



May 23, 2022

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National Highway Traffic Safety Administration (NHTSA)
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Washington DC 20590

Dear Barbara,

Thank you for the opportunity to respond to this request for comments on the Uniform Procedures for State Highway Safety Grant Programs under Docket No. NHTSA–2022–0036. As you know, the Governors Highway Safety Association (GHSAs) is the association of State and territorial highway safety offices (SHSOs) that are the primary beneficiaries of grants under these programs and the primary subject of oversight under these regulations.

GHSAs and its members value our strong partnership with NHTSA to implement life-saving highway safety programs. We are pleased to participate in the rulemaking process and offer comments and recommendations to support the implementation of the Infrastructure Investment and Jobs Act (IIJA), or Bipartisan Infrastructure Law, and the U.S. Department of Transportation’s National Roadway Safety Strategy (NRSS).

GHSAs congratulates the Administration on these two important accomplishments and commends NHTSA for beginning the rulemaking process with public stakeholder meetings to give voice to many of our partners who are also focused on highway safety and have a stake in regulatory outcomes.

The SHSOs offer perspectives that reflect direct experience of implementing programs under 23 CFR Part 1300 (“Uniform Procedures”) and complying with related NHTSA oversight. Thus, GHSAs’s comments will reflect both high level recommendations to advance highway safety nationally, as reflected in several of NHTSA’s Specific Guiding Questions, as well as more directed recommendations to improve rules, requirements and processes unique to the SHSOs as grantees.

On December 22, 2021, GHSAs submitted a letter to Acting NHTSA Administrator Steven Cliff describing many of these same topic areas and on May 2, 2022, GHSAs participated and spoke during a NHTSA stakeholder meeting. These current GHSAs comments incorporate and improve upon those comments and recommendations.

Themes for Revisions to the Uniform Procedures

GHSA recommends that NHTSA embrace some guiding principles in its revisions of the Uniform Procedures:

1) Ensure fidelity to the spirit and letter of Congressional directives

Historically and as reflected in the latest reauthorization, Congress charges each State to develop and implement a highway safety program, including to select State performance measures and targets, to develop a strategy based on State and local data, and to select evidence-based countermeasures to program funds in pursuit of that performance plan. Congress directs NHTSA to assess whether the Highway Safety Plan's (HSP) performance targets are supported by data, whether the plan will allow the State to meet its performance targets, and separately whether expenditures are consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200, the "OMB Guidance").

Since 2012, NHTSA has gradually shifted its State oversight scrutiny from the program level to the project level. Under previous authorizations – ISTEA, TEA-21 and SAFETEA-LU – the contents of the HSP were simple and limited largely to high-level program descriptions. When MAP-21 consolidated Section 402 and the new Section 405 grants into a single application, NHTSA added new requirements for States to submit details about individual projects, largely for financial purposes. The Final Rule in the wake of the FAST Act dramatically compounded the project details that States are required to submit over vigorous objections that this change was neither authorized or required by federal law.

State projects are now subject to granular review, approval or denial. GHSA has no objections to NHTSA having access to this information for the purpose of financial management, transparency or program analysis. GHSA however objects to how data-sharing has opened the door to excessive State administrative burden and inappropriate federal micro-management of State activities. GHSA offers recommendations to remedy this imbalance.

2) Aggressively promote the implementation of life-saving programs and remove program barriers

Many of the changes that Congress has codified aim to expand allowable use across the highway safety grant programs. The promulgated rules should reflect that Congressional intention and avoid creating additional barriers to full program implementation.

Program implementation barriers are not only regulatory. Many States want to forge partnerships with new highway safety stakeholders who may be smaller

non-profit or community groups. But a consistent experience has been for NHTSA to provide a higher level of scrutiny to these partners compared to legacy subrecipients, who can bring more resources to comply with NHTSA regulations and oversight. NHTSA and States have expressed interest in innovation but that can in effect be discouraged by NHTSA's past administrative oversight practices.

3) Minimize administrative barriers and ambiguity and promote clarity in regulatory requirements

GHSa is pleased that Congress has eliminated a number of administrative requirements that had unfortunately distracted both GHSa and NHTSA away from our more important shared safety goals. Key provisions that Congress has eliminated include the biennial automated enforcement survey, maintenance of effort requirements, and the mandatory traffic records assessment.

One persistent challenge with our shared program is how we apply the regulations to address ambiguities, novel situations and unforeseen circumstances. The internal federal process to develop and promulgate new, clarifying guidance, even when it is urgently needed, can be protracted and burdensome. GHSa offers recommendations to address some existing ambiguities and we have considered other potential sources of uncertainty that could be ameliorated.

4) Provide States with the flexibility to support the Safe System Approach

The NRSS acknowledges a national goal of zero fatalities and directs the Department-wide adoption of the Safe System approach. However, SHSOs have encountered some barriers to applying federally-funded resources to the Safe System. For example, we describe above barriers to expanding non-traditional partnerships to implement prevention-focused community programs. Historically, the experience of the States has also been an overwhelming NHTSA focus on traffic enforcement at the expense of other interventions. Many States and communities are also adopting the highway safety goal of zero fatalities, though some aspects of federal policy impede this, as we shall describe below. As the NRSS states about traffic fatalities, "The status quo is unacceptable," and the regulatory status quo would also benefit from improvement.

NHTSA Specific Guiding Questions

National Roadway Safety Strategy

1. How can NHTSA, States, and their partners successfully implement the NRSS and the SSA within the formula grant program to support the requirements in the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58)?

GHSA strongly supports the NRSS and agrees with its characterization of the highway safety crisis in the U.S. In keeping with the Safe System principle that responsibility is shared, the federal government, States and their partners all have roles to play in addressing different aspects of highway safety. The SHSOs commit to carrying out their mandate to implement Statewide programs to reduce traffic crashes and the resulting deaths, injuries and property damage.

GHSA urges U.S. DOT to carry out its “Key Departmental Actions to Enable Safer People,” which are the Departmental Actions in the NRSS most directly relevant for highway safety programs under the Uniform Procedures.

As described within these comments, GHSA urges NHTSA to help facilitate and even encourage State efforts to align their highway safety programs with the Safe System approach.

Though States are chiefly responsible for creating and carrying out their own safety programs, NHTSA can further support these efforts by continuing to provide high quality research, guidance, program best practices, and supporting materials, and exercising its convening powers to promote interdisciplinary cooperation to tackle highway safety issues. NHTSA can also leverage its authority and influence to promote greater safety in areas outside of the SHSOs’ purview that contribute to highway safety problems and solutions.

GHSA would also like to comment on one key principal of the Safe System approach that has caused some controversy: “humans make mistakes.” While this is meant to bring attention to the need to design the whole transportation system to address systemic shortcomings and mitigate deaths and injuries, we are also concerned that it may be misinterpreted to absolve drivers from responsibility for safe operation of vehicles. Some crashes arguably can occur due to unintentional lapses or errors in judgement. However, the leading behavioral contributors to an overwhelming majority of crash fatalities – impaired driving, speeding and lack of restraints – are the result of conscious choices by drivers in the face of well-known traffic laws and safe driving practices. The Safe System can and should encourage both a systemic approach to the design of the overall transportation system, as well efforts to

encourage safe driving decisions. GHSA would encourage NHTSA to frame this Safe System principle in an appropriate way.

2. What non-traditional partners and safety stakeholders can the States work with to implement NRSS and SSA?

Partnerships are the cornerstone of any successful State highway safety program. SHSOs cannot alone make significant progress on highway safety, nor can any other individual stakeholder. Partnership is also an essential element of the Safe System approach to break down silos, effectuate shared responsibility for safety and involve all of those with a stake in the highway safety planning process.

In the past, most SHSO partnerships consisted of other state agencies involved in transportation and public safety, media organizations, law enforcement, traffic records custodians and a small number of organizations implementing community programs. Today, SHSOs are increasingly embracing an expansive spectrum of non-traditional partners including but not limited to: public health authorities; local community representatives; religious organizations in communities; emergency medical service providers; hospitals, injury surveillance networks and other medical organizations; unique marketing program providers; toxicology labs; court systems; state and local authorities responsible for offender assessment and supervision; treatment program providers; youth advocacy organizations; alcohol and cannabis industry organizations; a widening range of national and local corporate, non-profit and safety advocacy organizations; and even stakeholders that have historically frustrated some safety efforts such as restaurant and nightlife industry organizations and motorcycle rider advocacy groups.

The opportunities far exceed what can be described in detail here and are limited only by imagination, the funding available and, unfortunately, often federal laws, regulations and requirements that might prevent, limit or discourage some kinds of safety programs.

Reducing Disparities and Increasing Community Participation

3. How can the Sections 402, 405, and 1906 formula grant programs contribute to positive, equitable safety outcomes for all? How can states obtain meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities?

4. How can the formula grant program require practices to ensure affected communities have a meaningful voice in the highway safety planning process?

On August 3, 2021, GHSA published [*Equity in Highway Safety Enforcement and Engagement Programs*](#), a report commissioned by GHSA that includes a number of recommendations for States to achieve more equitable outcomes in highway safety programs. Among the recommendations were for SHSOs to

encourage broader community involvement in the highway safety planning process and to embrace and expand traffic stop data collection.

These recommendations align with new highway safety program requirements created by the IIJA for community collaboration under 23 U.S.C. 402 (b)(1)(B) and for traffic safety enforcement programs under 23 U.S.C. 402 (b)(1)(E). Taken together, GHSA anticipates that these steps will contribute to an increase in community engagement and more equitable safety outcomes. In many cases, they reflect activities already underway by SHSOs and/or their subrecipients.

Further, GHSA supports the changes made to the Section 1906 grant program to provide more funding for racial profiling data collection, to allow more states to be eligible for this grant, and to expand allowable use. More specific recommendations related to implementation in the Uniform Procedures are described below.

NHTSA must also recognize that these kinds of efforts are time intensive and lend themselves to extensive in-person interactions to develop and maintain long-term relationships. In addition to new requirements and voluntary efforts, States and their partners can benefit from more funding to support these activities.

5. What varied data sources, in addition to crash-causation data, should States be required to consult as part of their Highway Safety Plan problem identification and planning processes to inform the degree to which traffic safety disparities exist on their roadways?

GHSA has always strongly encouraged SHSOs to incorporate a wide range of data into the Highway Safety Plan (HSP) problem identification and planning processes, including but not limited to data and perspectives collected from the new community collaboration requirements added by the IIJA. However, NHTSA will not be able to immediately mandate a specific process or data sources that would be universally feasible for all States, for several reasons:

- Each State carries out a different problem ID and planning process due to the differences in data available, resources that can be dedicated to planning, and the local stakeholders that are available and willing to participate in these efforts.
- NHTSA regulation of the problem ID and planning process is limited by what is authorized under 23 U.S.C. Chapter 4.
- NHTSA Regional Offices are not well-prepared to make objective judgements about the quality of these processes carried out by States in this novel and evolving area.
- Efforts to achieve equitable outcomes represent a journey, not a destination, and the transformation of highway safety programs in this regard will be iterative and long-term.

More specific requirements may be appropriate in the future but today, State highway safety programs will achieve the best outcomes if NHTSA’s general approach is to establish higher-level goal posts for State achievement that are process-focused and provide flexibility to States pursue these goals based on the resources that States can bring to bear. More specific recommendations related to implementation in the Uniform Procedures are described below.

Triennial Highway Safety Plan

6. *How can the triennial cycle best assess longer-term behavior modification progress and connect year-to-year activities in a meaningful way?*
7. *How can the triennial HSP account for strategies that are proportionate to the State’s highway safety challenges?*
8. *What information is needed to ensure the HSP provides comprehensive, longerterm, and data-driven strategies to reduce roadway fatalities and serious injuries?*

23 U.S.C. Chapter 4, as amended by the IIJA, lays out a functional system for states to incorporate into the Triennial HSP, Annual Application and Annual Report opportunities to track long-term progress on highway safety, ensure program consistency, carry out data-driven problem identification and tie countermeasure strategies closely to highway safety challenges.

Reporting requirements for the Triennial HSP, Annual Application and Annual Report should be consistent with what is required by, and limited by, 23 U.S.C. Chapter 4. GHSA would strongly urge against NHTSA establishing additional reporting requirements not authorized by the law. Such requirements would compound the administrative burden of implementing highway safety programs locally and make it more difficult to enlist subrecipients. Further, NHTSA Regional Offices are not well-prepared to make detailed State-by-State judgements and approval decisions about the whole substance of problem ID, countermeasure strategy selection, and the merits of individual projects. These tasks are the purview of the States.

More specific recommendations for the content of Triennial HSPs, Annual Applications, and Annual Reports are included below.

Annual Grant Application

9. *What data elements should States submit to NHTSA in their annual grant application to allow for full transparency in the use of funds?*
10. *What types of data can be included in the annual grant application to ensure that projects are being funded in areas that include those of most significant need?*

Reporting requirements for the Annual Application should be consistent with what is required by, and limited by, 23 U.S.C. Chapter 4. GHSA would strongly urge against NHTSA establishing additional reporting requirements not authorized by the law.

As described below, project information in the Annual Application should consist of project information consistent with the OMB Guidance to collect information to form the foundation for vouchers. This sharing of project agreement information should not be an invitation for NHTSA to systematically apply comprehensive, granular scrutiny to approve or disapprove individual projects on their individual merits, which NHTSA Regional Offices are not well-prepared to do.

In creating a new framework for NHTSA grant applications, Congress is clearly intending to provide relief for States by reducing the amount of reporting in any given year. GHSA would oppose efforts to add additional reporting requirements and additional project details that could make the Annual Application as burdensome as the Triennial HSP.

The law does require that Annual Applications include a description of how States might have adjusted their programs and countermeasure strategies. GHSA believes Annual Applications should include reporting on the three shared “core” performance measures, which remain effectively annual under FHWA’s Highway Safety Improvement Program (HSIP) for each individual year.

Reporting on other performance measures should be reserved for the Annual Report, as provided under the law. States often lack the necessary metrics to offer a complete performance update at the time of Annual Application submission. The law already requires the Annual Report to include updates based on the previous Annual Report. Requiring additional performance reporting in the Annual Report would duplicate State administrative effort.

The Annual Applications would also include any other updates deemed necessary by the State, all of which provide an opportunity for a State to adjust its planning based on changing needs.

Greater transparency in the use of funds can best be achieved with NHTSA successfully transitioning to a national electronic grant management program in the future in which existing state highway safety program information can be aggregated, organized and made available to the public in a user-friendly manner. GHSA supports NHTSA plans for this modernization and the adoption of a system that meets the needs of all users, though we remind the agency of the experience of NHTSA’s unsuccessful Grants Management Solutions Suite (GMSS) that created excessive administrative burdens for both the SHSOs and NHTSA.

Performance Measures

11. Should these measures be revised? If so, what changes are needed?

The IJA directs U.S. DOT to collaborate with GHSA to develop new minimum performance measures. NHTSA and GHSA previously partnered to develop the [Traffic Safety Performance Measures for States and Federal Agencies](#) (2008). These performance measures are due for a re-assessment given how much highway safety has changed since that time. GHSA will not make specific recommendations here. We would urge NHTSA to refrain from making any changes until we can jointly carry out the more thoughtful and collaborative revision process in the future as directed by Congress. GHSA has recommended that NHTSA engage an outside facilitator to manage the effort.

12. Section 24102 of the Bipartisan Infrastructure Law requires performance targets “that demonstrate constant or improved performance.” What information should NHTSA consider in implementing this requirement?

This new provision inserted by IJA, by further divorcing performance management from the data, creates a contradiction in how States are required to manage their performance plans, a point that GHSA communicated to Congress when the legislature was considering the IJA. This conflict is discussed in greater detail below and could lead to confusion and inconsistency. GHSA’s core recommendation to prepare for this provision is for NHTSA and FHWA to convene with the applicable stakeholders to arrive at a shared common understanding for how States should comply with this change before it takes effect. In GHSA’s conversation with State DOT personnel, the knowledge of the impact of this requirement on HSIP is not widely known.

Aside from strict regulatory compliance, States and U.S. DOT are shifting to set more aggressive safety performance goals. GHSA expresses its concern that States may continue to be penalized, chastened or inconvenienced for promoting safety leadership in this regard.

13. What should be provided in the Annual Report to ensure performance target progress is assessed and that projects funded in the past fiscal year contributed to meeting performance targets?

14. How can the Annual Report best inform future HSPs?

The new law delineates the precise contents of the Annual Reports moving forward. Annual Reports will contain an assessment of performance progress, how performance progress aligns with the Triennial HSP, and any State plans to make adjustments. As described below, by limiting the Annual Report contents, the new law provides for the exclusion of some previous NHTSA Annual Report requirements.

Further, the law provides that the Annual Applications following each Annual Report should describe any changes based on that Annual Report.

GHSA would strongly urge against NHTSA establishing additional reporting requirements not provided for in the law, though we do note a potential

exception with a compelling rationale that we discuss in detail in Attachment A.

Attachment A consists of a list of specific recommendations for implementing the IIJA. The recommendations are prioritized but Attachment B contains the list of recommendations in order of appearance in 23 CFR Part 1300. GHSA brings attention to specific provisions in the law that deserve close attention and pre-existing regulatory challenges that we have an opportunity to address. We have intentionally included detailed analysis and discussion to more fully share GHSA's perspective on the issues for those who will be drafting the regulation. We should resolve as many of these administrative issues as we can, up front, so that we can focus on our broader, shared safety goals.

The recent virtual public stakeholder meetings hosted by NHTSA provided an opportunity for many highway safety stakeholders to share their comments. GHSA incorporates its responses to any of those relevant comments through Attachment A.

GHSA is excited to learn that NHTSA plans to avoid issuing an Interim Rule and will instead issue a Notice of Proposed Rulemaking (NPRM), followed by a Final Rule. NHTSA's planned process will provide all stakeholders multiple opportunities to share their perspective.

GHSA supports NHTSA's goal of promulgating the Final Rule by December 31, 2022, as in the months following, States will begin developing their FFY 2024 HSP applications for submission in July 2023 under the new rules.

GHSA repeats its recommendation for NHTSA to establish an effective date for the new Final Rule at the start of FFY 2024 to affect a more orderly transition. Previously starting in the middle of the fiscal year created a lot of confusion and extra work for both NHTSA and the States.

These recommendations encompass GHSA's reflections on how to improve NHTSA's highway safety grant programs in the wake of the IIJA. Our association may share additional input moving forward. Even though NHTSA is launching a formal regulatory process that GHSA is excited to participate in, we are always open and available to discuss how to improve the program.

I hope you will take these recommendations into account as you and your team develop the upcoming NPRM. GHSA strongly values its partnership with NHTSA in highway safety and we look forward to close collaboration to set our program up for success.

Regards,



Chuck DeWeese
Chair, Governors Highway Safety Association

Assistant Commissioner, New York Governor's Traffic Safety Committee

cc: Dr. Steven Cliff, Acting Administrator
Ann Carlson, Chief Counsel

ATTACHMENT A

GHSA Recommendations

1. Triennial HSP Changes and Program-Level Focus

A. Recalibrate NHTSA’s Focus on Programs, Not Projects (23 CFR 1300.11)
GHSA has long argued that the 23 CFR Part 1300 contained several provisions beyond the scope of the FAST Act, or in violation of the spirit conveyed by 23 U.S.C. Chapter 4 to reduce administrative burdens. Heading this challenge is NHTSA’s approach to scrutinize the details of project agreements, which leads to unnecessary micromanagement of State programs.

As amended by the IIJA, 23 U.S.C. 402 (k) (4) requires Triennial HSPs to include, in addition to other elements, a countermeasure strategy (i.e., the State’s programs) that links to performance targets and uniform guidelines, and a description of the funds used. The new 23 U.S.C. 402 (l) requires the new Annual Grant Application to include a list of projects, which would also include certain project agreement information in compliance with the OMB Guidance (and to form the basis for the payment of vouchers) which may be submitted later in the fiscal year as HSP amendments (see below).

23 CFR 1300.11 (d) introduced a new concept of “planned activities” that are distinct from programs and projects. The law does not identify this concept or distinguish it from programs or projects. NHTSA created this category to bridge the gap as States did not (and do not now) always have complete project information at the time of HSP submission.

In the Preamble to 2 CFR Part 1300, NHTSA argued: “In view of the recent Federal statutory change introducing a performance-measures-driven process, States *do* need to identify their planned activities (*i.e.*, types of projects they plan to conduct) in sufficient detail in the HSP to show how they plan to meet their performance targets. The broad program-level descriptions contained in HSPs submitted in earlier years under different Federal authorizing legislation do not provide sufficient information to determine whether a State’s chosen performance targets are reasonable and data-driven.” NHTSA also argued that detailing planned activities assists in substantiating Section 405 initiatives in a single-application format.

The problem with this approach is that it creates a slippery slope of review in which NHTSA has asked for and more detail on State plans before approving State activities. There is no theoretical limit on what NHTSA can ask for and the decision as to whether enough information has been provided is entirely subjective.

The push for more information has also compounded NHTSA oversight tasks. By requiring more detailed information about planned activities in the HSP, NHTSA then had to devote more time to scrutinize HSP amendments to ensure their fidelity to the additional HSP particulars.

NHTSA's additional oversight has not resulted in better safety outcomes. Instead, much of the regulatory conversation between NHTSA and the States has been consumed by administrative matters such as record-keeping, mandatory contract clauses, NHTSA/State communication processes, consistency in regulatory interpretations, State administrative policies and procedures, routine consultant costs, bureaucratic details of federal awards, the origin of product components, and other bureaucratic minutiae, some of which is entirely performative.

The activities that will have a direct impact on safety are largely non-controversial, but discussion of administrative matters takes energy and focus away from their implementation. NHTSA's interpretation of some regulatory requirements has also sometimes resulted in outcomes that are hostile to advancing safety. Examples include limiting expenditures in support of safety conferences, making arbitrary and unsupported suggestions on performance management, and taking literal, constrictive interpretations of statutory text that have prevented program implementation.

The current approach was and continues to be unnecessary, burdensome and unauthorized, and continues to sap focus and resources away from the pursuit of achieving safety performance targets.

NHTSA should shift to an approach that is more faithful to the letter and spirit of the updated 23 U.S.C. 402 (k) (4) requirements for Triennial HSPs. For the purpose of the HSP, States can link programs, countermeasure strategies, performance targets, the funding used, and other necessary elements (including the articulation of the types of projects a State plans to conduct) in a sufficiently robust level of detail at the program level in order for NHTSA to evaluate whether the plan complies with 23 U.S.C. 402 (k) (4).

Rather than assuming so much up-front, open-ended burden to pre-approve State projects, NHTSA should allow States to have more of the responsibility to implement compliant activities. Further, States should face the consequences for non-compliance.

In amending 23 CFR 1300.11 to reflect the new Triennial HSP, GHSA recommends the following changes:

1300.11

(d) Highway safety program area problem identification, countermeasure strategies, planned activities and funding.

(1) Description of each program area countermeasure strategy that will help the State complete its program and achieve specific performance targets described in paragraph (c) of this section, including, at a minimum -

(i) An assessment of the overall projected traffic safety impacts of the countermeasure strategies chosen and of the ~~planned activities-programs~~ to be funded; ~~and~~

(ii) A description of the linkage between program area problem identification data, performance targets, identified countermeasure strategies and allocation of funds to programs planned activities;

(iii) A description of how each countermeasure strategy is informed by NHTSA uniform program guidelines;

(iv) a description of how each program and countermeasure strategy is authorized by federal regulations; and

(v) for each program, estimated amounts for match and local benefit;

(2) Description of each planned activity within the countermeasure strategies in paragraph (d)(1) of this section that the State plans to implement to reach the performance targets identified in paragraph (e) of this section, including, at a minimum—

(i) A list and description of the planned activities that the State will conduct to support the countermeasure strategies within each program area to address its problems and achieve its performance targets; and

(ii) For each planned activity (i.e., types of projects the State plans to conduct), a description, including intended subrecipients, Federal funding source, eligible use of funds, and estimates of funding amounts, amount for match and local benefit.

(3) Rationale for selecting the countermeasure strategy and funding allocation for each program planned activity described in paragraph (d)(~~2~~ 1) of this section (e.g., program assessment recommendations, participation in national mobilizations, emerging issues). The State may also include information on the cost effectiveness of proposed countermeasure strategies, if such information is available.

B. Relationship Between Triennial Highway Safety Plan, Annual Application and Section 405 and 1906 Grants (23 CFR 1300.11, 1300.20)

Currently, States submit an annual HSP that includes information in “Appendix B - Application Requirements for Section 405 and Section 1906 Grants,” which may refer back to information in the HSP.

The IJA, under 23 U.S.C. 402 (k) and (l), as revised, establishes a Triennial HSP and an Annual Grant Application. However, under 23 U.S.C. 405, as revised, Congress provides that for each Section 405 program, “in each fiscal year, [] percent of the funds provided under this section shall be allocated among the states [to carry out the grant],” and provides that the transfer of unallocated Section 405 funding shall occur on an annual basis. Many eligibility requirements for Section 405 grants also remain structured on an annual basis. For example, States conduct annual seat belt surveys to establish annual seat belt use rates that are the basis for Section 405 (b) eligibility.

The “Section 1906” Grant Program To Prohibit Racial Profiling does not indicate that it shall be granted on an annual basis but provides for an annual set-aside from Section 402 and a maximum annual amount to be awarded to any given State.

GHSa recommends that NHTSA resolve these different timeframes in a manner which minimizes application burdens for the States. For the first year of the triennial period, each State shall submit its Triennial HSP that includes the Appendix B that serves its current Section 405 application purpose – a Section 405/1906 application for that year. For years two and three of the triennial plan, States shall submit their Annual Applications. In addition, States should be permitted (in a different segment of Appendix B or a different Appendix) to simply re-apply for previously awarded Section 405 and 1906 grants using an application that allows States to *certify* compliance with some specific eligibility requirements that are likely to remain static, unless the underlying documentation has changed, rather than restating all of the qualification information.

There are many opportunities to reduce the application burdens. For instance, once a State passes a State law, the legislative elements relevant for federal grant eligibility are unlikely to change from one year to another. In addition, if a State has established a statewide issue-specific strategic plan that remains active in another year, the State and NHTSA can save effort if the State just certifies that it is the same, rather than re-submitting it with its application. NHTSA should just require certifications where such a requirement is possible.

States can also commit to carry out multi-year eligibility activities, such as sustained enforcement, training programs and other countermeasures strategies. The new Section 405 (h) program just requires States to describe how they will use the grant funds in order to be eligible, and that description also could be multi-year.

States newly applying for one or more Section 405 or 1906 grants in year two or three of the triennial period would still submit the full qualification information.

C. Annual Application Contents and Review (23 CFR 1300.11)

The IJA added a new 23 U.S.C. 402 (l) to provide for an Annual Grant Application. GHSa is recommending a different due date for the Annual Grant Application that would also apply for the first year of a triennial period under the Triennial HSP (see “3.J. Application Due Dates” below).

23 U.S.C. 402 (l)(1)(C)(i) requires that the Annual Grant Application shall include “such updates as the State determines to be necessary to any analysis included in the triennial highway safety plan of the State;”. GHSa would flag that Congress directs that the State, not NHTSA, shall determine what additional analysis might be necessary.

23 U.S.C. 402 (l)(1)(C)(ii) requires “an identification of each project and subrecipient to be funded by the State using the grants during the upcoming grant year, subject to the condition that the State shall separately submit, on a date other than the date of

submission of the annual grant application, a description of any projects or subrecipients to be funded, as that information becomes available;”. This refers to a project list consistent with the OMB Guidance to collect information that forms the foundation for vouchers.

GHSA also recommends that the Annual Application for year two and three include a performance plan for each of those fiscal years for the common performance measures, an approach discussed in full under “4.A. Performance Measurement Timeframes” below.

Based on the language of the IIJA, GHSA recommends the following requirements:

23 CFR 1300 (New)

The Annual Grant Application shall consist of the following components:

- (i) A list of each executed or signed project agreement that includes –
 - (A) an identification of the subrecipient;
 - (B) a classification of the project under a program area to demonstrate alignment with the triennial HSP;
 - (C) the project agreement number, subrecipient, amount of Federal funds by funding source, and the eligible use of funds;
- (ii) a description of the means by which any programs or countermeasure strategies in the Triennial Highway Safety Plan were adjusted and informed by the previous Annual Report;
- (iii) a performance plan consistent with 23 CFR 1300.11 (c) for the common performance measures for that fiscal year as described in 23 CFR 1300.11 (c)(2)(iii);
- (iv) any such updates as the State determines to be necessary to any analysis included in the triennial highway safety plan, including the performance plan; and
- (v) an application for any additional grants available to the State.

It is not the intent of Congress for NHTSA to comprehensively evaluate and approve every State project or subrecipient. The review of project-level information in the Annual Grant Application is not an invitation for NHTSA’s systematic and granular surveillance of State expenditures on each project’s individual merits. NHTSA can and should identify problematic proposals when they see them, but the agency should focus its review of project information on compliance with OMB guidance and fidelity to the Triennial HSP.

2. HSP Approvals and Amendments

A. Additional Information for HSP Review (23 CFR 1300.14)

The IIJA updates 23 U.S.C. 402 (6) to provide that U.S. DOT may “request a State to submit to the Secretary such additional information as the Secretary determines to be necessary to review the triennial highway safety plan of the State.” GHSA would note that this is limited to the Triennial HSP, not the Annual Grant Application or the Annual Report. It is current common practice for NHTSA to request clarifying details

in the process of evaluating an HSP or other application information. GHSA acknowledges that this new language is open-ended but we warn against this provision being a slippery slope to undue micro-management of State programs.

B. Amendments to the Triennial Highway Safety Plan (23 CFR 1300.32)

The IJA creates a new distinction between the Triennial HSP and the Annual Grant Application. What we currently consider HSP amendments related to project information would most likely fall under the future Annual Grant Application. However, States may rarely need to make changes to Triennial HSPs. The experience of 2020, when pandemic-related cancellations had significant program impacts, shows that some flexibility is warranted for major, unanticipated changes.

GHSA recommends that States be permitted to submit Triennial HSP amendments in between other applications when a State must suddenly eliminate or add a program or countermeasure strategy described in State's Triennial HSP.

C. Clarifying Amendments Requiring NHTSA Approval (23 CFR 1300.32)

States will continue to benefit from the ability to make amendments regarding project information under the new Annual Grant Application framework. The IJAA provides for this. Currently, 23 CFR 1300.32 (b) provides that States shall amend their HSPs prior to project performance to provide certain project agreement information (project agreement number, subrecipient, amount of Federal funds, and eligible use of funds) if it has not already been provided. These elements are based on requirements in the OMB Guidance and for the purpose of paying vouchers. GHSA recommends that this concept be extended in the next rule.

NHTSA guidance - [HSP Amendment Review Implementation](#) - dated August 15, 2018, has further clarified the requirements under this section to require HSP amendments for any changes from the HSP in these project agreement elements, as well as any change in the scope or objective of a given planned activity. Regarding the estimated amount of funding, the guidance established a threshold for change of 10% or \$500,000, whichever is less. The guidance also provides that NHTSA Regional Administrators should approve or disapprove amendments as soon as possible and not later than five business days after receipt.

GHSA and NHTSA collaborated to develop this important 2018 guidance to achieve greater consistency in HSP amendment procedures. GHSA urges NHTSA to update 23 CFR 1300.32 to incorporate the general approach of the 2018 guidance.

D. The Nature of HSP Amendment Review (23 CFR 1300.32)

The project agreement elements included in HSP amendments are identified based on requirements in the OMB Guidance and for the purpose of paying vouchers. GHSA recommends that this concept be extended in the next rule.

This sharing of project agreement information should not be an invitation for NHTSA to systematically apply comprehensive, granular scrutiny to approve or disapprove individual projects on their individual merits.

States have also experienced frustration with NHTSA approving programs or planned activities in the HSP only to ultimately disapprove a project based on an HSP amendment. By this time, the State has worked with a subrecipient to plan a project and develop a project agreement. In several cases, GHSA believes that NHTSA has incorrectly disapproved a project based on their misinterpretation of regulatory requirements. Challenges along these lines are discussed throughout this document but it is creating unneeded disorder in the highway safety grant program. States need to be able to rely on NHTSA's regulatory decisions.

E. HSP Amendment Approval Delays (23 CFR 1300.32)

Though HSP amendments are typically expediently addressed by NHTSA, sometimes they are not. SHSOs have experienced frustration at having to delay project implementation for weeks or months while amendment approvals are being resolved. Even for novel or ambiguous situations that may require the involvement of NHTSA headquarters staff, NHTSA counsel, a more formal appeals process, or input from our association, we need to shorten the postponement of important safety projects.

GHSA believes the deadline of five business days, as provided in NHTSA's 2018 HSP Amendment Review Implementation, is appropriate for NHTSA's first response to an HSP amendment. NHTSA should adopt this deadline. Five days, however, is likely be too short for all the involved parties to work together to resolve more thorny regulatory issues, though the experience of six months is also not reasonable. GHSA suggests that NHTSA commit to resolve any HSP amendment within 30 days after the State first submits the amendment to NHTSA.

F. The Need for Additional Appeals (23 CFR 1300.36)

The appeals process remains, unfortunately, an important aspect of grant administration. Even with detailed grant regulations, the implementation of grants produce novel, unforeseen or ambiguous situations that require review by different levels of NHTSA leadership.

In this context, NHTSA has often issued decisions regarding the administration of grants that deny the implementation of valuable safety programs and increase administrative burdens for the States. There is also a clear historical and ongoing pattern of mis-regulation by NHTSA Regions. NHTSA Regional Offices have ruled differently from each other on the same matters. NHTSA Regional Offices have been found to be request States to submit information in contradiction to existing regulation or NHTSA policy. NHTSA Regional Offices have authorized expenditures that later turned out to be unallowable (with the States holding the bill). NHTSA Regional Offices have also made regulatory judgements that were found to be incorrect. States have struggled to navigate NHTSA oversight and to piece together a clear, consistent totality of grant requirements.

Because of this experience, GHSA recommends that NHTSA amend this section (23 CFR 1300.36) to provide for a formal process for a State to appeal a decision of the

Associate Administrator, Regional Operations and Program Delivery, regarding the administration of grants, to the NHTSA Administrator.

GHSA also recommends that NHTSA clarify that NHTSA decisions in a formal appeals process should be transmitted formally in writing, not over the phone or via an informal email message. If NHTSA staff are confident of their interpretations, they should be able to document them in a transparent way.

G. “Prompt” Response to HSP Questions (23 CFR 1300.14)

23 CFR 1300.15 (a) requires States to respond “promptly” to requests for additional information in the course of the HSP evaluation. GHSA had previously expressed concern for the ambiguity of this language. The IIJA established a new provision under 23 U.S.C. 402 (6)(B)(iii) that establishes a window of seven business days for States to respond to any requests for information. GHSA urges NHTSA to adopt this timeline as general practice so that States have enough time to fully develop any responses.

3. Section 402 Reauthorization Changes

A. New State Highway Safety Program Requirements (23 CFR 1300.11)

The IIJA added new administrative requirements for highway safety programs. 23 U.S.C. 402 (b)(1)(B) will now require that State programs “provide for a comprehensive, data driven traffic safety program that results from meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities;”.

GHSA offers recommendations for how States can demonstrate public participation and engagement from affected communities. States are already engaging in these activities but in different ways. All States have a different landscape of communities and different staff and funding resources they can bring to bear to provide for public and community participation. NHTSA guidance in this respect is needed but NHTSA’s approach should be to promulgate high-level requirements and leave each State the flexibility they need to develop its own unique approach to compliance.

In communities where safety programs are to be implemented and where fatalities and injuries are the greatest (above a defined fatality/injury threshold), States should be required to demonstrate a minimum investment in “meaningful public participation and engagement” – which could include, but be not limited to, public meetings, in person and online listening sessions, meetings with community leaders, public surveys, input from local government or community officials who are demonstrably representative of affected communities, or otherwise providing the opportunity for the public to share its comments with the State. States are best suited to determine how to best engage the communities they serve.

These processes could be organized by the State or subrecipients, or groups of subrecipients. It may not even be organized by the SHSO but could be a multidisciplinary effort led by a State Department of Transportation or another

agency, as long as the SHSO can articulate how the information is taken into account as part of its highway safety planning.

Though States must articulate a good-faith effort to facilitate meaningful public participation and engagement, the volume of public comments or engagement that a State generates in this process should not be a necessary metric for compliance or success. Though States or subrecipients may provide reasonable opportunities for participation, they cannot compel the public or other stakeholders to participate, similar to how SHSOs cannot compel other agencies to collaborate on program assessments and other broad-ranging efforts.

It is also important to note that States will likely continue to put significant credence on data-driven problem identification. Areas with a high volume of crashes, deaths, injuries, and safety data generated are not always identical to what may be considered “underserved” communities, particularly in rural areas. States would intend to continue to strike an effective balance with the limited resources available.

We anticipate that the inclusion of this new requirement will lead to States gathering useful perspectives that SHSOs will successfully integrate into highway safety planning efforts. Further, best practices and lessons learned will undoubtedly spread from State to State over time, leading to a long-term sense of what is most effective and practicable.

23 U.S.C. 402 (b)(1)(E) will now require that State programs:

- “(E) as part of a comprehensive program, support—
 - (i) data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety; and
 - (ii) data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities;”

The SHSOs are already considering steps in line with these new requirements to reduce disparities and promote equity in traffic enforcement programs. GHSA’s 2021 report [*Equity in Highway Safety Enforcement and Engagement Programs*](#) recommends that States encourage broader community involvement and welcome new voices to help shape highway safety planning, and that States promote the collection and analysis of racial data for every traffic stop.

GHSA offers recommendations for ways States can demonstrate compliance with these related IIIA requirements.

The demonstration of “community collaboration” should be identical to the efforts described immediately above to substantiate “public participation and engagement.” An effort carried out above may be used for compliance with this requirement. While the efforts above may be carried out in areas with the most deaths and injuries, demonstration of “community collaboration” would be required as part of any program to fund direct traffic safety enforcement efforts. “Community collaboration”

may be carried out by or in partnership with law enforcement subrecipients, or it may be carried out by the State if the State can articulate how the effort is applicable to all enforcement programs Statewide.

The IIIA requires States to demonstrate support for “traffic enforcement data collection, analysis and transparency.”

Many States have existing traffic stop data collection programs, though most of them are not operated by the SHSO. Further, we anticipate that many States will launch new programs to advance equity in highway safety due to the attention brought to this valuable tool, these new IIIA requirements, and separate changes to the existing Section 1906 grant program to expand grant eligibility and allowable use.

However, the aggregation of law enforcement traffic stop data faces significant ongoing practical barriers.

As in other areas of highway safety, SHSOs cannot compel all local law enforcement agencies to provide traffic stop race information if it is not mandated by their State. The availability of the small amount of NHTSA grant funding typically available to an individual subrecipient agency will be insufficient to prompt that agency to voluntarily make the necessary changes, which could include changes in procedure, paperwork, technology and officer training.

SHSOs have no influence over law enforcement agencies that are not subrecipients. Should current law enforcement subrecipients face a mandate from the SHSO to provide such information, a significant number would likely simply decline to participate in any grant-funded highway safety activities at all. This would be a tremendous blow to the ability of the national program to achieve highway safety performance targets.

The aggregation of information, generally in any context, from local law enforcement agencies nationwide remains difficult. Currently, the U.S. Department of Justice aims to collect basic crime data, including impaired driving arrests. States also aspire to share data about impaired driving offenses to prevent offenders from moving from jurisdiction to jurisdiction to obscure prior offenses. Both of these efforts continue to be frustrated with incomplete datasets and inconsistent participation.

Some States face explicit existing policy barriers that would prevent the implementation of traffic stop data collection. As in other areas, SHSOs face lobbying restrictions that limit their ability to change State laws regarding these practices.

States also face cost barriers. The expanded Section 1906 program will provide for new traffic stop data collection initiatives in the States, but it will be insufficient to provide for the universal collection of this data.

Ultimately, any higher level data collection among law enforcement agencies will need to be aided by a higher-level federal mandate or incentive in the justice arena on

the federal or state level, as well as funding investments beyond what is available in NHTSA’s highway safety grant programs.

Other stakeholders can take action to better facilitate traffic enforcement data collection. For instance, traffic stop data that relies on officer observation is suspect. The inclusion of race and/or ethnicity on the driver’s license or in driver license records, which is usually self-reported by the driver’s license holder, would help bring more rigor, but state licensing agencies are not moving in this direction. Altering driver’s license values can involve control and expense levels beyond the means of SHSOs. For example, some States have efforts underway to integrate the designation of gender “x” on driver’s licenses, but these have proven very costly.

Given this environment, GHSA recommends that NHTSA defines the State compliance threshold for 23 U.S.C. 402 (b)(1)(E)(2) as providing for the acceptance and use of law enforcement data that can be provided to the SHSO or another custodian of a State’s traffic stop data collection efforts. The State should then articulate how this data collection effort “informs traffic enforcement policies, procedures, and activities.” The law does not require data to be collected on all traffic stops, even though that remains a goal that the nation could work toward in time.

The widespread adoption of this practice will be a long-term, iterative process. The imposition of broad mandates today upon all law enforcement subrecipients under this future rulemaking would not achieve its overall objective and would undermine current highway safety efforts nationwide.

B. Local Benefit Active Voice (Appendix C)

Appendix C outlines regulations regarding local participation and local benefit. Under paragraph (c)(3) funds expended by a State agency may be considered part of local share when the State can credibly demonstrate that local agencies have an active voice in the initiation, development, and implementation of the programs in question, requested the program, or accepted the benefits. States must maintain evidence of consent and acceptance of the work, goods or services. This is only needed when a State might fail to reach the full 40 percent using just funds granted directly to local jurisdictions.

The challenge is that States collaborate with hundreds of individual local government subrecipients. Soliciting written records that comprise evidence of local benefit, even if it is just a single, short letter, has taken months in some cases. Requiring all of this documentation before a project is implemented has led to unreasonably lengthy delays.

GHSA recommends that NHTSA clarify that local benefit can be documented above the individual subrecipient level. For example, if a State has a Statewide or regional law enforcement leadership association whose members comprise all sheriffs or police chiefs in the State or region, including all of those who represent law enforcement subrecipients, the leadership of that association should be able to collectively and formally request or consent and accept the benefits of relevant State

highway safety programs. Similarly, if a State has a Statewide association of local governments, or similar government associations, similar allowances should be made. It would be incumbent on the State to robustly articulate how a given representative body is credibly representative of local beneficiaries and how their engagement reflects the implementation of multiple local highway safety programs. Such a step could significantly reduce State compliance burdens and delays to program implementation.

C. Communications Initiatives as Local Benefit (Appendix C)

A common element of program implementation is highway safety mass media – print, billboards, radio, television, and social media – especially in support of high visibility enforcement campaigns. These communications blanket local areas and contribute to carrying out local highway safety program. States cannot currently apply any of these expenditures as local benefit without documented demonstration of local active voice as described above. Nonetheless, States may be able to track specific metrics to show how these efforts are closely coordinated with local program implementation, such as the date, time, location, duration of the communications.

GHSA urges NHTSA to amend Appendix B to permit States to apply State-sponsored communications efforts to local benefit if States can robustly demonstrate such efforts contribute to local highway safety programs.

D. Focus on Child Passenger Safety in Underserved Populations (23 CFR 1300.13)

The IJA established a new 23 U.S.C. 402 (a)(2)(A)(iii) directing States to comply with a future NHTSA uniform guideline “to encourage more widespread and proper use of child restraints with an emphasis on underserved populations;”. Like how States identify the basis for classifying populations as “at risk” under 23 CFR 1300.21(d)(3)(B), States should be permitted to identify “underserved populations” and articulate their rationale.

E. Motorcycle Helmet Awareness Studies (23 CFR 1300.13)

Sec. 4007 of the FAST Act provides that a State may not use federal funding for any program to “check [motorcycle] helmet usage.” NHTSA has interpreted this to prohibit the use of funds for motorcycle helmet observational surveys. GHSA sent a [letter](#) to NHTSA dated February 27, 2018 that articulated the wider context of the underlying legislation to provide relief from motorcycle-focused enforcement, not to prevent innocuous observational research conducted by civilians that has demonstrable value for data-driven highway safety planning. NHTSA issued [guidance](#) on June 26, 2018 upholding the application of 23 CFR 1300.13 (b) to ban the use of federal funds for observational helmet surveys.

GHSA urges NHTSA to reconsider its ruling given the wider legislative and highway safety context. Motorcyclist fatalities far exceed what should be expected given their VMT. NHTSA should demonstrate leadership on this topic and empower States to at least collect data to document the problem:

§ 1300.11

Prohibition on use of grant funds to check for helmet usage. Grant funds under this part shall not be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists, except that grant funds may be used for the collection and administration of a motorcycle helmet use observational survey.

F. Unattended Passenger Awareness (23 CFR 1300.13)

The IIJA created a new 23 U.S.C. 402 (o) which requires States to use “a portion” of Section 402 funding to carry out a program to educate the public about unattended passengers and help fight this tragic epidemic of unattended children dying in vehicles. Both NHTSA and some States are already taking action to address this crisis.

GHSA urges NHTSA to provide a measure of flexibility in meeting this requirement and that States only be required to expend at least enough federal funding to implement a sound countermeasure strategy. GHSA urges NHTSA not to set a specific required minimum expenditure.

Available [data](#) on pediatric vehicular heatstroke presents a heterogenous national footprint. Most of these incidents occur in the southern part of the country where average temperatures are higher; many States in the northern part of the country experience few or no such incidents. We also have a sense that this data is incomplete and possibly underreported as heatstroke incidents are not typically captured in crash data. NCSA is exploring the expansion of non-crash data collection that should help us better understand this challenge. Today, however, the implementation of a full unattended passenger awareness program may not be supported by normal data-driven problem ID.

Many of the States most challenged by problem ID are lower-apportionment States that already have fewer Section 402 funds to divert away from other more pressing highway safety challenges.

To address these limitations, GHSA also recommends that States be allowed to carry out such education campaigns as part of larger community engagement efforts that may involve other topics as well. State initiatives on unattended passengers can be a part of expanded highway safety outreach into new or underserved communities.

G. Directives for States that have Legalized Marijuana (23 CFR 1300.13)

The IIJA creates a new 23 U.S.C. 402 (a)(3) that requires States that have legalized marijuana to “take into consideration” programs to educate drivers on marijuana-impaired driving risks, and other programs to address marijuana-impaired driving. All States have efforts underway to address drug-impaired driving and should have no trouble articulating compliance with this requirement.

H. NHTSA’s Grant Determination Chart (Other Highway Safety Grant Matters)

NHTSA continues to publish its helpful Grant Determination Chart showing deficiencies that made State ineligible for awards for each fiscal year and is now applying an IJA requirement to include “all” State deficiencies.

GHTSA will encourage all States to apply for grants in the first years of the authorization in order to establish which States are and are not eligible and help the safety community identify the shortcomings.

GHTSA also recommends that NHTSA provide the optional ability in Appendix B for States to indicate why they may not apply for Section 405 grants so that it can be included in the Grant Determination Chart. Currently, the chart lists “Did Not Apply” for such States but there are many reasons why this might be. As the FAST Act authorization period progressed, the chart presented less and less useful context to help users understand the grant application landscape. GHTSA suggests that NHTSA amend Appendix B to allow States to optionally select from a list of all the potential reasons for not applying for each grant, which could include:

- Not eligible per Federal criteria
- Was not awarded in a previous year
- Program area not supported by Problem ID

I. Planning and Administration (P&A) Cost Threshold (23 CFR 1300.13)

23 CFR 1300, which took effect in 2018, increased the maximum federal contribution to P&A costs from 13% to 15%. In the ensuing time, States continue to face inflation costs and constant pressure to invest in technological innovation, in grant management and innovation, in traffic records, to provide for remote work, and advance in other program areas. Further, we anticipate future technological demands in order to interface with future evolutions in NHTSA electronic systems. GHTSA requests that NHTSA update this section and Appendix D to increase the P&A maximum to 18% to account for these needs.

J. Application Due Dates (2 CFR 1300.12)

The IJA directs that Triennial HSPs be due on July 1, continuing the current practice, but directs U.S. DOT to establish the due date of the Annual Grant Application.

Today, many States do not have complete project information by July 1 and instead submit HSP amendments afterward. GHTSA recommends that NHTSA establish that Annual Grant Applications be due on August 31 of each year to provide States more time to aggregate the necessary information. This date would also align with the due date for annual HSIP reports, which may benefit some SHSOs that are also involved in administering HSIP. Note that this would not prevent any States from submitting their Annual Grant Applications earlier or at the same time as the Triennial HSP if they elect to do so.

K. Automated Enforcement Guidelines (23 CFR 1300.13)

GHTSA is pleased that the IJA removed the requirement for a biennial automated enforcement survey and allows the use of federal funds for automated enforcement programs in school and work zones. 23 U.S.C. 402 (c)(4)(D) does require that any

federally-funded automated enforcement program comply with U.S. DOT guidelines on speed enforcement and red light camera systems.

U.S. DOT has published its [Red Light Camera Systems Operational Guidelines](#) (2005 – 91 pages) and [Speed Enforcement Camera Systems Operational Guidelines](#) (2008 – 62 pages). The size and complexity of either respective guide likely provide a significant disincentive for most States to attempt to create a program that U.S. DOT would consider “compliant.” Nonetheless, GHSA supports the use of automated enforcement programs, which have been proven to lead to positive safety outcomes. Rather than “purchase, operate, or maintain” such systems, SHSOs may begin more assertively advocating more for their adoption on the safety merits. GHSA would urge U.S. DOT to collaborate with the States and other stakeholders to update both resources or create new, simpler guidelines for the purpose of compliance with 23 U.S.C. 402 (c)(4)(D).

L. Aggregate Match (Other Highway Safety Grant Matters)

On August 13, 2019, GHSA published its guidance [Non-Federal Share](#), which clarified the standard for States to calculate aggregate Match. The IIJA created the new 23 U.S.C. 406 (c), which codifies a new Match rule that “the aggregate of the expenditures made by the State (including any political subdivision of the State),” excluding P&A, shall count towards an aggregate Match.

M. Cross-Border Initiatives (23 CFR 1300.13)

The IIJA amended 23 U.S.C. 402 (c)(1) to add a provision authorizing the use of highway safety funds for purposes that benefit neighboring States:

“(B) NEIGHBORING STATES.—A State, acting in cooperation with any neighboring State, may use funds provided under this section for a highway safety program that may confer a benefit on the neighboring State.”

Several States already engage in coordinated cross-border highway safety initiatives that may involve interstate public campaign communications. GHSA recommends that NHTSA define a “conferred benefit” under this section to mean any activity in support of the neighboring State’s highway safety program.

4. Performance Management

A. Performance Measurement Timeframes (23 CFR 1300.11)

Currently, each State establishes annual performance targets, common performance measures (fatality, fatality rate, and serious injuries) reported in the State’s HSIP annual report, as coordinated through the State Strategic Highway Safety Plan (SHSP) and other minimum performance measures.

The IIJA amended 23 U.S.C. 402 (k)(4) to provide that “with respect to the 3 fiscal years covered by the [Triennial HSP], based on the information available on the date of submission” each State shall include qualifying performance measures and performance targets. However, the bill did not alter the annual nature of HSIP performance reporting.

To resolve these differing timeframes, GHSA recommends that the common performance measures remain on an annual basis while the remaining performance measures for NHTSA programs be permitted to be generated in the Triennial HSP for the three-year period. For each performance measure, States would establish three separate performance targets for years one, two, and three based on data available during the development of the Triennial HSP.

Then, each Annual Application for year two and three would include a small performance report to convey common performance measures for those years, as described in “1.C. Annual Application Contents and Review” above. States may also elect to change anything in the Triennial HSP performance plan.

Progress towards meeting each performance target for each year, whether the common performance targets established annually or the other performance targets projected for three years in the Triennial HSP, will be evaluated in each fiscal year’s Annual Report.

B. Performance Target Setting (23 CFR 1300.11)

The IIJA amended 23 U.S.C. 402 (k)(4)(A)(ii) to indicate that performance targets must “demonstrate constant or improved performance.” GHSA communicated to Congress (and NHTSA may agree) that a prohibition on “regressive” performance targets would further divorce performance management from the data. The conflict is evident directly in the text as the next clause creates an almost contradictory requirement. 23 U.S.C. 402 (k)(4)(A)(iii), requires “a justification for each performance target, that explains why each target is appropriate and evidence-based;”.

From a legislative redline (new IIJA text underlined):

“(4)(A) performance measures required by the Secretary or otherwise necessary to support additional State safety goals, including—
 (i) documentation of current safety levels for each performance measure;
 (ii) quantifiable performance targets that demonstrate constant or improved performance for each performance measure; and
 (iii) a justification for each performance target, that explains why each target is appropriate and evidence-based;”

GHSA considers this matter to be one of its top priorities and we envision a substantial potential for confusion and inconsistency.

Subsequently, and because this impacts common performance measures with State DOTs, GHSA urges NHTSA and FHWA to convene with the applicable stakeholders to arrive at a shared common understanding for how States should comply with this change. NHTSA and FHWA should also collaborate to make all of those involved in the HSIP program more aware of how this change impacts the shared core performance measures.

This change is occurring in a wider context in which the U.S. DOT has adopted a national goal of zero fatalities in its NRSS, at least two States have adopted a goal of zero fatalities for formal performance measurement, and States and communities nationwide are exploring the use of more aggressive safety performance targets.

However, the discussion about safety targets does not match how their use is evolving. Aggressively-set targets are more likely to exceed what has historically been regarded as data-driven and less likely to be met. Nonetheless, States may face substantive “penalty” requirements for not meeting a target under the HSIP. State progress toward meeting targets is increasingly compared and contrasted, despite differences in how targets are set. A State that fails to meet a target may be considered a disappointment, even if that target is highly aspirational. Ultimately, while the performance system may inform program decisions on the macro level, SHSOs and their partners go to work every day to save as many lives as possible, regardless of any formal targets.

In short, GHSA believes we as a safety community, as well as federal policymakers, could benefit from continued dialogue on how we get on the same page on what the performance management system should mean and how we can use it to promote the most constructive incentives for everyone in the safety community.

C. HSP Performance Reporting (23 CFR 1300.11)

In October 2019, the U.S. Government Accountability Office released its report [*Improved Reporting Could Clarify States’ Achievement of Fatality and Injury Targets*](#), which brought attention to a number of issues in how States report on safety performance.

23 U.S.C. 402 (k)(4)(E) requires that HSPs include “a report on the State's success in meeting State safety goals and performance targets set forth in the most recently submitted highway safety plan;”. However, some States have not had the most recent performance data ready for inclusion in the HSP by its due date. The report cites a 24-month delay in the finalization of federal data. States face similar postponements. The report concluded that States face ambiguity on which target years should be assessed for performance and recommended that NHTSA provide “direction and clarification to States to ensure compliance with requirements to assess and report progress made in achieving fatality targets.”

GHSA recommends that NHTSA requirements should reflect the actual experience of performance reporting and States should be able to assess performance in the HSP based on the latest data available.

§ 1300.11

(c) *Performance report.* A program-area-level report, [based on the data available at the time of submission](#), on the State's progress towards meeting State performance targets from the previous fiscal year's HSP.

5. Annual Reports

A. Revised Annual Report Requirements (23 CFR 1300.35)

For the first time, the IIJA codified the requirement for States to submit an Annual Report by adding the new 23 U.S.C. 402 (1)(2). Under the new law, Annual Reports are required to contain only:

- “(A) an assessment of the progress made by the State in achieving the performance targets identified in the triennial highway safety plan of the State, based on the most currently available Fatality Analysis Reporting System data; and
- (B)
 - (i) a description of the extent to which progress made in achieving those performance targets is aligned with the triennial highway safety plan of the State; and
 - (ii) if applicable, any plans of the State to adjust a strategy for programming funds to achieve the performance targets.”

The new law omits some current Annual Report requirements listed in 23 CFR 1300.35, including:

- “(b) A description of the projects and activities funded and implemented along with the amount of Federal funds obligated and expended under the prior year HSP;
- (c) A description of the State's evidence-based enforcement program activities;
- (d) Submission of information regarding mobilization participation (e.g., participating and reporting agencies, enforcement activity, citation information, paid and earned media information);
- (e) An explanation of reasons for planned activities that were not implemented;”

NHTSA should eliminate these as Annual Report requirements, except for subsection (d) regarding mobilization information. States are already collecting the information and are willing to continue to provide it in the current orderly fashion, which should entail minimal burden.

GHSA also notes the new 120 day deadline after the end of the fiscal year, rather than 90 days, which should make compliance with this requirement easier for the States and resolve many of the existing challenges around the current deadline.

6. Section 405 Reauthorization Changes

A. Maintenance of Effort

GHSA is pleased that Congress has eliminated all Maintenance of Effort (MOE) requirements for Section 405 programs. Through NHTSA has been prohibited from enforcing MOE requirements for several years, States are still technically required to calculate and maintain on file MOE under the current Part 1300 through FY 2023. Whether within a regulatory notice, guidance or otherwise, it would be helpful for NHTSA to remind States whether or not, and how, previously calculated MOE may be relevant for any future NHTSA oversight.

B. § 1300.21 Occupant protection grants.

I. Defining Low-Income and Underserved Populations (23 CFR 1300.21)

The IIJA amended 23 U.S.C. 405 (b)(4)(A) to expand allowable use to focus child passenger safety programs for low-income and underserved populations. Like how States identify the basis for classifying populations as “at risk” under 23 CFR 1300.21(d)(3)(B), States should be permitted to identify “low-income and underserved populations” and articulate their rationale. These classifications may differ from State to State.

C. § 1300.22 State Traffic safety information system improvements grants.

I. Changes to Grant Eligibility and Allowable Use (23 CFR 1300.22)

Congress has made significant changes to this grant program to streamline grant eligibility requirements, including:

- Removing the traffic records assessment as a mandatory requirement for grant eligibility; and
- Providing that States shall certify the existence of a traffic records coordinating committee, traffic records coordinating committee coordinator, and a State traffic record strategic plan.

Congress has also removed problematic guardrails around allowable use. Throughout the FAST Act period, States have experienced hardship using traffic records grant funding due to the previous limitations on allowable use.

GHSA would specifically flag the new provision the IIJA adds in 23 U.S.C. 405 (c)(4)(B) which are meant to specifically liberalize the purchase of equipment that aids the collection of traffic records data at the point of collection – e-citation and e-crash equipment for officers.

GHSA anticipates that NHTSA will revise its January 29, 2019 guidance [23 U.S.C. Section 405c Expenditures Program Clarification](#) to be consistent with the changes in NHTSA’s new regulations.

D. § 1300.23 Impaired driving countermeasures grants.

I. Statewide Impaired Driving Task Force (23 CFR 1300.23)

1300.23 (e) requires mid-range and high-range States to provide certain information to demonstrate the convening of a Statewide impaired driving

task force. States must include in the HSP the statutory authority to convene the task force and a comprehensive roster of task force members.

Since this information is already included in the Statewide impaired driving plan, that the statutory authorization and the makeup of State Task Forces typically persist from year to year, and given the tenured nature of this requirement, GHSA recommends that States be only required to certify to this information in the HSP application if it is already listed in the impaired driving plan.

GHSA also recommends that NHTSA provide a means for States to demonstrate the convening of a non-statutorily established impaired driving task force. States can establish and maintain a highly functioning task force without a legislative directive.

II. Training Backfill as a Direct Expense (23 CFR 1300.23)

One of the significant barriers to geographical penetration of officers receiving specialized drug recognition training is the duration of training that takes an officer out of regular duty. This is especially acute for the Drug Evaluation and Classification Program to produce certified Drug Recognition Experts (DREs). According to the International Association of Chiefs of Police DRE training entails 72 hours of classroom instruction, usually localized in a given State, and 40-60 hours of field certifications which frequently involves extended travel to a different State.

Some jurisdictions, typically those in rural areas, have fewer sworn officers covering a larger geographic area. Regular duties during a shift will entail not just traffic enforcement but potentially all aspects of full-service policing. The law enforcement leadership may be willing to approve DRE training if not for the gap the officer would leave for well over 100 hours.

SHSOs fund DRE training and GHSA has broached this challenge to DRE coverage with NHTSA for several years. On August 13, 2019, GHSA published its guidance [Paying for Law Enforcement and Prosecutors' Activities](#), which clarified that funding may be spent for time spent on grant-related activities (including compensation of defined fringe benefits), but not full positions or individuals. Further, funding may be spent for officer compensation during grant-eligible training. The guidance specifically clarified that the “cost of replacing the law enforcement officer [for non-grant-eligible expenses] who is away from duties while at training is not an eligible training cost.”

The August 2019 guidance explains that the OMB Guidance under 2 CFR 200.444 provides that federal funds may not be used for activities considered “general costs of government” unless specifically allowed under Federal statute or regulation. Most SHSO activity could arguably be classified as “general costs of government” as highway safety is a government service that

State of local governments normally provide to the public. What is permitted are the “direct costs” – the various allowable uses articulated in 23 U.S.C. Chapter 4 and 23 CFR 1300.

The August 2019 guidance provides an example of a direct cost in the impaired driving area. 23 U.S.C. § 405(d) specifically allows the hiring an impaired driving coordinator, traffic safety resource prosecutors, and judicial outreach liaisons. “Under exceptions such as these, it is permissible to create a project agreement and reimburse for a full-time salaried position, including fringe benefits, provided documentation confirms the position is dedicated full-time to the grant.”

The IIJA amended 23 U.S.C. 405 (d) (4) (b) to authorize new allowable uses of these grant funds for:

“(iii) court support of impaired driving prevention efforts, including—

....

(II) training and education of those professionals to assist the professionals in preventing impaired driving and handling impaired driving cases, including by providing compensation to a law enforcement officer to carry out safety grant activities to replace a law enforcement officer who is receiving drug recognition expert training or participating as an instructor in that drug recognition expert training; and”

GHSA urges NHTSA to follow through and adopt a policy to allow the use of Section 405 (d) funding to temporarily replace officers in DRE training or serving as a DRE instructor, including funding for compensation for officers who are not involved in grant-eligible activities.

GHSA acknowledges that such expenditures may skirt the outer envelope of allowability and proposes some safeguards to ensure that these applications are strictly limited and responsibly applied:

- Such expenditures should be rigorously supported by problem ID.
- The statute itself limits expenditures to replacing officers specifically in DRE training or serving as a DRE instructor in training, so these costs should only be eligible during this timeframe, which States and the subrecipient agency can estimate in advance and document.
- The August 2019 guidance highlighted additional conditions that the OMB Guidance provides that States should consider:
 - Compensation should be consistent with the grant recipient’s established written policies;
 - Hours of work should be documented; and
 - Fringe benefits can be included but only in proportional share.

III. New Technological Approaches (23 CFR 1300.23)

Some States have expressed a sense of ambiguity whether they can spend federal funding in support of oral fluid testing programs and other leading edge technological applications to address impaired driving that may often not yet be considered “proven effective countermeasures” under 23 CFR 1300.

The IIJA has amended 23 U.S.C. 405 (d)(4) to list a number of new allowable uses for novel roadside and laboratory toxicology solutions, investigatory and case management systems, offender monitoring technologies, and more. We urge NHTSA to support the testing and implementation of these initiatives with the highway safety grant program.

IV. Ignition Interlock Grant (23 CFR 1300.23)

The IIJA added new eligibility requirements to this grant that should allow more States to qualify based on their ignition interlock laws. One such requirement is that States have both a law requiring interlocks for test refusals and a compliance-based removal program that requires a period of compliance without an interlock program violation.

GHSA notes that the statute does not require that the compliance-based removal be a State law. Rather, it may just be an administrative program requirement. The statute also does not define what constitutes a program violation and neither should NHTSA. Rather, States have established a range of typical program violations that include but are not limited to failure to install an interlock, tampering or circumvention, test failure or avoidance, unauthorized removal and many more. States may consider additional violations and future new best practices may emerge. GHSA would urge NHTSA not to limit State eligibility with a restriction that may be difficult to update.

V. Eligibility for 24/7 Sobriety Grant (23 CFR 1300.23)

The IIJA amended 23 U.S.C. 405 (d) (7) to allow States that have a State law authorizing a “local” 24/7 sobriety program in order to qualify for this grant. Extending the current requirements for State 24/7 programs, NHTSA should require States to submit a legal citation to a State statute, in accordance with Appendix B, to qualify.

E. § 1300.24 Distracted driving grants.

I. Grant Allocation (23 CFR 1300.24)

The IIJA makes a number of complex changes to this grant. GHSA’s interpretation is that 50% of 23 U.S.C. 405 (e) funds shall be automatically distributed to all States but may only be used in accordance with 23 U.S.C. 405 (e)(8). The remaining 50% shall be distributed among States with qualifying State distracted driving law: a qualifying texting ban, a handheld ban, OR a teen wireless ban. Eligible States that prohibit a driver from viewing a wireless device while driving shall receive an extra 25% of their apportionment. Otherwise, States with primary enforcement laws shall receive

100% of their apportionment. States with any secondary laws shall only be eligible to receive 50% of their apportionment. This is clearly a complex subject and GHSA looks forward to NHTSA’s elucidation.

G. § 1300.27 Nonmotorized safety grants.

I. Changes to Allowable Use (23 CFR 1300.27)

The IIJA made a number of changes to 23 U.S.C. 405 (g), as re-designated, to address barriers to implementing programs with these funds. Congress expanded the definition of “nonmotorized road user” to include not just pedestrians and bicyclists but other non-motorized users for whom these programs are also often relevant.

During the FAST Act era, States faced barriers to using nonmotorized safety grants because the text of the statute limited use of funds for programs strictly related to State laws on bicycle and pedestrian safety. Of course, not all States have such laws. The IIJA expands allowable use for this program beyond those limitations to include a range of new potential safety expenditures.

7. HSP Clarifications

A. Analysis and Description of State Traffic Safety Enforcement Programs (TSEP)
(23 CFR 1300.11)

23 CFR 1300 (d)(5) requires that State HSPs include an evidence-based TSEP. This section also requires States to provide a number of details to explicate such programs that are beyond requirements provided for in federal statutes, including an analysis of crash data and enforcement deployment and the monitoring of law enforcement subrecipients effectiveness.

The IIJA eliminated U.S.C. 402 (b)(1)(E), which required State highway safety programs to provide for a data-driven TSEP. In the Final Rule for 23 CFR 1300, NHTSA cited 23 U.S.C. 402(b)(F)(ii) requiring States to have “sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits,” but this is among a list of requirements for which States are only required to provide “satisfactory assurances,” not detailed data analyses and a comprehensive report. NHTSA also argued that this information is required for various Section 405 programs and that the former NHTSA GMSS would reduce burdens. However, not every State receives Section 405 funding and GMSS is now defunct.

As such, GHSA urges NHTSA to:

- Eliminate 23 CFR 1300 (d)(5);
- Simply require States to provide its assurance in Appendix A to Part 1300 that the highway safety plan provides for sustained enforcement under 23 U.S.C. 402(b)(F)(ii); and
- Include any Section 405 requirements under their separate respective rulesets.

Any activities funded as part of a TSEP should be subject to the same requirements as any other activities.

B. Signature Pages (Appendix B)

States are required to submit a completed and signed copy of Appendix A and B for their respective grant applications. We have been experiencing errors in pagination and page number references since States must secure physical signatures and then bundle the document back in. GHSA requests that NHTSA format Appendix A and B so that each signature page appears on its own separate page. This would help streamline internal State approval of the applications and reduce the potential for formatting errors.

C. Definition of “Countermeasure Strategy” (23 CFR 1300.3)

In the FAST Act Final Rule, NHTSA amended the definition (1300.3) of “Countermeasure” strategy to include “innovative countermeasures” as well as additional requirements (1300.11(d)(4)) for States to justify the use of innovative countermeasures.

A longstanding problem has been the attachment of a “countermeasure strategy” to traffic records programs. The new 10th edition of Countermeasures That Work does not include a section on traffic records. NHTSA should amend the definition of “countermeasure strategy” to clarify its applicability to traffic records programs

§ 1300.3

“*Countermeasure strategy* means a proven effective or innovative countermeasure proposed or implemented with grant funds under 23 U.S.C. Chapter 4 or Section 1906 to address identified problems and meet performance targets, or to support the development and implementation of effective State programs to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the State safety data that is needed to identify priorities for Federal, State, and local highway and traffic safety programs. Examples of proven effective countermeasures include high - visibility occupant protection enforcement, DUI courts, or alcohol screening and brief intervention programs.”

D. Description of Non-Federal Funding Used (23 CFR 1300.11)

The IJA eliminated a requirement in 23 U.S.C. 402 (k)(4)(D) for States to include in the HSP a description of “State, local, or private” funds that the State plans to use to carry out its countermeasure strategy. Some States may include this for informational purposes or to place federally-funded programs in context, but it should no longer be mandatory.

E. Quarterly HSP Updates (23 CFR 1300.32)

NHTSA has recently suggested that States update their HSPs quarterly to integrate all HSP amendments into an up-to-date version of the application. Some States may have the administrative capability to re-consolidate their HSP up to four times a year, but many States do not have the staff or the time to tackle such a significant burden. As

such steps would be clearly burdensome, take resources away from program implementation and have no positive impact on highway safety, NHTSA should not make such a requirement without congressional authorization. A future electronic grants management platform should be able to manage this consolidation automatically, as did the former GMSS. In the meantime, if there is a need to aggregate a complete HSP, States should continue the current practice of States separately submitting HSP amendments, which the NHTSA Region can append to the end of each active HSP.

F. Reasons for Unexpended Balances (23 CFR 1300.41)

States typically maintain a balance of unexpended funds for three substantial reasons:

- States have faced consistent challenges programming Section 405 funding due to guardrails that Congress has established on how the money can be spent.
- U.S. Congress has consistently failed to pass the full federal budget on time before the expiration of any given fiscal year. Rather, the federal budget for the year has been divided up by Continuing Resolutions. NHTSA subsequently delivers funds to States in incomplete parts. This is beyond NHTSA’s control but the end result is that States cannot rely on the timely receipt of federal funds. Thus, many States purposefully keep assets in reserve to ensure that they can make ends meet between the gaps.
- States have also experienced problems with NHTSA’s oversight of the grant program. States assume risk implementing programs approved by NHTSA that NHTSA may later find retroactively unallowable. Having some additional funds ensures that States can still implement other programs as planned.

NHTSA and the States have established clear expectations for unexpected balances based on statutory requirements and we ask for NHTSA’s ongoing partnership to manage these challenges.

G. NHTSA Communications with the States (23 CFR 1300.41)

States have experienced inconsistency in how NHTSA has contacted States regarding unexpended funds. Sometimes NHTSA has contacted a State’s Governor’s Representative but not the director of the SHSO. All communications regarding State administration of grants under this section, including unexpended balances, should include the director of the SHSO.

8. 23 U.S.C. 403

A. Increase in Funding for BTSCRCP (23 U.S.C. 403)

The IIJA increases the annual set-aside for the Behavioral Traffic Safety Cooperative Research Project (BTSCRCP) from \$2.5 million to \$3.5 million. GHSA is excited for this increased investment in behavioral research and looks forward to our ongoing partnership to administer this valuable program.

B. Support for DADSS Program and Forthcoming Rulemaking on Passive Alcohol Detection Technology (23 U.S.C. 403)

GHSA is pleased that the IIJA extends and increases funding that supports the Driver Alcohol Detection System for Safety (DADSS) initiative. GHSA further supports the IIJA provision to promulgate a new rule requiring all new vehicles to be equipped with passive alcohol detection technology to prevent impaired driving. Some States have been able to support DADSS on-road testing. GHSA believes that technological solutions will be critically important to help address impaired driving and we encourage NHTSA to expedite the process of new rulemaking.

C. Recall Awareness Competitive Grants (23 U.S.C. 403)

The IIJA authorizes \$1.5 million for U.S. DOT to competitively award grants to States for programs to increase vehicle recall awareness. Some SHSOs are already piloting recall awareness programs with non-federal funding, and our members are excited to support the wider goal of recall awareness.

D. Innovative Highway Safety Countermeasures (23 U.S.C. 403)

The IIJA directs NHTSA to evaluate the effectiveness of innovative behavioral traffic safety countermeasures, other than traffic enforcement, that are considered promising or likely to be effective for the purpose of enriching revisions to “Countermeasures That Work.” States rely on this resource for selecting countermeasure strategies in their HSPs. While enforcement-oriented strategies are well-validated, many other kinds of countermeasures have not been sufficiently evaluated. GHSA supports this effort, which could be an opportunity to pursue in the BTSCRCP.

9. 23 U.S.C. 154 and 164

A. Expanded Impaired Driving Focus (23 U.S.C. 154 and 164)

GHSA and other highway safety partners collaborated with Congress to expand allowable use under these two programs beyond alcohol-impaired driving. As NHTSA is aware, many impaired driving crashes involve the use of other drugs and multiple impairing substances and there are opportunities to apply these resources to more holistically address the impaired driving challenge. GHSA’s understanding is that this change has already taken effect.

10. Safe Streets and Roads for All Program

The IIJA creates a new, ground-breaking program for U.S. DOT to competitively distribute funding directly to localities to implement vision zero programs. GHSA supports vision zero initiatives to comprehensively address traffic fatalities. GHSA’s members intend to collaborate, as applicable, with local government awardees to coordinate the implementation of SHSO-funded programs and new local initiatives supported by this new U.S. DOT effort. GHSA urges NHTSA, through its Regional Offices, to keep GHSA and the SHSOs current on this program’s progress.

11. Miscellaneous NHTSA Guidance

In addition to new regulations to administer the NHTSA highway safety grant program, GHSA also recommends that NHTSA separately develop and issue

guidance on additional matters to bring more clarity to program requirements and oversight.

A. Advertising Guidance

NHTSA’s Advertising Guidance – [Guidance for States Using Section 402 Funds for Purchasing Advertising for Highway Safety Messages](#) – dates from 2013. In the meantime, States have experienced conflicts with whether law enforcement approaches must be coordinated with all highway safety advertising efforts, and whether high visibility enforcement campaigns can be combined with other messaging within the same campaign. GHSA encourages NHTSA to review his Guidance and make appropriate updates.

C. Guidance on Payback of Federal Funds

After being found to have made unauthorized or unallowable expenditures, States sometimes have to pay back federal funds. However, States do not perceive the circumstances of payback to be consistent nationwide. GHSA urges NHTSA to create and distribute to GHSA and the States a written baseline set of options for reference when the payback of federal funds becomes necessary to reduce the perception of inconsistent resolution.

C. Guidance on NHTSA File Review Procedures

NHTSA’s Regional staff conduct periodic State project file reviews, usually at least quarterly. This practice allows the Region to review projects on a timelier basis for the SHSO to make adjustments for compliance rather than NHTSA waiting three years for the required Management Review. The procedures that NHTSA uses to carry out project file reviews remains obscure. GHSA urges NHTSA to create and share with GHSA and the States formal written procedures for file reviews so that States understand what to expect and what their responsibilities are.

D. NHTSA Highway Safety Grant Guidance

In 2013, NHTSA last revised its [Highway Safety Grant Funding Guidance](#). Some of the content in the guidance has since been incorporated into regulation or addressed in subsequent guidance. However, there are still items within that deserve reconsideration. GHSA asks that NHTSA examine the document and clarify or re-affirm the applicability of certain directives that have not been already addressed elsewhere, such as the purchase of alcohol for grant-related purposes, costs of facilities and logistics in relation to meets and conferences, various rules surrounding equipment and training costs, and more. At the very least, since the Guidance dates from 2013, States could benefit from a reminder.

E. Appendix B Checklist

During the annual HSP and Section 405 grant approval process, NHTSA has typically found that certain information is missing for their required analysis of a State’s qualifications for most Section 405 programs. Although the NHTSA Appendix B lists some of the required information elements, it does not include all of them, which can cause a State to overlook a given element. This results in an exchange of emails and/or calls between the State and the NHTSA Region or NHTSA HQ to obtain the

needed information. GHSA urges NHTSA to create a complete qualification checklist for each applicable Section 405 program to assist States in developing and providing the required information. This would save time and effort for both NHTSA and the States.

ATTACHMENT B

GHSA Recommendations in 23 CFR Part 1300 Order

Subpart A - General 1300.1 – 1300.5

§ 1300.3 Definitions.

Definition of “Countermeasure Strategy”

Subpart B - Highway Safety Plan 1300.10 – 1300.15

§ 1300.11 Contents.

Recalibrate NHTSA’s Focus on Programs, Not Projects

Relationship Between Triennial Highway Safety Plan, Annual Application and Section 405 and 1906 Grants

New State Highway Safety Program Requirements

Description of Non-Federal Funding Used

Performance Measurement Timeframes

Performance Target Setting

HSP Performance Reporting

Annual Application Contents and Review

Analysis and Description of State Traffic Safety Enforcement Programs (TSEP)

§ 1300.12 Due date for submission.

Application Due Dates

§ 1300.13 Special funding conditions for Section 402 Grants.

Planning and Administration (P&A) Cost Threshold

Focus on Child Passenger Safety in Underserved Populations

Directives for States that have Legalized Marijuana

Motorcycle Helmet Awareness Studies

Automated Enforcement Guidelines

Unattended Passenger Awareness

Cross Border Initiatives

§ 1300.14 Review and approval procedures.

Additional Information for HSP Review

“Prompt” Response to HSP Questions

Subpart C National Priority Safety Program and Racial Profiling Data Collection Grants
1300.20 – 1300.28

§ 1300.20 General

Relationship Between Triennial Highway Safety Plan, Annual Application and Section 405 and 1906 Grants

§ 1300.21 Occupant protection grants.

Defining Low-Income and Underserved Populations

§ 1300.22 State Traffic safety information system improvements grants.

Changes to Grant Eligibility and Allowable Use

§ 1300.23 Impaired driving countermeasures grants.

Statewide Impaired Driving Task Force

Training Backfill as a Direct Expense

New Technological Approaches

Ignition Interlock Grant

Eligibility for 24/7 Sobriety Grant

§ 1300.24 Distracted driving grants.

Grant Allocation

§ 1300.27 Nonmotorized safety grants.

Changes to Allowable Use

Subpart D Administration of the Highway Safety Grants 1300.30 – 1300.36

§ 1300.32 Amendments to Highway Safety Plans - approval by the Regional Administrator.

Amendments to the Triennial Highway Safety Plan

Clarifying Amendments Requiring NHTSA Approval

The Nature of HSP Amendment Review

HSP Amendment Approval Delays

Quarterly HSP Updates

§ 1300.35 Annual report.

Revised Annual Report Requirements

§ 1300.36 Appeals of written decision by a Regional Administrator.

The Need for Additional Appeals

Subpart E Annual Reconciliation 1300.40 – 1300.43

§ 1300.41 Disposition of unexpended balances.

Reasons for Unexpended Balances

NHTSA Communication with the States

Appendix A to Part 1300 Certifications and Assurances for Highway Safety Grants (23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, as Amended by Sec. 4011, Pub. L. 114-94)

Appendix B to Part 1300 Application Requirements for Section 405 and Section 1906 Grants

Signature Pages

Appendix C to Part 1300 Participation by Political Subdivisions

Local Benefit Active Voice

Communications Initiatives as Local Benefit

Other Highway Safety Grant Regulation Matters

NHTSA's Grant Determination Chart

Aggregate Match

23 U.S.C. 403

Increase in Funding for BTSCR

Support for DADSS Program and Forthcoming Rulemaking on Passive Alcohol Detection Technology

Recall Awareness Competitive Grants

Innovative Highway Safety Countermeasures

23 U.S.C. 154 and 164

Expanded Impaired Driving Focus

Safe Streets and Roads for All Program

Miscellaneous NHTSA Guidance

Advertising Guidance

Guidance on Payback of Federal Funds

Guidance on NHTSA File Review Procedures