

NEW YORK STATE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

FHWA ASSET MANAGEMENT PLAN (23 CFR Part 515)

General Comments:

This rule is directed only at State DOTs, requiring them to develop an Asset Management Plan. The Plan must at a minimum address pavement and bridge assets on the National Highway System. States are encouraged to also include other asset classes within the NHS right-of-way including tunnels, ancillary devices, and signs. Nonetheless, MPOs have a significant stake in the rulemaking, as they are responsible for planning and managing investment in the entire transportation system in their region.

States are given the option to include other public roadways; if they exercise that option, all of the same rules apply. It is important to MPOs that FHWA not create barriers in this rule to states exercising that option.

The NPRM acknowledges that states do not own all NHS mileage, but makes them solely responsible for the AMP, including setting targets for the entire system. MPOs recognize that this creates a difficult situation for State DOTs. In New York, for example, a significant portion of the NHS is owned by New York City, a member of the New York Metropolitan Transportation Council, which may wish to set its own targets. The same may hold true for the NHS mileage owned by the New York State Thruway Authority.

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The section in this NPRM that addresses §1315(b) of MAP-21 is important. The recognition of the value of resiliency planning, and its application across the entire Federal-aid eligible highway system, is important to MPOs.

Section by Section comments

§515.001 – Purpose

*No comments on this section.*

§515.005 – Definitions

*“Performance of the NHS refers to the effectiveness of the NHS in providing for the safe and efficient movement of people and goods where that performance can be affected by physical assets.”*

*Comment: NYSAMPO requests clarification on the intended meaning of “effectiveness” as it applies to asset management. This is referenced as part of the gap analysis in §515.007(a)(1)(ii) and (a)(3)(i).*

§515.007 – Process for establishing the asset management plan

Subsection (a)(3)(i) – Risk management plan

*“This process shall, at a minimum, produce the following information:*

*(i) Identification of risks that can affect the NHS condition and effectiveness as they relate to the safe and efficient movement of people and goods...”*

*Comment: This section offers no guidance on the elements of risks that should be included in the AMP, other than the environmental emergency risks addressed in §515.019. It would be helpful if the Rule provided a non-prescriptive list of risk elements that may be included.*

Subsection (a)(4)(ii)

“The financial plan shall, at a minimum, include...

(ii) The estimated funding levels that are expected to be reasonably available, by fiscal year, to address the costs of future work types...”

*Comment: While this has a ten year horizon, NYSAMPO proposes adding a reference to consistency with the revenue forecasting methodology used to develop the financial plans for MPO MTPs.*

§515.009 – Asset management plan requirements.

This section defines required AMP content.

(b) It includes at a minimum NHS pavements and bridges “regardless of ownership”.

(c) States are “encouraged” to include other assets within the NHS right-of-way, and given the “option” to include other public roads. Any elements beyond the minimum that a state includes are treated no differently within the AMP.

(d)(2) This sub-section spells out the crosswalk between the AMP and the Pavement and Bridge Condition Rule by requiring that the AMP incorporate the measures and targets that have been established to meet that rule.

(h) “A State DOT should select such projects for inclusion in the STIP to support its efforts to achieve the goals...”

*Comment: There are two cross-cutting concerns in relation to AMP content. The first is making the State DOT responsible for the entire NHS regardless of ownership. This extends to target setting and programming, over which the DOT may have very little control. This may serve to skew the entire asset management process. NYSAMPO proposes that the rule specify a cooperative approach to target setting among all the NHS owners in a state.*

*The second concern is that by imposing the same requirements for all assets included in the AMP, State DOTs are presented with a disincentive to go beyond the minimum. MPOs are more likely to want a more holistic view of the metropolitan transportation system. NYSAMPO proposes that FHWA develop a useful but less prescriptive approach to managing assets off the NHS.*

§515.011 – Phase-in of AMP development

This section permits states to phase in their AMP by submitting within one year of the effective date of the rule a plan that meets the process requirements but may not include all the analyses. A state that exercises that option must submit a complete AMP within 18 months of the effective date of the pavement and bridge condition rule (not the AMP rule), except that an extension may be granted to allow at least 12 months after the submission of the initial AMP.

*Comment: This illustrates the confusion that may be engendered by having multiple effective dates for the various performance-related rules. NYSAMPO proposes that a single effective date for performance rules and planning rules is necessary for effective implementation of all aspects of performance-based planning.*

§515.013 – Process certification and plan consistency review

*No comment on this Section.*

§515.015 – Penalties

This section spells out the penalties that will be imposed on states. These are significant: if the state has not developed an AMP that meets the consistency requirement (above) in a given fiscal year, NHPP funding will be limited to a 65% federal share. Further, if the state has not developed an AMP and not established performance targets, they lose eligibility for NHPP funding entirely.

§515.017 – Organizational integration of asset management

This section addresses how asset management is integrated into the business of the State DOT. It is non-prescriptive (using “may” and “should” language), and relies primarily on self-assessment and performance gap analysis.

*Comment: NYSAMPO finds that this section is oddly placed in the rule. The theme of organizational capability is discussed across many FHWA functional areas; for example, some current work on applying the Capability Maturity Model to the operations function at State DOTs and MPOs. NYSAMPO proposes that this Section would be better placed in guidance and deleted from the rule.*

§515.019 - Periodic evaluations of facilities requiring repair or reconstruction due to emergency events.

(a) Note that unlike the AMP, this is not limited to the NHS, but is applicable to all FA eligible roads.

*Comment: Given the intent of this section, and the inclusion of all FA System roads, it is imperative that MPOs are included in the development of the evaluation and determination of “reasonable alternatives” to repair and rehabilitation. Resiliency planning in metropolitan areas is very different than in nonmetropolitan areas. MPOs have the data, knowledge, and capability to do this work in their MPA.*

*Comment: FHWA specifically asks what the “look back” period should be for the determination of two events. NYSAMPO proposes that a ten year look back is appropriate.*