



June 30, 2014

Docket Clerk  
U.S. DOT Docket Operations, M-30  
West Building Ground Floor, Room W-12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Subject: **FHWA Docket Number FHWA-2013-0020**  
Proposed rules for Performance Management Safety Measures, 23 CFR 490

The Montana Department of Transportation (MDT) respectfully submits the following comments in response to the Federal Highway Administration's (FHWA) proposed safety performance management rules to address provisions in the Moving Ahead for Progress in the 21st Century Act (MAP-21). As the Director of the Montana Department of Transportation (MDT) and former Colonel of the Montana Highway Patrol, I care deeply about the highway safety measure components of MAP-21. Safety is a foundational element of MDT's mission and my agency, working closely with our safety partners, is committed to improving highway safety by reducing fatal and serious injury crashes and working toward our goal of ensuring that all highway users arrive at their destinations safely.

As a member of the American Association of State Highway and Transportation Officials (AASHTO), we have invested extensive staff time into the development of the AASHTO comments filed to the docket and provide our broad support for these comments. MDT also fully endorses the comments filed jointly by the state transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming. With that said, we want to ensure preservation of a state administered, federally assisted program, preservation of state flexibility in delivering its programs, and limiting burden on states as FHWA works thru the MAP 21 rulemaking process. The following comments are provided with these principles in mind:

**1. 490.209(a)(1) State Authority in establishing Performance Targets**

MAP-21 is clear that a State has the discretion to set targets for performance relative to Federally established highway performance measures. We believe proposed 23 CFR 490.209(a)(1), if implemented as worded, would subject State established targets to USDOT

approval/disapproval. Accordingly, we urge revision of this provision by striking “shall be” and substituting “are encouraged but not required to be identical” as recommended thru AASHTO and the joint five state comments of ID, MT, ND, SD, and, WY.

**2. 490.211(b) Significant Progress**

States have been concerned about flexibility being built into the significant progress determination that allows states to set target values to account for fluctuations in available funding or other fluctuations such as VMT or extreme weather events. A 5-year historic trend to project performance is slow to react when significant events occur and states cannot predict such events when setting targets. Given these types of situations, which states do not have direct control over, the ability for exceptions, and to establish flat or declining performance targets is essential. The example provided in the NPRM does not reflect this type of scenario so it is difficult to comment whether the significant progress determination can be supported. A scenario for maintaining a performance trend or a negative performance trend should be included. Also of concern is that many states, like Montana, have made large gains in reducing fatal and serious injuries over the last several years and may see a slowing of the rate of decline especially given future funding issues. Given these concerns, we support the 490.211(b) additional language provided in the AASHTO comments to help ensure flexibility in FHWA’s significant progress determinations.

**3. Proposed Measures for the Highway Safety Improvement Program**

The NPRM appropriately sticks to the intent of MAP 21 by only including the four measures for those specified in the law despite pressures to disaggregate measures to specific vehicles/modes or issues. We support safety for all users and agree that safety for all users of public roads will be improved by focusing on these four measures and will provide for more stable trends, allowing for more reliable predictions of future performance on which to base the selection of targets. The State Highway Safety Plan process within each state is an appropriate forum for each state to evaluate and determine which areas they will emphasize within their respective states and focus efforts based on a data driven approach. States do consider the various crash types, vehicles, and behaviors in establishing these plans as appropriate so the national focus should remain on all fatalities and serious injuries. Expansion of performance measures by segregating specific types of fatalities and serious injuries at the national level is inappropriate and contrary to MAP 21 and States desire to focus national performance efforts on a limited number of measures to implement 23 USC 150.

Should the USDOT choose to incorporate separate non-motorized performance measures, it could do so in a way that doesn’t compromise the data driven approach to safety provided in the law and ensures states focus on the most critical safety issues within their state by including minimum thresholds for when states would be required to establish targets and report on such measures.

4. **490.205. Definitions –**

- The two-year lag in the availability of FARS data is a concern. Since the state system data for serious injury is acceptable for establishing serious injury related measures, this same data source should be accepted for the fatality related measures. Data would be more current and the effort would be less burdensome.
- The 5-year rolling average (rather than a single year period) for the safety performance measures is okay, but a 5-year rolling average may not be appropriate for the forthcoming condition measures since pavement condition or bridge deck square footage does not fluctuate over time as dramatically as fatalities or serious injuries.
- Historical Trend lines may be problematic for States in terms of data not being available in the case of serious injuries and in terms of determining significant progress if a state establishes a flat or declining performance target given specific circumstances in the state such as reduced funding or unforeseen events.

MDT appreciates the opportunity to comment on this rulemaking process. Thru Montana's *Vision Zero* goal, we remain committed to a drastic reduction in fatal and serious injuries moving toward zero while creating an environment where all highway users in Montana arrive at their destination safely. Therefore, we encourage FHWA to be considerate of limiting state burden and costs, preserving state flexibility and authority for administering its programs as provided in Title 23 USC, and allowing states to focus efforts on those most critical to safety performance and management as it continues this rulemaking process.

Sincerely,



Director Michael Tooley  
Montana Department of Transportation