

April 16, 2024

U.S. Department of Transportation
Docket Management Facility
1200 New Jersey Ave SE
Washington, DC 20590

Subject: Docket No. FHWA-2023-0045
Proposed modifications to rules governing the HSIP
23 CFR Part 924

The Montana Department of Transportation (MDT) appreciates the opportunity to provide comments on the U.S. Department of Transportation's (DOT) Notice of Proposed Rulemaking (NPRM) on the *Highway Safety Improvement Program* (HSIP), published in the Federal Register on February 21, 2024. HSIP is a critically important program that seeks to reduce traffic fatalities and serious injuries on the nation's public roadways. MDT is equally dedicated to its own safety efforts to achieve Vision Zero: zero deaths and zero injuries on Montana roadways. Safety is a foundational element of MDT's mission, and we are committed to enhancing highway safety features to help all highway users arrive at their destinations safely.

In addition to MDT's comments, provided below, MDT fully endorses the comments filed jointly by the state transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming. Combined, these comments seek to maintain states' flexibility and discretion, without compromising program efficacy.

MDT comments are provided below for the Federal Highway Administration (FHWA)'s consideration:

1. Section II. Summary of the Major Provisions of the Regulatory Action in Question, states:

State's SHSP must include a vulnerable road user safety assessment in accordance with 23 U.S.C. 148(l) and require each State to conduct a systemwide safety risk assessment as part of its HSIP data analysis process.

It is quite common to have several safety improvement sites (20 or more) within a single MDT project. This requirement would require each individual site within a project to be evaluated, both before and after (resulting in 40 or more evaluations for a single project). The reason MDT incorporates multiple safety sites into a single project is to maximize the efficiency of project delivery and to reduce design/construction costs. Implementing this requirement would undermine MDT's efforts and ultimately increase project costs and delay delivery.

2. Section II. Summary of the Major Provisions of the Regulatory Action in Question, states:

State[s] [shall] establish a process to evaluate the effectiveness of data improvement activities for MIRE fundamental data elements and clarifying that HSIP evaluation shall include individual project evaluations, countermeasure evaluations, and program evaluations.

- Individual projects include multiple safety sites within its boundary. This is designed to reduce the associated costs of safety improvements. As noted in comment 1, individually evaluating each safety site within a project would undermine this effort by increasing project costs.
- MDT implements multifaceted sites within a single project. It would be difficult to disaggregate the costs of each feature/site at each project location.
- Montana's widely rural landscape often means that small numbers of crashes at single sites will make it difficult to reliably evaluate a before-and-after scenario. Limited data is also vulnerable to being skewed, which can further lead to inaccurate results.

3. Section 924.3 Definitions, states:

The FHWA also proposes to clarify that, consistent with 23 U.S.C. 148, the HSIP applies to all road users, in addition to all public roads.

Crash trend data may only impact one set of roadway users. Expanding a project to all roadway users may not meet the benefit cost, thus no project would be eligible or nominated. MDT recommends FHWA consider revising the definition to "considering all road users" instead of "requiring all road users."

4. Section 924.3 Definitions, states:

The FHWA also proposes to clarify that safety data also includes crash and exposure data for nonmotorized users consistent with 23 U.S.C. 148(c)(2)(A)(vi), which requires States to improve the collection of data on non-motorized crashes as part of their HSIP.

Whether it becomes the states' responsibility to collect this data or it is acquired from private sources (e.g., Streetwise Services), this would be extremely costly (e.g., internal staff resources needed for data collection or the purchasing of private data from external sources).

5. Section 924.3 Definitions, states:

The FHWA believes that a classification framework with at least three levels of safety is needed to provide a meaningful way for States to distinguish between different safety levels to support prioritization of projects that best improve safety... The FHWA welcomes feedback on the appropriate number of categories for the risk ratings.

Identifying safety road projects under this new method reprioritizes how MDT ranks projects, which currently assesses crash exposure and systemic approaches. This new method may pose risks for FHWA and states by prioritizing projects where there is little to no ability to make improvements (geographical issues) or that experience extremely low volumes or crash severity.

6. Section 924.5 Policy, states:

The FHWA proposes to revise paragraph (b) to clarify that HSIP funds shall be used, rather than should be used, to maximize opportunities to advance highway safety improvement projects that have the greatest potential to reduce the State's roadway fatalities and serious injuries.

MDT supports prioritizing safety projects for funding however it does not support the proposal that FHWA define how a state ranks its roadways and, as it says above, "that HSIP funds **shall** be used...". The proposed language, written as an absolute, implies that states will no longer have the authority to consider projects that have the greatest potential to improve safety. Project selection should be at the discretion of states who are most knowledgeable about

roadway safety needs within their boundaries. Allowing states this discretion maximizes the use of funds and efforts that have the greatest potential to reduce fatalities and serious injuries.

7. Section 924.5 Policy, states:

The FHWA also proposes to clarify that the State shall not only have HSIP processes, but those processes shall be documented and approved by the FHWA Division Administrator.

This proposed change appears to require FHWA to approve a state's HSIP processes. Such a condition will only weaken states' project selection authority as well as its flexibility in adapting to changing conditions. MDT therefore recommends that the proposed language be revised to say that HSIP process shall be developed by states in cooperation with the FHWA Division Administrator.

It is unclear how states are expected to comply with this proposed requirement while at the same time keeping the process document confidential, given that such documents are legally required to remain so. Additionally, depending on the level of HSIP process documentation required to be sent to FHWA, once sent, the state may lose its Section 407 protections.

8. Section 924.9 Planning, states:

Proposed paragraph (a)(1)(i) would require safety data to be able to differentiate between vulnerable road users, other road users under subparagraph (i)(A), consistent with 23 U.S.C. 148(c)(2)(A)(vi), and also disaggregate safety data by demographic variables to support the inclusion of equity in the State's HSIP in subparagraph (i)(B).

It is unclear what "safety data" is in this instance. MDT does not differentiate its data by users with the exception of crash types.

- Disaggregating safety data by demographic variables would not be possible. Currently only age, race and gender are collected in crash data. Montana Highway Patrol (MHP) reports are Model Minimum Uniform Crash Criteria (MMUCC) compliant; however, all local law enforcement reports are not. Therefore, such information is not collected for approximately 50% of state-wide crashes. Race and ethnicity are only collected based on an officer's observation, is optional, and can be subjective. Therefore, MDT does not recommend a requirement to disaggregate this data. If, however, FHWA is determined to include such a requirement, then MDT recommends a revision to the language to include stipulations that the disaggregation of data will be satisfied to the best of states' ability, considering the availability of data and proxies for unavailable data.

9. Section 924.9 Planning, states:

While States can conduct a systemwide risk assessment with the MIRE fundamental data elements and other asset-related data, other roadway data would add value to the process.

The above statement includes "other roadway data". This is an ambiguous term. MDT does not have the authority to conduct risk assessments on roadways not in its jurisdiction. MDT recommends that FHWA clearly identify what "other roadway data" is being considered and whether this will be a requirement or simply a recommendation for states to consider. MDT does not support any additional data requirements other than what is already required in 23 CFR 924 for MIRE data elements.

10. Section 924.9 Planning, states:

In paragraph (a)(4), FHWA proposes to require States to develop a process to conduct systemwide safety risk assessment to implement 23 U.S.C. 148(c)(2)(B).

MDT is concerned that the above statement implies that FHWA is trying to restrict states' ability to direct how HSIP funds can be allocated. This would be an unfortunate change as any move

to restrict states' ability to direct their funds may keep states from addressing their areas of greatest need. It's critical that flexibility be preserved so that the program can evolve with changing conditions and needs over time. For instance, as increased HSIP funding became available, MDT began to develop larger projects and safety performance functions to help identify the greatest locations of need. MDT also looks at risk factors and implements systemic safety countermeasures (centerline rumble strips, statewide curve signing upgrades, high tension cable barrier, etc.) to maximize safety benefits.

11. Section 924.15 Reporting, states:

The FHWA proposes to add new paragraph (a)(1)(i)(B) that would require a State to discuss the progress made implementing the priorities and actions identified in the State's HSIP implementation plan under 23 U.S.C. 148(i)(2) for those States that did not meet or make significant progress toward meeting their safety performance targets... The FHWA proposes to revise redesignated paragraph (a)(1)(ii) (current paragraph (a)(1)(iv)) to require States to report the results of individual projects, countermeasures, and program evaluations.

Limited staff resources would make the additional requirements proposed above very challenging.

12. Section 924.15 Reporting, states:

While it is currently optional for States to report this information, nearly half of the States already do so, and, as noted above when discussing proposed changes to § 924.13(a)(2) all States are necessarily required to have processes in place for individual project evaluations.

MDT does include this information, yet it is provided based on a method MDT developed. Under this proposal, a new method is being proposed that will be far more cumbersome and time consuming, and may not provide anticipated results, especially for low volume roads (secondary routes and local roads in particular).

MDT appreciates the opportunity to comment on this rulemaking process. Through Montana's Vision Zero goal, we remain committed to the goal of zero deaths or serious injuries on Montana roadways. Therefore, we encourage FHWA to be considerate of limiting state burden and costs, preserving state flexibility and authority for administering its programs as provided in Title 23 USC, and allowing states to focus efforts on those most critical to safety management.

Sincerely,



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