

**From:** FHWA, Infrastructure (FHWA) <Infrastructure.FHWA@dot.gov>  
**Sent:** Thursday, January 25, 2024  
**To:** Division Administrators, Division Office Leadership and TPM POCs  
**Subject:** FHWA Notice of Proposed Rulemaking (NPRM) impacting 23 CFR part 490

**ATTENTION TO: Division HPMS, Safety, Pavement, Freight, Air Quality, Planning, and Transportation Performance Management (TPM) Points of Contact**

On Thursday, January 25th, FHWA published a [Notice of Proposed Rulemaking \(NPRM\)](#) titled National Performance Management Measures; Extenuating Circumstances, Highway Performance Monitoring System Data Field Names, Safety Performance Measure, Pavement Condition Measure, and Freight Performance Measure that proposes changes to 23 CFR 490. [89 FR 4857] **Please share this memo with your State DOTs and MPOs so that they are aware of this NPRM.**

This rulemaking proposes updates to the National Performance Management Measures regulation to consider impacts of national emergencies on performance achievement, address compliance determinations and penalty assessment for the pavement condition measures, clarify data collection standards and requirements, adjust freight reporting to align with the 4-year update cycle for State Freight Plans in the Bipartisan Infrastructure Law (BIL), and provide select clarifying technical corrections. The rulemaking would also incorporate by reference the Highway Performance Monitoring System (HPMS) Field Manual, which includes updated fields related to the collection of Transportation Performance Management (TPM) data. This rulemaking also would provide for greater opportunities for meaningful safety performance targets and outcomes, consider approaches to alternative safety performance measures, and align performance targets for the three common measures that must be identical with the National Highway Traffic Safety Administration (NHTSA).

Here is a high-level summary of the changes found in the NPRM:

- **Clarify Extenuating Circumstances:** Clarify the list of extenuating circumstances to explicitly include national emergencies, such as the COVID-19 pandemic.
- **Freight:** Align the State Freight Plan requirements with the 4-year cycle established by BIL.
- **Safety:** Align with NHTSA's requirement under § 24102 of BIL to establish triennial Highway Safety Plan (HSP) safety targets that 'demonstrate constant or improved performance,' and establish criteria for insufficient data or information and extenuating circumstances.
- **Technical Corrections:** Align with state of the practice by making technical corrections to existing standards incorporated by reference and other practices. Make technical corrections to improve the clarity of 23 CFR part 490.
- **Pavement:** Codify the state of practice for the compliance determination and penalty assessment for the Pavement Condition Measures.
- **HPMS:** Updates to the HPMS Field Manual

The FHWA Office of Infrastructure will be holding an external webinar on Thursday, February 8, 1-2 p.m. Eastern via Zoom registration information will be sent separately.

Please be aware that FHWA staff cannot communicate with anyone outside the agency about the specifics of the rulemaking. Comments must be submitted to the official docket so they can be considered by FHWA.

Comments must be received on or before February 26, 2024. Submit comments via [www.regulations.gov](http://www.regulations.gov), docket number FHWA 2023-0014.

Additional information related to the NPRM will be made available at [www.fhwa.dot.gov/tpm/rule.cfm](http://www.fhwa.dot.gov/tpm/rule.cfm).

If you have any questions, please contact [m.smithjackson@dot.gov](mailto:m.smithjackson@dot.gov) or [alexis.kuklenski@dot.gov](mailto:alexis.kuklenski@dot.gov).