



April 22, 2024

The Honorable Shailen P. Bhatt
Administrator
Federal Highway Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Comments on Notice of Proposed Rulemaking, Highway Safety Improvement Program (Docket No. FHWA-2023-0045)

Dear Administrator Bhatt,

ITE—A Community of Transportation Professionals is grateful for the opportunity to provide feedback on the Federal Highway Administration's (FHWA) Notice of Proposed Rulemaking on updates to the Highway Safety Improvement Program (HSIP) (Docket Number FHWA-2023-0045) published in the Federal Register on February 24, 2024.

Founded in 1930, ITE is an international membership association of transportation professionals who work to improve safety and mobility for all transportation system users and help build smart and livable communities. Through its products and services, ITE promotes professional development and career advancement for its members, supports and encourages education, identifies necessary research, develops technical resources including standards and recommended practices, develops public awareness programs, and serves as a conduit for the exchange of professional information. Through meetings, seminars, publications, and a network of more than 18,000 members working in 78 countries, ITE connects members to a world of ideas, people, and resources.

ITE believes that safety is exceedingly important, and we are developing a three-year plan or roadmap to direct our efforts toward transforming the culture of transportation professionals to enhance transportation safety. ITE's vision for the ITE safety roadmap is to achieve Vision Zero by collaboratively and collectively adopting the Safe System Approach framework. This framework will guide the development of resources, service, and tools essential to fostering a cultural shift in planning, designing, and operating the transportation system. The vision is founded upon the belief that:

1. Zero is achievable;
2. Safety is not luxury;
3. Data-driven, evidenced-based approaches are essential;
4. Collaboration and partnerships are crucial; and
5. Technological advancements are critical.

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Thus, ITE generally supports FHWA's activities related to this NPRM to update existing regulations to reflect provisions of the Infrastructure Investment and Jobs Act (IIJA) in a collaborative way that focuses on using the Safe System Approach. In fact, ITE fully supports the stronger integration of the Safe System Approach with the Highway Safety Improvement Program (HSIP) and the comprehensive strategy to enhance transportation safety outcomes, considering all road users and addressing equity issues in all activities.

ITE offers the following comments in direct response to the requests in the HSIP NPRM:

1. Local Agencies are Critical Partners

Local transportation agencies are responsible for maintaining approximately 77% of all public centerline roadway miles and are crucial partners in addressing traffic safety alongside state DOTs for many reasons:

- **Local Knowledge:** Intimate understanding of their communities, including traffic patterns, road conditions, and areas prone to crashes. This local knowledge is invaluable in identifying safety concerns and implementing targeted solutions.
- **Responsiveness:** Respond more quickly to safety concerns raised by community members or local authorities. They can swiftly assess and address issues such as high-risk intersections or road conditions before they escalate into major safety problems.
- **Collaborative Planning:** Contribute valuable input to regional and statewide transportation planning efforts. This collaboration ensures that safety initiatives are aligned with broader transportation goals and that resources are distributed effectively.
- **Tailored Solutions:** Tailor safety initiatives to meet the specific needs of their communities. This might involve implementing traffic calming measures in residential neighborhoods, improving signage and visibility at busy intersections, or enhancing pedestrian and cyclist infrastructure in urban areas.
- **Data Collection:** Collecting and analyzing safety data within their jurisdictions. This data-driven approach enables them to identify high-risk areas, prioritize interventions, and measure the effectiveness of safety measures over time.
- **Community Engagement:** Direct relationships with community stakeholders, including residents, businesses, schools, and advocacy groups. Engaging these stakeholders in the planning and implementation of safety initiatives fosters greater buy-in and ensures that solutions are both effective and acceptable to the community.

As FHWA begins to implement the updated regulations encompassing all public roadway miles, ITE urges FHWA to continue recognizing the vital importance of local transportation agencies as critical partners in implementing the Safe System Approach and achieving Vision Zero.

2. Statewide Safety Risk Assessment

In general, conducting a statewide safety risk assessment for all public roads in a state and the process of labeling individual roadway segments as high or low risk can have severe

unintended consequences unrelated to the success of the HSIP program. For example, this could impact the states' flexibility in directing HSIP dollars to the most cost-effective projects, as is current practice. More specifically, ITE believes that the proposed requirement for a statewide safety risk assessment will present several challenges for transportation agencies, both at the state and local level.

First, the NPRM and existing regulations use language that is not liability-neutral, which presents challenges for states and local transportation agencies even with 23 U.S.C. 407 data protections in place. There is concern about state ranking roadways not owned by the state. Using the proposed language, a systemwide safety risk assessment resulting in risk ratings for all public roads would be expected to expose states and local transportation agencies to more litigation related to these ratings and how projects are prioritized. It is our understanding that the assessments will be part of the state HSIP rather than the strategic highway safety plan (SHSP). And thus, not available online, they will still be accessible through open records requests. However, without clear modifications to 23 U.S.C. 407 to protect analyses, assessments, and report developments from, these assessments could pose challenges. Specifically, they may increase the liability risk for local transportation agencies if a state DOT assesses a public roadway in a certain condition and does not provide specific tort liability protections.

Second, there is the potential for significant additional administrative burdens to conduct a statewide safety risk assessment. Local transportation agencies face similar, but different, challenges in raising revenue compared with state DOTs, including limited revenue sources, smaller budgets, lack of autonomy, and political considerations. Adding new requirements for a safety risk assessment of all public roads will increase the need for resources, and it is unlikely that this mandate will come with additional funding, especially for local transportation agencies. Therefore, even though this requirement focuses on state DOTs, it could divert important funding that could be used to construct safety-related transportation projects. There is also a question of how often a state will update the statewide safety risk assessment list. In keeping safety priorities in order, rankings would need to be updated throughout the year to ensure the best safety projects are selected.

Third, the proposed language regarding the statewide safety risk assessments is too general to provide substantive comments and feedback. There are not enough details for ITE and our members to understand the intended objectives of the new program and how they align with the goals of the HSIP. This limits ITE's ability to provide detailed comments on critical aspects of the proposed safety risk assessment and to propose specific recommendations. ITE is also concerned that the FHWA will not provide details until it issues guidance following publication of a final rule, which will prevent local transportation agencies and ITE from contributing input on these aspects of the changes. IF FHWA does develop the safety risk assessment, one critical recommendation is to employ evidence-based, data-driven methods such as those outlined in the *Highway Safety Manual*. These methods are preferable to approaches like the five-star approach, which might imply a subjective methodology versus one based on evidence.

Finally, ITE has some concerns about the FHWA's interpretation requiring a systemwide safety risk assessments on all sections of the public roadway network. Each state DOT, working with their local partners, does identify highway safety improvement projects based on crash experience, crash potential, crash rate, or other data-supported means and considers which projects maximize opportunities to advance safety. Current US Code does include data-driven crash potential as one means of project identification, but it is unreasonable to translate this to a risk analysis of all public roads and does not imply that roadway characteristics should be the primary consideration of crash potential.

3. Increased Cost and Burden of Implementing the Regulations

Most of the requirements associated with the HSIP and the changes proposed in this NPRM fall on the state DOTs to fund and implement. However, due to the broad nature of the HSIP regulations, which require assessing safety on all public roads, many local transportation agencies will be affected by these requirements. ITE believes that the cost and other administrative impacts presented by FHWA in the NPRM underestimated the impacts to local transportation agencies which already struggle with limited and constrained funding. Specifically, the economic cost estimates in the NPRM do not adequately consider costs, effort, and time to:

- Have local transportation agencies coordinate data collection and program requirements with their state DOT partners.
- Incorporate the Safe System Approach into a constantly improving safety program that addresses equitable safety for all road users on all public roads, while also expanding the program's data-driven nature and collaboration with partners. A primary concept of the safe system is that it is not intended to be applied by only infrastructure owners and operators, which adds to the complexity, time, and resources needed to achieve implementation throughout an agency.
- Assess safety risk on all public roads, using roadway, volume, and other safety data for which there are gaps in localized areas.
- Obtain, consider, and incorporate public input, which requires engaging with potentially numerous individuals, and making significant effort to raise awareness across various geographic, socio-economic, road user, and underserved communities within a state.
- Collect, manage, and analyze data to meet new requirements, in particular:
 - *Vulnerable road user exposure data*: Required by the proposed revised definition of "safety data", this will necessitate significant resources to collect on all public roads, especially if FHWA intends this to include data on facility location, separate, and geometrics, etc., and even if estimating volumes at many locations is allowable.
 - *Disaggregation of demographic data*: Data would be needed from multiple sources To support the inclusion of underserved communities in the state HSIP, data would need to be collected from multiple sources. Combining these data for

- the analyses needed would require significant time and resources, and many state DOTs will need to enlist consultant support for this activity.
- *Including MIRE fundamental data elements (FDE) in Highway Performance Monitoring System (HPMS) submissions:* FHWA's estimates do not appear to include the costs of collecting data either annually or when roadways change, costs for local roads, and reducing and formatting data for inclusion in HPMS.

4. Definition of Safe System Approach

ITE fully supports the USDOT's National Roadway Safety Strategy and has answered the call to action with commitments as Allies in Action. However, we are concerned about FHWA proposing to include another definition of Safe System Approach within the regulation. First, creating two definitions of the same term, one in code and the other in regulation, may create unnecessary confusion and not provide the necessary clarity. As the NPRM itself notes, there are other federal definitions of Safe System Approach, including 23 U.S.C. 148(a)(9). ITE appreciates the limitation of the current definition of Safe System Approach, which focuses on a type of roadway design. Second, as stated in the National Roadway Safety Strategy, the Safe System Approach is not only about safer roadways, but safer people, safer vehicles, safer speeds, and post-crash care. Consistency with the Safe System Approach means reducing risk of severe injuries and fatalities. Furthermore, as discussed in the Safe Systems Pyramid framework, not all safety interventions are equivalent; population interventions that require less individual effort (e.g., socioeconomic factors and changes to the built environment) should be prioritized.

5. NPRM Section Comments

- **Public Input into the HSIP Development Process (924.9(a)(3)(xi))**—ITE generally supports creating more opportunities for the public to be involved in the transportation planning and decision-making process. While the safety analysis can be a fairly rigorous technical activity, including the public in the overall process is generally good. ITE supports the language as proposed in 924.9(a)(3)(xi) that the SHSP update "...shall consider..." input from public involvement.
- **Non-Motorized Crash and Exposure Data (924.3, Safety data)**—ITE is concerned about requiring the addition of crash and exposure data for non-motorized road users as proposed in the definition of safety data. Currently, non-motorized crash and exposure data is not readily available systemwide, and methods and means to effectively obtain these data are not advanced and prevalent enough to efficiently collect these data. It is not clear whether these exposure data include information on facilities such as type, geometry, and separate of user types. It is also not clear whether non-motorized crash data involves crashes that do not involve motor vehicles, such as bicyclist-pedestrian crashes. ITE generally supports collecting non-motorized crash data as it would inform safety interventions such as separation of bicyclists and pedestrians where needed. However, ITE urges FHWA to change "shall" to "should" with respect to non-motorized exposure data and to clarify the details of the crash- and exposure- related data elements.

Again, we appreciate the opportunity to provide these comments and look forward to continuing the important partnership that ITE has with FHWA on eliminating traffic fatalities and serious injuries on US roadways. If you have any questions about these comments or recommendations, please contact Matthew Hardy, Ph.D., Deputy Executive Director and Chief Technical Officer, at (703) 868-7154 or mhardy@ite.org.

Sincerely,



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