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May 22, 2014

Gregory G. Nadeau
Deputy Administrator, Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re: Docket No. FHWA-2013-0019

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on Federal Highway Administration's (FHWA) "Highway Safety Improvement Program" NPRM, published in the Federal Register on March 28, 2014. Representing all 50 states, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between State Departments of Transportation (DOT) and the federal government.

AASHTO and the State DOTs are supportive of the MAP-21 safety provisions and safety remains a top priority for AASHTO and for the State DOTs. AASHTO and its member departments are committed to developing and implementing data-driven safety programs that reduce fatalities and serious injuries on the U.S. transportation system. In fact, since peaking in the 1970s, roadway fatalities have been reduced to record lows not experienced since the early part of the 20th century. State DOTs have been among the leaders making these reductions a reality with their partners in the driver behavior, law enforcement, and emergency medical services communities.

However, over 33,000 people lose their lives on the nation's roads each year—and one life lost on a roadway is one too many. To this end, over thirty State DOTs have adopted a zero-based goal or vision, such as a *Toward Zero Deaths* (TZD) policy, with the intent of eliminating all road-related fatalities. Building on state programs, AASHTO has participated in the development of the national safety initiative, *Toward Zero Deaths: A National Strategy on Highway Safety*. This national strategy has been developed in cooperation with associations representing state and local agencies whose members have responsibilities for various aspects of safety such as infrastructure programs, licensing, enforcement, education, commercial vehicle safety, and emergency medical services. The national strategy focuses on uniting all highway safety stakeholders to build on the safety programs that have been effective and promotes development of new countermeasures that will continue to reduce fatalities and serious injuries, and is therefore a tool that all stakeholders can use to enhance current national, state, and local safety planning and implementation efforts.

The following comments represent a substantial work effort among State DOTs to thoroughly review and comment on the NPRM. This included a coordinated effort to gather input from the

AASHTO Standing Committees on Highway Traffic Safety, Performance Management and Planning.

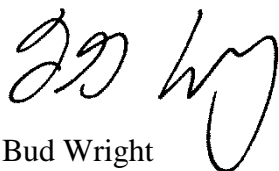
AASHTO is supportive of the Highway Safety Improvement Program. However, it is recommended that FHWA address the concerns we have outlined in the attachment to this letter. Of particular concern to the State DOTs is the amount of resources, both time and funding, that will be required to meet the Model Inventory of Roadway Elements (MIRE) Fundamental Data Elements (FDE). We believe that the changes we recommend would strike an effective balance between encouraging State DOTs to collect the necessary data to conduct safety analysis and research without unduly burdening the States.

The comments are organized as follows:

- **Principal Comments**—There are eight principal comments for which AASHTO provides an in-depth analysis and discussion.
- **Section-by-Section Comments**—AASHTO comments on each major section and subsection of the NPRM.
- **AASHTO Response to FHWA Requests**—AASHTO response to the eight questions specifically asked by FHWA in the NPRM.
- **Proposed Changes to Text**—Suggested changes to the NPRM text based upon AASHTO analysis.

We appreciate the opportunity to provide these comments and look forward to working with FHWA in the implementation of final rules that are in accord with our suggestions. If you would like to discuss the issues raised in this letter, please contact Kelly Hardy, AASHTO's Program Manager for Safety at (202) 624-5868 or Matthew Hardy, AASHTO's Program Director for Planning and Policy at (202) 624-3625.

Sincerely,



Bud Wright
Executive Director, American Association of State Highway and Transportation Officials



Mike Hancock
President, American Association of State Highway and Transportation Officials
Secretary, Kentucky Transportation Cabinet

PRINCIPAL COMMENTS

1) IMPLEMENTATION OF THE MIRE FDE REQUIREMENTS

In general, AASHTO acknowledges the need to collect data on a wider range of public roads in order to support better decision-making. However, the requirement within the Highway Safety Improvement Program (HSIP) Notice of Proposed Rulemaking (NPRM) to collect the MIRE FDE on all public roads will be extremely difficult to achieve given current resources and funding availability. In addition, these FDEs require a significant amount of resources in both money and staffing in order to be collected by 2020. The concern of AASHTO with regard to the MIRE FDE centers around four areas: 1) data requirements; 2) cost to collect, analyze and manage; 3) timeframe for implementation; and 4) impact on All Public Roads requirements.

Data Requirements—MAP-21 requires the Secretary to establish a subset of the MIRE elements on all public roads. All State DOTs have very good data on all state owned roadways. And, many States may already be working with their local partners to collect data on the higher functional class roads for non-state roads, but will have almost no data for the lower order roads. Thus, the huge and expensive challenge posed to State DOTs by this NPRM concerns data collection for the non-state roadway system and those roads owned by the federal government and sovereign tribal governments. For the federally and sovereign owned roads, the government-to-government relationship that exists between tribal nations and the federal government seems a more appropriate avenue for ensuring this data will be collected.

Many states are currently working to meet the linear referencing system (LRS) requirements regarding the Geospatial Network for All Public Roads which now requires a State DOT to submit an LRS for all public roads and not just those roads eligible for Federal Aid¹. While many states are able to meet this new requirement, there are some states having difficulty simply collecting the LRS data let alone fundamental data on the roadway characteristics. What is being asked of States through the HSIP NPRM is to collect additional data above and beyond a simple LRS and include additional data for roads not owned by the State DOT.

In addition to the additional amount of data that will have to be collected for non-intersection roadway segments, the level of detail and type of data being requested for each intersection is substantial and does not provide sufficient detail to support sophisticated analysis. Consideration should be given to collecting enough intersection information (with supporting details) so that a representative sample exists and is sustained as a high quality data set since most scientific studies use a representative sample to conduct their hypothesis testing. The current proposal strives to collect the entire universe of intersections with a diluted data set for future use and this approach needs to be changed. AASHTO would encourage US DOT to explore the use of other data sets, such as the United States Road Assessment Program

¹ See August 7, 2012 letter to FHWA Division Administrators from Mr. David Winter and Mr. James Cheatham

(usRAP), a program of the AAA Foundation for Traffic Safety, which could be useful for roadway safety analysis.

Cost to Collect, Analyze and Manage the Data—The cost estimate conducted by FHWA for purposes of the MIRE FDE are significantly underestimated. AASHTO conducted a survey of its members to gather additional input on the estimated cost of meeting the MIRE FDE requirements and came to the following conclusion for an average state:

Year 1 Expenses

- Information Technology Cost for entering, storing and reporting the data: \$4 million.
- Data Collection includes additional counting equipment, vehicles, and personnel: \$6 million.
- Additional Staff to administer the data collection program: \$1 million.

Year 2 through 16 Expenses

- Annual Operations and Management: \$2 million.

Total Costs

- Total Year 1 Expenses for All State DOTs: \$561 million (\$11 million/state * 51 states)
- Total Year 2 through 16 Expenses: \$1.53 billion (\$2 million/state * 51 states * 15 years)
- Total Undiscounted Cost: \$2.091 billion

The costs associated with implementation of the MIRE FDE are not trivial and represent both a significant up-front cost and annual costs. Currently, State DOTs do not have the additional resources to spend on original data collection and the ongoing maintenance of these data. AASHTO believes that the extensive data collection and storage of information required to collect MIRE FDE at the local level falls into the unfunded mandate category.

Timeframe for Implementation—AASHTO has significant concerns about the ability to implement the MIRE FDE over a 5 year period for all public roads. Even if there were no issue surrounding the availability of resources to collect the required data, the time requirement to gather a minimum set of data for all public roadways by September 30, 2020 is too aggressive, both in urban and rural settings, and may not be appropriate. Data collection on all roads requires coordination, prioritization, local assistance, and funding. As a result, completing this task within the proposed timeline will be problematic.

Impact on All Public Roads Requirements—All public roads involves a significant amount of road miles and will include lightly traveled gravel (or otherwise unpaved) county roads of all conditions, local streets within neighborhoods that are generally low speed and low volume, as well as forest service roads that may only be accessible for a few months out of the year, creating an extra data burden and resource investment for States.

AASHTO recommends the following as it relates to the Implementation of the MIRE FDE Requirements:

- **Limit which local/rural roads need to have data reported**—To alleviate lack of clarity as to the roads for which States will be acquiring data, data collection should only be for roads in good enough condition to be traversable by a typical passenger car and available to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. If access is restricted to a subset of persons, then it is not considered open to public travel.
- **Allow states to determine methodology to estimate Average Annual Daily Traffic (AADT) for lower level roads.** AASHTO agrees with FHWA in allowing State DOTs to estimate travel demand on lower level roads. The MIRE Fundamental Data Elements Cost-Benefit Estimation prepared for FHWA suggests that one methodology would be to use geospatial analysis that assigns volumes based on roadway and location characteristics. This is but one methodology, and the rule should indicate that State DOTs can choose an estimation methodology they believe to be best suited for their roadway network.
- **Allow a minimum of ten years for State DOTs to collect MIRE FDE on all public roads.** AASHTO appreciates that FHWA has proposed a five year delayed date of requiring State DOTs to collect the MIRE FDE on all public roads. However, the delayed date is not achievable given the current data requirements, definition of public roads, and available resources. AASHTO recommends that this five year delay be extended to ten years.
- **States should not have to report data for sovereign tribal lands**—The government-to-government relationship that exists between tribal nations and the federal government seems a more appropriate avenue for ensuring this data will be collected. FHWA should eliminate the requirement to collect and analyze data and provide direction on strategic planning to tribal governments. Instead, FHWA should work directly with tribal governments to ensure they have the resources to be collaborative partners in data collection, maintenance, and analysis. Requirements already exist for plan development on tribal roadways in other federal rules.
- **Limit the data for low volume, off-system roads**—FHWA should establish three categories of roadways for data collection:
 1. **Unpaved/Gravel/Dirt Roadways:** States should not be required to collect the MIRE FDE for roadways that are unpaved or gravel. These roadways are typically very low volume and often seasonal in nature.
 2. **Roadways with Less than 400 AADT:** Collect data as proposed in the NPRM, Table 2.
 3. **Roadways with Greater than 399 AADT:** Collect data as proposed in the NPRM, Table 1.

While distinct treatment for unpaved roads may overlap with the proposed fewer requirements for roads with AADT below 400, there is a straightforward simplicity to

this demarcation line, as one would not have to have counted or estimated AADT to know that reporting should be limited as to unpaved roads.

- **Allow states to prioritize their data needs based upon available resources**—CFR 924.11(b) should be modified to allow states to develop an implementation plan that prioritizes the collection of MIRE FDE as resources are made available.
- **Extend the September 30, 2020 MIRE FDE deadline**—The 5-year time frame in CFR 924.11(b) should be removed and replaced with a longer term deadline that takes into account the roles that should be played by entities other than State DOTs.

2) FLEXIBILITY IN USING THE HSIP FUNDING BETWEEN INFRASTRUCTURE AND NON-INFRASTRUCTURE PROJECTS AND PROGRAMS

AASHTO supports the elimination of a 10 percent flex funds cap in exchange for being able to use the funds to maximize the potential safety benefit. However, AASHTO does have concerns that a lack of flexibility by the federal agencies will impact any opportunities that states may have to be innovative in using such funds to address non-infrastructure types of projects. First, the statement FHWA expects that National Highway Traffic Safety Administration (NHTSA) and Federal Motor Carrier Safety Administration (FMCSA) funds to be used to the fullest extent before flexible funds are used identifies the difference in priorities from the various federal perspectives (e.g., if NHTSA does not believe it is a priority, they will not allow “their” funds to be used on certain project types). Second, this lack of flexibility ignores the connection in MAP-21 between a State’s Strategic Highway Safety Plan (SHSP) and the HSIP. The SHSP recognizes the multi-disciplinary approach to traffic safety, including the coordination of funding. Finally, the lack of actual flexibility from the federal oversight is a real possibility.

It is AASHTO’s position that if a non-infrastructure project/program meets the HSIP approved criteria, the State DOT should be able to utilize the funds as needed. For example, if an HSIP project to install rumble strips as a countermeasure for lane departure or road departure would benefit from the synergistic effort to bring in traffic law enforcement and education (for drivers, pedalcyclists, motor carriers), the state should be able to use the HSIP funds for the non-infrastructure aspects. If states lose the flexibility to bring in these elements under the HSIP funding eligibility, it places tension at the state level to go shopping for other funds to cover the education or enforcement efforts. Oftentimes the high priority location under HSIP for countermeasures like rumble strips is not the same location for education and enforcement efforts from the State Highway Safety Office (SHSO) as their focus is on impaired driving or occupant protection efforts per NHTSA guidance.

AASHTO recommends the following as it relates to flexibility in using the HSIP funding between infrastructure and non-infrastructure projects and programs:

- **Maximize use of limited funding to improve safety outcomes.** AASHTO appreciates the flexibility given to State DOTs to use HSIP funds for data collection, analysis, evaluation and reporting. However, with limited funding, the proposed data requirements could force States to spend much of their HSIP money on data collection and not

delivering safety projects. AASHTO believes that the priority for funding must remain focused on delivering projects rather than data collection.

- **Remove the requirement that all other eligible funding for non-infrastructure projects must be used prior to using HSIP funds.** The language of indicating HSIP funds are eligible for any highway safety improvement (both infrastructure and non-infrastructure) seems to be positive and flexible, but the added requirement that indicates “all other eligible funding for non-infrastructure projects must be used prior to using HSIP funds” may be limiting and a detriment. The non-infrastructure HSIP projects will need to be shown separately in the STIP.

3) SAFETY PROGRAMMING AND PROJECT SELECTION

The selection of safety programs and projects is an integral part of the performance management process. And, flexibility is needed by the States to use HSIP funds that will be used for highway safety improvement projects to advance safety consistent with the State’s SHSP and reduce the State’s fatality and serious injuries. The statutory text of 23 USC 148(c)(2)(B)(v) calls for a State to “**consider** which projects maximize opportunities for safety.” (emphasis supplied). Also, under 23 USC 148(c)(2)(C)(ii) a State is to adopt “**goals**” that “focus resources on areas of greatest need.” (emphasis supplied). In several instances the proposed rule includes language that appears to be unduly detailed or prescriptive and would not allow a state the flexibility and ability to program safety projects that could well act to curtail State programming flexibility beyond any statutory requirement. Such provisions should be deleted or revised.

For example, as proposed in 23 CFR 924.5(b) these provisions appear to have morphed from a consideration or goal to an apparent operative requirement at the project level: “HSIP funds shall be used for highway safety improvement projects that maximize opportunities to advance safety ... and have the greatest potential to reduce the State’s fatality [sic] and serious injuries.” This language is at the project level and appears to contemplate some ability to have a rank order for projects so that one can determine which ones “maximize” opportunities to advance safety and provide the “greatest” potential to reduce fatalities and serious injuries. This creates the risk of administration of the program such that a State cannot program anything in this area without FHWA approval of the project selection as being one that has the best rating (“maximize” and “greatest”) under some approach. This approach seeks precision in programming that would require significant underlying work, would strip States of significant ability to exercise judgment in programming, and is not required by statute.

Similarly, proposed 924.9(a)(3)(vii), regarding updates to SHSP, appears to be more specific and project oriented than the statute in calling for the SHSP to focus on areas that “... possess the greatest potential for a high rate of return on safety investments.” This rate of return language suggests a very detailed analysis, seemingly looking for project level cost benefit analyses, and should be deleted. Moreover, under the above proposed change to 924.5(b) a State already would have to consider “which projects maximize opportunities for safety and consider which areas are in greatest need for safety improvement investment.” To this end, State DOTs have and will continue to voluntarily use a variety of analysis techniques, including economic analyses methodologies, they deem appropriate and necessary. In fact, AASHTO recognizes the usefulness of conducting economic analyses for safety projects and programs as is documented

in the Highway Safety Manual and the Safety Analyst software. While these tools may be seen as best practices or commonly used, we are concerned that requiring the use of such tools, or a specific methodology, through this rulemaking may become overly burdensome to the State DOTs. AASHTO recommends not requiring the use of a rate of return analysis but leaving State DOTs free to determine, on their own or in consultation with FHWA, selection and implementation of means of prioritization using techniques they deem appropriate and necessary.

AASHTO recommends the following as it relates to Safety Programming and Project Selection:

- **Revise Section 924.5(b) to provide States with greater flexibility, as called for by the statute.** One possible approach to revising the language of the proposed rule would be along the following lines: “HSIP funds shall be used for highway safety improvement projects consistent with the SHSP provided that the State shall have considered which projects maximize opportunities for safety and considered which areas are in greatest need for safety improvement investment.”
- **Remove “rate of return” language.** This rate of return language suggests a very detailed analysis, seemingly looking for project level cost benefit analyses, and should be deleted. Under proposed 924.5(b) a State DOT will already consider “which projects maximize opportunities for safety and consider which areas are in greatest need for safety improvement investment.” Accordingly, 924.9(a)(3)(vii) should be revised as follows:

NPRM	AASHTO Recommendation
Identify key emphasis areas and strategies that significantly reduce highway fatalities and serious injuries, focus resources on areas of greatest need, and possess the greatest potential for a high rate of return on safety investments;	Identify key emphasis areas and strategies that significantly reduce highway fatalities and serious injuries and focus resources on areas of greatest need as determined by the State DOT.

4) ONLINE REPORTING OF THE HSIP

AASHTO is supportive of the online report tool for the HSIP. However, many States have reported problems and issues concerning the use of the tool and the value it provides. For example, some states have indicated it is difficult and inefficient to use because access to the online reporting tool is limited due to tight security measures that necessitate supplying confidential and personal information in order to use the system. Others report that the tool is cumbersome to use.

AASHTO recommends the following as it relates to use of the HSIP Online Reporting Tool (ORT):

- **Delay the requirement that all states must use the online reporting tool until after a user evaluation is conducted and changes are made.** A comprehensive user evaluation needs to be conducted to better understand what works and what is not working with the current tool and to implement necessary changes.

- **Establish an HSIP Online Reporting Tool Expert Task Group (ETG).** The HSIP ORT ETG would be composed of State DOT personnel who must use the tool and provide feedback to FHWA on suggested changes and improvements.

5) SERIOUS INJURY DEFINITION

AASHTO is supportive of the transition of States to using the Model Minimum Uniform Crash Criteria (MMUCC), 4th Edition. The NPRM specifies that the MMUCC, latest edition, should be used. AASHTO suggests that the MMUCC 4th Edition be established in the regulation such that State DOTs are not out of compliance once the next edition is available. For more information, please refer to AASHTO comments on the “National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule” Docket FHWA-2013-0020 for a more extensive discussion and recommendations on transition to MMUCC and linking medical data with crash records

AASHTO recommends the following as it relates to the Serious Injury Definition:

- **Use the MMUCC, 4th Edition.** AASHTO recommends that FHWA establish MMUCC 4th Edition in the regulation rather than MMUCC, latest edition. Specifying a particular edition, rather than the latest edition, will ensure that State DOTs are not immediately out of compliance once a new edition is published.

6) USE OF THE TERM “HAZARD”

Throughout the HSIP NPRM, the term “hazard” is used to imply an unsafe condition on roadway. The use of the term “hazard” creates a liability for many State DOTs since it implies that an unsafe condition does exist when it does not. In keeping with the state of the practice, the use of the term “risk” or “relative risk” should be used because it would be more accurate and not inadvertently create potential liability for State DOTs.

AASHTO recommends the following as it relates to the Use of the Term *Hazard*:

- **Do not require that a project must correct or improve a hazardous road segment under CFR 924.3(3) *Highway safety improvement project*.** The use of the term *hazard* in this instance would mean that only reactive measures would occur and that proactive measures would not be considered since not all locations will have hazards or problems such as systemic improvements. AASHTO would recommend that FHWA use the terms “the project results in modifications to a road segment, location or feature that reduce the potential for the number, type or severity of crashes.”
- **Change the definition of *Hazard Index Formula* to *Relative Risk Index* under CFR924.3.** Use of the term *risk* and *relative risk* provide a clearer definition and create less liability for State DOTs.

7) EVALUATING AND REPORTING² SAFETY PROJECTS AND PROGRAMS

An important tenet of performance management and performance-based planning and programming (PBPP) is a feedback loop whereby an evaluation of implemented programs and projects is conducted with that information being reported back into the decision-making process such that better decisions can be made on how to use limited resources. Typically, the types of projects that are being implemented are multi-year efforts with outcomes that may take a number of years to fully appreciate. Currently, the HSIP NPRM is not focused on the long-term evaluation and reporting of these long-term outcomes.

It is important that the HSIP focus not only on the short term efforts of annual target setting and reporting but long term outcomes as well. To date, State DOT efforts in achieving a coordinated program for highway safety have focused on setting consistent goals and performance measures across the different modes and programs. If State DOTs are to truly move towards a performance management approach, they should focus not solely upon the year-to-year target setting but the long-term outcomes as well. Without a consistent and coordinated effort on the feedback loops (evaluating project effectiveness), the process as laid out in the HSIP NPRM leads a State DOT to focus too much on the federally-mandated process and not the long-term outcomes.

AASHTO recommends the following as it relates to Evaluation and Reporting of Safety Projects and Programs:

- **Ensure long-term Safety Outcomes are Emphasized in Addition to Short-term Target Achievement.** Strengthen the language of CFR 924.15 (a)(1)(iv) to emphasize a long-term, outcome oriented focus in addition to the reporting on target achievement.

8) COORDINATION BETWEEN NHTSA AND FHWA IN PROVIDING DEFERENCE AND FLEXIBILITY TO STATES

We perceive differences in the approach between NHTSA and FHWA when it comes to transportation safety. With one approach, a State DOT is expected to push the envelope and be innovative and aggressive with regard to safety targets.. However, under another approach the emphasis is focused on ensuring that the funds that are spent on safety result in target achievement and good results. AASHTO encourages NHTSA and FHWA to continue to strive to work closely together. Most importantly, both agencies and USDOT must recognize the important role of the States in delivering the program and provide greater deference and flexibility to the States in program administration as States seek to improve safety. Deference to States is particularly important with respect to target setting and safety performance management. USDOT can provide advice on best practices and additional information and that will be welcome while allowing for flexibility in States' approaches to implement the HSIP and meet the intent of MAP-21.

² AASHTO provided more detailed comments on the Coordination of Planning Documents through our comments on Docket Number FHWA-2013-0020

AASHTO recommends the following as it relates to the Coordination Between NHTSA and FHWA:

- **Adopt a coordinated approach to safety performance management.** FHWA and NHTSA should collaborate and coordinate their approaches to improving safety. This approach can include encouraging State DOTs to set aggressive targets, adopt best practices, and implement innovative safety projects while preserving the flexibility for States DOTs to meet the traffic safety needs within their own states and not subjecting States to penalties or restrictions should they not achieve aggressive targets.
- **Clarify the relationship between the core safety measures.** It is important to States that clear direction from both NHTSA and FHWA be provided when it comes to performance measures. Currently, NHTSA only requires three of those four national-level safety performance measures (NHTSA does not include serious injury rate). NHTSA has already provided SHSOs specific direction on core safety measures that are required to have performance targets set as part of the HSP. However, those core measures do not align with what is being proposed by the FHWA in the Safety Performance Measure NPRM (Docket Number FHWA-2013-0020). Without clear direction from both NHTSA and FHWA, States will be caught in the middle with FHWA and NHTSA taking different approaches.

SECTION-BY-SECTION COMMENTS

924.1 PURPOSE

AASHTO has no comments on this section.

924.3 DEFINITIONS

HAZARD INDEX FORMULA

AASHTO suggests that the term *hazard* be replaced with terms *risk* or *relative risk index*. Please see discussion under Principal Comment 6: Use of the Term “Hazard.”

HIGHWAY

AASHTO supports the definition of Highway. However, the definition for pedestrian and bicyclists references 23 USC 148 (e)(1)(A) which does not appear to be the correct reference for defining a facility that serves pedestrians and bicyclists which is quoted here:

“(e) Flexible Funding for States With a Strategic Highway Safety Plan.—
(1) In general.—To further the implementation of a State strategic highway safety plan, a State may use up to 10 percent of the amount of funds apportioned to the State under section 104(b)(5) for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that—
(A) the State has met needs in the State relating to railway-highway crossings; and
(B) the State has met the State's infrastructure safety needs relating to highway safety improvement projects.”

HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP)

AASHTO has no comments on this definition.

HIGHWAY SAFETY IMPROVEMENT PROJECTS

AASHTO suggests that it be explicit that a comprehensive safety improvement program is also a component of this definition.

MIRE FUNDAMENTAL DATA ELEMENTS

AASHTO supports the collection of the MIRE FDEs. However, the implementation schedule and approach that FHWA proposes in this NPRM is too aggressive and not achievable given current resources. Please see discussion under Principal Comment 1: Implementation of MIRE FDE Requirements.

PUBLIC GRADE CROSSING

AASHTO has no comments on this definition.

PUBLIC ROAD

The definition of what constitutes a public road is too broad and involves a significant amount of road miles that will likely include lightly traveled gravel county roads of all conditions, local streets within neighborhoods that are generally low speed and low volume, as well as forest

service roads that may only be accessible for a few months out of the year. AASHTO suggests that the definition of public road be changed to exclude roads that are seasonal in nature, four-wheel drive traffic only, or roads open to public use, but have no state or local jurisdiction roads (e.g., logging roads).

NPRM	AASHTO Recommendation
Public road means any highway, road, or street under the jurisdiction of and maintained by a public authority and open to public travel, including non-State owned public roads and roads on tribal land.	Public road means any highway, road, or street under the jurisdiction of and maintained by a public authority and open to public travel, including non-State owned public roads and roads on tribal land that is in good enough condition to be traversable by a typical passenger car and available to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. If access is restricted to a subset of persons, then it is not considered open to public travel.

REPORTING YEAR

AASHTO has no comments on this definition.

ROAD SAFETY AUDIT

AASHTO has no comments on this definition.

SAFETY DATA

AASHTO has no comments on this definition.

SAFETY STAKEHOLDER

AASHTO has no comments on this definition.

SERIOUS INJURY

AASHTO is supportive of the definition of *suspected serious injury* using the MMUCC, 4th Edition. The NPRM specifies that the MMUCC, latest edition, should be used. AASHTO suggests that the MMUCC 4th Edition be established in the regulation such that State DOTs are not out of compliance once the next edition is available. For more information, please refer to AASHTO comments on the “National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule” Docket FHWA-2013-0020.

NPRM	AASHTO Recommendation
Serious injury means “suspected serious injury” as defined in the Model Minimum Uniform Crash Criteria (MMUCC), latest edition.	Serious injury means “suspected serious injury” as defined in the Model Minimum Uniform Crash Criteria (MMUCC), 4 th Edition.

SPOT SAFETY IMPROVEMENT

AASHTO has no comments on this definition.

STRATEGIC HIGHWAY SAFETY PLAN (SHSP)

AASHTO has no comments on this definition.

SYSTEMIC SAFETY IMPROVEMENT

AASHTO has no comments on this definition.

924.5 POLICY

AASHTO offers the following comments within this section:

(a) FHWA needs to establish guidelines regarding what constitutes a significant reduction in fatalities and serious injuries on all public roads. AASHTO believes that FHWA’s approach to that issue must recognize that there will be variability in the circumstances facing States as they each work to improve safety.

(b) The proposed rule states that safety improvements “should” be incorporated into projects funded by other Federal-Aid Programs. The policy says that the safety improvements that are provided by the broader Federal-Aid project should be funded from the same source as the broader project. AASHTO feels that this does not belong in the rule. This position is not required by law and is not in accord with flexibility allowed under the Federal aid program. There could well be times when a State may wish to promote funding projects with multiple Federal-Aid Programs, possibly including HSIP funds.

Section 942.5(b) proposes to require *HSIP funds to be used for projects that maximize opportunities...and have the greatest potential to reduce fatalities and serious injuries*: This implies a new standard or level of analysis will be required to ensure that a program of projects selected by each state has the greatest potential or maximizes opportunities to advance safety. There are important questions regarding how *maximized opportunities* and *greatest potential* are measured. The language in existing 23 CFR 924.5, which refers to an “overall objective” clearly establishes the policy without this additional standard. AASHTO recommends that the existing language be retained or the proposed language be changed to the following:

NPRM	AASHTO Recommendation
HSIP funds shall be used for highway safety improvement projects that maximize opportunities to advance safety consistent with the State’s SHSP and have the greatest potential to reduce the State’s fatality and serious injuries.	HSIP funds shall be used for highway safety improvement projects consistent with the State’s SHSP provided that the State shall have considered which projects maximize opportunities for safety and considered which areas are in greatest need for safety improvement investment.

924.7 PROGRAM STRUCTURE

AASHTO agrees that each process step of the HSIP should be done in cooperation with the FHWA Division Administrator, and that cooperation should be clearly defined to reduce confusion. AASHTO also agrees that local, tribal and other safety stakeholders should be consulted as appropriate in the development of the HSIP component process and that these processes are in accordance with 23 USC 148. AASHTO suggests that this consultation should occur during the development of the SHSP.

924.9 PLANNING

AASHTO offers the following comments within this section:

(a) Please see comments on definition of public road above and the discussion under Principal Comments 2: Implementation of the MIRE FDE Requirements.

(a)(3)(i) AASHTO is supportive of the five year minimum updated period of the SHSP. In fact, some states may want to update their SHSP more frequently than every five years.

(a)(3)(v)(A) AASHTO agrees that the performance measures established as part of 23 USC 150 should be consistent between the SHSP and HSIP. However, AASHTO wants to ensure that the establishment of targets for these performance measures remains the prerogative of the State DOT and is not approved by U.S. DOT. Please refer to AASHTO comments on the “National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule” Docket FHWA-2013-0020 for a more extensive discussion and recommendations on Target Setting Authority.

(a)(3)(v)(B) FHWA should provide information on how states should “coordinate” highway safety programs. Please refer to AASHTO comments on the “National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule” Docket FHWA-2013-0020 for a more extensive discussion and recommendations on the Coordination of Planning Documents.

(a)(3)(vii) The ‘rate of return’ language suggests a very detailed analysis at the plan level, seemingly looking for project level cost benefit analyses. It suggests new burdens not called for by statute and should be deleted. Please see discussion of reasons for deleting this provision under Principal Comment 3: Safety Programming and Project Selection.

(a)(3)(ix) FHWA should provide more information on how State DOTs should “consider” the results of other planning processes and how State DOTs will be expected to document “demonstration of mutual consultation among partners.”

(a)(3)(xi) AASHTO recognizes that the SHSP must describe the “process and potential resources” for implementing strategies. At a high level, this is acceptable (e.g., funds coming from HSIP, NHTSA, etc.). However, if this requirement is focused on listing specific funding

amounts for each strategy in the document, then AASHTO does not agree with this requirement and suggests that the current wording be changed.

(c) AASHTO agrees that non-infrastructure safety projects be add to 23 USC 104 (b)(3), to the list of safety projects that can be funded and that states be able to distinguish non-infrastructure projects in the STIP. However, AASHTO suggests that FHWA provide some information on how State DOTs should track the performance of some of these projects such as data improvement, education, safety culture, etc. These types of non-infrastructure projects will be difficult to quantify.

924.11 IMPLEMENTATION

AASHTO offers the following comments as well within this section:

(b) The July 1, 2015, deadline to have an implementation plan incorporated into their State Traffic Records Strategic Plan and the September 30, 2020, deadline to have collected all of the MIRE FDE for all public is generally not attainable. AASHTO has offered numerous suggestions for extension or exclusion and other modifications to these data requirements. Please see discussion under Principal Comment 1: Implementation of the MIRE FDE Requirements.

(c) AASHTO agrees that the emphasis area strategies, including implementation actions, be included in the SHSP. However, AASHTO believes that this should be done at a high level, since numerous partners may not be able to commit to specific implementation actions at the planning level which may preclude private, local and tribal participation.

924.13 EVALUATION

AASHTO is supportive of the requirements that State DOTs establish an evaluation process to better understand the impact the safety program is having on improving safety. AASHTO agrees that the process is to analyze and assess the results achieved by highway safety improvement projects generated from the SHSP and Railway-highway crossing program (RHCP) and not the HSIP. However, this change is likely to require additional analysis and investigation at the project level that is not currently being analyzed. For instance, projects may now be tracked based on the type or the contributing factors of a crash versus a more general reporting of total frequency or severity. New data being collected with MIRE may also increase the level of analysis. FHWA is also requiring that the SHSP emphasis areas and strategies be validated with current safety data. To do so may require significant effort of agencies who have less data (e.g., local road initiatives) and those using more sophisticated methods (e.g., the Highway Safety Manual).

In addition, AASHTO is concerned that the evaluation requirements may have a more short-term focus of achieving yearly targets established as part of 23 USC 150 rather than rather than long-term outcome effects of the transportation safety programs. AASHTO would encourage FHWA to ensure that a long-term, outcome oriented focus is a priority in addition to the short-term target achievement focus. Please see discussion under Principal Comment 7: Evaluating and Reporting Safety Projects and Programs.

924.15 REPORTING

AASHTO is supportive of the requirements that State DOTs report on the HSIP. However, it appears that the requirements have a more short-term focus of reporting on yearly target achievement rather than long-term outcome effects of the transportation safety programs. AASHTO would suggest that the HSIP focus not only on the short terms efforts of annual target setting and reporting but long term outcomes as well. This could be accomplished by strengthening CFR 924.15 (a)(1)(iv) to have a long-term, outcome oriented focus. Please see discussion under Principal Comment 7: Evaluating and Reporting Safety Projects and Programs.

AASHTO offers the following comments as well within this section:

(a) AASHTO is supportive of the transition to the HSIP online reporting tool. However, FHWA needs to look at making improvements to the tool in order for it to be easier to use and more useful. Please see discussion under Principal Comment 4: Online Reporting of the HSIP.

(a)(1)(iv) FHWA should provide additional information on State DOTs would be expected to assess the effectiveness of improvements of the HSIP projects.

(a)(1)(v) AASHTO is concerned that some states and local agencies may have difficulty in complying with 29 USC 794(d), Section 508 of the Rehabilitation Act and that the burden of meeting this requirement may shift to the reporting agency. FHWA should consider providing examples of 508 compliant reporting on the website and technical assistance when needed.

924.17 MIRE FUNDAMENTAL DATA ELEMENTS

There are many types of roadways that the public may travel on within a state ranging from high volume Interstate roadways to seasonal 4x4 roads with traffic volumes less than 20. For many of the low volume roadways, State DOTs have no travel information. As currently proposed in the NPRM, State DOTs would need to first estimate AADT in order to determine if it less than or greater than 400 AADT. This creates a new burden on State DOTs. Rather than creating this new burden, AASHTO recommends that FHWA establish three categories of roadways for data collection:

1. **Unpaved/Gravel/Dirt Roadways:** States should not be required to collect the MIRE FDE for roadways that are unpaved or gravel. These roadways are typically very low volume and often seasonal in nature.
2. **Roadways with Less than 400 AADT:** Collect data as proposed in the NPRM, Table 2.
3. **Roadways with Greater than 399 AADT:** Collect data as proposed in the NPRM, Table 1.

While distinct treatment for unpaved roads may overlap with the proposed fewer requirements for roads with AADT below 400, there is a straightforward simplicity to this demarcation line, as one would not have to have counted or estimated AADT to know that reporting should be limited

as to unpaved roads. In addition, FHWA should explore the use of tools like usRAP that could be used on low volume roads for data collection requirements, would require less data than what is required under the MIRE FDE, and is already being used successfully in the US and abroad. Use of a tool like us RAP may lower the burden on local and state agencies struggling to collect data. Please see discussion under Principal Comment 1: Implementation of MIRE FDE Requirements for additional information.

AASHTO RESPONSE TO FHWA REQUESTS

1. Economic, administrative, operation impacts of NPRM.

The economic, administrative and operational impact of this NPRM on State DOTs is significant and underestimated by FHWA as part of their Costs and Benefits analysis. Throughout this document AASHTO has provided comments concerning burden placed upon State DOTs to comply with the requirements of this NPRM. In summary, while collecting additional data on all public roads in an effort to improve safety can be supported as a broad concept, the specifics of how matters. The manner in which this NPRM would impose data collection obligations upon the State DOTs is not reasonable. Please see discussion under Principal Comment 1: Implementation of the MIRE FDE Requirements.

In summary:

- AASHTO strongly disagrees with completion of the MIRE data at 5 years of adoption of the NPRM. This is a huge challenge in both urban and rural areas. Since data collection on all roads requires coordination, prioritization, local assistance, and the funding necessary to complete the task, this will be problematic.
- AASHTO strongly disagrees with requiring MIRE FDE data for all local public roads, and believes that a subset of the most important might be appropriate, but collecting for all local roads would not. For example, WSDOT has developed and implemented a safety program following national best practices, combining spot safety improvements and systemic safety improvements. Washington State trends indicate that this program is working well. This program would not be altered by collecting MIRE FDE data in a statewide database.
- AASHTO believes that the cost to collect the extensive data collection and storage of information required to collect MIRE FDE is significantly underestimated and falls into the unfunded mandate category.

2. SHSP update cycle and related costs.

The proposed 5-year cycle seems to be reasonable and could be accomplished by most State DOTs at minimal cost. However, information should be provided on the relationship of the national performance targets, other planning documents, and the 5-year SHSP and HSIP Annual report.

3. Timeframe for collecting and implementing the MIRE FDE.

States will need to have an “implementation plan” for collecting the required data elements in place by July 1, 2015. This requirement is aggressive and more time is needed in order for a State DOT to coordinate a statewide implementation plan among all of the key stakeholders involved in order to develop, implement and evaluate the plan and data. Furthermore, the September 30, 2020, deadline to have collected all of the MIRE FDE for all public roads is

generally not attainable. Please see discussion under Principal Comment 1: Implementation of the MIRE FDE Requirements.

4. Additional data elements to collect to support safety analysis.

If urbanized and non-urbanized areas are used by a State DOT, urbanized area boundary will need to be identified in the safety data set.

5. System to support MIRE FDE collection efforts.

Because much of the MIRE FDE is road inventory related, to reduce duplication of effort, better coordination is needed with the HPMS requirements.

6. Assumptions used in MIRE FDE benefit/costs estimation.

The cost estimate conducted by FHWA for purposes of the MIRE FDE significantly underestimated the burden to State DOTs. AASHTO conducted a survey of its members to gather additional input on the estimated cost of meeting the MIRE FDE requirements and came to the following conclusion for an average state:

Year 1 Expenses

- Information Technology Cost for entering, storing and reporting the data: \$4 million.
- Data Collection includes additional counting equipment, vehicles, and personnel: \$6 million.
- Additional Staff to administer the data collection program: \$1 million.

Year 2 through 16 Expenses

- Annual Operations and Management: \$2 million.

Total Costs

- Total Year 1 Expenses for All State DOTs: \$561 million (\$11 million/state * 51 states)
- Total Year 2 through 16 Expenses: \$1.53 billion (\$2 million/state * 51 states * 15 years)
- Total Undiscounted Cost: \$2.091 billion

The costs associated with implementation of the MIRE FDE are not trivial and represent both a significant up-front cost and annual costs. Currently, State DOTs do not have the additional resources to spend on original data collection and the ongoing maintenance of these data. AASHTO believes that the extensive data collection and storage of information required to collect MIRE FDE at the local level) falls into the unfunded mandate category.

Please see discussion under Principal Comment 1: Implementation of the MIRE FDE Requirements.

7. Ways to improve benefits and usefulness to the State.

AASHTO encourages FHWA to reduce the burden associated with the proposed HSIP rule. While the proposed flexibility to use HSIP funds for data collection, analysis, evaluation and

reporting may facilitate data collection, States seek to deliver projects, excellent projects, to the public, including but not limited to safety projects. To the extent that funding for the Federal-aid highway program is challenging, and it is, the priority for the proverbial “next program dollar” is for projects, not data collection. FHWA efforts to reduce the burden that would fall upon States under the rule proposed in the NPRM would be appreciated.

8. *Other facets of proposed rulemaking.*

None.

PROPOSED CHANGES TO TEXT

Section	Text of Proposed Regulation	Changes Recommended by AASHTO
924.3	<i>Public road</i> means any highway, road, or street under the jurisdiction of and maintained by a public authority and open to public travel, including non-State owned public roads and roads on tribal land.	<i>Public road</i> means any highway, road, or street under the jurisdiction of and maintained by a public authority and open to public travel, including non-State owned public roads and roads on tribal land <u>that is in good enough condition to be traversable by a typical passenger car and available to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. If access is restricted to a subset of persons, then it is not considered open to public travel.</u>
924.3	<i>Serious injury</i> means “suspected serious injury” as defined in the Model Minimum Uniform Crash Criteria (MMUCC), latest edition.	<i>Serious injury</i> means “suspected serious injury” as defined in the Model Minimum Uniform Crash Criteria (MMUCC), <u>4th Edition.</u>
924.5(b)	HSIP funds shall be used for highway safety improvement projects that maximize opportunities to advance safety consistent with the State’s SHSP and have the greatest potential to reduce the State’s fatality and serious injuries.	HSIP funds shall be used for highway safety improvement projects <u>consistent with the State’s SHSP provided that the State shall have considered which projects maximize opportunities for safety and considered which areas are in greatest need for safety improvement investment.</u>
924.9(a)(3)(vii)	Identify key emphasis areas and strategies that significantly reduce highway fatalities and serious injuries, focus resources on areas of greatest need, and possess the greatest potential for a high rate of return on safety investments;	Identify key emphasis areas and strategies that significantly reduce highway fatalities and serious injuries and focus resources on areas of greatest need <u>as determined by the State DOT;</u>