

the requester must file a written notice with the Commission.

(5) The Commission shall institute an advisory proceeding by publication of a notice in the **Federal Register**. The notice will define the scope of the advisory opinion and may be amended by leave of the Commission.

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Issued: September 16, 2015.

By order of the Commission.

**Lisa R. Barton,**

*Secretary to the Commission.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 924

#### National Highway Traffic Safety Administration

#### 23 CFR Part 1200

[FHWA Docket No. FHWA-2014-0032]

### Retrospective Regulatory Review— State Safety Plan Development and Reporting

**AGENCY:** Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of regulatory review.

**SUMMARY:** Consistent with Executive Order 13563, Improving Regulation and Regulatory Review, and in particular its emphasis on burden-reduction and on retrospective analysis of existing rules, a Request for Comments was published on November 28, 2014, to solicit input on State highway safety plan development and reporting requirements, which specifically refers to the development of the State Highway Safety Plan (HSP) and Strategic Highway Safety Plan (SHSP), and the reporting requirements of the Highway Safety Improvement Program (HSIP) and HSP. Thirty-eight unique letters were received and this document provides a summary of the input from these letters. Given the lack of support for any significant changes in the highway safety plan development and reporting requirements, neither the FHWA nor NHTSA will change the HSP or SHSP development requirements nor change the HSIP or HSP reporting requirements at this time. However, the FHWA and NHTSA will consider the valuable information offered in the

responses to inform the agencies' decisions on their respective highway safety programs.

**DATES:** September 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** For questions about the program discussed herein, contact Melonie Barrington, FHWA Office of Safety, (202) 366-8029, or via email at [Melonie.Barrington@dot.gov](mailto:Melonie.Barrington@dot.gov); or Barbara Sauers, NHTSA Office of Regional Operations and Program Delivery, (202) 366-0144, or via email at [Barbara.Sauers@dot.gov](mailto:Barbara.Sauers@dot.gov). For legal questions, please contact Mr. William Winne, Attorney-Advisor, FHWA Office of the Chief Counsel, (202) 366-1397, or via email at [william.winne@dot.gov](mailto:william.winne@dot.gov); or Jin H. Kim, Attorney-Advisor, NHTSA Office of the Chief Counsel, (202) 366-1834, or via email at [Jin.Kim@dot.gov](mailto:Jin.Kim@dot.gov). Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

This document, all comments, and the request for comments notice may be viewed on line through the Federal eRulemaking portal at: <http://www.regulations.gov>. The docket identification number is FHWA-2014-0032. The Web site is available 24 hours each day, 365 days each year. Anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476), or you may visit <http://DocketsInfo.dot.gov>.

##### Request for Comments

On November 28, 2014, FHWA and NHTSA published a Request for Comments at 79 FR 70914 soliciting input on actions FHWA and NHTSA could take to address potentially duplicative State highway safety planning and reporting requirements in order to streamline and harmonize these programs, to the extent possible, in view of the separate statutory authority and focus of the two programs.

The FHWA's HSIP and NHTSA's State Highway Safety Grant Programs share a common goal—to save lives on our Nation's roadways—and have three common performance measures. These programs have complementary but distinctly different focus areas and administrative and operational procedures and requirements. The

FHWA's HSIP primarily addresses infrastructure-related projects and strategies. The NHTSA's State Highway Safety Grant Programs primarily focus on driver behavior projects and strategies. One notable distinction is that the statute governing the NHTSA grant program requires State highway safety activities to be under the direct auspices of the Governor. In contrast to the NHTSA grant program, the HSIP is administered by the State Department of Transportation.

Both the HSIP projects and the HSP must be coordinated with the SHSP and both programs contribute to the goals and objectives of the SHSP, but they do so in different ways based on different statutory authority.

The funding for individual project and strategy implementation is contained in the Statewide Transportation Improvement Program for the HSIP and the annual HSP for NHTSA's State Highway Safety Grant Programs. Following the implementation period, the State then reports on progress to implement the projects and strategies and the extent to which they contribute to achieving the State's safety goals and targets. The HSIP report is submitted to FHWA by August 31st each year, while the HSP report is submitted to NHTSA by the end of each calendar year.

##### Summary of Responses

The FHWA received comments from 28 State DOT representatives, 7 State Offices of Highway Safety (or similar-named agencies), and 5 associations. The following sections indicate the specific question as stated in the Request for Comments and provide a summary of the associated docket comments.

*How do State offices currently collect and report data to FHWA and NHTSA? Are any elements of those information collections or reports duplicative? If yes, what are those duplicative requirements and are there ways to streamline them?*

The responses indicated that the means for collecting and reporting data are unique and often tailored by each State. Several States use a combination of national reporting databases, such as the Fatality Analysis Reporting System (FARS), and their own database(s) specifically developed for their State. According to the Governor's Highway Safety Association (GHSA), most States have created comprehensive, tailored, complex programs that capture the most reliable, relevant data for their own requirements. Many States indicated that data was collected by various departments, yet was available to other

State agencies as part of the coordination efforts to use the same data for reporting efforts. Michigan DOT, for example, stated that the departments responsible for data collection and reporting have structured themselves so efforts for FHWA and NHTSA are not duplicative. Ten State DOTs (Arizona, Delaware, Kentucky, Missouri, New Hampshire, North Dakota, Oregon, Tennessee, Vermont, and Wisconsin) and the GHSA acknowledged that there is some duplication between the base data and crash trend analysis requirements for HSIP and HSP reporting purposes, yet they indicated that it was not significant and therefore was not a reason to change the reporting requirements.

Connecticut, Maine, Pennsylvania, and Rhode Island DOTs, as well as the Minnesota and Washington State Highway Safety Offices stated that reporting on three safety performance measures (number and rate of fatalities, number of severe injuries) was potentially duplicative. Those three performance measures are currently part of the HSP and are proposed for inclusion in the HSIP as noted in NPRM RIN 2125-AF56. Though there is some duplication in reporting, several States, including Missouri and Oregon DOTs, the Arizona Governor's Office of Highway Safety, the California Office of Traffic Safety, and the American Association of State Highway and Transportation Officials (AASHTO) indicated that each report serves a different purpose, and therefore should remain separate. While each report focuses on the efforts of its program, these reports support the overall safety efforts described in the SHSP.

Alaska and Washington State DOTs indicated that behavioral questions on the HSIP online reporting tool are duplicative of HSP reporting requirements. The FHWA would like to clarify that only funds programed and obligated for HSIP projects should be reported in the HSIP online reporting tool.

Regarding streamlining, Delaware, Kentucky, Montana, Oregon, Pennsylvania, and Wisconsin DOT as well as the GHSA specifically stated that streamlining efforts should not be pursued, because duplication is minimal and efforts to change the reporting process would likely increase costs and administrative burden. Some States did offer suggestions for streamlining; the AASHTO, Maine, New Jersey, Rhode Island, and Texas DOTs suggested aligning the reporting periods and submission deadlines for HSIP and HSP reports. The HSP is by statute due to NHTSA by July 1 of each year and a

report due December 31. The HSIP annual report is, by regulation, due August 31. The Connecticut DOT, Utah Highway Safety Office, and Washington Traffic Safety Commission suggested that there be a common performance measure reporting tool for both agencies.

As indicated by the responses, data collection is unique to each State. States have developed partnerships and working agreements that allow the collection of data necessary for State highway safety planning. Although a few States indicate there is some repetition in reporting, the majority believe the reports should remain separate. Changes to this process would not provide efficiencies or improve the current practices.

*Are there any changes FHWA and NHTSA should make to the HSIP and the HSP reporting processes to reduce burdens from duplicative reporting requirements, improve safety outcomes, and promote greater coordination among State agencies responsible for highway safety, consistent with the underlying statutory authority of these two grant programs?*

Fourteen State DOTs, four State Offices of Highway Safety, and one association suggested that the existing processes remain unchanged. Only Vermont DOT supported consolidating the HSP for NHTSA and the HSIP for FHWA into a single report. Although Vermont DOT's comment does not specify, FHWA and NHTSA assume that Vermont is referring to the HSP report and the HSIP report. The remainder of the comments on this question suggested minor modifications to the existing processes. New York's State DOT and Governor's Traffic Safety Committee suggested that the plans be combined, yet the reporting remains separate. Eight commenters, including AASHTO, GHSA, Connecticut, Montana, New Jersey, North Dakota, Oregon, and Pennsylvania DOTs suggested that the reports be submitted biannually (every 2 years) rather than annually. Alaska, Rhode Island, Tennessee, and Texas DOTs suggested that the reporting periods and deadlines be aligned between the two reports to reduce burdens and conserve resources.

Rhode Island DOT further suggested that the submission requirements for the HSIP report, HSP and HSP report be the same and that the HSP and HSP report be consolidated. Wisconsin DOT also suggested eliminating duplicate information between the previous fiscal year report and the upcoming fiscal year application for the HSP and HSP report. Rhode Island and Texas DOT suggested

improvements related to the HSIP online reporting tools, and creating an online reporting tool for the HSP. Pennsylvania recommended a uniform online reporting format for common performance measures.

To ensure that the HSIP and HSP are being implemented as intended and their programs are achieving their purpose, FHWA and NHTSA will continue to require yearly reporting. However, due to the limited interest in aligning the deadlines of these two reports, the FHWA and NHTSA will not pursue that action. The FHWA and NHTSA will continue to identify opportunities to streamline the reporting and planning process and explore providing additional guidance to assist States in coordinating their safety plans. The FHWA realizes the importance of the online reporting tool and will continue to solicit input on system enhancements from users. The NHTSA is considering developing an online tool for the HSP and HSP report in the future.

*Would States prefer to combine plans and reports for the HSIP and HSP into a single report for FHWA and NHTSA? Would States find a single report useful for these complementary but distinctly different programs?*

Only Vermont suggested combining the HSIP and HSP reports. Twenty-five State DOTs, five State offices of Highway Safety, and three associations (92 percent of the responders) expressed disagreement with combining the plans and reports for HSIP and HSP into a single report. Commenters indicated that combining the reports would lead to increasing the burdens on the States due to more layers of review and approval, thus increasing cost and additional time requirements for coordination above and beyond what is needed. Some States indicated that a combined document would be more difficult to interpret by the intended audiences and that it would also likely increase the review time by FHWA and NHTSA thus potentially delaying program funding and implementation. Based on the overwhelming response against combining the plans and reports, the current planning and reporting structure will be maintained.

*Are there any State legal or organizational barriers to combining plans and reports for the HSIP and HSP to FHWA and NHTSA? To what extent does the location of the State recipient of the Federal funds from FHWA and NHTSA, within the State's organizational structure, add to or reduce the burdens of consolidated plan development or reporting?*

While there was quite strong opposition to combining the HSIP and HSP reports, only eight commenters (Michigan, Minnesota, and Washington State DOTs and California, Minnesota, and Washington Offices of Highway Safety, AASHTO and GHSA) indicated that there were organizational barriers to combining the plans and reports. Washington Traffic Safety Commission indicated that combining more reports with Washington State DOT would be an additional burden due to the differences in organizational structure between the two independent agencies. California Office of Traffic Safety indicated that California's organizational structure would make it difficult to combine the plans. Five State DOTs and three State offices of Highway Safety did not specifically state that there were legal or organizational barriers, yet some provided comments indicating how the agencies within the State already work together or comments against combining the plans due to the additional coordination/approval process that would be required beyond what is already being done. Wisconsin DOT stated that "efforts to combine reporting would be cumbersome, time-consuming, disruptive, and costly." Fourteen State DOTs and one State Office of Highway Safety specifically indicated that there were no legal or organizational barriers to combining the plans and reports. However, several commenters, including Alaska, New Hampshire, North Dakota, and Missouri DOTs acknowledged combining plans or reports would be burdensome and not add any efficiencies or improvements to the process. Furthermore, combining plans would also be unproductive as the SHSP is the State's comprehensive highway safety plan and already coordinates highway safety efforts and builds consensus on safety goals and strategies. These efforts are then implemented through the HSIP and HSP. The responses on organizational or State

legal barriers to combining plans or reports further indicates there is not support or a strong desire for a change to the current processes.

*Are there SHSP requirements with higher costs than benefits? If so, what are those requirements and are there ways to improve them or should they be eliminated?*

Nineteen State DOTs and 4 State Offices of Highway Safety indicated that the SHSP costs do not outweigh the benefits. Responding to ways to improve or eliminate requirements, the Arizona Governor's Office of Highway Safety indicated that requirements related to data collection in general have higher costs than benefits which can essentially reduce the State's ability to satisfy other requirements under MAP-21.

Oregon DOT suggested that FHWA consider eliminating the individual strategy evaluation requirement, and instead focus on data collection to evaluate overall performance on key transportation safety metrics such as fatal and injury crashes over an extended period. The FHWA would like to clarify that evaluation of individual SHSP strategies is not an SHSP requirement; rather State's should assess whether the strategies are being implemented as planned, and review their progress in meeting SHSP goals and objectives, such as reductions in the number of fatalities and serious injuries. Both AASHTO, through its discussions with member States, and GHSA indicated that over time the SHSP principles and process have been embraced and integrated by the State DOTs and Highway Safety Offices, resulting in a safety culture through the planning and programming processes. The AASHTO cautioned against the promulgation of additional guidance on reporting that could disrupt the existing working arrangements and reporting systems currently in place. Similarly, GHSA indicated that because the SHSP process has been incorporated into the planning process already, there were not likely to be improvements that would greatly reduce costs.

*Are there changes FHWA should make to the SHSP guidance to promote coordination among State agencies responsible for highway safety?*

Very few commenters provided input related to changes that FHWA should

make to the SHSP guidance to promote coordination among State agencies responsible for highway safety. The AASHTO indicated that it would not object to guidance that may encourage State agencies to collaborate and coordinate in the further development of their safety plans, but that any additional mandates to require the collaboration and coordination is unwarranted. Iowa DOT suggested FHWA provide a template for a memorandum of understanding or other type of agreement to institutionalize the collaborative process which outlines the shared and separate responsibilities included in the development of a State's SHSP. Oregon DOT indicated that the current requirements are sufficient, yet there is no enforcement mechanism in place requiring all parties to participate with the FHWA and NHTSA funded State agencies, which are compelled by financing to work together. Rhode Island DOT suggested that FHWA mandate States to designate a full-time employee as the State's SHSP Program Coordinator. The FHWA in coordination with NHTSA will promote noteworthy practices on collaboration and coordination of safety stakeholders in the development and implementation of the SHSP. The FHWA will continue to endorse flexibility in how the States choose to develop their SHSP and HSIP in accordance with MAP-21.

## Conclusion

Given the lack of support from State DOTs and Offices of Highway Safety for significant change in the highway safety plan development and reporting requirements process, FHWA and NHTSA will retain the current State highway safety plan development and reporting requirements. The DOT will use the valuable information offered in the responses to streamline and harmonize FHWA and NHTSA highway safety programs.

Issued on: September 8, 2015.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

**Mark R. Rosekind,**

*Administrator, National Highway Traffic Safety Administration.*

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