



April 17, 2024

Honorable Shailen Bhatt
Administrator
US Department of Transportation
Federal Highway Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Highway Safety Improvement Program; Docket No. FHWA-2023-0045

Dear Administrator Bhatt:

On behalf of the American Road & Transportation Builders Association (ARTBA) and our more than 8,000 members in the transportation construction industry, we respectfully submit the following comments regarding the Federal Highway Administration (FHWA) proposed rule on the Highway Safety Improvement Program (HSIP).¹ Because we value the safety of transportation construction workers and roadway users above all other objectives, it guides all actions undertaken by our association and our individual members. While we support FHWA's efforts to amend the HSIP for the betterment of our transportation networks' safety, we urge the agency to consider the following suggestions to further strengthen the proposal and provide additional safeguards for both roadway workers and users.

Background

ARTBA's highest priority is ensuring the safety and welfare of both roadway workers and users. Even a single work zone injury – or worse yet a fatality – is unacceptable for our association and our members. According to the Bureau of Labor Statistics (BLS), roadway construction ranks among the most hazardous occupations in the United States. Every year, tens of thousands of workers, motorists, vehicle occupants, cyclists, and pedestrians suffer injuries or fatalities in roadway work zones.² Besides endangering lives directly, these incidents can result in additional safety hazards, traffic congestion and economic loss.

¹ Highway Safety Improvement Program, 89 Fed. Reg. 13,000, (February 21, 2024).

² According to FHWA, in 2020, 117 workers at road construction sites experienced fatal occupational injuries; 62 involved a worker on foot being struck by a motor vehicle. Also in 2020, there were 857 fatalities in 774 fatal work zone crashes. See Work Zone Safety and Mobility and Temporary Traffic Control Devices, 88 Fed. Reg. 64836, (September 20, 2023) at 64837.

ARTBA's membership consists of a diverse array of stakeholders within the transportation construction industry. This includes contractors, planning and design firms, consultants, state and local transportation agencies and officials, developers, research institutions, materials suppliers, and equipment manufacturers. Together, our members play a crucial role in implementing essential infrastructure repairs and enhancements across all transportation modes.

Committed to safety, environmental stewardship, and the timely and cost-effective delivery of projects, our members are dedicated to maximizing the value of historic funding from the Infrastructure Investment and Jobs Act (IIJA). Moreover, for decades, ARTBA has advocated for improved work zone safety policies and education programs. Funding and safety are also inextricably linked in that record federal investment enables more projects and additional work zones.

The HSIP, a federally-funded initiative, channels resources to states for projects aimed at reducing traffic fatalities and injuries. By targeting high-crash areas and facilitating safety planning, hazard elimination, and infrastructure improvements, HSIP seeks to enhance transportation safety nationwide.³ FHWA's proposed rule integrates the "Safe System Approach" into the existing HSIP program, broadening its scope to encompass "all roadway users" and mandating states to assess how their safety plans can be extended to previously overlooked user groups.⁴ States are obligated to conduct comprehensive safety assessments and ongoing evaluations to gauge the effectiveness of their programs.⁵ However, the proposal does not address work zone safety within its definitions or evaluation criteria.

Comments on the Proposed Rule

- I. Transportation construction workers must be included when creating protections for "all roadway users."

FHWA's proposed rule does not explicitly reference road construction within the regulatory text, despite asserting that HSIP should apply to "all" public roads and "all" road users.⁶ The agency's definition of "all" expands beyond traditional roadway users and encompasses representatives from underserved communities and public health organizations.⁷ Additionally, the proposal underscores the Safe Systems Approach, which views roadway safety holistically and assigns shared responsibility for achieving zero fatalities among all who "design, build, manage, own, and use the system."⁸ While the agency directs states to conduct assessments for vulnerable roadway users and acknowledges risks to nonmotorized users, the proposed rule

³ 23 U.S.C. § 148.

⁴ *Supra* note 1 at 13,002-13,007.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 13,010.

omits any discussion or inclusion of roadway workers who face direct and acute risks of injuries or fatalities.

FHWA's omission of roadway workers from the proposed rule is both perplexing and disappointing. This rulemaking takes place in the wake of continuing work zone tragedies, many caused by distracted, impaired, and reckless motorists. As FHWA's leadership knows, the Baltimore region alone saw two unthinkable calamities in just over a year, each resulting in six fatalities. If these horrors cannot catalyze improved federal policies to protect industry workers, then what will?

ARTBA supports clarifying the definition of highway safety improvement projects to encompass strategies, activities, or initiatives seeking to enhance safety for "all road users" in the most accurate sense of that term. FHWA should assert unequivocally that road users encompass workers who are actively engaged in building, improving, and maintaining our nation's transportation systems. Therefore, ARTBA strongly urges FHWA to revise the definition of "vulnerable road user" to explicitly include roadway workers. It is worth noting that most state strategic highway safety plans currently overlook this critical group of vulnerable road users as well. The onus is on FHWA to show leadership in recognizing this category of users. Implementing these revisions can help ensure that the safety of our transportation construction workers receives the necessary attention and prioritization it deserves.

II. State data collection, assessments, and evaluations must include roadway worker safety.

Current state data collection efforts, as well as those outlined in this proposed rule, lack provisions specifically addressing roadway workers. ARTBA therefore recommends that FHWA direct states to differentiate between pedestrians who are roadway workers and those who are members of the public susceptible to injury or fatality. The protective measures required for these two sub-groups significantly differ, making such data specificity an imperative. This approach would enable states to make more informed decisions regarding the safeguarding of both users and workers. FHWA should also actively promote enhanced standardization in data collection for work zone-related incidents by law enforcement agencies, facilitating more consistent reporting and enhanced data quality.

III. Any updates to the HSIP must include road construction.

FHWA's omission of roadway construction workers, as well as any reference to road construction activities, represents a significant oversight and contradicts the intended goals of a Safe System Approach. Despite FHWA's assertion that the rule comprehensively addresses safety and the roadway user experience, it fails to recognize that it should also encompass construction, maintenance, and renovation operations (i.e. roadway work zones). Any revisions to the program should incorporate safety considerations such as traffic management and queues, lane constrictions, and other relevant factors. The inclusion of these elements is

essential for implementing comprehensive strategies to mitigate roadway injuries and fatalities effectively.

Conclusion

Any informed observer will recognize that FHWA's proposed rule reflects one of the agency's policy priorities over the past three-plus years, namely highlighting the needs of bicyclists and pedestrians. However, this priority and its message points need not – and should not – marginalize the protection of workers actually building and maintaining assets for them to use. How many more work zone tragedies will it take for the HSIP to address this need?

A definitive directive from FHWA for states to prioritize worker safety would significantly mitigate the risks faced by these individuals daily. We urge FHWA to address this deficiency in the final rule. As always, ARTBA and our members are ready to assist in this task.

For further questions or additional information, please feel free to contact Brad Sant at bsant@artba.org or Prianka Sharma at psharma@artba.org. Thank you for considering these views.

Sincerely,

/s/

Bradley M. Sant
Senior Vice President for Safety and Education
American Road & Transportation Builders Association

/s/

Prianka P. Sharma
Vice President and Counsel for Regulatory Affairs
American Road & Transportation Builders Association