

Comments of the Transportation Departments of  
Idaho, Montana, North Dakota, South Dakota, and Wyoming  
to the  
National Highway Traffic Safety Administration  
in  
Docket No. NHTSA-2022-0036  
Uniform Procedures for State Highway Safety Grant Programs;  
Request for Comments  
May 19, 2022

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The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming (“we” or “our”) respectfully make this submission in response to the request for comments published by the National Highway Traffic Safety Administration (NHTSA) at 87 Federal Register 23780 *et seq.* (April 21, 2022).<sup>1</sup>

The recently enacted Infrastructure Investment and Jobs Act, Public Law No. 117-58, often referred to as the Bipartisan Infrastructure Law (BIL), includes provisions modifying programs of grants to States for highway safety programs that are administered by NHTSA. NHTSA seeks comment on how it should update those safety grant programs, particularly to achieve consistency with the BIL.

At the outset, the transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming emphasize their deep commitment to improving transportation safety and to reducing fatal and other crashes. Improving highway safety throughout our states is a very important consideration for us in all aspects of our programs, not only in NHTSA-administered safety specific programs.

Our States are members of the Governors Highway Safety Association (GHSA). GHSA has emphasized that NHTSA implementation of the BIL should not impose on States requirements in addition to those clearly directed by statute. We agree with that approach and appreciate those and similar GHSA efforts that would provide States with increased flexibility to direct funds and take other actions to address the highway safety issues in their respective States.

In this docket NHTSA has not set forth specific proposed rules but requested input on topics that may be addressed in specific rules.

Accordingly, in this filing we briefly outline principles that we believe will serve NHTSA well in developing revised rules for these legislatively amended grant programs. We will begin with points we consider important and, before closing, turn to issues on which NHTSA has requested input.

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<sup>1</sup> These comments are also supported by the South Dakota Department of Public Safety.

### Limit Administrative Requirements to Enhance Highway Safety

A successful State program implementing the NHTSA State safety grant programs will have senior management focused on identifying the most important opportunities to improve highway safety in the State and determining how to maximize those opportunities through project or program investments or other action.

Dollars, including personnel time and costs, dedicated to administration or application forms, are dollars not available for investment in actual projects and programs that provide safety benefits. So, we see the addition of administrative requirements to requirements clearly called for by statute as not just adding direct costs, but as also imposing opportunity costs, steering the time and effort of State staff from more direct efforts to improve safety.

We also note that this principle applies to more than efficiently implementing any new requirements in the BIL. NHTSA should prune from its rules administrative requirements that preceded the BIL that are not expressly called for by statute.

While we do not have specific records on this, it is the impression of our safety grant program managers that they spend as much time completing forms and reports for NHTSA as they do on the real job of using their judgment to manage the safety grant program for improved outcomes. And we think we are efficient in completing our NHTSA-driven paperwork. Accordingly, we think NHTSA should undertake a mighty effort to reduce the administrative burdens of the program in order to increase the focus on delivering a successful safety program.

### NHTSA Should Interpret and Administer Provisions to Provide States with Increased Flexibility to Address Highway Safety Issues in Their Respective States

In addition to not imposing requirements not specifically called for by statute, NHTSA can increase State effectiveness in enhancing highway safety by interpreting and implementing statutory provisions so as to increase State flexibility. We note here a few examples and reserve the right to comment more specifically and extensively on such points when NHTSA issues for comment a specific rulemaking proposal.

### Congress Deleted Maintenance of Effort Requirements from NHTSA's Safety Grant Programs; NHTSA Must Follow Through and Delete any such Requirements from its Rules and Guidance

A very positive aspect of the BIL was revision of 23 USC 405(a) to delete the requirement that, as part of a grant application, a State makes a certification that it is maintaining at least past expenditure levels on safety programs. This required keeping track of past expenditures. More importantly, to some extent, this discouraged a State from making any one-time safety investments (because of the implication that any increase had to be maintained). It also, to some extent, hindered the ability of a State to shift funds to new or increasingly important State highway safety priorities because of concern that it had to maintain prior expenditure levels in programs.

Accordingly, revised rules (or guidance) implementing the NHTSA State safety grant programs post-enactment of the BIL should delete references to maintenance of effort requirements. Alternately, updated rules or guidance could modify any references to maintenance of effort requirements to be clear that they apply only to use of funds from FY 2023 or earlier, as the BIL establishes that the elimination of maintenance of effort requirements takes effect with grant applications for FY 2024 and subsequent years.

#### Continue Provision for Transfer of Unused Section 405 Funds to Section 402

We also consider it positive that current rules reflect the provision in the FAST Act under which certain funds not awarded by NHTSA under other programs (basically, section 405 programs) are transferred to the section 402 program for redistribution to the States. See 23 CFR 1300.20(e)(3). This provision should be continued.

#### Take a Practical Approach to Certain Program Issues

Recognize the Multiple Responsibilities of Law Enforcement in Crafting Rules. In gathering data regarding crashes or speeding tickets or other highway safety related information, State highway safety agencies work with law enforcement agencies. Those agencies have many, many responsibilities in addition to highway safety.

Per the BIL 23 USC 402(b)(1)(E) refers to a State's section 402 program as providing "support" for "data-driven traffic safety enforcement programs." It is important that NHTSA rules not describe such programs as requirements for complete data, which is not a practical objective. Law enforcement has multiple priorities. Data provisions should be worded so that the program is working to gather data and, as practical, trying to improve data that is collected.

Coordinate with FHWA to Limit Burdens on States. NHTSA knows that the Federal Highway Administration (FHWA) also has a safety program and requires States to report data and prepare plans. While the programs are not exactly the same, as FHWA's safety program features but is no longer limited to safety construction, there is some overlap and the potential for more overlap. NHTSA and USDOT agencies should strive to avert imposing duplicative or nearly duplicative reporting and planning burdens on States. We ask that NHTSA closely consult with FHWA before proposing rules for the revised highway safety grant program. The goals – avoid requiring States to collect data, file reports or undertake other tasks for NHTSA that are the same or very similar to tasks required by FHWA.

#### Matters of Stated Interest to NHTSA

In the Federal Register notice in this docket, NHTSA specifically invites comment on five listed issue areas.

##### National Roadway Safety Strategy

First, NHTSA indicates that it is considering implementing the highway safety grant programs as revised by the BIL by applying USDOT's National Roadway Safety Strategy.

As we explained above, all other things being equal, the highway safety grant programs should have greater success if program administration limits administrative burdens and enables State safety program leaders to focus on highway safety problem identification and devising projects and programs to correct those highway safety problems. To the extent that the National Roadway Safety Strategy speaks favorably of safety management systems, those systems can involve considerable process requirements and should be a voluntary decision by States, not a requirement from NHTSA as to these highway safety grant programs.

In short, NHTSA should focus on promulgating rules (or guidance) that do not add complexity to program administration by adding requirements beyond those clearly directed by statute. However, NHTSA can act to increase the extent that safety initiatives not expressly mentioned in statute but consistent with statute and the National Roadway Safety Strategy are an option for States in implementing the NHTSA-administered safety grant programs.

#### Reducing Disparities and Increasing Community Participation

Second, we suggest that if NHTSA succeeds in eliminating, or at least substantially reducing administrative, process, data collection and other requirements not expressly called for in statute, States will be able to dedicate more attention to public participation and engagement. That would help States identify issues and communities for follow up action to improve highway safety.

#### Triennial Highway Safety Plan and Annual Grant Application

Third and fourth, in implementing the new statutory approach of a State submitting to NHTSA for approval a three-year “plan” and, also for approval, an annual grant application, NHTSA should strive to eliminate duplication in those submissions. NHTSA should think of the triennial plan as outlining the kinds of actions (programs and projects) a State wants to take in order to improve safety by addressing certain types of issues. The annual application by a States would spell out the State’s specific choices for investments and other actions to implement the plan. Perhaps the annual grant application can include brief references to the plan so that NHTSA will be told which part of the three-year plan a particular investment would address. Saving that, again, we think the key to implementing this new approach is to avoid duplicative requirements, freeing the State to focus more fully on actions to achieve safety progress.

#### Performance Measures

Fifth, we believe that any additional performance measures by NHTSA for the highway safety grant programs must be able to cross over an extremely high bar. Currently, we are not recommending any such new performance measures and would oppose such new performance measures. Importantly, the current set of measures has been sufficient to enable NHTSA to gather data on key safety issues. Further, a State is free to supplement Federal performance measures with measures of its own choosing.

As noted at the outset, what is important is to minimize administrative burdens so that State safety program leaders can focus more fully on delivering effective solutions to safety problems and help reduce fatalities, injuries and property damage from crashes.

We also note that, per 23 USC 402(k), USDOT/NHTSA is to consult with GHSA as to any new performance measures. As noted above, we currently are not recommending any new performance measures for the NHTSA-administered safety grant programs, but if NHTSA chooses to advance one or more, it should consult with GHSA on them in a serious and sustained manner. This would be appropriate, as prior work by NHTSA with GHSA in developing the current performance measures appears to have been successful.

### Conclusion

In closing, we emphasize again our strong commitment to safety. NHTSA should strive to limit administrative and paperwork requirements for States to those clearly called for by statute, the basic point that has been made by GHSA. This approach, and more flexible, less prescriptive interpretations of provisions, would increase a State's ability to address highway safety problems of greatest importance within that State. It also would free up resources for investment in safety projects and programs, thereby further enhancing safety.

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming thank NHTSA for its consideration and urge that further actions regarding the subject matter of this docket be in accord with our recommendations.

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