



October 26, 2022

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National Highway Traffic Safety Administration (NHTSA)
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Dear Barbara,

Thank you for the opportunity to respond to this request for comments on the Notice of Proposed Rulemaking (NPRM) for the Uniform Procedures for State Highway Safety Grant Programs under Docket No. NHTSA–2022–0036. As you know, the Governors Highway Safety Association (GHSA) 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.

GHSA congratulates NHTSA on drafting and issuing the extensive NPRM in a timely manner. This was a significant undertaking and GHSA appreciates the effort and coordination involved. We recognize how NHTSA has thoughtfully translated many Infrastructure Investment and Jobs Act (IIJA) requirements, and GHSA recommendations, into the proposed regulations that effectuate many changes that aim to streamline grant applications, increase grant eligibility and expand allowable use.

The NPRM also presents new regulatory requirements that present major changes for State programs. Below, GHSA identifies these challenging areas and in some cases requests further NHTSA clarification and State support.

Finally, GHSA is disappointed that the NPRM contains some new requirements that are not supported by the statute and that impose unreasonable burdens on States that will impede the implementation of critical safety programs. This is especially unfortunate in a time of increasing traffic fatalities.

In Attachment A below, GHSA addresses these elements in their order of appearance in the NPRM. We also include specific recommendations for NHTSA to consider incorporating into the forthcoming Final Rule.

GHSA and NHTSA have long discussed the objective of completing a Final Rule by the end of calendar year 2022. In the NPRM, NHTSA suggests that the agency may not be able to meet this objective due to constraints imposed by the Administrative Procedures Act.

NHTSA is aware that the planning process for the 2023 Highway Safety Plan has already begun in some States. Further, the NPRM creates new requirements related to problem identification and program planning that States must incorporate early in the Highway Safety Plan (HSP) planning cycle. We thank NHTSA for its acknowledgement of the circumstances and its commitment to expedience. We look forward to a completed rulemaking as soon as possible.

The NPRM reflects a drafting approach in which NHTSA rewrote and replaced the entire extensive body of rules. However, this may obscure important changes. In reviewing the rules, States may overlook important elements that could be embodied in something so brief as a changed or added clause or a deleted word – changes that may be easily missed. When NHTSA does issue a Final Rule, or following thereafter, GHSA urges NHTSA to also release a supplemental “red-lined” or “tracked changes” resource indicating, word for word, how the Final Rule will update the current 23 CFR Part 1300.

We hope you will take these recommendations into account as you and your team develop the upcoming Final Rule. As always, even though this rulemaking is part of a formal regulatory process, GHSA is open and available to discuss any of our recommendations or other strategies to improve NHTSA’s grant program.

GHSA strongly values its partnership with NHTSA in highway safety, to implement the IIJA and to implement the U.S. Department of Transportation’s National Roadway Safety Strategy (NRSS). We look forward to close collaboration to set our programs up for success.

Regards,



Barbara Rooney
Chair, Governors Highway Safety Association
Director, California Office of Traffic Safety

cc: Ann Carlson, Acting Administrator
Lauren Stewart, Chair, GHSA Federal Relations Committee, and Director, Maine
Bureau of Highway Safety

ATTACHMENT A

Preamble

Section II.D. Transparency: Standardized Template for National E-Grant System

NHTSA requests comment on developing a standardized template, codified as an appendix to this regulation, that States could use to provide information in a uniform manner similar to what might be provided in a future e-grant application. GHSA recommends against creating a separate application “template” at this time via this rulemaking. Such a project would be a major undertaking in itself. A future e-grants system will not be ready for the first Triennial HSP period. States and NHTSA should be focused on the immediate transition at hand. The NPRM lays out a new, complex program structure that States will need to understand and adapt to, much less to also transition to a new application process. Any future template, or associated e-grants system should conform to the regulatory requirements in force at the time. The template will need to take into account how SHSO staff interact with the e-grant interface. Whether to codify the template may be revisited in the future, but generally establishing such a template in the regulation may make it difficult to update it if changes are needed.

Section III, B.4. Performance Plan: Performance Target Setting Considerations

The general global framework for performance management has been a topic of considerable conversation among GHSA’s members and some of our partners. GHSA will discuss specific related requirements under 23 CFR Part 1300 below, but there is frustration that even though States create and implement programs in pursuit of progress on performance measures and data-driven targets, the immediate utility of the performance system has been consistently diminishing. Many states count changes in fatalities and crashes in single digits and while such a small change may mean the difference between achieving or not achieving a target, it is not always clear what changes a State should consider in its highway safety program. Day to day, SHSO staff are in pursuit of maximum safety impact on an ongoing basis, regardless of any performance outcomes.

NHTSA explained why it disagrees that State targets should focus only on variables within the control of SHSOs. GHSA offers its own further comment on why this deserves further discussion. The performance measures, as they exist today, are by definition beyond the full control of SHSO efforts. SHSOs are in practice mostly focused on preventing the behavioral causes of crashes. State transportation engineers are typically focused on preventing crashes caused by unsafe roadways. Other stakeholders implement programs to address other crash types or outcomes. But the shared core performance measures – fatalities, series injuries and fatalities per 100M VMT – reflect efforts to prevent all crash types. This results in a sense that SHSOs at least are being evaluated on outcomes over which they have limited control.

Even though SHSOs do not currently face “penalties” for failing to meet performance goals, NHTSA should acknowledge that those failures still reflect poorly on State programs and under NHTSA regulations, would require additional State analysis and planning efforts. And while failure to meet performance goals does not result in a “sanction” or loss of funding from the HSIP program, the additional administrative steps are a “penalty” of sorts. This is especially problematic in an environment where States are increasingly pressured or forced to set aggressive performance targets that deviate from data-driven analysis.

This rulemaking process is focused on establishing the discrete program requirements to apply for and use NHTSA grants, but there is a higher order challenge with the current performance system. GHSA looks forward to an ongoing discussion with NHTSA and our partners, such as during the future reconsideration of minimum performance measures, to ensure that performance management can become more meaningful for State planning and that all incentives align more coherently with our shared lifesaving mission.

Section IV. National Priority Safety Program and Racial Profiling Data Collection

GHSA previously recommended that NHTSA create a Section 405 checklist to help States prepare Section 405 applications. In the Preamble, NHTSA declined to do so, directing States instead to Appendix B. GHSA still believes there may be value in creating a separate checklist, but it would not be included in the regulation. GHSA resolves to separately continue the conversation with NHTSA about future guidance or resources.

Triennial HSPs

23 CFR 1300.3 *Definitions*

1. “Countermeasure Strategy for Programming Funds.” NHTSA defines the term but uses just the word “countermeasure” in many places within the regulation seemingly, or possibly, referring to a “countermeasure strategy for programming funds.” Please clarify if there is a reason or a distinction.
2. NHTSA continues the definitions of “Program Area” and “Project” but within those definitions, it references the “Highway Safety Plan”. GHSA suggests that it appears these both should refer to the “triennial highway safety or annual grant application.”

1300.11(b)(4) *Use of Non-Federal Funds*

In the Preamble in Section II.D. Transparency, NHTSA describes how it plans to post State highway safety program information online, including a description of non-federal funding sources. However, elsewhere in the Preamble, NHTSA describes how the IJA removed the requirement to describe non-Federal funds that the State intends to use to carry out countermeasure strategies in the Triennial HSP. NHTSA has

drafted proposed text accordingly. GHSA asks that NHTSA confirm that non-federal sources of funding are not required to be submitted but that NHTSA will post any such information it receives as required under the new 23 U.S.C. 402 (n).

1300.11 (1) (b)(2) *Public Participation and Engagement.*

1. *General.* The new requirements for public participation and engagement present a number of planning challenges for which States need to prepare. This represents an entirely new element of developing highway safety applications and for tasks to be incorporated into highway safety programs. While many States are already carrying out some of these activities, they are not necessarily doing so as systematically and universally as will now be required. States have also not had to include detailed descriptions in the HSP. GHSA appreciates NHTSA's responsiveness to provide States with flexibility. We do have some remaining concerns with the requirements as described in the NPRM and can offer some recommendations below.
2. *Training and Guidance.* Given the new requirement, GHSA recommends that NHTSA prioritize how the agency can help States plan, implement, analyze and report on community engagement. For instance, on October 13 U.S. DOT released [*Promising Practices for Meaningful Public Involvement in Transportation Decision-Making*](#), which contains helpful content. FHWA has also provided other support for public engagement in its programs. Many States likely have successful initiatives but information about those efforts may not be effectively shared. GHSA would be interested in collaborating with NHTSA to support States in this respect.
3. *Efforts for FY2024.* As discussed above, NHTSA may not promulgate the Final Rule by the end of 2023, by which time many States will already have begun their highway safety planning process. Many States will need to have Triennial HSPs in relatively final form by April or May for internal State approval.

Under a literal reading of the requirements under 1300.11 (b)(2), States would have to not only plan but also carry out and report on engagement efforts for the first Triennial HSP. The anticipated engagement efforts will be considerable, and it is unreasonable to expect that States will be able to fully complete them in the time available.

GHSA requests that due to the collective timing challenge that NHTSA make a one-time allowance to better accommodate the schedule jointly faced:

1. NHTSA should make the requirements applicable to the first Triennial HSP to only require a State to submit:
 - a. Its starting goals and the identification of communities per 1300.11 (b) (2)(i)(A) and (B);

- b. Initial community engagement steps that a State may be able to undertake as described under 1300.11(b)(i)(C) but not necessarily to a complete extent; and
 - c. A description of plans to carry out the remainder of the engagement activities to meet the full requirements of 1300.11 (2) after the Triennial Plan is submitted.
- 2. NHTSA would direct States to report on the results of the State’s engagement efforts under 1300.11 (b)(2)(ii) in the year two Annual Grant Application, as well as describe any resulting adjustments to countermeasure strategies, as is already required under 1300.12 (b) (1)(i).
- 3. This allowance would be for this first Triennial period and only impact the first Triennial HSP and second year Annual Grant Application within that Triennial period.
- 4. *Community Participation Plan.* NHTSA describes how Title VI of the Civil Rights Act of 1964 (Title VI), as implemented through DOT Order 1000.12C, requires that recipients of Federal funding submit a “Community Participation Plan.” Later, NHTSA suggests that the “public participation and engagement” plan required in the Triennial HSP under 1300.11 (b)(2) fulfills this requirement. If this is so, we urge NHTSA to clarify this requirement to definitively state whether there is a separate document that must be submitted or kept on file.
- 5. *Compliance Requirements.* In previous recommendations to NHTSA about these new requirements, GHSA alluded to adopting a “procedural” focus for compliance. We believe NHTSA has embraced this in spirit but there still may be further clarification opportunities.

Since this will entail a new substantial descriptive element of the Triennial HSP, many States have expressed concern about how it should be described, such as the statement of goals under 1300.11 (b)(2)(i)(A).

One concern is the question of how much engagement effort is appropriate. The capacity for public engagement is in a sense bottomless but clearly the intention is not to wholly deplete federal funding on meetings about safety without actually implementing any programs. States might have the option of organizing community engagement efforts using the level of geographical or demographic stratification of programs and projects (such as projects involving a local government agency that represents a defined political subdivision) expressed elsewhere in its Triennial HSP and Annual Grant Application. Some programs and projects may not fit this model. As NHTSA has noted, some efforts do not have well-defined geographic barriers. Some projects might be a step removed from the public, such as projects to support State toxicology for impaired driving prevention. Some projects may apply completely statewide. In these cases, States might design an effort to engage the anticipated audience for that program. While NHTSA may be reluctant to detail specifics, States (and NHTSA) would benefit from establishing a sense of what parameters might be acceptable and if there are any predictable tactics that may be problematic from a compliance perspective.

Ultimately, the major concern is that the consideration of these elements in a subjective environment might result in State or Regional misinterpretation.

6. *Plans for Three-Year Period.* NHTSA proposes that as part of its description of public participation efforts that States also specifically describe their public participation plans during the Triennial period.

While the SHSOs are supportive of increasing public engagement, this requirement hints at an ambiguous level of ongoing effort that could raise compliance questions in the future.

23 U.S.C. Section 402 (b) (1) (B) requires States to provide for “a program”, suggesting that public participation and engagement requirements should be in support of program- or countermeasures strategy-level planning embodied principally in the Triennial HSP. Further, the project information listed in the Annual Grant Application does not include public participation and engagement considerations.

GHSAs urge NHTSA to clarify that States do have flexibility to make changes beneath the program or countermeasure strategy-level without the input of public engagement required under 1300.11 (b)(2). Congress did not intend for there to be an expectation that an SHSO be unable to take any action without public input, nor that NHTSA require individual projects to hinge totally on public outreach activities.

For the requirement to describe public participation plans for the entire Triennial period under 1300.11 (2)(iii), NHTSA should clarify that this refers to efforts in support of programs and countermeasure strategies, or the subsequent Triennial HSP.

7. *Participant Compensation.* In the Preamble in Section III, B.3. Public Participation and Engagement, NHTSA discusses the question of whether States would be able to compensate members of the public or others that participate in new SHSO public participation and engagement efforts. GHSA expects that most States are generally not considering compensating such participants but there is a need for specific clarification by NHTSA on the allowance of or restrictions on this practice.
8. *Use of Federal Funding.* More generally, NHTSA’s description in the Preamble of what is allowable calls into question whether any NHTSA grant funding may be used to support public participation and engagement efforts in general. This includes the steps described in 23 CFR 1300.11 (b) (2), such as formulating engagement strategies and goals, identifying relevant communities and implementing engagement activities. Given that these tasks are framed as part of the highway safety planning process and will be required to be included in detail in the Triennial HSP, States should be able to leverage federal funds, just as States

may otherwise leverage federal funds to support HSP development. We urge NHTSA to clarify how these purposes will be considered allowable as long as they are otherwise consistent with 23 CFR Part 1300, 2 CFR Part 200, and any other relevant Federal and State laws or rules.

1300(b)(3)(1) *Constant and Improving Performance Targets*

The NPRM contains the new IIJA requirement that performance targets demonstrate constant or improved performance. NHTSA's comments on this in the Preamble in Section III, B.4. Performance Plan accurately describe how a State should set a data-driven performance target, as they do today. However, NHTSA has not articulated how States can set a data-driven target if the evidence and analysis conclude that an appropriate target would not demonstrate constant or improved performance.

NHTSA notes that a "State should consider different countermeasure strategies or adjust funding levels." In practical terms, States cannot necessarily bring the necessary resources to bear. States do not have an unlimited menu of NHTSA-acceptable countermeasures. Nor do they have unlimited budgets. States are required to effectively invest in the entirety of their safety portfolio and States with smaller formula allocations may have little remainder after programming mandatory activities. Clearly, the new requirement and many other factors are not in NHTSA's power to change unilaterally, but States do need to know how they can set compliant targets.

Congressional intent appears to be to provide for some minimum benchmark regardless of the outcomes of any data analysis, even if that is potentially contradictory to a truly data-based process.

If a State were to conduct a data analysis with all due diligence that showed that an appropriate target would not demonstrate constant or improved performance, and cannot allocate additional resources, NHTSA should allow such States to adjust that target to be "constant." States should clearly explain this calculation and reasoning as part of the target-selection process.

This would allow States to factor in "realistic expectations" as NHTSA suggests but also to meet the Congressionally-directed minimum.

1300.11(b)(4)(ii) *Countermeasure Justification*

NHTSA proposes requiring that States provide additional detailed justification for each countermeasure that they plan to implement. Specifically, States may cite countermeasures rated three stars or above in NHTSA's *Countermeasures That Work* (CMTW), or States may provide "data, data analysis, research, evaluation and/or substantive anecdotal evidence." GHSA finds a number of significant concerns with the administrative burden of this approach.

In the current rule, all countermeasures are generally required to be “evidence-based,” and States must describe the process and data sources they use to select countermeasures. For this purpose, many States already cite CMTW and other well-relied upon sources. NHTSA also currently provides that only for “innovative countermeasure strategies”, States must include additional justification, including research, evaluation or anecdotal evidence.

However, the approach described in the NPRM seems to treat any countermeasure short of three CMTW stars as though it is “innovative” and potentially unproven. NHTSA itself, in the Preamble in Section III, B.5., acknowledges the potential administrative burden unlocked by this approach; “...requiring States to provide independent justification for all countermeasures, even ones that have been proven over time, is burdensome without any added benefit.”

GHSA also points out that this change undoes the regulatory treatment of “innovative” countermeasures. It is important for NHTSA to provide how States can consider investment in wholly new program ideas or countermeasures that haven’t been even yet been evaluated.

Also, while CMTW is an invaluable resource for States and the highway safety community, the guide itself is not without challenges. Many in the safety community have brought attention to inadvertent bias enforced by research patterns over time. Specifically, some have argued that CMTW overly-encourages investment in traffic enforcement-oriented countermeasures.

Finally, these changes also do not seem to be required due to any IIJA amendments to the underlying statute. Given the many potential burdens and concerns raised, GHSA questions the value of deviating from current practice, at least as described.

If NHTSA does continue in this direction, GHSA offers some additional specific recommendations.

For the purpose of countermeasure justification under 23 CFR 1300 (b)(4)(ii), GHSA recommends that States should also be permitted to cite two other NHTSA resources in order to broaden the menu of countermeasure options. First, States should be able to cite countermeasures recommended by NHTSA Highway Safety Program Guidelines, which NHTSA describes as tools “with which States can assess the effectiveness of their own programs.” States should also be permitted to cite recommendations made in their individual NHTSA Program Assessment Reports, which convey NHTSA’s specific recommendations for States to adopt in their programs.

NHTSA should further clarify the level of detail required to be shared “for State-developed countermeasure strategies” to ensure this aspect of the application process appropriately remains comparable to what States provide today. Clearly States should not be required to submit detailed research reports as a whole, which would be burdensome for States and for NHTSA Regional Office personnel who are not

necessarily qualified to provide expert judgements on safety research. Nor should the Triennial HSP approval process become wholly mired in debates about the merits and quality of research.

1300.11(b)(5) *Performance Report*

In the Performance Report to be included in the Triennial HSP, NHTSA proposes that this report on State progress toward meeting performance targets be at the same level of detail as in the Annual Report. As GHSA has urged, the contents of the Triennial HSP, Annual Grant Applications and Annual Report should be as non-duplicative as possible to reduce administrative burden.

The proposal to require the level of detail under 1300.35 captures content that is not appropriate for the Triennial HSP. NHTSA may have intended that this only pertain to the first sentence/clause of paragraph 1300.35 (a)(1), but that paragraph includes subparagraphs (i) and (ii) which are more specific to individual years.

The proposal also confuses what level of detail might be logically included. For each triennial period, States will provide three Annual Reports with three different analyses. The most efficient way to leverage this is to combine them into the ultimate triennial analysis. This may be NHTSA’s intention, but the proposed regulatory language does not necessarily lead to this conclusion. GHSA suggests that NHTSA consider communicating to States the opportunity for achieving efficiency by importing Annual Report data, rather than codifying it as a requirement.

Annual Grant Applications

1300.12 (b)(1) *Updates to Triennial HSP*

The IIJA lists in the newly created Annual Grant Application requirements under Section 402(l)(1)(C) “(i) such updates as the State determines to be necessary to any analysis included in the triennial highway safety plan of the State;” (GHSA underline added). The statute clearly provides that it is the State which determines when such updates are necessary. NHTSA disputed this in the Preamble under Section III, C.2. Updates to Triennial HSP by citing a related section which affirms that NHTSA must ensure that Annual Grant Applications are aligned with the Triennial HSP, and further consistent with any other enumerated requirement. GHSA does not dispute this, but we would argue this clause has a limiting effect on other updates or analysis that NHTSA may seek.

1300.12(b)(1)(ii) *Synchronizing Common Performance Measures*

NHTSA appears to suggest that in the Annual Grant Application, States should update “common performance measures”. However, the common measures (fatalities, series injuries and fatalities per 100M VMT) are already dictated to the States for both NHTSA- and FHWA-funded grant programs and would not be changed year-to-year. Rather, it is the associated performance targets which need to be updated to

remain in sync. Based on the discussion in the Preamble where NHTSA acknowledges the underlying challenges, GHSA believes that the agency had intended for this allowance to pertain to “targets” and not “measures”. We urge NHTSA to clarify this point and make any necessary corrections.

1300.12(b)(2)(i) *Project and Subrecipient Information*

1. *Zip Codes in Project Descriptions.* Among the required project information elements of the Annual Grant Application is “Project name and description (e.g., purpose, activities, zip codes where project will be implemented, affected communities, etc.).” The Preamble under Section III, C.3. Project and Subrecipient Information, NHTSA stated that it proposes to include zip codes “as an example of information that may be provided as part of a project description, but does not require it for all projects,” specifically because some projects are not so location limited.

However, the zip code requirement appears to be listed among other more presumably *required* elements with ambiguity over when is required and what is optional, since the clause begins with an “e.g.” – “for example.”

Further, zip codes do appear to be mandatory for Annual Reports (see below).

GHSA proposes that zip codes remain an optional element of a project description, for reasons discussed in the related section below, and urge that it and any other optional elements be omitted from this clause, or explicitly separated and notated as optional. In general, the regulation should be reserved for enumerating required elements to reduce ambiguity.

2. *Eligible Use of Funds.* Among the requested project information, NHTSA proposes in clause (iv) inclusion of “eligible use of funds.” This matches the prior requirement that “eligible use of funds” be a required element of an HSP amendment. GHSA suggests that this provides an opportunity for NHTSA to provide guidance on its understanding of this term and the level of detail expected from States. Some projects would benefit from a State’s eligibility explanation but at the same time, many projects are obviously eligible given the nature of the project and funding source. GHSA aims to establish a more common understanding and avoid any unnecessary administrative burden.
3. *Final Year Funds:* Among the requested project information, NHTSA proposes in clause (viii) inclusion of “whether the project will be used to meet the requirements of Sec. 1300.41 (b),” which GHSA takes to mean whether “final year” funding (previously unexpended funding in the fourth year after apportionment) is being committed to the project to avoid deobligation. This is a helpful requirement, but we ask that NHTSA further clarify this point with more specific language to the States to ensure it is well understood.

4. *HSP Linkage*: Among the requested project information, NHTSA proposes in clause (ix) associating the project with the relevant countermeasure strategy or strategies for programming funds in the Triennial HSP. Clearly, the projects listed in the Annual Grant Application should be consistent with the Triennial HSP. GHSA proposes a slight change in order to provide more flexibility in Annual Grant Application formatting. For example, some States may wish to group projects together by Triennial HSP program area, rather than label each project. GHSA suggests that NHTSA clarify that States have the ability to organize their application as suits them, as long as the projects are substantively associated with the Triennial HSP as described in clause (ix).

Further, NHTSA should clarify that in a labeling scenario, a very brief description or reference to the relevant strategy should suffice.

Section 402

1300.13(a) *Planning and Administration Threshold*

NHTSA declined GHSA’s request to increase the percentage of funds that can be allocated to Planning and Administration (P & A) costs from 15% to 18%. GHSA reiterates its recommendation that NHTSA make this change.

Despite the increase in funding available under the IIJA, once it is divided up among States, this assistance is much more modest than it seems. The IIJA imposes many new planning requirements that will necessitate additional non-programmatic time, effort and costs. SHSOs will be responsible for developing new elements of both the Triennial HSP and Annual Grant Application, such as additional data analysis for problem identification, new requirements for public participation and engagement, additional justification for countermeasure selection, more information about projects, and a new standard to meet regarding participation by political subdivisions. All States will be facing the same new requirements, even though States will receive different formula allocations.

According to the U.S. Bureau of Labor and Statistics, the 6-month inflation rate in the last year made the most dramatic jump in at least 10 years, impacting typical P&A costs – travel, equipment, supplies, rent and utilities – as much as other costs we all endure in our day-to-day lives.

Consumer Price Index for All Urban Consumers (CPI-U)

	HALF1	HALF2
2019	2.1	2.3
2020	1.8	1.6
2021	2.6	4.5
2022	6.2	

Source; USBLS, accessed October 5, 2022,

https://data.bls.gov/timeseries/CUUR0000SA0L1E?output_view=pct_12mths

The current P&A limit leads States to also face practical challenges in how to allocate staff time. Some SHSO positions – the director, the public information officer, in some cases financial staff – are necessary for the functioning of any government agency. These positions could be funded out of P&A, but they could also be funded programmatically given the high program content of day-to-day activities. A higher P&A threshold would help eliminate some of that ambiguity.

1300.13 (b) *Participation by Local Subdivisions*

The challenge for States to meet local share, and specifically how to substantiate funds spent on behalf of localities, has been a subject of long-term discussion between NHTSA and the SHSOs. While this requirement would benefit from reform, GHSA was disappointed to see NHTSA propose a reconceptualization that would increase administrative burdens for both States and localities and make it more difficult to meet the 40% threshold. As GHSA has previously noted that under the current rules, gathering all of the necessary documentation before a project is implemented has already led to unreasonably lengthy delays.

NHTSA proposes two options for efforts to qualify as expenditures on behalf of a political subdivision – either having an individual political subdivision participate in the State highway safety planning process, or, submitting a detailed request reflecting the political subdivision’s own rigorous highway safety planning.

Though SHSOs would welcome local input, in practice not every individual political subdivision has the means to meet either of these standards. Local governments may not have the bandwidth to substantively participate in statewide safety planning, especially if their individual project is limited in scope. Local governments, in fact those that most benefit from “expenditures on behalf,” may not have the funding, staff or expertise to carry out problem ID or develop a detailed plan in advance as described by NHTSA.

It also serves no purpose to require SHSOs to wrangle for a substantive proportion of subrecipient lists of media outlets, billboard locations, schools and sporting events for review by NHTSA Regional Offices, which have no frame of reference to evaluate this documentation or the effort behind it.

Many potential local partners would likely decline to participate rather than face these escalated administrative burdens. This will have a discriminatory effect on the allocation of safety resources, most likely excluding under-served and under-resourced communities and undermining U.S. DOT’s own pledges to advance equity in transportation.

States in the meantime have explored greater efficiencies. One real world example is to establish a subgrant with a non-profit organization that carries out highway safety community activities in multiple communities throughout the State. These are expenditures that undeniably benefit localities. Instead, NHTSA seems to suggest that

Congress is purposely opposed to such a streamlining effort, and States should establish multiple individual grant agreements with local governments, which would only serve to multiply paperwork, risk and oversight responsibilities.

GHSA also asserts that NHTSA has erred in its interpretation that the IIJA amendment to 23 U.S.C. Section 402 (b)(1), redlined below, nullifies the local benefit qualification avenue of “request by a political subdivision as part of an approved local highway safety program,” as proposed in the Preamble.

~~(B) authorize political subdivisions of the State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the minimum standards established by the Secretary under this section;~~
~~(B) 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;~~
 (C) except as provided in paragraph (2), provide that at least 40 percent of all Federal funds apportioned under this section to the State for any fiscal year will be expended by the political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs ~~authorized in accordance with subparagraph (B);~~

The IIJA replaced the prior subsection (B) with a new unrelated subsection (B), eliminating the requirement that States must authorize local governments to carry out local highway safety programs. This does not preclude such programs or State-local relationships from existing; it simply eliminates it as a minimum requirement for HSP approval. The last subclause of subsection (C) was struck because the subsection (B) it referenced was struck. However, subsection (C) still provides that 40 percent of funds “shall be expended by the political subdivisions of the State...to carry out local highway safety programs.” This statutory change is silent on whether local subdivisions can request safety expenditures.

GHSA urges that a request to the State from a locality to implement a project on its behalf should qualify the associated expenditure to count towards local share, as it demonstrates that the project is reasonably beneficial to that local community and provides for a reduced administrative burden on the locality to participate in highway safety programs. This option also provides an avenue for States to efficiently solicit such requests as part of the project planning process.

NHTSA declined to adopt GHSA’s suggestion to allow groups of localities to jointly request expenditures on their collective behalf. Elsewhere in the Preamble discussion of the inclusion of zip codes among project information, NHTSA acknowledges that there are grant-funded activities that can have no single, exclusive location. Further, the new NHTSA definition of “political subdivision of a State” includes “associations comprised of representatives from political subdivisions acting in their official capacities.”

GHSA urges NHTSA to acknowledge the plain reading of its own proposed text that an association comprised of representatives from a collection of different political subdivisions acting in their official capacities constitute a “political subdivision” that

may carry out any of the qualifying activities listed in 23 CFR 1300.13 (b) – under NHTSA’s new reconceptualization or by additional means that GHSA proposes.

The expenditures eligible for local share would still be tied to eventual actual expenditures. There is no reason why this scenario presents any difference from any individual political subdivision’s participation in local-share eligible activities.

Further, in the Preamble, NHTSA categorically declined GHSA’s suggestion to allow State-sponsored communications campaigns to be counted as a local share expense, even an expenditure that could be the outcome of a qualifying activity. However, the distinction between a communications campaign conducted on behalf of one or more localities, and other efforts carried out on the State’s behalf, as a result of qualifying activities, appears to be arbitrary and the local benefit is difficult to parse.

For example, the high-visibility enforcement model promoted by NHTSA’s CMTW includes both enforcement, typically a local expenditure, and also highly publicized media communications, which would typically be a State expenditure. According to CMTW, “The strategy’s three components – laws, enforcement, and publicity – cannot be separated: effectiveness decreases if any one of the components is weak or missing.” However, NHTSA asks that States assume additional unnecessary administrative burden to substantiate that these agency expenditures are not “arbitrarily” “on behalf of a local government” or that the local highway safety program receives substantial benefit.

NHTSA points out in the Preamble that the underlying statute has remained mostly unchanged since 1966. While the previous standard for “active voice” has been likewise long-standing, NHTSA has the authority to carry out constructive reforms. NHTSA should take steps to make local share less, not more, burdensome for States and subrecipients.

Section 405 and 1906

1300.2(e)(ii) Impaired Driving Task Force Members

NHTSA has proposed an expanded list of required members of the impaired driving task force required by mid-range States. States may now be required to newly enlist a local law enforcement representative, a public health representative, a drug-impaired driving countermeasure expert (e.g., a DRE coordinator), and a communications and community engagement specialist.

The choice of categories reads simultaneously overly prescriptive and yet incomplete, suggesting an arbitrary approach. If the goal is to dictate a comprehensive task force membership, stakeholders would be missing from toxicology, treatment providers that are not supervisory, and conceivably many other groups. Meanwhile, a DRE coordinator may be considered a drug-impaired driving countermeasure expert, but the meaning of the term “drug-impaired driving countermeasure expert” remains

problematic considering that most impaired driving professionals are addressing impaired driving from an increasingly holistic and “polysubstance” perspective.

Overall, this requirement is headed in the wrong direction. GHSA previously recommended that States be only required to certify to this information in the HSP application if it is already listed in a multi-year impaired driving plan.

If anything should be required, a list of membership for compliance purposes should be much more categorical, such as, categories listed in 1300.2(e)(iii), which would afford States much more flexibility.

Ultimately, most impaired driving task forces are already well-established and best practices on such task forces are well understood. NHTSA has not cited widespread shortcomings among State impaired driving task forces. While some States are likely already compliant, this change is, strictly speaking, not dictated by statute. It may impose an additional burden on States to meet, and at this stage in the life of the grant program, NHTSA should exercise more deference to States on what is most appropriate for their purposes.

1300.26(c) *Nonmotorized Qualification Criteria*

NHTSA proposes to change the current self-certification approach to apply for this grant to a new approach that would require States to submit a list of project and subrecipient information the State plans to conduct. This is aligned with procedures for other grants. However, there were no changes in the underlying statute. This clearly increases the burden associated with applying for the grant. Qualification for this particular grant program is by formula, not by NHTSA needing to review project plans. GHSA asks that NHTSA further justify this change.

1300.27 *Preventing Roadside Deaths*

1. *Definitions.* NHTSA proposed a number of new definitions for this new grant program to clarify statutory language.

GHSA recommends that the definition for digital alert technology be further generalized to better reflect the statute and to anticipate future potential technological developments. The statute does not specify that the alerts pertain to vehicles, that the vehicles be stopped at the roadside, or the specific means by which a motorist would receive an alert. GHSA proposes:

Digital alert technology means an electronic system to alert drivers regarding nearby first responders.

NHTSA also proposes a definition for “public information campaign.” All States engage in public information campaigns, which are alternatively referred to throughout 23 U.S.C. Chapter 4 and Part 1300 using diverse terms such as “educating the public”, “paid media”, “earned media”, “education campaign”, “advertising”, and

“public awareness”. NHTSA has declined to define these terms, or to unify them in a common understanding. GHSA believes the concept referred to in the new grant program is commonly understood and while we appreciate the effort, we recommend against establishing a definition in this instance.

2. *Qualification Criteria*

NHTSA proposes the detailed requirements for the “plan” that States are required to submit to apply for this new grant program. States would have to meet the requirements under 1300.11(b) 1, 3 and 4, as they would for any grant-funded initiative. But if a State establishes this information and underpins the basis of a roadside safety program in its Triennial HSP, GHSA recommends that a State be able to refer back to the Triennial HSP, similar to how they might for other Section 405 grant programs. The project information would rightly be included in the Annual Grant Application.

3. *Use of Grant Funds.* The last clause refers to funding efforts to increase the visibility of stopped vehicles. The proposed regulation reflects unfortunate oblique statutory language. States would benefit if NHTSA would comment on whether this clause authorizes States to purchase equipment or safety items for public distribution as defined in NHTSA’s 2016 Guidance on [Use of NHTSA Highway Safety Grant Funds for Certain Purchases](#), in the form of vehicle reflectivity gear.

Annual Report (1300.35)

Voluntary Template. GHSA appreciates the offer to develop a NHTSA-provided voluntary Annual Report template, but at this time we recommend against it. The development of State Annual Reports is already a long-standing practice and there is now a considerable debate about what the Annual Report should include moving forward (see below).

General. The Annual Report requirements section includes several proposed elements that are either beyond what Congress has directed, are not well-supported by NHTSA, or would potentially duplicate content that SHSOs provide in other submissions.

23 U.S.C. 402 (1)(2), as created by the IIJA, lists the contents of the Annual Report:

(2) *REPORTING REQUIREMENTS.* —Not later than 120 days after the end of each fiscal year for which a grant is provided to a State under this chapter, the State shall submit to the Secretary an annual report that includes—

(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.”

GHSA notes that 23 U.S.C. 402 (l)(1)(C), which designates the contents of the annual grant application directs that such applications “shall include, at a minimum.” The Annual Report section contains no such clause. As GHSA has previously described, the contents of the Annual Report should be limited to what Congress directs. There needs to be a compelling reason to expand beyond that and any addition should be weighed against its added burden for States. NHTSA has considered State burdens when weighing other proposed requirements.

Performance Report. GHSA recommends that NHTSA strike the requirement under 1300.35 (a)(1)(ii). In the Preamble Section V. B. 5. Annual Report, NHTSA proposes that States should be required to describe how projects funded under each grant contributed to meeting the State’s performance targets, in order to satisfy the requirements of 2 CFR 200.329:

(a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.

(b) Reporting program performance. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award.

(c) Non-construction performance reports.

...

(2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

2 CFR 200.329 in paragraphs (b) and (c)(2) refers to the “objectives of the federal award”, e.g. the grant from NHTSA to the SHSO, not the objectives of the “Federal award supported activities”, an SHSO’s projects, which is subject to differentiation in paragraph (a). As such, 2 CFR 200.329 does not require the Annual Report to link individual projects to performance target accomplishments. Rather States should only be required to describe overall statewide performance progress, as they had done previously and as is directed by the IIJA.

In further support of this conclusion, the project and subrecipient information required in the Annual Grant Application under 1300.12 (b) (2) does not require States to explicitly link projects to performance measures or targets. Rather performance targets are associated with programs, as described under 1300.11 (b) (3) (ii).

Separately, if States were required to provide detailed narrative about every project and their impact on performance, the Annual Report would balloon to an unmanageable and unreasonably burdensome size. Some States have hundreds of individual projects. Further, a description about how a State might adjust its programming due to underperformance is already required to be included in each subsequent Annual Grant Application. This speaks to the heart of the matter while avoiding unnecessary content.

GHSA also notes that the IIJA established a duplicative requirement that may be outside of NHTSA's power to change. The IIJA requires that the Annual Report include plans for the State to adjust its strategies to achieve performance targets. A similar requirement is imposed for Annual Grant Applications. Since these are narrative descriptions, GHSA urges NHTSA to approach these requirements in a way to minimize duplication. The narrative in the Annual Report might be a discussion of high-level strategic plans, while the narrative in the subsequent Annual Grant Application may be a description of how that strategy is translated into individual projects and activities.

Activity Report. GHSA urges that NHTSA revise and dramatically condense the newly required "Activity Report" under 1300.35 (b). NHTSA argues that this content is necessary to validate previously submitted certifications and assurances. This invalidates the entire purpose of making certifications and assurances, which are attestations without supporting documentation.

Meanwhile, the proposed requirements do not fill in gaps left by certifications, but rather duplicate content that States already provide. Consider the requirements in 1300.24 (b)(1), which should be struck. States already describe projects and activities funded in the Annual Grant Application, which is based on signed project agreements and contracts with subrecipients. The Annual Grant Application includes the amount of funding, which along with all project elements, must be submitted before any project can even begin. Under 1300.33, States also submit vouchers reflecting actual payments that are tied to projects.

NHTSA's proposed requirements for the Triennial HSP also already require States to articulate a public engagement plan for the entire three-year period. Further, strictly speaking, the IIJA does not require States to explicitly link projects to "meaningful public participation and engagement in the planning processes described in the State's Triennial HSP." On the contrary, 23 U.S.C. Section 402 (b) (1) (B) requires States to provide for "a program" – referring to the overall State program – that results from public participation and engagement. The Annual Grant Application requirements under 1300.12 do not require a link between projects and public participation and engagement efforts. As with the discussion above regarding projects and performance, requiring a narrative that addresses every project would result in an Annual Report that is unreasonably voluminous.

NHTSA should consider any project listed in the Annual Grant Application as implemented. If anything, States should be required to submit nothing more in the Annual Report on this matter other than an explanation of projects which were not implemented.

Clearly, there is a desire to more effectively link all of these elements together. but ultimately the full linkage should be actualized through the launch of a functional, national electronic grants system, not by requiring unreasonably duplicative reporting by States that detracts time and resources from actually implementing programs.

Evidence-Based Enforcement Program Activities. NHTSA proposes that Annual Reports include: “(2) A description of the State's evidence-based enforcement program activities, including discussion of community collaboration efforts and efforts to support data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities;”.

This could be a major administrative task and States planning for compliant programs are concerned about NHTSA’s brief treatment of the topic. While the statute places this squarely in the HSP requirements, the NPRM addresses it in multiple places, which obscures its potential significance. GHSA urges NHTSA to bring more attention to this requirement in a consolidated discussion. NHTSA should also provide further clarification on implementation and the compliance documentation that may be required of the States in the future.

GHSA suggests that rather than explicitly requiring “a description of the State’s evidenced-based enforcement program activities”, which would duplicate content that appears in the Triennial HSP or Annual Grant Application, the Annual Report should focus on the discussion of community collaboration activities and efforts related to the requirement above. GHSA would also flag that like the discussion above of the general public participation and engagement activities required under 1300.11 (2), the statute directs States to “as part of a comprehensive program, support...enforcement programs...” This suggests a program or countermeasure strategy-level description, or at least the level of detail necessary to meaningfully describe a compliant program. In general, NHTSA should seek to avoid unnecessary redundant content.

Further building on the discussion above regarding public participation and engagement activities required under 1300.11 (2), NHTSA should comment more on the specific nature of the required community collaboration activities. If they are carried out on a program or countermeasure strategy-level, then they would not necessarily be required for every individual enforcement project. Some States have hundreds of individual law enforcement projects. Rather, it could be a program-level plan and/or statement of activity comparable to what is proposed for public participation and engagement in the Triennial HSP under 1300.11 (b)(2). Relatedly, States would benefit from flexibility in the manner in which they carry out community collaboration and data collection efforts, which could involve actions taken by the State, a subrecipient, groups of subrecipients, or all of the above in concert. It would be helpful for NHTSA to clarify this as well.

Compliance with these provisions is also the subject of a certification in Appendix A. State activities will be subject to Management Reviews, File Reviews and other oversight. It would be helpful for NHTSA to clarify what compliance evidence might be

sought in a future review of State files, if not the content proposed to be included in the Annual Report.

Zip Codes. NHTSA proposes that the Activity Report associate each project with zip code, except for statewide projects. NHTSA claims that the inclusion of zip code information is necessary “for NHTSA to understand where the funding is being utilized compared with the State’s problem ID and performance targets.” However, zip codes are explicitly considered optional elements for project elements in the Annual Grant Application (see above). Zip codes should be optional in the Annual Report as well. Further, the correct place for these considerations – to evaluate how funding is being utilized - is in the Triennial HSP report and Annual Grant Application, not after the fact in the Annual Report.

Other

1300.33 *Content of Vouchers*

NHTSA proposes to add to the content of vouchers a new element: “eligible use”. Eligible use was previously a required element of HSP amendments and will now be a required element of project information shared the Annual Grant Application. Adding new elements to vouchers presents substantial administrative burdens for States because they will need to update internal systems to add this information either manually or particularly with electronic systems, that generate vouchers.

Appendices

Appendix A

Conflict of Interest. NHTSA should clarify the requirement regarding the employing agency of the Governor’s Representative (GR), which NHTSA proposes cannot be a subrecipient. In some States the GR is a staff member of the SHSO or the leader of an over-arching State department. The SHSO may create grants for itself as the SHSO, or for other bureaus of the over-arching department, to carry out legitimate programmatic activities. These structures, which may date to the very genesis of the governors’ highway safety programs provide valuable efficiencies and coordination. Clearly it is in the public interest to avoid personal conflicts of interest and the commonly envisioned scenarios are conflicts external to the SHSO, but NHTSA should clarify how this requirement can be consistent with the way State agencies may be organized and long-standing accepted practices.

Appendix B

Under PART 3: IMPAIRED DRIVING COUNTERMEASURES, High-Range State Only, GHSA noticed a potential correction in the 2nd box to be checked:

The State submits an updated Statewide impaired driving plan approved by a Statewide impaired driving task force on (date) and updates its assessment review and spending plan provided in the HSP at (location).

Should this refer to either the Triennial HSP or Annual Grant Application rather than the “HSP”?

Under PART 6: DISTRACTED DRIVING GRANTS, Prohibition on Viewing Devices While Driving, GHSA noticed a potential correction – an apostrophe in “driver’s” that may need to be removed.

Also under PART 6: DISTRACTED DRIVING GRANTS, Legal citations, GHSA noticed a potential correction. “Prohibition on viewing devices use while driving;” may need to be changed to “Prohibition on viewing devices while driving.”