



*Florida Department of Transportation*

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October 13, 2022

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590

**Re: National Performance Management Measures; Assessing Performance of the National Highway System, Greenhouse Gas Emissions Measure, Docket No. FHWA-2021-0004**

The Florida Department of Transportation (FDOT) appreciates the opportunity to comment on the Federal Highway Administration's (FHWA) Notice of Proposed Rulemaking on National Performance Management Measures, Assessing Performance of the National Highway System, Greenhouse Gas Emissions Measure (Docket No. FHWA-2021-0004).

FDOT and our transportation partners, including Florida's 27 Metropolitan Planning Organizations (MPOs), have a long history of measuring the performance of the transportation system and adapting policies, plans, and programs to help accomplish performance goals. Florida law establishes a framework for transportation performance management, with FDOT policy linking performance measures to planning and programming decision making. This ensures informed decisions on transportation system performance, agency operations, and program outcomes.

While the intent of the proposed rule is important, the implementation of the proposed rule is also important. Federal regulations should not burden states with overreaching or unnecessary requirements that may impact successful implementation. FDOT strongly encourages FHWA to consider this balance as it moves forward in the rulemaking process.

Instead of prescriptive targets and timelines, FDOT recommends FHWA allow states flexibility to make decisions based on the needs of their communities. Regulations should be broad enough to include the unique current characteristics and evolving conditions of all 50 states.

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### **Authority to Establish the GHG Measure**

FDOT is concerned that FHWA relied upon an overly broad interpretation of 23 U.S.C. 150 to justify its legal authority for establishment of this rule. In 23 U.S.C. 150(c), Congress used clear language to direct USDOT to establish performance measures to assess pavement condition, bridge condition, system performance, serious injuries and fatalities, and, for the CMAQ program, traffic congestion and on-road mobile source emissions. Congress also stated that the USDOT Secretary shall limit performance measures to those described in the subsection. Notably absent from this section is a reference to GHGs. Furthermore, the national goals identified in 23 U.S.C. 150(b)(6), which FHWA also relies upon for legal justification, do not explicitly address reducing GHG emissions.

When Congress passed the Infrastructure Investment and Jobs Act (IIJA) less than one year ago it did not add a GHG performance measure to 23 U.S.C. 150(c) or expand upon the national goals. Congress did create new programs in IIJA that provide funding for and incentivize state DOTs and MPOs to develop carbon reduction strategies and implement projects accordingly. However, IIJA did not include a mandate that state DOTs or MPOs track on-road GHG tailpipe emissions or otherwise achieve year over year reductions in GHG emissions from on-road vehicles. Had Congress intended to require a GHG performance measure, the IIJA would have provided the opportunity to do so.

### **Timing of Proposed Target setting and Reporting Requirements**

The proposed rule would require that state departments of transportation establish initial targets for greenhouse gas (GHG) performance measures no later than October 1, 2022. Comments on the proposed rule are due October 13, 2022, 12 days AFTER the deadline for target setting. It is impractical to require states to set targets before a rule is promulgated.

In order to establish targets, states must gather data, analyze, and calculate historic trends, coordinate among various functional areas, and review policy. The proposed measure requires the use of data sets controlled by FHWA, which are not currently available to state DOTs. Additionally, state DOTs are required by the proposed rule to coordinate the state performance targets with their metropolitan planning organizations. In the case of Florida, coordinating with 27 MPOs on new performance targets requires several months of collaboration.

Other rules requiring performance measures and targets provided at least one year for states to coordinate and establish state targets. Florida strongly encourages FHWA to extend the target-setting deadline and to consider alignment with the schedule that already exists for pavement and bridge conditions and mobility measures.

### **Declining Targets and Target Timeframes**

As the nation's third most populous state, Florida's population is projected to grow from 21.5 million residents in 2020 to 27.8 million residents by 2050. Out-of-state visitors to Florida are projected to increase 55 percent between 2019 and 2031. Florida continues to experience growth in vehicle miles traveled (VMT), as a result of the growth in population and visitors. The proposed rule requires that states set declining targets from an established baseline, to show

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improvements in GHG emissions. Realistically, this presents a challenge when VMT is increasing and population is growing, especially for 2- and 4-year targets.

A GHG performance measure expressed as a rate of emissions to VMT, or population would provide better context. States should not be penalized for population or economic growth.

By requiring declining targets, FHWA goes well beyond the statutory requirement in 23 U.S.C. 150(d) that “each *State* shall set performance targets that reflect the measures” promulgated by FHWA. The statute makes no reference to improving, declining, or constant targets. In effect, the requirement for declining targets inserts FHWA into the target setting role that is provided to states. It is more reasonable to maintain that states have the full ability to establish realistic, data-driven targets, whether they be improving or declining.

The most promising strategies to affect reductions in on-road tailpipe emissions are those that will take more time to build, implement, or adopt. States will have little influence to achieve progress toward short-term, 2- and 4-year targets.

FHWA is also proposing 8- and 20-year targets, which are more realistic. FDOT prefers 8- and 20-year targets over 2- and 4-year targets and respectfully suggests that the establishment of four separate targets for four time periods is overreach and a burden to states.

### **Reference Year**

FDOT is concerned about the use of 2021 as the reference year due to the Covid-19 pandemic. VMT in Florida, both total and NHS, dropped significantly from 2019 to 2020. While VMT rebounded in 2021 to a level slightly above 2019, it was below the trajectory it was on prior to the start of the pandemic. This suggests that additional rebound is likely in 2022 and beyond. Thus, the use of 2021 as a baseline is not likely to reflect ongoing system performance over the next few years. We recommend that FHWA evaluate other options for the reference year to assess the impacts on target achievement.

### **MPO Requirements**

The proposed rule requires MPOs to establish GHG targets for their MPO area, as well as for urbanized areas that may cross MPO jurisdictions (Figure 1). Creating 2-, 4-, 8-, and 20-year targets for the state, 27 MPOs, and at least 10 urbanized areas would mean at least 115 new targets for Florida. Not only does this create undue burden for the MPOs; it also creates undue burden for FDOT. FDOT monitors and tracks performance measures and targets for all federal measures for its 27 MPOs as part of its oversight responsibilities.

The proposed rule requires state DOT to review and, in essence, approve, the MPOs’ approach to calculating metrics and targets. For FDOT, this means potentially validating 27 different approaches to GHG calculations.

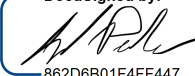
Given transportation emissions are not physically contained within a jurisdictional boundary, it is unclear how performance targets specific to an urbanized area will create improvements above those coming from performance targets specific to an MPO area. The proposed rule should

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provide limited options for metrics, with any validation responsibility assigned to FHWA, and should not require targets for BOTH urbanized areas and MPO areas.

Thank you for the opportunity to provide these comments. Please do not hesitate to contact FDOT in regards to any of or comments. Your main point of contact will be Brad Thoburn, Assistant Secretary of Strategic Development. You can contact him by email at [brad.thoburn@dot.state.fl.us](mailto:brad.thoburn@dot.state.fl.us) or by phone at 850-414-5235.

Sincerely,

DocuSigned by:  
  
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Jared W. Perdue, P.E., Secretary  
Florida Department of Transportation

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Enclosures: Florida Urbanized Areas and MPO Boundaries

**Figure 1 - Florida Urbanized Areas and MPO Boundaries**  
(Urbanized areas shown in light to dark purple. MPOs shown in light to dark green.)

