

May 21, 2022

Barbara Sauers
Acting Associate Administrator, Regional Operations and Program Delivery
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Request for Comment on Uniform Procedures for State Highway Safety Grant Programs (NHTSA-2022-0036)

Dear Ms. Sauers:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide general comments on the National Highway Traffic Safety Administration's (NHTSA) request for comments (RFC) on Uniform Procedures for State Highway Safety Grant Program, published in the Federal Register on April 21, 2022.

In alignment with the Governors Highway Safety Association (GHSA), AASHTO encourages NHTSA to review the comments of the State agencies responsible for the existing Highway Safety Plans and traffic safety performance measures, as well as the forthcoming Triennial Highway Safety Plans and Annual Grant Applications. These are key elements of States' behavioral traffic safety programs and entail significant coordination of these plans and measures with other traffic safety activities within each State. We encourage NHTSA to focus its valuable guidance to States at the program level and to ensure that implementation of the Infrastructure Investment and Jobs Act (IIJA) allows for effective collaboration among State traffic safety programs and alignment of program goals and schedules.

The National Roadway Safety Strategy and its foundation, the Safe System Approach, will be implemented most effectively when the multiple layers of protection include behavioral approaches, such as enforcement and education, in addition to infrastructure-based, public health, post-crash care, and other strategies. To that end, coordinated safety planning for behavioral and infrastructure safety programs, in particular the State activities for the Highway Safety Grant Program and Highway Safety Improvement Program (HSIP), should have similar objectives and timelines. AASHTO encourages NHTSA to implement GHSA's recommendations related to States' development and submission of performance targets and Annual Grant Applications for all three years of the Triennial Highway Safety Plans. AASHTO also encourages NHTSA to minimize any additional workload on State agencies due to new timelines for plans and applications, to allow staff to maximize their efforts on their traffic safety programs.

AASHTO and State departments of transportation (DOT) are committed to incorporating equity, diversity, and inclusion in all aspects of transportation. A fundamental value in AASHTO's strategic plan is advancing equity and social justice to ensure transportation policies provide safety, mobility and access to everyone. The AASHTO Board of Directors unanimously passed an equity resolution that includes a pledge to use more effective public engagement processes, especially in historically underserved communities, to enhance decision-making processes. Similar to GHSA, we are committed to enhancing

community engagement and to promoting and investing in the proven data-driven traffic safety programs in ways that will eliminate disparities, ensure transparency, and most importantly, save lives of all road users.

As stated in the NHTSA RFC, the IIJA makes several important changes to the Highway Safety Plans (HSP) that created significant conflicts between parts of the United States Code (USC) and between the USC and the Code of Federal Regulations (CFR). Specifically, AASHTO has identified three areas of conflict created because of the identical target requirement between the Highway Safety Improvement Program (HSIP) and HSP that are described below. The NHTSA RFC did not address these conflicts and AASHTO wants to ensure that USDOT is taking the necessary steps to resolve the conflicts that were created by the IIJA.

First, the HSIP regulation 23 CFR §490.209(a)(1) and HSP regulation 23 CFR §1300.11(c)(2)(iii) mutually require State DOTs establish identical targets annually for each performance measure identified in 23 CFR §490.207(a). Currently there are three “in common” performance measures between the HSIP and HSP. As noted in the RFC, 23 U.S.C. §402(k) now requires a triennial HSP and 23 U.S.C. §402(k)(4) specifically states the triennial HSP content shall span the three years of the plan. This creates a conflict between the requirement for the HSIP annual targets to be established annually (23 U.S.C. §148, 23 U.S.C. §150, and 23 CFR §490) and the HSP triennial plan content to span the three-years covered by the plan.

Second, Congress and the USDOT repeatedly use terminology such as 23 USC §402(k)(6)(c)(i)(I) “the plan and the performance targets contained in the plan are evidence-based and supported by data,” 23 CFR §490.209(a)(2) “State DOT targets shall represent the performance outcomes anticipated for the calendar year following the HSIP annual report date, as provided in 23 CFR §924.15,” and 23 CFR §490.209(a)(3) “State DOT performance targets shall represent the anticipated performance outcomes for all public roadways within the State regardless of ownership or functional class.” Under revisions to 23 U.S.C. §402(k)(4)(A)(ii), effective October 1, 2023, the HSP performance targets are to “demonstrate constant or improved performance.” This creates a conflict within sections of 23 USC §402 and related Title 23 CFRs that require targets be established to reflect “anticipated performance outcome” through evidence-based analysis supported by data demonstrating if that data-supported analysis identifies a declining performance.

Third, it is important to recognize that Congress has imposed both a financial penalty and a consequence if a State DOT has not made significant progress toward meeting the safety performance targets established under section 23 U.S.C. 150(d) in implementing the HSIP requirements. Congress did not impose a similar penalty upon the State Highway Safety Office for implementing the HSP. AASHTO is concerned that the requirement to have identical targets from the regulation and the new requirement that HSP targets be either showing improvement or performance staying constant, that State DOTs will be further limited in their ability to demonstrate making significant progress and will have to address the consequence of not achieving their targets which can be burdensome to the States and take away from their ability to deliver safety projects and programs.

Because these conflicts were not specifically addressed within the NHTSA RFC, AASHTO will be working its member departments to develop more specific recommendations on how to best disentangle the identical target requirements. AASHTO will transmit these recommendations to NHTSA and FHWA. AASHTO’s comments will focus upon two themes that are consistent with previous comments we have submitted:

- Targets Must Be Established by State DOTs—AASHTO still believes that the current regulation should more clearly vest target establishment authority in States. The current regulation requiring identical targets results in HSIP targets needing NHTSA’s approval and is not aligned with 23 U.S.C. §150(d)(1), which provides States with target establishment authority not subject to FHWA approval.
- Ensure Evidence-Based Targets—State DOTs should be able to implement innovative safety projects and establish aggressive performance targets in their HSPs without fear of Congressional established penalties that are imposed when States do not meet or make significant progress toward meeting these targets. State DOTs should have flexibility to establish safety targets that have performance holding steady, or in some situations declining, and are consistent with evidence-based and data-supported realities present in their States. In effect, the changes to 23 U.S.C. §402(k)(4)(A)(ii) to constrain HSP performance targets, therefore, to constrain in common HSIP performance targets, to demonstrate constant or improved performance is in direct conflict with Congressional and USDOT requirements to establish evidence-based and data-supported performance targets and creates an ethical dilemma upon State DOTs with a financial penalty and consequence.

The State DOTs will be affected most significantly by the changes discussed in the RFC and the changes included in the IJA if the safety targets are not met. States will have to develop implementation plans for meeting safety targets in the future and there will also be limitations on how certain funding can be spent. In the current constrained financial environment, this could have a significant impact on the ability of State DOTs, working with our local partners, to deliver needed projects. It is important the USDOT continue to work collaboratively with the infrastructure owners and operators on the implementation of the IJA provisions and we welcome the opportunity to collaborate with USDOT to examine current federal regulations and to determine how best to disentangle the identical target requirement between the HSIP and HSP through modification of 23 CFR §490.209(a)(1) and HSP regulation 23 CFR §1300.11(c)(2)(iii).

Thank you for the opportunity to provide these comments. If you would like to discuss the issues raised in this letter, please contact Kelly Hardy, P.E., AASHTO’s Senior Program Manager for Safety at (202) 624-5868 or khardy@aaashto.org.

Sincerely,



Shawn D. Wilson, Ph.D.
President, American Association of State Highway and Transportation Officials
Secretary, Louisiana Department of Transportation and Development