

Memorandum

FROM: Joe McAndrew, Transportation for America

DATE: March 19, 2014

RE: USDOT Proposed Safety Performance Measure



NOTICE OF PROPOSED RULEMAKING:

NATIONAL PERFORMANCE MANAGEMENT MEASURES, HIGHWAY SAFETY IMPROVEMENT PROGRAM

COMMENTS DUE: JUNE 9, 2014

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

OVERVIEW

MAP-21 provides a new framework for measuring and improving transportation performance. The law establishes national goals and performance measures, and requires federal aid recipients to set targets for each performance measure and plan future spending to help meet their targets. Congress intended national performance measures to improve accountability and progress on the part of implementing agencies. The law set out 12 performance measures that the U.S. Department of Transportation (USDOT) was to create, ranging from Interstate highway performance to metropolitan congestion and transit state of repair. MAP-21 established a deadline for USDOT to issue rules implementing all 12 performance measures by the end of this month. The Federal Transit Administration (FTA) issued the first proposal on performance measures: an advanced notice of proposed rulemaking (ANPRM) for transit safety and asset management. The public comment period closed on January 2, 2014 for this ANPRM, and the FTA is currently reviewing the comments before they release a notice of proposed rulemaking (NPRM) for these performance measures. The proposed safety rule analyzed here, published March 11, by USDOT, is the first NPRM to be issued and addresses four of the 12 performance measures. USDOT plans to release the remaining proposed performance measures later this year.

MAP-21 created, for the first time, a national safety goal for the transportation system - to achieve a significant reduction in traffic fatalities and serious injuries on all public roads. The proposed rule sets out the process and methodology States and Metropolitan Planning Organizations should use to measure progress towards achieving the national safety goal of decreasing fatalities and serious injuries on all public roads. Transportation for America considers this first proposed rule to be important, not only for its subject matter - saving lives on our roadways - but also as an indicator of the approach USDOT will take to the remaining performance measures. Transportation for America will analyze each proposed rule as it is released to assess whether it will improve accountability and progress toward national goals.

PROPOSED SAFETY PERFORMANCE MEASURE

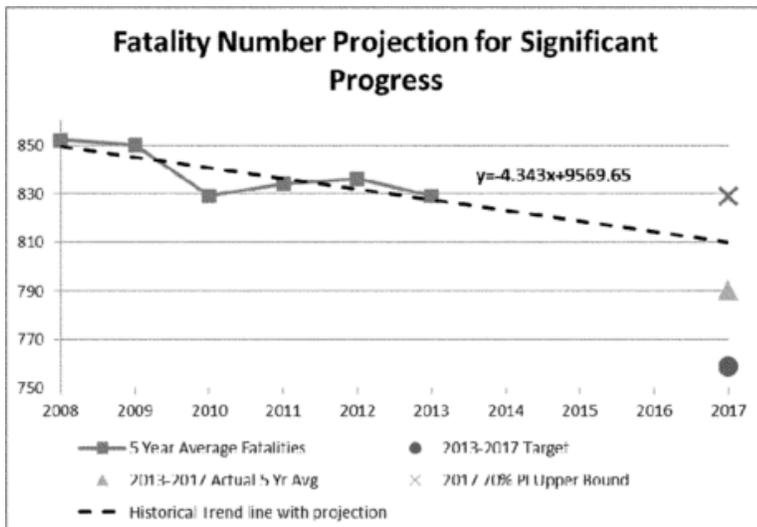
The proposed safety rule implements MAP-21's statutory requirement that States and MPOs must set targets for reducing, on public roadways (1) number of serious injuries; (2) number of fatalities; (3) serious injuries per vehicle mile traveled (VMT); and, (4) fatalities per VMT. MAP-21 allows States and MPOs can develop additional measures if they choose. Under the proposed rule, the *number* of fatalities would be based on the federal Fatality Analysis Reporting System (FARS), and the *rate* of fatalities would be measured using FARS and the Highway Performance Monitoring System (HPMS) maintained by the Federal Highway Administration (FHWA). State-reported data would be used for the *number* of serious injuries, and State-reported data and HPMS data would be used to measure the serious injury *rate*.

State DOTs will establish annual targets for performance measures that must be developed with and identical to those established by the State Highway Safety Office. States may develop additional measures and differentiate between urbanized and non-urbanized areas, but are not required to do so. MPOs are required to coordinate with State DOTs in establishing targets for the four safety performance measures. MPOs will either adopt the state DOT targets or commit to targets unique to their metropolitan area.

USDOT will review states' progress annually. States would be considered "passing" by the USDOT if they achieved the targets they set for just two of the four performance measures from MAP-21, plus half of all additional safety measures they develop, if any (e.g., if a State DOT has four targets, it will need to achieve two to be considered "passing"). This proposed rule is directed at States, and not MPOs, though MPOs could be indirectly impacted by consequences placed upon the State for non-compliance. FHWA intends to review MPO safety progress under the updated Statewide and Metropolitan Planning regulations, which have yet to be released.

If a State is unable to meet half of its self-developed safety targets, the USDOT will evaluate if a State is making "significant progress" towards achieving its safety targets. A State will be considered to have made significant progress toward a failed target based on analysis of the state's trend toward that target over the past 10 years. USDOT will build a statistical model of the state's trend, using a 5-year average for each of the past 10 years (i.e., for each year of the analysis, USDOT will average the data for that year plus the four preceding years). USDOT explains that this approach is intended to help smooth the volatility that may exist in a state's data, such as a year with an unusually high number of fatalities. Using that statistical model, USDOT will generate a 10-year historical trend line, and determine where the trend line would be for the year being reviewed. If the state's actual outcome for that measure falls within 70 percent of that projection, the state will be considered to have made "significant progress" toward that target. (See Figure 1).

States that are still unable to pass or make significant progress toward 50 percent of its safety targets will be required to submit an implementation plan that identifies how to improve the State's safety, and require that States use Highway Safety Improvement Program (HSIP) funding for safety improvement projects, which would limit the State's flexibility to transfer these funds for other transportation projects. A State would not be able to flex these funds for other uses until the USDOT Secretary determines that they have made significant progress toward improving safety performance.



Source: Federal Highway Administration, Notice of Proposed Rulemaking, [here](#)

ANALYSIS

The proposed safety measure has a few benefits, and a large number of issues. Most important is that the proposed rule does not match the vision or intent of the performance measure as written in MAP-21. The number one goal for the nation's transportation system is to improve safety by decreasing fatalities and injuries on all public roads.

This rule, if finalized as proposed, would allow States that fail to reach targets they set for themselves to avoid taking action to improve their outcomes. Further, the USDOT decision to require states to meet only two requirements gives short shrift to safety. The remainder of this memorandum will present the proposed safety rule's positives and negatives, and also present areas the USDOT should improve within the rule before it is finalized after the 90 day public comment period ends on June 9, 2014.

POSITIVE IMPACTS

- Establishes a single, consistent definition for "serious injury".
- Creates the goal of having a performance measure that addresses the safety of all users, regardless of vehicle type (e.g., passenger vehicles, trucks, motorcycles, and bicycles), influencing behavior (e.g., distracted driving, impaired driving, speeding), or roadway characteristics (e.g., intersections, roadway departure).
- Addresses all public roads regardless of ownership and functional classification (not limited to National Highway System, federal-aid, or other subset).
- Begins to give a clearer accounting for fatalities and injuries for non-motor roadway users (e.g., people on foot and bicycle). It does this by creating safety performance measures that measure the total number of fatalities and serious injuries, rather than just measuring fatalities and serious injuries of drivers and passengers.
- Recommends that States, by 2020, prepare to link roadway crash data to hospital inpatient and emergency discharge databases, which will provide a more comprehensive picture of serious injuries in the state.
- Offers flexibility to States and MPOs to go beyond baseline performance measure targets.

NEGATIVE IMPACTS

POOR INCENTIVE

- **States could achieve a passing grade by doing nothing.** States only need to achieve half the targets that they set, which set the bar extremely low. For example, States would "pass" if they achieve two fatality targets (number and rate), even if serious injuries increased – a scenario that could happen as vehicle design has become safer over the years. States could also pass by achieving the two targets based on the rate of fatalities and serious injuries per VMT, which, as discussed below, rely on future projections of VMT growth which in many cases are overly high. In both of these examples, States could, in theory, pass by doing nothing – allowing fatalities to decline on their own as vehicles get safer, or letting the rates for both fatalities and serious injuries decline by simply increasing their VMT projections, even if the raw number of fatalities and serious injuries increases.

- **States could be deemed to be making “significant progress” toward their targets even if actual conditions are getting worse.** If States do not meet their self-developed safety targets, USDOT will look to see whether State performance is in line with its historical trend line; in other words, as long as State numbers are within a certain range of their historical performance, they are deemed to be making “significant progress” toward their target.
- **States can continue to use inaccurate VMT rates.** The rule uses the inaccuracy of VMT rates as a reason to accept a 70 percent “failure interval” (the range of the historical trend line within which a State will be deemed to be making “significant progress”) when evaluating progress. As required by MAP-21, two of the four performance measures are based on VMT projections, [which for the past 61 years have been overestimated in FHWA’s annual Conditions and Performance Report](#). Rather than making the case for improving VMT projections, the proposed rule cites it as a reason for giving a passing grade for all State targets that come within 70 percent likelihood of the projected safety measure.
- **The rule allows for an extreme lag in reporting, responding, and evaluating.** For example, goals created for 2017 are based on data from 2013 and are not evaluated by USDOT until 2020. In that scenario, States who have not achieved a 50 percent pass rate for its performance measures in 2017 will not be required to address their unsafe roads until 2021, because the evaluation by USDOT will not occur until 2020 – four years after the State actually failed. All cost effective approaches to improve this reporting, responding and evaluating lag are recommended.

POOR CATEGORIZATION

- **The rule lumps motorized and non-motorized users together** in one category. The rule justifies this approach by saying that doing otherwise would “lead to numbers too statistically small to provide sufficient validity for developing targets to carry out the HSIP.” However, non-motorized roadway users are often vulnerable to serious harm and in many instances require very different roadway design for their protection. In fact, some safety projects designed with cars in mind can be hazardous to non-motorized users. By not creating two separate categories for motorized and non-motorized users of our roadways, FHWA is making it possible for a State or MPO to focus on the safety of one group at the expense of the other. In addition, the rule’s justification of its approach could serve to discourage States and MPOs from creating additional non-motorized performance measures should FHWA not amend the proposed safety rule.
- **The rule lumps smaller urbanized areas and rural areas into single category**, which may not accurately reflect safety issues in these unique areas. If states choose to develop separate standards for urban and rural areas, small urban areas (i.e., those areas with less than 50,000, but more than 5,000 people) are lumped with rural areas (i.e. areas with less than 5,000 people). Population centers bring about different transportation challenges and safety issues, and lumping rural and small urban areas together may mask the safety issues inherent where people work, live and transport in greater numbers.