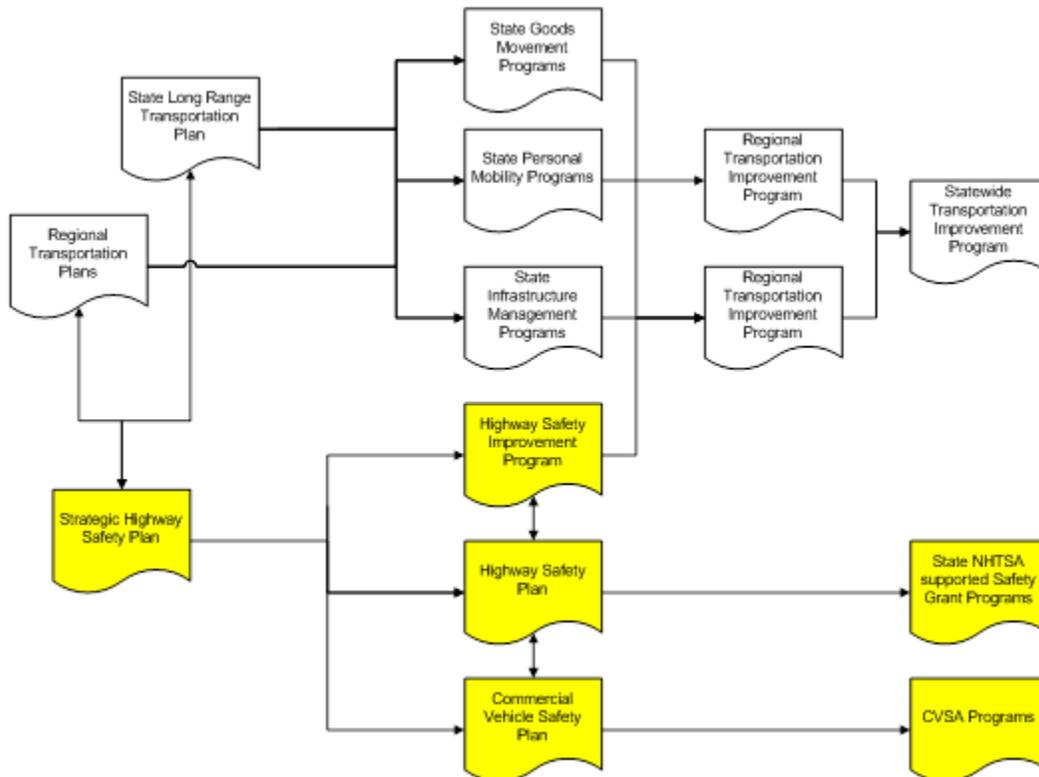


Figure 2: Integration of Safety Plans

6) COORDINATION WITH MPOs AND SHSOs

Coordination will be an important factor in the successful implementation of the final rule. State DOTs already coordinate extensively with both their MPOs in the state and the SHSOs, some of which are housed within the State DOT while others are housed outside of the State DOT.

MPO Coordination—The coordination between State DOTs and MPOs specified in 23 CFR 490.213(b) is straightforward and appropriate, providing flexibility consistent with the intent of MAP- 21. AASHTO is supportive of the language giving MPOs flexibility in the establishment of targets in their boundary. While the NPRM encourages cooperation and coordination between State DOTs and MPOs, it also provides the necessary flexibility by allowing MPOs to either support the State DOT targets or establish their own quantifiable performance targets. This is appropriate since State DOT's are responsible and held accountable for both the reporting of the data and for achieving significant progress. Therefore, State DOT's should be provided with the needed flexibility to coordinate with the individual MPO's within their state. AASHTO believes that the State DOT and MPOs will take a coordinated approach to the establishment of performance targets for the proposed safety measures. As FHWA discusses in the preamble, many MPOs lack the necessary resources and technical expertise to analyze the safety data and State DOTs will have to work closely with their MPOs in this area.

SHSO Coordination—As proposed, 23 CFR 490.209 (a)(1) will require that the State DOT and SHSO targets for the those performance measures in common be identical. As discussed in Comment 1 under Principal Comments, making the performance targets identical requires indirect approval of the State DOT targets by U.S. DOT. AASHTO is concerned that this requirement may discourage a State DOT from being aggressive in setting stretch targets or being innovative in developing a safety program for fear of the consequences if those targets are not met. Rather than discouraging aspirational targets and innovative thinking, AASHTO would rather see the regulations encourage State DOT and SHSO collaboration and coordination.

AASHTO recommends the following as it relates to the coordination with other organizations:

- **Ensure safety targets do not have to be identical between the State DOT and SHSO.** The coordination between State DOTs and State Highway Safety Offices specified in 23 CFR 490.209 (a)(1) is too restrictive given the flexibility intended through MAP 21. AASHTO recommends striking “identical to” and replacing it with “are encouraged but not required to be identical”. See Comment 1 in Principal Comments section above.

7) IMPLICATIONS IF A STATE DOT DOES NOT MEET TARGETS

23 CFR 490.211(c) states that if a State DOT has not achieved or made significant progress toward achieving safety performance targets in accordance with paragraph (b) of this section, the State DOT must comply with 23 USC 148(i) which states the following:

“(i) State Performance Targets.—If the Secretary determines that a State has not met or made significant progress toward meeting the performance targets of the State established

under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets, the State shall—

(1) use obligation authority equal to the apportionment of the State for the prior year under section 104(b)(3) only for highway safety improvement projects under this section until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State; and

(2) submit annually to the Secretary, until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State, an implementation plan that—

(A) identifies roadway features that constitute a hazard to road users;

(B) identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

(C) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

(D) describes how the proposed projects, activities, and strategies funded under the State highway safety improvement program will allow the State to make progress toward achieving the safety performance targets of the State; and

(E) describes the actions the State will undertake to meet the performance targets of the State.”

Differing interpretations of the above by individual FHWA division offices poses a significant risk to states. Should penalties for non-performance need to be applied, it will be important that the FHWA apply penalties in a consistent manner nationwide that are both meaningful and appropriate and will achieve the intent of MAP-21. For example, it is unclear whether the language in 23 USC 148(i)(1) relates to programming or obligation. Depending on how the language is interpreted, a state may have difficulty delivering a full year's apportionment for various reasons ranging from project readiness to the establishment of projects in the pipeline to other priorities established with the MPOs that focus on infrastructure needs to meet asset management targets and not safety target. Furthermore, the language outlined in 23 USC 148(i)(2) could lead to redundant, onerous reporting that adds no value to improving safety.

AASHTO recommends the following as it relates to the penalties associated with State DOTs not meeting their targets:

- **Allow states to use obligation authority equal to prior year apportionment over the full apportionment availability period.** If a state does not have the capacity to obligate funding equal to its prior year annual apportionment on the fiscal year in which this provision applies, the State may apply for use, in portions, the difference in apportionment and obligation authority on the affected fiscal year over the subsequent fiscal years for which the prior-year apportionment remains available. This would be in addition to the state's otherwise anticipated obligations in the subsequent years.
- **Allow states to balance programs for optimum success across all performance targets based upon funding levels.** If a State can demonstrate that it is spending all its obligation authority under section 23 CFR 104(b)(3), and that spending additional amounts up to the apportioned amount will negatively affect the State's progress toward

other required performance targets, a waiver of the requirement 23 USC 148(i)(1) can be granted.

SECTION-BY-SECTION COMMENTS

490.201 PURPOSE

AASHTO recommends that the bullets 23 CFR 490.201(a) and 23 CFR 490.201(b) be switched to show the importance of the count of the number of fatalities and serious injuries rather than the rate of fatalities and serious injuries.

490.205 DEFINITIONS

5-YEAR ROLLING AVERAGE

AASHTO supports the adoption of a 5-year rolling average for all four performance measures. A 5-year rolling average allows for the smoothing out of statistical anomalies in outlying years and provides a means of determining progress from year to year in a more consistent fashion than one based on single year peak and valleys. Moreover, AASHTO believes that it is critical for FHWA and NHTSA to provide consistent direction in the use of a 5-year rolling average across all performance measures as part of the Highway Safety Improvement Program and Strategic Highway Safety Plans.

AASHTO recommends that a more precise definition of the 5-year rolling average be made in the NPRM. For example, the following definition for the 5-year rolling average is suggested:

“5-year rolling average means the summation of the value of the current year and four previous years divided by five years (e.g., the 5-year rolling average of the annual fatality rate).”

FATALITY ANALYSIS REPORTING SYSTEM

AASHTO supports the use of FARS database. However, AASHTO is concerned with the timely availability of FARS data. See Comment 3 in Principal Comments section.

HISTORICAL TREND LINE

The use of a historical trend line to make a future projection focuses on looking backwards to establish future performance. While this is appropriate for short term projections, it does little to support the long term focus of the SHSP development that is the responsibility of each state. The goal of the SHSP is to think beyond the next year, and the proposed rules do not support this effort.

As discussed later in the discussion on Evaluation Methodology sub-section under the section 490.211 Determining Significant Progress Being Made Towards Performance Targets, a straight-line model is not always appropriate for all States. If a historical trend line is used, an appropriate model should be used given the unique situation of the State.

It is important to note that availability of data with which to establish the necessary historical trend line is a concern. All States have fatality data but many States do not have consistent

serious injury data that would be readily available by the 2020 date proposed by U.S. DOT in the NPRM. If States were required to provide this data to FHWA, it would be a costly endeavor.

MAKING SIGNIFICANT PROGRESS

AASHTO appreciates the general flexibility provided to the State DOTs by FHWA in determining whether significant progress has been made in achieving the performance targets. As discussed in Comment 2 in the Principal Comments section Evaluation Methodology subsection and under the section 490.211 Determining Significant Progress Being Made Towards Performance Targets, a 70 percent upper bound is not appropriate for States that have experienced a sharp decline in fatalities over the previous 10 years. As discussed under Comment 2 in the Principal Comments section, additional models should be considered such as non-linear methods. And, U.S. DOT should consider significant progress is being made if any of the following four conditions are met:

1. The State DOT saw a decrease in the 5-year rolling average from the previous year; or
2. The State DOT saw a decrease in yearly number of fatalities or serious injuries from the previous year; or
3. The trend analysis as proposed in the NPRM with the addition of non-linear models is met as noted in Comment 2 in the Principal Comments.
4. The State likely would have achieved targets or significant progress towards achieving targets but for extraordinary circumstances. (See AASHTO's proposed 23 CFR 490.211(b))

NUMBER OF FATALITIES

AASHTO supports the definition of Number of Fatalities as defined in the NPRM using FARS data for a calendar year. However, AASHTO is concerned with the timely availability of FARS data. See Comment 3 in the Principal Comments section.

NUMBER OF SERIOUS INJURIES

AASHTO supports the definition of Number of Serious Injuries using the MMUCC, 4th Edition, as defined in the NPRM using data as reported by the State DOT. However, AASHTO is concerned about the transition to MMUCC by all States within 18 months of the effective date of this rule and recommends this be extended to 36 months. See Comment 4 in the Principal Comments section.

PREDICTION INTERVAL

AASHTO supports the definition of the Prediction Interval. However, AASHTO is concerned with the manner in which the prediction interval is calculated using solely a straight-line model. See Comment 2 in the Principal Comments section.

PROJECTION POINT

AASHTO supports the definition of the Projection Point. However, AASHTO is concerned with the manner in which the Projection Point is calculated using solely a straight-line model. See Comment 2 in the Principal Comments section.

RATE OF FATALITIES

AASHTO supports the definition of Rate of Fatalities per 100 million VMT in a calendar year. However, AASHTO is concerned with the timely availability of VMT data from HPMS. See Comment 3 in the Principal Comments section.

RATE OF SERIOUS INJURIES

AASHTO supports the definition of Rate of Serious Injuries per 100 million VMT in a calendar year. However, AASHTO is concerned with the timely availability of VMT data from HPMS. See Comment 3 in the Principal Comments section.

SERIOUS INJURIES

AASHTO supports the definition of Serious Injuries as defined in the NPRM. AASHTO is supportive of the transition to the MMUCC criteria by the State DOTs and the use of the conversion tables supplied by NHTSA to convert the KABCO scale MMUCC.

For many States, the use of MMUCC will not be an issue. However, it is also recognized that some states, who are not currently meeting, nor substantially meeting the KABCO definition, will have difficulty in complying with the proposed transition date without substantial expenditures, since potential changes to crash report forms, data systems and coding may need to occur. Provisions for a state that is making significant progress toward adopting MMUCC should be considered. For example, Michigan will be MMUCC compliant on January 1, 2016: this will have taken four years to complete and will take an additional two years to implement.

490.207 NATIONAL PERFORMANCE MEASURES FOR THE HIGHWAY SAFETY IMPROVEMENT PROGRAM

AASHTO is supportive of the four safety performance measures included in the NPRM and believe that the proposed measures will provide important information and data on the safety of the entire transportation system at a state and national level. The four proposed measures capture all users of the transportation system and not any special emphasis area. Thus, AASHTO would not support any requirement that all States report on separate measures for specialized emphasis areas. To include additional measures for specialized emphasis areas would be in conflict with the second principle used in the development of the proposed performance management regulations; that is, minimizing the number of measures. Non-motorized users (e.g., pedestrian and bicyclist crashes) and other special emphasis areas (e.g., motorcyclists and older drivers) are already addressed in a State's SHSP. States that are experiencing a significant number of crashes in these emphasis areas are already required to address them in their SHSP.

NUMBER OF FATALITIES

AASHTO supports the calculation of the Number of Fatalities as written in the NPRM.

RATE OF FATALITIES

AASHTO supports the calculation of the Rate of Fatalities as written in the NPRM. AASHTO suggests that a clarification is made such that it is clear that the same years of data be used to calculate a rate for any one calendar year (CY 2013 FARS and CY 2013 VMT are used to calculate a CY 2013 rate).

NUMBER OF SERIOUS INJURIES

AASHTO supports the calculation of the Number of Serious Injuries as written in the NPRM given the discussion above related to defining serious injuries.

RATE OF SERIOUS INJURIES

AASHTO supports the calculation of the Rate of Serious Injuries as written in the NPRM given the discussion of defining serious injuries above. AASHTO suggests that a clarification be made such that it is clear that the same years of data be used to calculate a rate for any one calendar year (CY 2013 serious injuries and CY 2013 VMT are used to calculate a CY 2013 rate).

CALCULATION OF SERIOUS INJURIES

AASHTO supports the calculation of Serious Injuries. AASHTO would recommend that some flexibility be included in the NRPM as some States transition to the MMUCC definitions. AASHTO is concerned about the transition to MMUCC by all States within 18 months of the effective date of this rule and recommends this be extended to 36 months. See Comment 4 in the Principal Comments section.

490.209 ESTABLISHMENT OF PERFORMANCE TARGETS

PERFORMANCE TARGET CONSISTENCY 490.209(a)(1)

As discussed in Comment 1 of the Principal Comments section, MAP-21 was clear in saying that each State DOT shall set performance targets that reflect the measures developed by U.S. DOT. We suggested specific changes that should be made to the NPRM that would let States have the option of setting different targets from those required under 23 USC 150 and those required under 23 USC 402 if so desired.

It is AASHTO's position that U.S. DOT should not be both approving targets established by the State DOTs and evaluating whether or not a State DOT has made significant progress to meeting those targets. U.S. DOT will ultimately have the ability to determine whether states are making significant progress through the proposed evaluation process. And, if a State has not made significant progress, there are consequences for the State.

PROCESS OF ESTABLISHING PERFORMANCE TARGETS 490.209(a)(2)-(6)

Another area of concern is the time horizon for which targets must be set for the safety measures. The overall approach of the proposed rule contemplates annual target setting. Yet, annual target setting tends to reduce the effect that performance measures will have to drive programs since a long term view is difficult to incorporate into the decision-making process. Ideally, a longer prediction period would allow for opportunities to incorporate needed institutional changes (e.g., cultural changes) believed to be essential to traffic safety and the establishment of performance targets.

As part of a performance management approach, it is critical that targets be periodically reevaluated and adjusted to reflect risks, revenue expectations, and strategic priorities. The NPRM needs to clearly state that a State does not need FHWA approval to change its target in a subsequent year and that 23 CFR 490.209(a)(6) should be clarified so that the restriction precluding a State from modifying its HSIP targets "unless approved by FHWA" once the target

is submitted in the State’s HSIP annual report applies only for a given year. To avoid any risk of inflexible implementation of the rule, proposed 23 CFR 490.209(a)(6) should be clarified as follows, referring to a State individually rather than all states and recognizing that there are four targets.

Current	Proposed
Unless approved by FHWA, State DOTs shall not change their target once it is submitted ...	Unless approved by FHWA, a State DOT shall not change one or more of its targets under this part for a given year once it is submitted ...

THE NUMBER OF PERFORMANCE TARGETS THAT MAY BE ESTABLISHED BY STATE DOTs 490.209(b)

AASHTO appreciates the flexibility given to States in establishing targets between urbanized and non-urbanized areas. We believe this provides States with the ability to properly analyze, plan, and implement safety projects in their State that will have the largest effect on significantly reducing crashes. This flexibility is especially important due to the differences between FHWA definition of urban/rural and the Census definition. The definition and boundary of urban, small urban and rural areas have changed over the past ten years and trying to assemble this data would be costly and provide no added benefit. Moving forward, many States will continue to analyze data for rural and urban areas and likely include the new national-level measures in that analysis.

If states decide to adopt optional measures for urbanized and non-urbanized areas, these targets should not be considered in evaluating whether significant progress was made with 50 percent of targets. Otherwise, such as evaluation becomes a disincentive and may discourage some states from adopting these optional measures. For consistency, all states should be measured on the same four required measures, including the 50 percent consideration – and the optional measures should not be included in the 50 percent evaluation.

THE PROCESS THAT MPOs MUST USE TO ESTABLISH PERFORMANCE TARGETS 490.209(c)

AASHTO does not object to the MPO setting targets within their boundaries and generally finds the proposed language gives enough flexibility to the State DOTs and MPOs in establishing targets between the two that are either the same or complementary.

AASHTO also supports the option under CFR 490.209(c)(3) that MPOs can demonstrate compliance by planning and programming safety projects that contribute towards the accomplishment of the State DOT targets. Coordinating targets, especially safety targets that encompass all public roads, can potentially be a difficult task. This rule provides several areas that suggest that the HSIP, HSP and SHSP should have identical measures and providing mandates for MPO’s to set their own targets sets up a situation where those targets could be in direct conflict with other entities. Thus, there needs to be flexibility included in the rulemaking to allow MPO’s to adopt the state DOT targets, if so desired by the MPO.

COORDINATION OF PERFORMANCE TARGET SETTING BETWEEN MPOS AND STATE DOTs 490.209(d)

AASHTO supports the coordination requirement on the selection of targets to ensure consistency. Please see the Comment 6 under the Principal Comments section.

U.S. DOT needs to clarify what is meant by “...*relevant MPOs*...” under 23 CFR 490.209(d).

490.211 DETERMINING SIGNIFICANT PROGRESS BEING MADE TOWARDS PERFORMANCE TARGETS

SOURCE OF DATA THAT GOES INTO THE DETERMINATION

AASHTO agrees with the use of FARS for reporting fatal crashes and the state motor vehicle crash databases for reporting serious injury collisions. AASHTO also recognizes that applicability to all public roads² (defined in 23 U.S.C 130 and 148) is aligned with reporting definitions in FARS (fatalities occurring on roads open and accessible to the public regardless of ownership or jurisdiction) but will be less consistent among States in serious injury reporting. Statewide collision database reporting requirements are often driven by state laws and may not include requirements to report collisions occurring on roads outside of state and local DOT jurisdictions. Even if these collisions are reported by law enforcement, they may not ultimately be included in the statewide collision database. To comply with the definition of applicability in regards to serious injuries, state laws and/or agency rules may need to be revised.

As discussed previously, AASHTO has concerns regarding the use of FARS and HPMS data as it relates to the delay in the reported data. Please see the Delay in Reported Data discussion under the Principal Comments section.

EVALUATION METHODOLOGY

AASHTO is generally pleased with the two-step evaluation process in which FHWA proposes assessing whether or not States are making progress towards target achievement. For the first step, AASHTO agrees that if States have met two of the four targets set for the four performance measures, that a State has been deemed to have made significant progress. This process enables FHWA to take into account unique characteristics of a State’s situation that would affect their ability to meet certain targets and not others and enables the establishment of “aspirational” or “stretch” goals. For example, dramatic changes in VMT may affect a state’s ability to meet both of the rate-based measures, but not the count-based measures (and vice-versa). This process allows flexibility for a State and will not penalize them for establishing aggressive targets.

There are some concerns regarding the second step in the evaluation methodology. While the second step is only performed if a State DOT does not meet at least two of the four targets set for the four performance measures, the proposed straight line methodology does not provide for flexibility to either the State DOT or U.S. DOT. These concerns are discussed in Comment 2 in the Principal Comments section.

² Please see AASHTO comments on the HSIP NPRM, Docket FHWA-2013-0019 for discussion on the definition of public road.

WHEN THE EVALUATION OCCURS

AASHTO supports the process presented in 23 CFR 490.211(d). However, AASHTO is concerned with the timely availability of FARS and HPMS data. See Comment 3 in the Principal Comments section.

490.213 REPORTING OF TARGETS FOR THE HIGHWAY SAFETY IMPROVEMENT PROGRAM

REPORTING OF STATE DOT TARGETS

AASHTO supports the reporting of targets established by the State DOT through the State's HSIP annual report. However, if FHWA does require States to use the HSIP online reporting tool, AASHTO encourages FHWA to improve the functionality of the tool as some States have had serious technical issues in using the online tool³. Otherwise, States should be allowed to submit the HSIP annual report in PDF format via electronic mail.

REPORTING OF MPO TARGETS

One interpretation of 23 CFR 490.213(b) may be that Metropolitan Planning Agreements will need to be updated in order for an agreed upon manner to report the targets is agreed to. The language should be changed to specify that State DOT and MPOs agree to a reporting methodology, working within the intent of the established Metropolitan Planning Agreements.

Under 23 CFR 490.213(c), AASHTO supports the reporting of baseline safety performance and progress towards the achievement of their targets in the system performance report.

³ Please see AASHTO comments on the HSIP NPRM, Docket FHWA-2013-0019 for discussion on the use of the HSIP Online Reporting Tool.

AASHTO RESPONSE TO FHWA REQUESTS

1. *The FHWA considered these principles in this NPRM and encourages comments on the extent to which the approach to performance measures set forth in this NPRM supports the principles discussed above.*
 - a. *Provide for a National Focus – focus the performance requirements on outcomes that can be reported at a national level.*
 - b. *Minimize the Number of Measures – identify only the most necessary measures that will be required for target establishment and progress reporting. Limit the number of measures to no more than two per area specified under 23 U.S.C. 150(c).*
 - c. *Ensure for Consistency – provide a sufficient level of consistency, nationally, in the establishment of measures, the process to set targets and report expectations, and the approach to assess progress so that transportation performance can be presented in a credible manner at a national level.*
 - d. *Phase in Requirements – allow for sufficient time to comply with new requirements and consider approaches to phase in new approaches to measuring, target establishment, and reporting performance.*
 - e. *Increase Accountability and Transparency – consider an approach that will provide the public and decision makers a better understanding of Federal transportation investment needs and return on investments.*
 - f. *Consider Risk – recognize that risks in the target establishment process are inherent, and that performance can be impacted by many factors outside the control of the entity required to establish the targets.*
 - g. *Understand that Priorities Differ – recognize that State DOTs and MPOs must establish targets across a wide range of performance areas, and that they will need to make performance trade-offs to establish priorities, which can be influenced by local and regional needs.*
 - h. *Recognize Fiscal Constraints – provide for an approach that encourages the optimal investment of Federal funds to maximize performance but recognize that, when operating with scarce resources, performance cannot always be improved.*
 - i. *Provide for Flexibility – recognize that the MAP-21 requirements are the first steps that will transform the Federal-aid highway program to a performance-based program and that State DOTs, MPOs, and other stakeholders will be learning a great deal as implementation occurs.*

AASHTO believes that the nine guiding principles developed and considered by FHWA are appropriate and that the approaches set forth in the NPRM support these guiding principles. The comments and suggested revisions provided by AASHTO seek to clarify and underscore several of these principles, particularly providing flexibility to states in target setting and ensuring the timing to phase in requirements is adequate.

2. *The DOT requests comments on how the Department could address separate nonmotorized performance measures. The DOT requests input on the extent to which States and MPOs currently collect and report non-motorized data (fatality, serious injury, miles traveled) and the reliability and accuracy of such data, and how States and MPOs consider such data in*

their safety programs and in selecting investments. The DOT also invites the public to suggest ways to most efficiently track, report, and use performance measures to improve safety.

Performance management and target setting is a data-driven and multidisciplinary process that is practiced by all States. Specific to safety, a comprehensive evaluation strategy of States' safety data looking at all roadway users is necessary. Special rules focusing on a particular issue such as non-motorized users limit States' ability to use this comprehensive approach to use a data-driven approach to determine where the investment of limited resources can most effectively save lives and reduce serious injuries. Furthermore, AASHTO believes that it is important that safety measures focus on all fatalities and all serious injuries and not on special emphasis areas such as non-motorized users. Non-motorized users are already addressed in the State HSPs. All states analyze non-motorized fatalities and serious injuries data as part of HSPs. Having the emphasis remain in the HSP is consistent with letting each State focus on their individual characteristics and situations, while minimizing the number of performance measures required for target-setting, measurement, and reporting.

There are generally three sets of data that would be needed to report on non-motorized users:

- **Crash Data**—Bike and pedestrian crash data is reported if a motor vehicle is involved and a police officer writes up the accident and submits a report. Near misses and non-roadway incidents are generally not included in the dataset. Although non-motorized fatalities that occur on roadways are reported with high accuracy, non-motorized serious injuries are not. However, some agencies may collect non-motorist accidents (i.e., bike on bike, bike on tree, or bike on pedestrian, etc.) but this is not consistent throughout the U.S.
- **Volumes**—Systematic data collection for non-motorized users currently does not exist in the U.S. There are some examples of State DOTs, local DOTs, and MPOs collecting non-motorized volume data. For example
 - Video intersection counters are becoming more common and have the ability to be used for bike and pedestrian counts but this can be expensive and not a priority function of the equipment.
 - Specialized bike counters have been developed and are gaining popularity by MPOs and cities.
 - When turning movement counts are required, DOTs may request that bikes and pedestrians are also counted.
 - Many State DOTs and MPOs participate in the annual National Bicycle and Pedestrian Documentation Project, but this data is limited to select sites and is not comprehensive or systematic.
- **Facilities**—There is a lack of information on bike lane miles data including multi-use trails miles, and data quality is limited. Sidewalk network data varies significantly throughout the U.S. Some cities may have up to date networks in GIS, but no State DOT has the information at the statewide level. While many cities and counties have bike lanes, the extent to which this data is accurately recorded is unknown. More so, there are few existing bike lane miles on state routes and there is no reporting mechanism/requirement set up for local municipalities to report this information.

However, it would be fairly straight-forward to collect this data via annual submissions for the TIP, for example.

Unfortunately, the ability to reliably and accurately collect the necessary data to consistently report on non-motorized users does not exist at this time. The problem is likely more acute in small and rural states where there will be a great deal of variability in year-to-year performance numbers. Further, all of these required data sets are not consistently available for the entire U.S. where crashes occur. While the data are likely easier to capture in urbanized areas, collecting state-wide data would be very difficult and costly to states. Even if the data were available, there currently is no uniform procedure for collecting rate information for non-motorized users, although individual states, MPOs and cities are experimenting with some approaches. Because of this lack of data, it is difficult for any State to establish a baseline of reliable rates for non-motorized fatalities and serious injuries and States are limited due to lack of data for statewide bicycle and pedestrian miles traveled.

AASHTO is concerned that by adding specific measures regarding pedestrians and bicyclists the data collected would create much smaller (and more volatile) datasets, making measurement assessment of progress more difficult and unpredictable. It is recommended that at the national level additional emphasis be placed on means for collecting and using non-motorized data, including the crash data collection methods and estimating exposure in a data poor environment. For instance, to measure pedestrian & bicycle fatalities by 100 million VMT for motorized vehicles would not make sense, yet no consistent agreed to exposure measure exists for non-motorized exposure levels. Even if an exposure method existed, AASHTO would be concerned that the link would be more influenced toward non-motorized mobility funding rather than non-motorized safety funding. Safety priorities/funding should still be driven by the state safety plan.

3. Stakeholders are encouraged to comment on whether a 3-, 4- or 5-year rolling average should be required for the HSIP performance measures. Stakeholders are also encouraged to comment on whether the use of moving averages is appropriate to predict future metrics.

AASHTO is supportive of the proposed five-year rolling average. A five-year rolling average is consistent with most State's current approach of evaluating many of their safety efforts. While not perfect, rolling averages are an effective way to predict future performance over time and help account for fluctuations in the annual data. In addition, most states and safety professionals are generally familiar with the concept and calculation of multi-year, rolling averages.

4. The FHWA solicits comment on whether some other injury classification and coding system would be more appropriate.

See AASHTO response to the transition to MMUCC under the Principal Comments section, Comment 4: *Transition to MMUCC and Linking Medical Records to Crash Reports.*

5. The current time lag (time period between the end of the calendar year in which the data were collected to the date the data is available in the national system for the final FARS and HPMS data) is approximately 24 months. The DOT seeks comments on whether this time lag

is an issue, any impacts it may have on a State DOT's ability to establish targets, and any suggestions that can help address this issue.

See AASHTO response to the time lag issue under the Principal Comments section, Comment 3: *Delay in Getting the Data.*

6. *Many differences in target setting boundaries could exist that would require State DOTs and MPOs to coordinate on quantifiable targets between them using the proposed target setting requirements in this section. As part of the coordination process, State DOTs and MPOs are encouraged to consider how the data will be reported. The FHWA is seeking comment on alternative approaches that could be considered to effectively implement the coordination requirements of MAP-21 (e.g., 23 U.S.C. 134(h)(2)(B)(i)(I) and 23 U.S.C. 150(d)(2) considering the need for coordination required under 23 U.S.C. 134(h)(2)(B)(i)(II) and 23 U.S.C. 135(d)(2)(B)(i)(II).)*

AASHTO believes that the State DOT and MPOs will take a coordinated approach to the establishment of performance targets for the proposed safety measures. Since State DOT's are responsible and held accountable for both the reporting of the data and for achieving significant progress, State DOT's should be provided with the needed flexibility to coordinate with the individual MPO's within their state.

See also AASHTO response to this topic under the Principal Comments section, Comment 6: *Coordination with Others (MPOs, SHSOs, etc.).*

7. *Stakeholders are encouraged to comment on the appropriateness of the trend line methodology proposed for the significant progress analysis.*

See AASHTO response to the trend line methodology under the Principal Comments section, Comment 2: *Methodology for Determining Significant Progress.*

8. *The FHWA seeks comment on whether the underlying methodology of the prediction interval is appropriate.*

See AASHTO response to the prediction interval under the Principal Comments section, Comment 2: *Methodology for Determining Significant Progress.*

9. *The FHWA seeks comment on whether 50 percent is the appropriate threshold for determining if a State has overall achieved or made significant progress toward achieving its performance targets.*

See AASHTO response to the 50 percent threshold under the Principal Comments section, Comment 2: *Methodology for Determining Significant Progress.*

PROPOSED CHANGES TO TEXT

Section	Text of Proposed Regulation	Changes Recommended by AASHTO
490.201	<p>The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(4), which requires the Secretary of Transportation to establish performance measures for the purpose of carrying out the Highway Safety Improvement Program (HSIP) and for State Departments of Transportation to use in assessing:</p> <p>(a) Serious injuries and fatalities per vehicle miles traveled; and (b) The number of serious injuries and fatalities.</p>	<p>The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(4), which requires the Secretary of Transportation to establish performance measures for the purpose of carrying out the Highway Safety Improvement Program (HSIP) and for State Departments of Transportation to use in assessing:</p> <p><u>(a) The number of serious injuries and fatalities; and</u> <u>(b) Serious injuries and fatalities per vehicle miles traveled.</u></p>
490.205	<p><i>Number of Serious Injuries</i> means the total number of persons suffering at least one serious injury for each separate motor vehicle traffic crash during a calendar year, as reported by the State, where the injury status is MMUCC, latest edition, compliant. For serious injuries that are not MMUCC compliant, the number of serious injuries means serious injuries that are converted to KABCO by use of conversion tables developed by NHTSA.</p>	<p><i>Number of Serious Injuries</i> means the total number of persons suffering at least one serious injury for each separate motor vehicle traffic crash during a calendar year, as reported by the State, where the injury status is MMUCC, <u>4th Edition latest edition</u>, compliant. For serious injuries <u>classifications</u> that are not MMUCC compliant, the number of serious injuries means serious injuries that are converted to KABCO by use of conversion tables developed by NHTSA.</p>
490.209	<p>(1) The State DOT targets shall be identical to the targets established by the State Highway Safety Office for common performance measures reported in the State’s Highway Safety Plan, subject to the requirements of 23 U.S.C. 402(k)(4), and as coordinated through the State Strategic highway safety plan.</p> <p>(6) Unless approved by FHWA, State DOTs shall not change their target once it is submitted in the HSIP annual report.</p> <p>(6) (b) State DOTs may, as appropriate, establish one</p>	<p>(1) <u>State DOT and State Highway Safety Office targets are encouraged, but not required, to be identical to the targets established by the State Highway Safety Office</u> for common performance measures reported in the State’s Highway Safety Plan, subject to the requirements of 23 U.S.C. 402(k)(4), and as coordinated through the State Strategic highway safety plan.</p> <p>(6) Unless approved by FHWA, <u>a</u> State DOTs shall not change <u>one or more of its their</u> targets <u>under the part for a given year</u> once it is submitted in the HSIP annual report.</p> <p>(6) (b) State DOTs may, <u>for each performance measure, as</u></p>

	<p>additional performance target for all urbanized areas and one additional performance target for all non-urbanized areas within the State for each performance measure.</p>	<p>appropriate, establish one additional performance target for all urbanized areas and one additional performance target for all non-urbanized areas within the State for each performance measure.</p>
490.211	(b)	<p><u>“(4) The FHWA may also determine that a State has made significant progress towards achieving performance targets within the meaning of paragraph (b)(2) if either of the following conditions are met:</u></p> <p><u>(i) The State DOT saw a decrease in the 5-year rolling average from the previous year.</u></p> <p><u>(ii) The State DOT saw a decrease in yearly number of fatalities or serious injuries from the previous year.</u></p> <p><u>(5) The FHWA may also determine that a State has made significant progress towards achieving performance targets upon finding that the State likely would have achieved targets or achieved significant progress towards achieving targets within the meaning of paragraph (b)(2) but for extraordinary circumstances, including but not limited to naturally occurring hazards such as extreme weather events, forest fires, and earthquakes.”</u></p>