



Coronavirus Aid, Relief, And Economic Security (CARES) Act Report to Congress

For waivers and postponements authorized under section 22005 of the CARES Act

Prepared by NHTSA's Grants Management & Operations Office

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Introduction

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136, Division B, § 22005(a)) provided the Department of Transportation with emergency authority in the wake of the COVID-19 public health emergency. Specifically, the CARES Act authorized the Secretary of Transportation 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 program, 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.

In addition, Congress directed the Secretary to periodically submit to the relevant committees of Congress a report describing each determination of significant impact made by the Secretary and describing each waiver or postponement of a requirement made under the CARES Act authority.

The first of two planned Reports to Congress detailing NHTSA's administration of the waivers was provided on August 21, 2020, to the Chairman and Vice-Chairman of the Senate Committee on Appropriations; the Chair and Ranking Member of the Senate Committee of Commerce, Science and Transportation; the Chairwoman and Ranking Member of the House Appropriations Committee; and the Chair and Ranking Member of the House Committee on Transportation and Infrastructure.

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¹ <https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-04/2021%20CARES%20Act%20Waivers-4-30-21.pdf>

Executive Summary

The COVID-19 public health emergency presented State Highway Safety Offices (HSOs) with many challenges in conducting their highway safety programs under 23 U.S.C. Chapter 4. Some of the most difficult challenges related to safely engaging with mission-essential sub-recipients such as law enforcement agencies. Activity levels were drastically reduced in FY 2020 because States could not safely implement countermeasures or personnel were redirected to urgent activities supporting the State's COVID-19 response. Other traffic safety activities were disrupted by challenges associated with social distancing and remote work policies put into place by many States.

Without relief, the cancellation or significant postponement of such grant activities would have resulted in States violating legislative mandates and the associated statutorily required certifications and assurances made to NHTSA as a condition of receiving FY 2020 Federal grant funds under 23 U.S.C. Sections 402 and 405.

On April 9, 2020, after a delegation of CARES Act authority from the Secretary of Transportation, NHTSA issued a Notice of Waivers and Postponements offering relief to States adversely impacted by the COVID-19 public health emergency. States were highly appreciative of the waivers and postponements afforded for FY 2020 grant requirements.

Overview of Substantial Impacts

The response to COVID-19 at Federal and State levels in 2020 reflected that impacts were extensive and widespread. Those impacts affected the States' ability to conduct their highway safety programs under 23 U.S.C. Chapter 4. Highway safety programs are 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 were also disrupted by resource constraints and challenges associated with social distancing and remote work policies put into place by many States.

Discussion of the specific substantial impacts determination supporting each waiver or postponement is contained in individual discussions of each waiver or postponement below.

Overview of Waivers and Postponements Issued

To respond to the effect of COVID-19 on States, on April 9, 2020, NHTSA used the authority delegated by the Secretary under the CARES Act to issue a notice announcing waiver and postponement of certain requirements for State highway safety grant programs. In addition, the notice waived one statutory requirement imposed on NHTSA. NHTSA issued waivers and postponements covering the following areas:

- High Visibility Enforcement Mobilizations
- Annual Seat Belt User Surveys
- Required Program Assessments
- Highway Safety Plans (HSP) and National Priority Program (Section 405) Grant Application Deadline
- Maintenance of Effort
- Expenditure Requirements for FY 2016 funds
- Local Benefit/Share to Local

The waivers and postponements in that notice applied to all States and jurisdictions covered by the requirements, except where expressly noted. States did not need to request/apply for a State-specific waiver for the areas determined by NHTSA to have been substantially impacted by the COVID-19 public health emergency. States availed themselves of the waiver(s) as needed.

NHTSA assessed which States utilized waivers and postponements through routine oversight and monitoring activities, as well as our review of States' FY 2020 Annual Reports. As a result, States were not required to report separately on their use of the waivers.

This report describes each waiver and postponement along with its supporting determination of substantial impact within individual sections below.

High Visibility Enforcement Mobilizations

State and local participation in the national high-visibility enforcement (HVE) campaigns, coordinated by NHTSA, is a proven effective tool in deterring dangerous driving behaviors. Numerous studies demonstrate that HVE is effective in curbing alcohol-impaired driving and increasing seat belt use among drivers².

23 U.S.C. §404 requires the campaigns are conducted annually to "reduce alcohol-impaired or drug-impaired operation of motor vehicles" and to "increase use of seatbelts by occupants of motor vehicles."

23 U.S.C. §402(b)(1)(F)(i) requires States to participate in "national law enforcement mobilizations and high-visibility law enforcement mobilizations coordinated by the Secretary." NHTSA's grant program implementing regulation further specifies that States must participate in the national high-visibility seat belt enforcement mobilization and the two impaired driving crackdowns "as identified in NHTSA's annual communications calendar."³

23 U.S.C. §405(b)(3)(A)(ii) requires States to participate in the Click It or Ticket national mobilization in order to receive an Occupant Protection grant.

NHTSA waived the requirements that the Agency conduct and States participate in three high visibility enforcement campaigns in FY 2020. This waiver was based upon the Agency's determination that COVID-19 was having a substantial impact upon the ability of States (and by extension NHTSA) to carry out HVE campaigns due to the diversion of necessary law enforcement personnel to work on State COVID-19 responses. However, although the waiver encompassed the statutory requirement that NHTSA conduct HVE campaigns, NHTSA ultimately successfully conducted the required high visibility enforcement campaigns.

The National Seat Belt Enforcement *Click It or Ticket* Mobilization, originally planned for May 11-31, 2020, was rescheduled to November 2020 to offer States additional time to develop plans that would ensure officer safety.⁴ Vehicle road miles traveled (VMT) increased nearly 9 percent from May to November 2020, allowing the Mobilization to have a greater impact. Travel for November 2020 is estimated to have been 231.6 billion vehicle miles whereas travel for March 2020 is estimated to have been 213.2 billion vehicle miles.⁵ National paid media supporting the

² [Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition \(Report No. DOT HS 812 478\). Washington, DC: National Highway Traffic Safety Administration.](#)

³ 23 C.F.R. §1300.11(d)(6). For NHTSA's annual communications calendar, *see* https://one.nhtsa.gov/links/14264-2020_CommsCal_010919_v11_tag.pdf.

⁴ <https://www.nhtsa.gov/press-releases/2020-click-it-or-ticket-enforcement-mobilization>

⁵ [Office of Highway Policy Information - Policy | Federal Highway Administration \(dot.gov\)](#)

Click It or Ticket campaign ran November 9-29, 2020, and accompanying State and local enforcement took place November 16-29, 2020.

While excused because of the CARES Act waivers, States were encouraged to participate in the rescheduled campaign to the maximum extent possible. Forty States and the territories safely and successfully participated to some degree in the rescheduled *Click It or Ticket* high-visibility enforcement mobilization. Ten States did not participate.

The two Impaired Driving *Drive Sober or Get Pulled Over* Campaigns took place as scheduled between August 19-21, 2020 and December 16, 2020 – January 1, 2021.

Annual Seat Belt User Surveys

States and territories must conduct an annual seat belt use survey in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 C.F.R. Part 1340, to ensure accurate and representative measurements of a State's seat belt use rate, as a condition of receiving a Section 402 grant. 23 U.S.C. §402(b)(1)(F)(iii).

The annual seat belt surveys also inform how the State can apply for the Section 405b Occupant Protection grant. 23 U.S.C. §405(b)(3). States are designated as a high- or lower seat belt use rate State. A high seat belt use rate means a State with an observed seat belt use rate of 90% or higher. A lower seat belt use rate means a State with an observed seat belt use rate below 90%. High seat belt use rate States have fewer Section 405b application requirements and have additional flexibilities in how they can spend the funds.

NHTSA waived the requirement for States to conduct an annual seat belt survey and provided flexibility for States to decide whether to conduct a survey in calendar year 2020. NHTSA determined that COVID-19 would have a significant impact on States' ability to conduct the annual seat belt survey for three primary reasons. First, State shelter in place or stay at home orders impacted their ability to conduct surveys. Second, most States carry out annual seat belt use surveys in tandem with the *May Click It or Ticket* high visibility enforcement campaign that was rescheduled to November 2020 as a result of the effects of COVID-19. The rescheduling of the campaign may have impacted the ability of States to carry out a survey at the same time as the campaign due to lack of seasonal workers typically used to conduct the surveys, the difficulty awarding new contracts on time, and the uncertainty of fall weather in many States. Finally, NHTSA determined that COVID-19 changed State traffic patterns such that a survey might not reflect a State's actual seat belt use.

If a State did not complete a survey in calendar year 2020, NHTSA used results of the State's most recent survey (conducted in 2019) to determine Section 405b designations of high or lower seat belt use rates for the FY 2021 Occupant Protection grant applications.

Despite the waiver, twenty-one jurisdictions safely completed a seat belt use survey in 2020 and submitted results to NHTSA. Thirty-two States and three territories did not conduct a NHTSA-certified observational seat belt use survey in 2020.

Required Program Assessments

The Section 405b Occupant Protection grants and the Section 405c State Traffic Safety Information System Improvements grants each include application criteria requiring program assessments.

For FY 2021 Occupant Protection grants, lower seat belt use rate States must meet at least 3 of 6 application criteria to qualify; two of these criteria require an occupant protection program assessment. The comprehensive occupant protection program criterion requires, in part, that a NHTSA-facilitated program assessment be conducted within five years prior to the July 1, 2020 application date. 23 U.S.C. Part 1300.21(e)(5)(i). The occupant protection program assessment criterion requires that a NHTSA-facilitated program assessment be conducted within three years prior to the application date. 23 U.S.C. Part 1300.21(e)(6).

To qualify for FY 2021 State Traffic Safety Information System Improvements grants, States must conduct a State highway safety data and traffic records system assessment within 5 years prior to the application due date. 23 U.S.C. Part 1300.22(b)(4).

NHTSA postponed the requirement for States to conduct a program assessment for Occupant Protection and State Traffic Safety Information System Improvements grants applications due July 1, 2020. Program assessments 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. NHTSA determined that work disruptions, including remote work policies and social distancing requirements due to COVID-19, were straining State resources and preventing States from participation in these assessments.

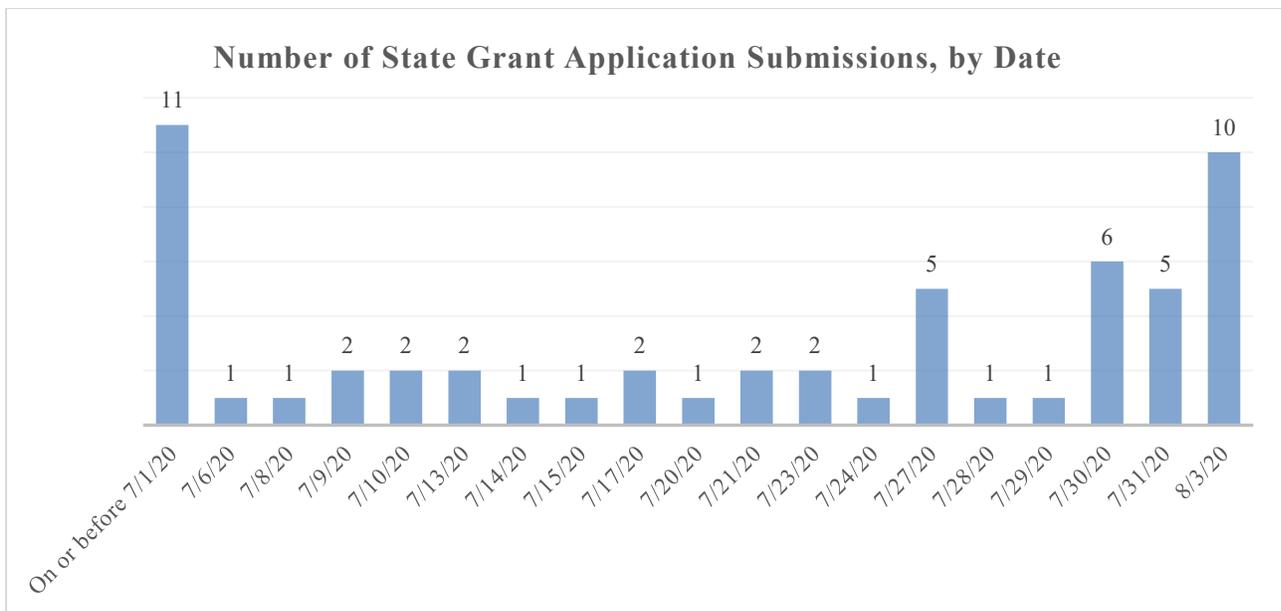
Six states postponed their occupant protection program assessment, and four States postponed their traffic records assessment. NHTSA worked with the affected States to ensure the postponed programmatic assessments were conducted before the July 1, 2021 FY 2022 HSP and National Priority Program grant application due date.

Highway Safety Plans and National Priority Program Grant Application Deadline

23 U.S.C. §402(k)(2) requires each State to submit its highway safety plan (HSP) “not later than July 1 of the fiscal year preceding the fiscal year to which the plan applies.” See also 23 C.F.R. §1300.12. The HSP must also include the States’ application for any of the national priority safety program grants and the racial profiling data collection grant. 23 U.S.C. §402(k)(4); 23 C.F.R. §1300.11(g).

NHTSA postponed the deadline for FY 2021 HSPs and Section 405 National Priority Program grant applications for 30 days—until Monday, August 3, 2020. NHTSA offered this flexibility because we determined that the resource strain brought on by COVID-19 was having a significant impact on States’ ability to carry out their planning process on the usual schedule and provide application information by the statutory deadline. See Chart A for the distribution of submission dates.

Chart A



Maintenance of Effort

Maintenance of Effort (MOE) requirements ensure that States maintain their own expenditures as a condition of receiving grant funds. As a condition of receiving Occupant Protection, State Traffic Safety Information System Improvements, and Impaired Driving Countermeasures grants (23 U.S.C. §405(b), (c), and (d)) in FY 2020, States certified that the lead State agency responsible for occupant protection, traffic records, and impaired driving programs would maintain aggregate State level expenditures at or above the average level of spending in fiscal years 2014 and 2015 in the specified program. 23 U.S.C. §405(a)(9)(A); 23 C.F.R. Part 1300, App. B.

NHTSA waived the maintenance of effort requirements for FY 2020 and the effect of the associated certifications provided by States in their FY 2020 grant applications.⁶ NHTSA determined that this waiver was necessary to prevent the maintenance of effort requirement from having a significant impact on States' ability to respond to the COVID-19 public health emergency by redirecting funds to emergency response.

NHTSA cannot report on how many States used the waiver of the maintenance of effort requirements due to an appropriation restriction that prohibits NHTSA from enforcing MOE requirements. Section 143 of the Further Consolidated Appropriations Act of 2020 (Pub. L. 116-94) prohibits NHTSA from spending funds to enforce State MOE requirements under 23 U.S.C. §405.

⁶ Outside the CARES Act, NHTSA has existing statutory authority to waive the MOE requirement for not more than one fiscal year in each program area in exceptional or uncontrollable circumstances. 23 U.S.C. §405(a)(9)(B).

Expenditure Requirements for FY 2016 Funds

Timely expenditures of highway safety grant funds help ensure life-saving countermeasures are deployed promptly. To address unexpended balances and consistent with the period of the availability set out in 23 U.S.C. §118, NHTSA created a regulatory process to help ensure that States expend funds in a timely manner. 23 CFR 1300.41 provides that grant funds are available for expenditure for four years from apportionment. If funds remain unexpended after four years, States may commit those funds to one or more specific "promised" projects by the end of the fourth year. Once committed to a specific project, those funds cannot be moved to other projects and must be liquidated by the end of the fifth year. Any amounts that remain unexpended at the end of five years are to be deobligated.

NHTSA waived the regulatory requirement that States expend previously obligated funds by the end of the fifth year, providing an additional year to expend those funds (through September 30, 2021). However, this waiver did not eliminate the requirement that funds be obligated to a "promised" project by the end of the fourth year. NHTSA found that COVID-19 had a significant impact on States' ability to expend funds because many highway safety program activities were paused or canceled due to the COVID-19 public health emergency.

In order to qualify to use the waiver, States were required to keep FY 2016 funds under obligation to a "promised" project; however, if the "promised project" designated initially by the State was not feasible due to COVID-19, States were permitted to designate an alternate project if the State provided evidence the project was obligated by September 30, 2019. One State utilized the alternate project option.

Seven jurisdictions relied on the waiver to have an extra year (until September 30, 2021) to spend a combined total of \$3,884,819 in NHTSA grant funds.

NHTSA is actively tracking the FY 2016 expenditures to ensure previously obligated funds are expended within the additional year granted by the CARES Act.

Local Benefit/Share to Local

Local benefit/share to local requirements ensure that a certain percentage of the funds provided to States to carry out highway safety programs is expended by or for the benefit of local political subdivisions. 23 U.S.C. §402(b)(1)(C) requires that at least 40 percent of apportioned funds are expended by local political subdivisions. NHTSA's program regulations provide that this can be accomplished through direct local expenditures or by demonstrating that local political subdivisions have an active voice in the initiation, development, and implementation of highway safety programs. 23 C.F.R. Part 1300, App. C.

NHTSA waived the local benefit/share to local requirements 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. NHTSA determined that COVID-19 was having a substantial impact on the ability of States to meet local benefit/share to local requirements. Specifically, States reported that local law enforcement had been diverted away from traffic safety for purposes of public health response, reducing the number of local organizations that are available for projects. Similarly, unpredictable delays in projects at the local level threatened the States' ability to satisfy the local share requirement.

Twenty States utilized the local benefit waiver in FY 2020.

FY 2021 COVID-19 Impacts

NHTSA data⁷ suggest a sharp increase in risky driving behaviors during the 2020 public health emergency and an increase in fatalities in the 2nd half of 2020 as many States began to re-open. Early data also suggest that traffic fatalities in 2020 were more rural, involved more people between the ages of 16 and 24, and were associated with risk-taking behaviors such as speeding and riding without a seat belt.

There is no evidence to suggest that the issuance of waivers and postponements for FY 2020 contributed to the rise in risky driving behaviors and fatalities during the 2020 public health emergency. Unfortunately, these trends are continuing into 2021. A statistical projection of traffic fatalities for the first quarter of 2021 shows a 10.5% increase as compared to fatalities projected to have occurred in the first quarter of 2020⁸. NHTSA continues to assess COVID-19 impacts on highway safety and gather data on crash fatalities for 2020 and 2021 using information from police crash reports and other sources.

NHTSA provides oversight and technical assistance to the 57 State and territorial highway safety offices. For FY 2021, under the authority granted by Section 442 of the Consolidated Appropriations Act, 2021⁹, on April 29, 2021,¹⁰ NHTSA issued waivers covering Maintenance of Effort and Local Benefit/Share-to-Local requirements for FY 2021.

The waivers for FY 2021 are more limited than those issued in FY 2020 because States have adjusted and adapted their programs to the changed working circumstances. Like NHTSA, States are no longer in the initial crunch of figuring out how to adapt to the pandemic. While some significant impacts remain, States are better informed through experience to carry out their programs. NHTSA continues to assess State and local safety partners' needs and may issue additional waivers as circumstances change and evolve.

⁷ National Center for Statistics and Analysis. (2020, December). Early estimates of motor vehicle traffic fatalities and fatality rate by sub-categories through June 2020. (Report No. [DOT HS 813 054](#)). National Highway Traffic Safety Administration.

⁸ National Center for Statistics and Analysis. (2021, August). Early estimate of motor vehicle traffic fatalities for the first quarter of 2021 (Crash Stats Brief Statistical Summary. Report No. DOT HS 813 149). National Highway Traffic Safety Administration.

⁹ Pub. L. 116-260, available at <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>

¹⁰ <https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-04/2021%20CARES%20Act%20Waivers-4-30-21.pdf>