

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **Federal Highway Administration**

#### **23 CFR Parts 490 and 1300**

#### **Docket No. NHTSA-2022-0036**

#### **RIN 2127-AM45**

#### **Uniform Procedures for State Highway Safety Grant Programs**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the uniform procedures implementing the State Highway Safety Grant Program to waive, for fiscal year 2024, the requirement that targets for the common performance measures be identical to targets in the State Highway Safety Improvement Plan. This final rule makes a corresponding change to a similar requirement in the Federal Highway Administration's performance management regulation.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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### **SUPPLEMENTARY INFORMATION:**

#### **Table of Contents**

#### **I. Background**

#### **II. Waiver of identical targets for common performance measures**

#### **III. Waiver of notice and comment**

#### **IV. Regulatory Analyses and Notices**

#### **I. Background**

The National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) share three common performance measures in their highway safety programs—total fatalities, rate of fatalities, and total serious injuries—

and have shared these common performance measure for many years. Both NHTSA and FHWA regulations require States to submit identical targets for the three common performance measures—in NHTSA’s triennial Highway Safety Plan (HSP) and in FHWA’s Highway Safety Improvement Plan (HSIP) annual report. *See* 23 CFR 1300.11(b)(3)(ii)(C) and 23 CFR 490.209(a)(1), respectively.

On November 15, 2021, the President signed into law the “Infrastructure Investment and Jobs Act” (known also as the Bipartisan Infrastructure Law, or BIL), Public Law 117-58. The BIL provided additional grant funds to States and changed several requirements to support States in their efforts to strengthen their highway safety programs. Among other things, the BIL required that all performance targets submitted to NHTSA in the triennial HSP demonstrate constant or improved performance. 23 U.S.C. 402(d)(4)(A)(ii).

NHTSA published a final rule implementing the Highway Safety Grant Program under the BIL on February 6, 2023, at 88 FR 7780. The rule provides direction to States on procedures for meeting the statutory requirements governing their highway safety grant programs and applications. Among other things, the rule requires States to submit constant or improved targets for the common performance measures and that these targets be identical to the targets that are reported by the State DOT in the HSIP annual report. *See* 23 CFR 1300.11(b)(3)(ii)(B). Stakeholders have raised questions about the interplay between NHTSA’s and FHWA’s current regulations. Additionally, FHWA has not yet completed a new regulation implementing any changes to its performance measures since the passage of the BIL. Therefore, States have not had the opportunity to comment on proposed FHWA requirements that may be affected by the NHTSA regulation’s

requirement for identical targets. FHWA will soon release a notice of proposed rulemaking concerning its performance measures that will address this issue.<sup>1</sup>

## **II. Waiver of identical targets for common performance measures**

In this rulemaking, NHTSA amends 23 CFR 1300.11 to insert paragraph (b)(3)(iv), which waives, for fiscal year 2024, the requirement that performance targets submitted for common performance measures be identical to the State DOT targets reported in the HSIP annual report. NHTSA also makes a conforming amendment to 23 CFR 1300.11(b)(3)(ii)(C). FHWA makes a similar change to its regulation. With these changes, State Highway Safety Offices (HSOs) and State DOTs have the flexibility to submit non-identical targets for the common performance measures for fiscal year 2024. However, States must still submit targets for these common performance measures along with the other targets they are required to submit, and all targets submitted to NHTSA for all performance measures must show constant or improved performance compared to the current safety levels, as required by statute. See 23 U.S.C. 402(k)(4)(A)(ii) and 23 CFR 1300.11(b)(3)(ii)(B)(2).

While NHTSA and FHWA are affording States flexibility not to submit identical targets for fiscal year 2024 highway safety programs, HSOs are nevertheless encouraged to continue setting identical targets in collaboration with their colleagues in State Departments of Transportation as they work together to implement a Safe System Approach and reduce deaths and injuries on our roadways.

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<sup>1</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2125-AG06>

### **III. Waiver of notice and comment**

NHTSA and FHWA find good cause to issue, without notice and comment, and to make effective immediately, this time-limited waiver of the requirement for identical targets, in accordance with 5 U.S.C. § 553(b)(B) and 5 U.S.C. § 553(d)(1). The Administrative Procedure Act provides that when an agency, for good cause, finds that notice and public comment are impractical, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment (5 U.S.C. 553(b)(B)). For the same reason, the rule can become effective immediately. *See* 5 U.S.C 553(d)(1). The safety programs of NHTSA and FHWA are governed by different statutory provisions, and FHWA has not completed its notice and comment rulemaking on the National Performance Management Measures since the passage of BIL. NHTSA and FHWA recognize the importance of allowing time for States to provide comments on the FHWA program, but also recognize that HSOs must meet the upcoming statutory July 1 deadline to submit their triennial Highway Safety Plans for the NHTSA program and State DOTs must meet the August 31 deadline to submit their safety performance targets in their HSIP annual reports. States' efforts to develop their triennial Highway Safety Plans are well underway at this time, and it is critical that States be provided certainty about application criteria. With these considerations in mind, NHTSA finds it in the public interest to waive, for fiscal year 2024 Highway Safety Programs, the regulatory requirement in 23 CFR 1300.11(b)(3)(ii)(C) that performance targets submitted for the common performance measures (fatalities, fatality rate, and serious injuries) in the triennial Highway Safety Plan be identical to the targets submitted by the State DOT in the Highway Safety Improvement Program report, and to make this waiver effective immediately. Likewise,

FHWA finds it in the public interest to waive the regulatory requirement in 23 CFR 490.209(a)(1) that the State DOT targets shall be identical to the targets established by the State Highway Safety Office for the common performance measures, and to make this waiver effective immediately.

#### **IV. Regulatory Analyses and Notices.**

##### **A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures.**

NHTSA and FHWA have considered the impact of this rulemaking action under Executive Order 12866 (as amended by Executive Order 14094), Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This action is not expected to impose any costs because it makes limited revisions to the uniform procedures implementing State highway safety grant programs. This rulemaking has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of OMB.

##### **B. Regulatory Flexibility Act.**

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act

(SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This final rule makes limited revisions to the uniform procedures implementing State highway safety grant programs, which were previously determined to not have a significant impact on a substantial number of small entities. The grant programs impacted by this rule will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

### **C. Executive Order 13132 (Federalism).**

Executive Order 13132 on “Federalism” requires NHTSA and FHWA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” 64 FR 43255 (August 10, 1999). “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An

agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agencies have analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The limited revisions made by this rulemaking provide flexibility to State applicants. The agencies have therefore determined that this final rule would not have sufficient Federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement.

**D. Executive Order 12988 (Civil Justice Reform).**

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), “Civil Justice Reform,” the agency has considered whether this rule would have any retroactive effect. I conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**E. Paperwork Reduction Act.**

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This rulemaking does not establish any new information collection requirements.

**F. Unfunded Mandates Reform Act.**



The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). This rulemaking would not meet the definition of a Federal mandate because any potential resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

#### **G. National Environmental Policy Act.**

NHTSA and FHWA have considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act. The agencies have determined that this rulemaking would not have a significant impact on the quality of the human environment and qualifies for the categorical exclusion at 23 CFR 771.117(c)(20).

#### **H. Executive Order 13211.**

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

#### **I. Executive Order 13175 (Consultation and Coordination With Indian Tribes).**

The agencies have analyzed this rulemaking under Executive Order 13175 and have determined that today's action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### **J. Privacy Act.**

Please note that anyone is able to search the electronic form of all comments received into 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, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR19477) or you may visit <http://dms.dot.gov>.

#### **List of Subjects**

##### **23 CFR Part 490**

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

**23 CFR Part 1300**

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure, Alcohol abuse, Drug abuse, Motor vehicles—motorcycles.

Issued in Washington, D.C., under authority delegated in 49 CFR 1.81, 1.85, and 1.95.



**Andrew Rogers**

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**Sophie Shulman**

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In consideration of the foregoing, NHTSA and FHWA amend title 23, Code of Federal Regulations, parts 490 and 1300 as follows:

**Title 23 – Highways**

1. The authority citation for part 490 continues to read as follows:

**Authority:** 23 U.S.C. 134, 135, 148(i), and 150; 49 CFR 1.85.

**PART 490 – NATIONAL PERFORMANCE MANAGEMENT MEASURES**

**Subpart B – National Performance Management Measures for the Highway Safety**

**Improvement Program**

2. Amend § 490.209 by revising paragraph (a)(1) to read as follows:

**§ 490.209 Establishment of performance targets.**

(a) \* \* \* \* \*

(1) \* \* \* For fiscal year 2024 only, the performance targets submitted under this paragraph are not required to be identical to the targets established by the State Highway Safety Office for the common performance measures.

\* \* \* \* \*

3. The authority citation for part 1300 continues to read as follows:

**Authority:** 23 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109-59, 119 Stat. 1468, as amended by Sec. 25024, Pub. L. 117-58, 135 Stat. 879; delegation or authority at 49 CFR 1.95.

**PART 1300 – UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY**

**GRANT PROGRAMS**

**Subpart B – Triennial Highway Safety Plan and Annual Grant Application**

4. Amend § 1300.11 by revising paragraph (b)(3)(ii)(C) and adding paragraph (b)(3)(iv) to read as follows:

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(C) Except as provided in paragraph (b)(3)(iv), \* \* \*

\* \* \* \* \*

(iv) For fiscal year 2024 only, the performance targets submitted for common performance measures under paragraph (b)(3)(ii)(C) are not required to be identical to the State DOT targets reported in the HSIP annual report.

\* \* \* \* \*