

NOTICE OF FINAL RULEMAKING:

NATIONAL PERFORMANCE MANAGEMENT MEASURES; HIGHWAY SAFETY IMPROVEMENT PROGRAM

DATE EFFECTIVE: APRIL 14, 2016

[FEDERAL REGISTER NOTICE, [HERE](#)]

OVERVIEW

More than two years after the Federal Highway Administration (FHWA) first proposed a faulty safety national performance measure (more in [T4America's blog post here](#)) and after thousands of our partners responded in kind, the agency is now moving to finalize its rule. On March 15 the final safety national performance measure was published with an effective date of April 14, 2016. The rule addresses the requirements of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and incorporates some significant changes from the first proposed rule, many of which we advocated for.

The purpose of this final rule is to establish performance measures for state departments of transportation (DOTs) and metropolitan planning organizations (MPOs) to use to carry out the Highway Safety Improvement Program (HSIP) and to assess the number of (a) motor vehicle crash-related serious injuries and fatalities; (b) serious injuries and fatalities of non-motorized users; and (c) serious injuries and fatalities per vehicle miles traveled (VMT).

This final rule retains the majority of the major provisions of the notice of proposed rule-making (NPRM) that was released in 2014, but makes significant changes by (a) establishing a fifth performance measure to assess the number of combined non-motorized fatalities and non-motorized serious injuries and (b) revising the methodology for assessing whether DOTs and MPOs have met or made significant progress toward meeting its targets. FHWA updated these and other elements of the NPRM based on the review and analysis of comments received.

DOTs and MPOs will be expected to use the information and data generated as a result of the new regulations to inform their transportation planning and programming, decision-making, and to directly link investments to desired performance outcomes. In particular, FHWA expects that the new performance measures outlined in this rule will help DOTs and MPOs make investment decisions that will result in the greatest possible reduction in fatalities and serious injuries.

FHWA has determined that States must meet or make significant progress toward meeting four out of five targets required by this rule. (The addition of the non-motorized performance measure in this final rule expands the number of required performance targets from the four proposed in the NPRM to five.) FHWA will measure significant progress toward meeting its targets when four of five measure targets are met or the outcome for the performance measure is better than the DOTs or MPOs baseline safety performance for that measure.

DOTs that fail to meet or make significant progress toward meeting four of five measure targets will be required to direct a portion of their HSIP funding toward projects that will improve safety, and submit an annual implementation plan that describes actions the DOT will take to meet their targets.

This is the first of 3 rules that will establish performance measures for DOTs and MPOs to use to carry out Federal-aid highway programs and assess performance in each of 12 areas.

FINAL SAFETY PERFORMANCE MEASURE

In this final rule, FHWA establishes 5 performance measures to assess performance and carry out the HSIP:

- number of fatalities,
- rate of fatalities per VMT,
- number of serious injuries,
- rate of serious injuries per VMT, and
- number of combined non-motorized fatalities and non-motorized serious injuries.

The exposure rate measures are calculated annually per 100 million VMT. Data for the fatality-related measures are taken from the Fatality Analysis Reporting System (FARS) and data for the serious injury-related measures are taken from the State motor vehicle crash database. The VMT are derived from the Highway Performance Monitoring System (HPMS).

Non-motorized Safety Performance Measure

The proposed safety performance measure published in 2014 did not include a measure for non-motorized users. Ninety-nine percent of the more than 13,000 public comments requested that FHWA change course and include a safety measure for non-motorized users. In response, Congress directed FHWA to develop a performance measure for non-motorized fatalities and serious injuries in the FY2015 THUD appropriations bill. The report language specifically stated:

Safety performance measures and reporting requirements – FHWA is directed to establish separate, non-motorized safety performance measures for the highway safety improvement program, define performance measures for fatalities and serious injuries from pedestrian and bicycle crashes, and publish its final rule on safety performance measures no later than September 30, 2015.

In the final rule, FHWA has established a single non-motorized safety measure for serious injuries and fatalities. The measures will be calculated based on a 5-year rolling average.

The single non-motorized performance measure included in this final rule will be treated equal to the other four measures included in this final rule. All five safety performance measures are subject to the requirements of this rule, including establishing targets, reporting, and FHWA's assessment of whether DOTs and MPOs have met or made significant progress toward meeting their targets.

It adds only one additional performance measure to the required set of safety measures, thereby still limiting the overall total number of measures, addressing a concern of AASHTO and some DOTs. The data used for this additional measure address DOTs' and FHWA's concern about small numbers of non-motorized fatalities in some states by combining non-motorized fatalities and serious injuries together in one measure.

ESTABLISHING & REPORTING TARGETS

DOT 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). Targets established by the DOTs will begin to be reported in the first HSIP annual report that is due after 1 year from the effective date of this final rule and then each year thereafter in subsequent HSIP annual reports.

States may choose to establish separate targets for any urbanized area within the State and may also choose to establish a single non-urbanized target for all of the non-urbanized areas in a State. These optional targets will not be included in assessing whether the State met or made significant progress toward meeting its targets.

The MPOs may choose between programming projects in support of all the State targets, establishing specific numeric targets for all of the performance measures (number or rate), or establishing specific numeric targets for one or more individual performance measures (number or rate) and supporting the State target on other performance measures. For MPOs with planning boundaries that cross State lines, the MPO must plan and program projects to contribute toward separate sets of targets – one set for each State in which the planning area boundary extends.

In response to comments received by FHWA, the final rule requires MPOs to annually report their established safety targets to their respective DOTs in a manner that is documented and mutually agreed upon by both parties. While the process needs to be documented, it does not need to be incorporated into the Metropolitan Planning Agreement.

Significant Progress Requirement

In this final rule, FHWA adopts that a State is determined to meet or make significant progress toward meeting its targets when four out of five targets are met or the outcome for the performance measure is better than the State's baseline safety performance for that measure. The proposed rule included a faulty significant progress assessment process that would have allowed DOTs and MPOs to fail to achieve half of their self-established performance safety targets. Our partners took great concern with the proposed process and are glad to see FHWA accept our preferred significant process proposal.

The final rule reduces the time lag between when the State establishes the targets and when FHWA will assess whether the State has met or made significant progress toward meeting its targets. Instead of using Final FARS for all 5 years of data that comprise the rolling average, FHWA adopts the use of the FARS Annual Report File (ARF) if Final FARS data are not available. This approach allows FHWA to assess whether States met or made significant progress toward meeting their targets 1 year earlier than proposed in the NPRM.

However, FHWA recognizes the timeframe for this determination remains lengthy. In order to accelerate transparency, which is one of the goals of MAP-21, FHWA is in the process of creating a new public website to help communicate the national performance story. FHWA will make publicly available postings of State performance statistics and other relevant data that relate to this performance measurement system as soon as the data are available.

EFFECTIVE DATES

This national safety performance measure rule will be effective starting April 14, 2016.

FHWA has decided to phase in the effective dates for the three final rules for these performance measures so that each of the three performance measures rules will have individual effective dates. This allows FHWA and the States to begin implementing some of the performance requirements much sooner than waiting for the rulemaking process to be complete for all the rules.

ADDITIONAL INFORMATION

FHWA will be holding a webinar to provide specific details of the Final Rules on April 1, 2016 at 11:30am eastern time. The webinar is open to the public and interested parties can [register here](#).