



State of Delaware
Office of Highway Safety
800 Bay Road, Suite 2
Dover, DE 19901

October 27, 2022

Barbara Sauers
Associate Administrator, Regional Operations and Program Delivery
National Highway Traffic Safety Administration (NHTSA)
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington DC 20590

Dear Ms. Sauers,

On behalf of the Delaware Office of Highway Safety (DE OHS), we thank you for the opportunity to submit comments on the Notice of Proposed Rulemaking (NPRM) for the Uniform Procedures for State Highway Safety Grant Program under Docket No. NHTSA-2022-0036 published in the Federal Register on September 15, 2022.

The Delaware Office of Highway Safety offers the following comments:

- 1) The DE OHS fully supports the comments submitted by the Governor's Highway Safety Association (GHSA) to this docket.
- 2) We want to emphasize that NHTSA's implementation of the Infrastructure Investment and Jobs Act (IIJA), often referred to as the Bipartisan Infrastructure Law (BIL) should not impose requirements not supported by statute. States should be provided with increased flexibility to direct funds and take other actions to address the highway safety issues in their respective states, without excessive administrative requirements. As a minimum apportionment state that has limited staff and other resources to implement the considerable proposed additional administrative requirements, we urge NHTSA to review provisions closely and make a strong effort to eliminate burdensome requirements.
- 3) Regarding 23 CFR 1300.11 (b)(4)(ii), NHTSA proposes new rules requiring states to implement countermeasures that are rated 3 or more stars in *Countermeasures That Work* or "justification supporting the countermeasures strategy, including data, data analysis, research, evaluation and/or substantive anecdotal evidence that supports the effectiveness of the proposed countermeasure strategy...", DE OHS has concerns with the language proposed and the administrative burden of receiving approval of projects within high priority program areas where the state is observing significant spikes in fatalities and serious injuries. While *Countermeasures That Work* serves as the backbone for the DE OHS planning process, it should be noted that innovation is needed within

traffic safety and all programs/projects implemented by states should be data driven. This regulation discourages innovative practices and undoes NHTSA guidance about working with new partners by placing additional burdens to prove effectiveness on innovative countermeasures, especially when countermeasures listed with 1 or 2 stars are noted that no evaluation has taken place of these practices. Should NHTSA continue with this language, it should clarify what constitutes appropriate data, data analysis, research, evaluation, and/or substantial anecdotal evidence to minimize inconsistencies for approval between states and regions. Whether innovative strategies are effective should be noted within the yearly Annual Report where the state can provide evaluation for themselves and NHTSA.

- 4) Regarding 1300.12(b)(2)(i) and 1300.35 (b)(1)(i), within the preamble, NHTSA proposes intentions that zip codes and other identifying location information are a valuable part of a project description and help ensure that states are implementing programs in the areas that are identified by the state's problem ID and proposes using zip codes as an example of information that may be provided as part of a project description.

Language continues within the rule making regarding the Annual Report that for each countermeasure strategy, a description of projects and activities funded and implemented should include the amount of federal funds expended and the zip code(s) in which the projects were performed, if the program is statewide. DE OHS believes that this requirement will cause excessive burden on the state to track each activity and on the NHTSA Region to evaluate. Many projects cross over multiple zip codes and this can create confusion relating to many outreach efforts in relation to where the projects were "performed". DE OHS believes there are more efficient ways to acknowledge the location of projects that will be more beneficial to states and NHTSA.

- 5) Regarding 23 CFR 1300.13(b), DE OHS understands many states have challenges with meeting local share and how to substantiate funds spent on behalf of localities. We oppose the restriction against applying media (even when approved via active voice by a political subdivision) to the 40% share to local requirement. NHTSA's *Countermeasures That Work* publication clearly indicates that high visibility enforcement coupled with a highly publicized media campaign is more effective than implementing only one of those efforts alone. Local police departments and organizations routinely engage and express their interest with DE OHS' media campaigns through participation in task forces, committees and programs directed by DE OHS. They are also provided social media tool kits and share DE OHS funded social media and traffic safety messaging on their channels and websites. Post-media surveys, as well as enforcement citation data, demonstrates the correlation between a robust media campaign and High Visibility Enforcement which decreases serious injuries and fatal crashes. NHTSA and State Highway Safety Offices (SHSOs) recognize the importance of this partnership, therefore, NHTSA should not simultaneously prohibit this collaboration from counting towards the share to local requirement, especially so when locals clearly have an active interest and participation in this process.

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. DE OHS notes that 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 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 and would be overly burdensome 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, especially in a state the size of Delaware where most media efforts are conducted statewide and we have limited local media markets. We strongly believe that 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.

In conclusion, DE OHS urges NHTSA to administer the Rule in a way that encourages the efficient administration of the processes it promulgates, so both the states and their community partners can maximize use of the funds, and effectively and efficiently combat the alarming rise in fatalities and injuries. We have a crisis on our roadways and states need flexibility and efficiency now more than ever.

DE OHS also encourages NHTSA to ensure that consistent guidance is provided to all state programs. NHTSA plays a vital role in providing clarity on regulations; continuing to provide high quality research, guidance, program best practices, and supporting materials; to provide states with the tools needed to tackle highway safety issues. Uniform and consistent written guidance relating to policy and regulations from NHTSA is crucial, so all states and territories operate using the same information.

The DE OHS is very thankful for the continued congressional and agency support of our program and we look forward to working with NHTSA as they implement changes to the Highway Safety Grant program in accordance with the Infrastructure Investment and Jobs Act. As we continue to collaborate on important lifesaving work, we look forward to strengthening our partnership and program.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly Chesser". The signature is written in a cursive style with a large, sweeping initial "K".

Kimberly Chesser
Director
Delaware Office of Highway Safety