

August 25, 2017

Office of Management and Budget
Office of Information and Regulatory Affairs, USDOT Desk Officer
OIRA_submission@omb.eop.gov

Re: Docket No. FHWA-2017-0033

To Whom It May Concern:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on the Federal Highway Administration's (FHWA) "Request for Approval of a New Information Collection for Roadway Safety Data Capability Assessment" (Docket Number FHWA-2017-0033), published in the Federal Register on July 28, 2017. Representing all 50 states, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between state departments of transportation (state DOTs) and the federal government.

AASHTO and the state DOTs are deeply committed to improving transportation safety and eliminating fatal and other crashes. Safety is a very important consideration for all state DOTs in all aspects of their programs, not only in safety specific programs. Accordingly, all state DOTs are working to implement recently adopted rules on safety performance management (see 81 Federal Register 13881 et seq., March 15, 2016) and for the highway safety improvement program (see 81 Federal Register 13722 et seq., March 15, 2016). Both of those rules considerably increased safety data obligations of state DOTs. All state DOTs continue to prioritize safety, including in regards to information and data.

Due to its lack of clear scope and intent, AASHTO is concerned with this new, potentially burdensome proposed information collection requirement. First, in this docket FHWA seeks OMB approval to impose a new information collection obligation on state DOTs) entitled "Roadway Safety Data Capability Assessment" which FHWA describes as a large scale effort¹. Simply, but very importantly, without more knowledge of the specific information FHWA wants to collect, and the benefits and burdens of that additional collection compared to what is already required, this "large scale" effort makes it difficult for state DOTs to provide constructive input.

¹ 82 Federal Register 35262

Second, it is important for the state DOTs, and presumably others, to have the opportunity to comment on specific information collection proposals. For example, a key issue in the highway safety improvement program rulemaking was the proposal for the collection of full Model Inventory of Roadway Elements (MIRE) data on unpaved roads, which would have been a very burdensome collection with limited benefit due to very low traffic volumes on unpaved roads. Congress recognized this proposal as unduly burdensome and included in the FAST Act an opportunity for a state to opt out of such data collection on unpaved roads, which account for roughly 25 percent of all public roads in the United States. Subsequent to legislative enactment, the final rule was issued which significantly reduced data requirements and associated burdens on unpaved roads without compromising safety. The opportunity to comment on specific data collection proposals was in that instance was critical to the needed modification of the proposal. In this instance, however, FHWA did not identify what the information collection effort would cover except that it is part of a “large scale” effort that involves unspecified data, which would ostensibly allow FHWA to assess states on roadway inventory data collection, data integration and expandability, performance management, data management and governance, and data analysis tools and uses.

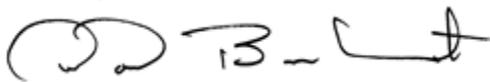
Third, FHWA provides no information on the format of this data inquiry nor the extent to which the questions would seek qualitative input. In the safety area, qualitative questions can pose litigation risk for states. For example, in a prior comment to OMB on a proposed FHWA performance management questionnaire, we correctly objected to a question that would have asked a state whether Highway Safety Improvement Program (HSIP) funds addressed “off-state” system needs “adequately” (emphasis added). What does “adequately” mean? This is particularly problematic in the context of a discussion of safety funds at a time when the US Department of Transportation and states are supporting policies of working “towards zero deaths.” The responses to such questions conceivably could be used in litigation against a state to argue that it did not plan “adequately” to reduce fatalities. FHWA should not advance ill-defined questions that could facilitate erroneous claims. In this docket we are concerned that a “capability assessment” could involve asking states to self-grade their abilities, a problematic exercise due to its highly subjective nature.

Finally, FHWA’s estimate of 36 hours for a state to respond to the information/data requests is hard to reconcile with the open ended description of the material. Our view is that the estimate is likely too low given vague nature of the data collection request. In addition, while the total burden is estimated at 1,728 hours, the notice also indicates the burden to be 36 hours per state which equals 1,872 hours. This discrepancy, though simple, implies the lack of careful analysis to accurately estimate the burden of the proposal on the states. Given this discussion in the docket, it is difficult for AASHTO to know what utility the undescribed data has and whether that utility exceeds the burden that would be imposed on state DOTs to collect the data. Furthermore, state DOTs remain concerned about the administrative burden that the new performance regulations are imposing on the states, something that we believe FHWA has underestimated.

For these reasons, AASHTO recommends that the proposed information collection not be approved in its current, vaguely-worded and open-ended form. Instead, FHWA should be required to develop specific proposals on the information to be collected, provide justification for the proposed collection(s) and then open any revised proposal for information and/or data collection for public review and comment. Without more specific information on the proposed collection and FHWA's supporting reasons, we are not in a position to provide constructive review and feedback.

If you would like to discuss further or have questions, please contact Matthew Hardy, Ph.D., AASHTO's Program Director for Planning and Performance Management at (202) 624-3625 or mhardy@ashto.org.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bernhardt". The signature is stylized and somewhat cursive.

David Bernhardt, P.E.

President, American Association of State Highway and Transportation Officials
Commissioner, Maine Department of Transportation