

The "5% Report" is an unnecessary and insensitive requirement which has no safety benefit, will require an additional 300 burden hours (150% over the existing, or an additional 2 months of man hours), and will harm torn litigation sensitive States like Hawaii that have no liability caps and no protection under 23USC409. There is little or no discussion on what will be done with the 5% list. I guess drivers can avoid those areas, or if not possible, stay home. Either way, it is impractical and the State will surely be put on notice, even if the solution is not curable with engineering countermeasures. Hawaii courts are plaintiff biased and have consistently thrown out 23USC409 defenses. With that understanding and the information becoming available on the www, Hawaii DOT could stand to lose millions of dollars (awards come from the State Highway Fund). These millions of dollars could instead go a long way toward matching Federal highway safety dollars. Mounting lawsuits may make it infeasible for Hawaii to continue the HSIP, which would surely have a negative impact on safety in Hawaii and the nation. Furthermore, it is hypocritical of FHWA to contradict the original intent of 23USC409 by requiring exposure of safety data without regard or support for protection in civil courts. It is also strange that FHWA will require publication of safety data, while not supporting it's protection in the recent Pirce County v. Guillen case. This subject should be brought up in discussion at forums like the TRB Tort Liability Committee meeting for reconsideration.