

October 28, 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

Ms. Sauers,

Thank you for seeking input on the Notice of Proposed Rulemaking (NPRM) on the “Uniform Procedures for State Highway Safety Grant Programs” published in the Federal Register on September 15, 2022. The Missouri Department of Transportation (MoDOT), home agency for Missouri’s state highway safety office, is pleased to provide these comments in advance of NHTSA’s issuance of a final rule.

To begin, MoDOT works closely with the Governors Highway Safety Association (GHSA) and fully supports the comments and considerations already submitted by GHSA in response to the NPRM. We share GHSA’s overall concern that parts of the proposed rule will place unnecessary administrative burdens on the states which will, ultimately, prove counterproductive to the goals of the highway safety program.

MoDOT, like other state highway safety offices, is engaged daily in identifying and implementing effective highway safety programs that comply with federal and state guidelines. We are deeply invested in these programs and strongly desire to deliver projects and activities that eliminate fatalities and injuries occurring on Missouri’s roadway. We agree renewed effort and new approaches are vital to meeting our shared mission of zero traffic fatalities, and we are encouraged by the commitment of Congress to accomplish this work as demonstrated in the Bipartisan Infrastructure Law (BIL).

To that point, we urge NHTSA, in issuing a final rule, to recognize and accommodate the states’ need for balancing the time and effort needed to implement effective programs with the time and effort needed to complete administrative requirements and ensure compliance with federal regulations. This is a significant undertaking, one we do not take lightly, and we respectfully ask you give genuine consideration to the comments of GHSA as well as those listed below. In order to ensure we spend more time delivering a successful program that reaches the extents of Missouri, we ask you to issue a final rule that captures the intent of Congress without the addition of unnecessary or redundant administrative requirements.

In addition to the comments already provided by GHSA, MoDOT offers the following comments for your consideration:

1. First and foremost, we ask for patience and flexibility regarding the implementation of requirements for which a certain level of subjectivity exists. For example, the evaluation of meaningful, public participation will likely vary by NHTSA region and possibly even from state to state within the same region. MoDOT fully supports the requirement for meaningful, public participation, and we are excited to consider additional ways for achieving this. That said, this is



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not a switch that can be flipped or a feat that can be fully exhausted. There will always be new and meaningful ways to increase public participation in our programs. With the first triennial Highway Safety Plans (HSP) due on July 1, 2023, most states will be well into developing their FY24 plans by the time a final rule is issued. While Missouri already includes elements of public participation and is actively pursuing additional opportunities, it is unlikely we, and other states, will be capable of inserting new public engagements between the time a final rule is issued and the time we must submit the HSP for approval from our Governor's Representative (GR). Therefore, we strongly urge NHTSA to recognize this is an ongoing effort and to exercise understanding, flexibility, and sound judgment in evaluating progress for the first triennial HSP. It should be anticipated states will be further along in implementing these requirements come July 1, 2024 than they will be on July 1, 2023.

- a. We also concur with GHSA's comments that meaningful, public participation should be evaluated at the program level as indicated by Congress and not at the project level.
 - b. Likewise, we encourage NHTSA to clarify grant funding from the agency can be used to carry out activities which facilitate meaningful, public participation.
2. Regarding, performance measures, MoDOT agrees they are an important part of any successful program. In fact, Missouri was among the first states to fully adopt performance measures, and MoDOT continues to value and emphasize their purpose across the organization. While performance measures are critical for evaluating progress and success, they should not be confused with performance *predictions*. There is value in setting performance targets, and MoDOT is generally aggressive in doing so. However, we must also recognize there are external factors which impact performance, many which are outside the control of the state highway safety offices. While we can identify and, in some ways, account for these factors when setting targets, doing so can sometimes lead to setting performance targets that are less than desired. For example, public policy has a strong correlation to highway safety outcomes (primary seat belt laws, cell phone prohibitions, helmet requirements, etc.). The existence or lack of such policies has a significant impact on performance outcomes. Typically, these are not factors the state highway safety offices can directly influence. Thus, while we support the use of performance measures, we must be careful to not create a system in which unmet performance measures are met with burdensome administrative requirements or unwarranted changes to programs that are effective. We urge NHTSA to recognize and acknowledge just because a state's fatality and serious injury performance measures are not met, this does not insinuate the highway safety programs are ineffective. Sometimes, the programs just aren't effective enough to overcome other adverse factors in play. If we're not careful, we'll end up spending more time documenting and justifying why performance measures weren't met than we will implementing programs that can actually make a difference.
3. Regarding project selection, NHTSA's proposal to require additional justification for each countermeasure not rated as a 3-star or higher in the *Countermeasures That Work* (CMTW) publication is arduous and an example of unnecessary overreach. It is the state highway safety offices who are tasked with identifying and implementing countermeasures that will positively impact highway safety. NHTSA's responsibility is to ensure the states are administering the countermeasures through a compliant program. NHTSA's proposal for states to provide additional justification for projects not listed in CMTW blurs these responsibilities and, quite



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frankly, creates a rift in the relationship between states and the agency. In addition, the states are already required to establish performance measures for which they are being evaluated. Why then must states justify individual projects provided they are eligible activities? If NHTSA is going to pre-approve justification for each project on the front end, what's the purpose of the performance measures? In that case, wouldn't the performance outcomes be just as much a responsibility of NHTSA as they are of the state? As a result, we urge NHTSA to refrain from adding such laborious requirements, especially since they do not appear to be directly derived from BIL.

4. Regarding local benefit, we strongly agree with the sentiments set forth by GHSA. There are many programs a state highway safety office administers at a statewide level that result in an obvious, direct benefit to local jurisdictions. This includes, but is not limited to, public service announcements and paid media campaigns, teen driving programs, enforcement activities of state police, training programs for individual representatives from numerous local jurisdictions, and partnerships with state agencies responsible for working with local courts, licensing agencies, and health departments. Given the far-reaching nature of these projects, we urge NHTSA to issue a final rule that allows for statewide programs which have direct local benefit to be considered toward the required percentage.
5. We fully support GHSA's comments regarding the required elements of the Annual Report (AR). The contents of the AR should be limited to what Congress requires in BIL. Adding elements that are not required or that are already included in other documents such as the HSP or the annual project report is redundant and an unnecessary burden. In addition, we concur with GHSA's comments performance targets should not be linked to individual projects. Realistically, this is almost impossible to do, and as noted above, there are many variables the impact performance measures. Considering these variables in program-level performance measures is difficult enough and would be much more so at the project level. On a related note, Missouri manages more than 400 projects each year.
6. Finally, in issuing a final rule, we request a "red-lined" version of the rule so that changes from the current rule can be easily identified.

Thank you again for the opportunity to comment. We look forward to a final rule that maximizes the states' abilities to effectively carry out our shared mission to end traffic deaths.

Sincerely,



Jonathan Nelson
Missouri Department of Transportation
Highway Safety and Traffic Division



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