

National Highway Traffic Safety Administration

Date of Issuance	
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Signature:
Acting Administrator

NOTICE ANNOUNCING WAIVER AND POSTPONEMENT OF CERTAIN REQUIREMENTS FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

PURPOSE

Pursuant to the emergency authority provided under Section 22005(a) of Division B of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, this notice waives and postpones certain statutory and regulatory grant requirements for the State highway safety programs authorized under 23 U.S.C. Chapter 4 and implementing regulations at 23 CFR Part 1300 (“grant programs”). The waivers and postponements identified in this notice apply to all States and jurisdictions covered by the requirements, except where noted. In addition, this notice waives one statutory requirement imposed on the National Highway Traffic Safety Administration (NHTSA) in connection with these grant programs.

BACKGROUND

The current response to COVID-19 at Federal and State levels reflects the fact that impacts have become extensive and widespread throughout the United States. These impacts are having an immediate effect on the ability of States to conduct their highway safety programs under 23 U.S.C. Chapter 4. NHTSA has received several inquiries from States and their representatives, requesting relief from various grant requirements in response to the COVID-19 public health emergency. According to these inquiries, the emergency situation has resulted in disruptive impacts to State Highway Safety Offices (SHSOs), the offices charged with carrying out the grant programs, compromising their ability to plan and carry out traffic safety activities required by statute (23 U.S.C. §§ 402 and 405) and under the implementing regulation—the Uniform Procedures for State Highway Safety Grant Programs (23 CFR Part 1300).

The success of those grant activities is reliant, in significant part, on the participation of State transportation and public safety personnel (e.g., State and local law enforcement personnel that normally enforce traffic safety laws) whose services have been unavailable or diverted to pressing public health activities because of the public health emergency. Other traffic safety activities typically performed by State traffic safety officials and local sub-recipients and contractors also have been disrupted significantly by resource constraints and challenges associated with social distancing and remote work policies recently put into place by many States. Without relief, the cancellation or significant postponement of such grant activities

would result in States violating legislative mandates and the associated statutorily required certifications and assurances they have made to NHTSA as a condition of receiving Federal grant funds under these grant programs.

SUBSTANTIAL IMPACT

Under the CARES Act (Pub. L. 116-136, Division B, § 22005(a)), the Secretary of Transportation is authorized to waive or postpone certain grant program requirements, based upon a determination that either COVID-19 is having a substantial impact on the ability of States or the Secretary to carry out a grant, campaign, or program, or the requirements themselves are having an impact on the ability of States or the Secretary to respond to COVID-19. The Secretary delegated this authority, in writing, to the NHTSA Administrator on April 3, 2020.

After a careful review of the prevailing facts and circumstances, the relief granted by this notice is based upon one, or in some cases, both, determinations above. Generally, these waivers are necessary due to either (1) workforce shortages from transfer of personnel to other COVID-19 priorities, or (2) operational limitations as a direct result of the COVID-19 public health emergency, preventing the timely completion by SHSOs and their sub-recipients of federally mandated grant program requirements typically conducted during this period. More specifically, NHTSA has identified the following substantial impacts that support the waivers and postponements enumerated in this notice.

For the programmatic waiver of high visibility enforcement (HVE) campaigns this fiscal year (#1), State and local law enforcement personnel, by large measure, are not available to participate in the campaigns set for April and May because they have been diverted to work on State COVID-19 responses. By statute, the campaigns must include law enforcement. In addition, to secure the associated national advertising for the campaigns, NHTSA must plan months in advance and make various commitments to broadcast partners. With the required rescheduling of the campaigns, NHTSA is unable to obtain associated advertising until October or later.

For the waiver of the annual seat belt use survey (#2), most States carry out these surveys in tandem with the high visibility enforcement seat belt campaign (Click It or Ticket) that occurs in May. The ability of States to participate at that time has been disrupted by the COVID-19 public health emergency. Many States are under shelter in place or stay at home orders and cannot carry out observational surveys. The public health emergency also has changed current State traffic patterns in a way that surveying now may not be reflective of a State's actual seat belt use. In addition, because of the abrupt but necessary rescheduling of the campaign to the Fall, States may not be able to plan for or carry out a survey at the time of the rescheduled campaign for a number of reasons – e.g., typical seasonal workers are not available (college students, teachers, etc.); new contracts may not be able to be awarded on time; and Fall weather may impacts certain States.

For the programmatic waiver of assessments (#3), some States require a NHTSA-facilitated assessment or a State self-assessment as a condition of applying for and receiving various

National Priority Safety Program grants under 23 U.S.C. § 405. For occupant protection grants under 23 U.S.C. § 405(b), lower seat belt rate use States must meet three of six specified criteria, one of which includes a NHTSA-facilitated assessment every three years. For State traffic safety information system grants under 23 U.S.C. § 405(c), all States are required to receive a NHTSA-facilitated assessment or self-assessment every five years. These assessments, however, require States to prepare a significant amount of information and materials and, for NHTSA-facilitated assessments, to participate in intensive meetings involving Federal officials and subject matter experts over the course of a week. COVID-19 work disruptions, including remote work policies and social distancing that are straining State resources, are not allowing States to prepare and participate in these assessments now. The number of States that are required to complete an assessment is relatively small, so this waiver will only impact a handful of States.

For the postponement of the grant application deadline (#4), States have indicated that the resource strain brought on by COVID-19 is having a significant impact on their ability to provide grant application information by the statutory deadline. Although the number of States making this request is now small, we expect the number to grow as the public health emergency continues. In addition, because the grant programs are formula-based, a delay by even one State in submitting application information impacts the ability of the agency to make funding decisions for all other States, so issuing waivers on a case-by-case basis is not practicable. Under the circumstances, a postponement of the grant application deadline for 30 days affords relief consistent with the challenging environment and limited planning progress that can be made, while also providing certainty about when this information is due to the agency.

For the waiver of certain financial requirements (#s 5, 6, 7), COVID-19 is having a serious impact on recipients' ability to carry out grants due to unavailability of law enforcement personnel, contractors, and other sub-recipients. In addition, COVID-19 has disrupted the typical allocation of State resources, which has hindered the ability of the States to plan and manage these programs. Accordingly, NHTSA is waiving some financial requirements for the grants to address these limitations and to provide flexibilities to States in using their own funds to respond to the current public health emergency. For maintenance of effort (#5), States have reported that they cannot maintain State-level expenditures on traffic safety programs under the current circumstances as resources have been diverted to other uses. We also do not want the requirement to be a limitation on States using their own funds to respond to the public health emergency. For the regulatory expenditure requirements (#6), the inability to spend funds has been identified as creating the potential for lapse issues at the end of the fiscal year. Even if the public health emergency were to end quickly, States would still likely face a lapse situation as it would be very difficult for them to spend funds at a fast-enough rate to make up for the weeks and possibly months where no grant program spending occurred. For local benefit (#7), States have reported that local law enforcement has been diverted away from traffic safety for purposes of public health response, reducing the number of local organizations that are available for projects. Similarly, delays in projects at the local level are unpredictable, and threaten the State's ability to satisfy the local share requirement. Failing to

meet this requirement puts States at risk of discontinued Federal funding or, in extreme cases, a requirement to return Federal funds that exceed the match requirement.

The waivers and postponements identified below are intended to address the most urgent issues identified by States that fall within NHTSA's authority. NHTSA will evaluate the continued need for waivers as circumstances unfold, and intends to be flexible in issuing new waivers and postponements as substantial impacts are identified. NHTSA will also consider unique circumstances where a waiver or postponement might be made on a case-by-case basis.

EXPIRATION DATE

These waivers and postponements cover grant program requirements for FY 2020 and, except where noted below in #s 2, 3 and 6, expire on September 30, 2020 (#2 addresses the waiver of a survey requirement this year and its effect on grant applications for FY 2021; #3 addresses the need to reschedule assessments to the next fiscal year because they will not be completed in time for this year's grant application deadline; and #6 provides an additional fiscal year to expend grant funds for funds previously placed under obligation). Notwithstanding the postponement of the grant application submission date to August 1, 2020 (and as altered by #s 2 and 3), States are directed to submit their FY 2021 grant applications in conformance with the normal statutory and regulatory requirements and should expect to meet all grant requirements for FY 2021.

Depending on the continuation of the public health emergency, however, NHTSA may review and determine it necessary to extend the waivers and postponements announced in this notice. Any such extension would be announced in a new notice.

WAIVERS AND POSTPONEMENTS

The following waivers and postponements are issued, effective upon the date of this notice:

1. **High Visibility Enforcement Mobilizations and Crackdowns:** NHTSA waives the requirements that NHTSA must conduct and States must participate in at least three high visibility enforcement campaigns (in the areas of occupant protection and impaired driving) and the requirement to participate in the Click It or Ticket national mobilization this fiscal year (FY 2020). Where feasible, the campaigns will be rescheduled to the next fiscal year and States are encouraged to participate in the rescheduled campaigns to the maximum extent possible. (23 U.S.C. § 402(b)(1)(F)(i); 23 U.S.C. § 404(a); 23 U.S.C. § 405(b)(3)(A)(ii)).
2. **Annual Seat Belt User Surveys:** NHTSA waives the requirement for States to conduct an annual seat belt survey and provides flexibility for States to decide on their own whether they want to conduct a survey this year. For applications due on July 1, 2021, if the State did not complete a survey in calendar year 2020, NHTSA will use the results of the State's most recent survey, conducted in 2019, to determine designations of high or low seat belt use rates. (23 U.S.C. § 402(b)(1)(F)(iii)).

3. **Required Program Assessments:** NHTSA postpones the requirement for States to obtain a program assessment for occupant protection and State traffic safety information system grants for National Priority Safety Program grants applications due July 1, 2020. NHTSA will work with the States to reschedule these assessments during FY 2021. (23 U.S.C. §§ 405(b)(3)(B)(ii)(VI)(aa); (c)(3)(E)).
4. **Highway Safety Plans (HSP) and National Priority Program (Section 405) Grant Application Deadline:** NHTSA postpones the deadline for upcoming HSPs and Section 405 grant applications for 30 days, moving it from July 1, 2020 to August 1, 2020. Please note that associated deadlines that apply to NHTSA for informing States about HSP approval, application status, and the posting of grant determination information are adjusted automatically under the statutory requirements that apply. (23 U.S.C. § 402(k)(2); 23 CFR § 1300.12).
5. **Maintenance of Effort:** NHTSA waives the maintenance of effort requirements for FY 2020 and the effect of the associated certifications provided by States in their grant applications for FY 2020. (23 U.S.C. § 405(a)(9)(A); 23 CFR Part 1300, App. B).
6. **Expenditure Requirements for FY 2016 funds:** NHTSA waives the regulatory requirement that States expend previously obligated grant funds by the end of the fifth year after apportionment or allocation, and extends the ability to expend these funds for an additional fiscal year, to September 30, 2021. Please note that this does not waive the statutory requirement that funds be obligated and remain under obligation by the end of the fourth year after apportionment or allocation. (23 CFR § 1300.41).
7. **Local Benefit/Share to Local:** NHTSA waives the requirement and the effect of the associated assurances provided by States in their grant applications for FY 2020 that States expend 40 percent of Section 402 (23 U.S.C. 402) highway safety grant funds in, or for the benefit of, political subdivisions of the State. (23 U.S.C. § 402(b)(1)(C); 23 CFR Part 1300, App. A.).