



August 19, 2016

Docket Management Facility
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: FHWA Docket Number FHWA-2013-0054
National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program

The Montana Department of Transportation (MDT) respectfully submits the following comments in response to the Federal Highway Administration's (FHWA) proposed rule, National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program.

As a member of the American Association of State Highway and Transportation Officials (AASHTO), we have invested extensive staff time into review of this rule and the development of the AASHTO comments filed on the docket and generally support the AASHTO comments. MDT also fully endorses the comments filed jointly by the state transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming.

MT is a very rural, low population, large land area based state and the measures proposed in this rule seem most appropriate for highly populated, urbanized area. Compliance with the rule as proposed will require a significant resource investment by states and basically redirect efforts away from much needed infrastructure improvements toward unnecessary process to demonstrate the obvious non-issue in rural areas regarding travel time reliability and congestion. With that said, we ask FHWA thru this rulemaking process to limit undue burden and costs on states; preserve a state administered, federally assisted program as provided thru law; and preserve state flexibility in delivering its programs. The following comments are provided with these principles in mind.

Increased Burden and Cost to States

The proposed rule represents a significant departure from current practice, requiring States to analyze and report on millions of data points. The complexity, burden and resource drain that will be required is significant, with little apparent benefit to the nation's transportation system. For MT, we anticipate the need for additional staff and/or consultant services, additional software, and excessive time to utilize the FHWA provided data set in implementing this rule. Consequently, limited resources and staff will be consumed by process rather than focused toward advancing critical infrastructure improvements. Significant revisions to this rule are necessary for states to manage and

afford the implementation of this rule and to cost effectively meet the intent of the national performance goals contained in 23 USC 150.

Travel Time Reliability Measure- Relief for Rural Areas

The proposed rule would subject Montana and other rural states to the considerable burden of analyzing and reporting for NHS travel time measures. In rural areas, we will be investing excessive resources to measure conditions that simply don't exist on our non-Interstate NHS system. In order to limit unnecessary cost and burden on states we support and strongly urge adoption of AASHTO's recommendation to limit the non-Interstate NHS travel time reliability measure to segments only within urbanized areas. And, as an alternate, allow states to self-certify travel time reliability of their rural, non-Interstate NHS system. This will help address concerns of extensive staff time and analysis directed toward a nearly non-existent issue in rural areas and also resolves concerns with the significant gaps we have experienced with the national data set provided for this portion of the system.

CMAQ Measures in Rural States

Montana is hyper rural, with only three small MPO's and no urbanized areas over one million population. In fact, our entire state population is just over one million, yet we are the fourth largest state in terms of land area. So, we appreciate the relief provided for rural areas with a population of less than one million in regard to the CMAQ traffic congestion measure. However, we believe this relief should extend to the on-road mobile emission measure as well to ensure consistency between all CMAQ measures. Applicability of this exemption for all CMAQ measures to areas with less than one million populations also aligns with Congress's action thru 23 USC 149, to limit the requirement of a CMAQ performance plan to areas of over one million in population. Furthermore, the proposed on-road mobile emission measure is tied to expenditure of CMAQ funds and the majority of MT's CMAQ apportionment is flexible and can be spent similar to STP funds. So additionally, this measure should only apply to the use of non-flexible CMAQ funds as to not indirectly constrain this flexibility provided by Congress.

Opposition of CO2 (GHG) Measures

Title 23 USC 150(c) specifically states that USDOT shall "limit performance measures only to those described in the subsection." There is no GHG measure in 23 USC 150(c). We oppose USDOT's attempt to expand measures contrary to law. AASHTO as well opposes expansion of measures beyond what's in law. The comments to this docket from MT, ID, ND, SD, and WY has provided in depth information on this issue and we believe inclusion of a GHG measure extends beyond FHWA's statutory authority. Therefore, we strongly urge FHWA to drop consideration of a GHG measure as part of the final rule.

Consideration of State DOT Comments

While considering all of the comments received, we encourage FHWA to recognize that the states will carry the burden and cost of implementing these rules.

In addition, FHWA must acknowledge that State DOT comments, and AASHTO's by extension, represent the outcome of considerable ongoing involvement with our citizens and transportation stakeholders.

This representation must be considered when weighing our comments, rather than simply comparing the volume of our comments with automatically generated form comments submitted by narrow interest groups.

Summary

In summary, we are committed to achieving the best possible transportation system performance within available resources. However, the rule as proposed is costly, burdensome, and unmanageable for States, especially for a rural state like MT. We do appreciate and support the proposed rule limiting the peak hour travel time measure and the CMAQ traffic congestion measure to urbanized areas with a population of over one million, but any movement toward adoption of a final rule by FHWA should incorporate the following:

- exclusion of the non-interstate NHS outside urbanized area boundaries from the travel reliability measure;
- limiting applicability of both CMAQ measures to areas over one million population in transportation related nonattainment and maintenance areas and additionally limiting applicability to the use of non-flexible CMAQ funds only; and
- not including additional measures beyond those required in statute, such as the GHG measure.

We appreciate the opportunity to comment on this rulemaking process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Tooley".

Director Michael Tooley
Montana Department of Transportation