

October 31, 2022

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

Re: Notice of Proposed Rulemaking 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) notice of proposed rulemaking (NPRM) on Uniform Procedures for State Highway Safety Grant Program, published in the Federal Register on September 15, 2022. AASHTO is a nonprofit, nonpartisan association representing the state transportation departments (state DOTs) in the 50 states, the District of Columbia, and Puerto Rico, with the mission to support state DOTs to connect America with the transportation system of today and tomorrow.

The state DOTs and AASHTO work closely with state highway safety offices (SHSOs) and the Governors Highway Safety Association (GHSA). AASHTO echoes GHSA's appreciation of NHTSA's significant effort in developing this NPRM that has addressed Infrastructure Investment and Jobs Act (IIJA) requirements and many comments received during the associated Request for Comment this spring. In addition, AASHTO supports GHSA's thorough and detailed comments on this NPRM, which reflect our mutual goals of effectively and efficiently administering traffic safety activities to aggressively work toward eliminating fatalities and serious injuries.

In addition to supporting the GHSA comments, AASHTO is providing the following comments on several specific aspects of the NPRM related to collaboration among infrastructural and behavioral traffic safety programs and staff.

Effective Performance Management

As we are all aware, traffic safety is a complex field that requires a comprehensive and multidisciplinary approach to reach goals, and performance management activities allow us to more clearly demonstrate transparency and accountability to transportation system users, partners, and other stakeholders.

Collaboration with stakeholders is critical and beneficial to our traffic safety programs. While the joint success of state DOT and SHSO programs depends on collaboration, each stakeholder does have its own areas of responsibility and has to provide expertise and leadership in those areas.

Traffic safety performance management—including target setting policies, reporting, and consequences of not meeting targets—as defined by IIJA and earlier legislation, does not allow states to effectively manage performance and demonstrate their commitment to safety since the individual programs are assessed based in part on shared targets that account for safety aspects outside of their program focus areas. There is no individual stakeholder organization that has full control over preventing and reducing

traffic crashes, and therefore the impacts of performance should reflect the respective roles and responsibilities of individual stakeholders.

While there may not be a decrease in Highway Safety Improvement Program (HSIP) funds due to a state DOT not meeting federal safety targets, there are significant cost and resource impacts related to the administrative burden of the planning, analysis, and implementation of plans required in this situation, as well as potential impacts across other areas of a DOT's program. In addition, it may take years for the state DOT to plan, design and construct projects before crash reduction can occur and therefore the agency may be penalized for a number of years even though positive actions are occurring.

As AASHTO continues its discussions with GHSA on methods to support our members' efforts to improve the effectiveness of traffic safety performance management activities, we also want to continue our discussions with NHTSA, the Federal Highway Administration (FHWA) and other USDOT partners to ensure we are all able to realize the benefits of effective performance management.

Data-Driven Target Setting

AASHTO fully supports a data-driven approach to performance management target setting. In fact, the state DOTs funded National Cooperative Highway Research Program (NCHRP) *Report 993: Managing Performance to Enhance Decision-Making: Making Targets Matter* which describes a core element of transportation performance management as defining performance targets that connect investment decisions to system results in a manner that is transparent to all stakeholders¹. Targets should be used to assess progress toward achieving strategic goals, guide planning efforts, inform programmatic decisions and adjustments, and communicate with stakeholders. Target-setting and performance reporting practices can help determine whether targets are being met and whether current funding levels are adequate and can help communicate with stakeholders.

As required under the IIJA, the safety targets must show constant or improving performance. Unfortunately, this requirement undercuts the purpose of the transportation performance management process. While NHTSA does describe how a state should set a data-driven performance target—as states do today—NHTSA does not articulate 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. In the NPRM, NHTSA states simply that a “state should consider different countermeasure strategies or adjust funding levels” which is not at all that simple to do in reality, and often the required changes take a number of years to implement. States do not have unlimited budgets or staff, ability to make changes to their budgets without state legislative approval, nor do they have an unlimited menu of NHTSA-acceptable countermeasures to use to show that targets will show improvement or constant performance.

AASHTO supports GHSA's recommendation that in situations where the data-driven analysis does not show the ability to achieve constant or improved performance, 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-setting process.

Common Performance Targets between NHTSA and FHWA

One of AASHTO's concerns regarding this NPRM are the three common performance measures between NHTSA and FHWA (fatality, fatality rate, serious injury). NHTSA's proposed language under 1300.12(b)(1)(ii) to allow states to update the targets for the three common performances measures as part of the Annual Grant Application seems appropriate. There is still a question of how to reflect any changes to the three common performance measures in the triennial plan. A recommendation may be to include

¹ NCHRP Research Report 993: Managing Performance to Enhance Decision-Making: Making Targets Matter, Available at: <https://www.trb.org/Main/Blurbs/182711.aspx>. Accessed on 10/27/2022.

language in the triennial plan that the three common performance measures could be updated on an annual basis and include a reference to where to find the updated targets in the annual grant applications. If the triennial plans are web-based, then additional options could be provided to update the language as appropriate and make it clear what the original three-year target is versus the updated, annual target.

However, the language proposed by NHTSA in 1300.12(b)(1)(ii) does not address a critical concern of AASHTO with respect to target setting authority. The performance management provision in the U.S. Code, 23 USC 150, is clear that each “state” shall set performance targets that use the measures developed by USDOT. 23 USC 150(d) is clear that target setting is vested in each “state.”² The proposed language in the NPRM still does not address this conflict. AASHTO disagrees with NHTSA’s assertion in the preamble on the NPRM that “As the substance of the relevant statutes has not changed, NHTSA incorporates the response FHWA provided at that time.”³ In fact, the relevant statutes have changed significantly with respect to target setting with the undeniable fact that the NHTSA targets must now show constant or improved performance. This new language in the law does create a conflict that needs to be appropriately addressed.

Public Participation and Engagement

The new requirements for public participation and engagement are important and we agree with the need to engage with the public in developing the triennial plan. This supports efforts to promote and invest in proven data-driven traffic safety programs in ways that will eliminate disparities, ensure transparency, and most importantly, save lives of all road users, including those in historically underserved communities. However, the purpose of public participation and engagement should be limited to development of the triennial strategic plan. The proposed 23 CFR 1300.11(b)(2)(iii) appears to be without limit and could include management decisions, minor updates to the triennial plan, and annual applications relating to projects. AASHTO recommends that there be specific language included limiting required public participation and engagement to the development of the triennial plan or the annual application but not the ongoing management of the overall program.

In addition, NHTSA should look to the large body of work and experience that has been undertaken as part of the required FHWA public participation process⁴. As part of existing law and regulations, all state DOT are required to develop and implement a comprehensive public participation process as part of the transportation planning process. FHWA has documented much of this work and has developed many resources that support state DOT activities to conduct valuable public engagement activities that incorporate consideration of diverse perspectives. AASHTO would encourage NHTSA to work with FHWA to develop support for states that is tailored to the highway safety planning process.

Rulemaking

AASHTO encourages NHTSA to ensure the final rule does not introduce regulatory requirements that go beyond the changes established by the IJA. State DOTs and SHSOs, many of which are housed in the same agency as the state DOT, have faced significant burdens related to the administrative side of managing their programs that detract from the capacity for implementing effective programs. Additional requirements will further diminish states’ abilities to address traffic fatalities and serious injuries as effectively as possible.

We understand that the process for completing this rulemaking will be a significant effort with administrative constraints for NHTSA, and we strongly encourage NHTSA to issue the Final Rule in a timeframe that allows SHSOs to effectively develop their fiscal year 2024 Triennial Highway Safety Plans (HSPs) and Annual Grant Applications that meet the requirements of the new rule and to consider

² See 23 USC 150(d).

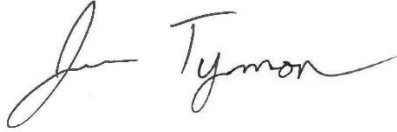
³ See <https://www.govinfo.gov/content/pkg/FR-2022-09-15/pdf/2022-18995.pdf>; page 56768.

⁴ See: https://www.fhwa.dot.gov/planning/public_involvement/ and https://www.fhwa.dot.gov/planning/public_involvement/vpi/

GHSA's recommendations for one-time modifications to requirements for this document to accommodate the schedule challenges that states and NHTSA both face.

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@ashto.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Tymon". The signature is fluid and cursive, with the first name "Jim" and last name "Tymon" clearly distinguishable.

Jim Tymon
Executive Director