

National Highway Traffic Safety Administration

Date of Issuance	April 29, 2021
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Signature: 
Acting Administrator

NOTICE ANNOUNCING WAIVER OF CERTAIN FY 2021 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](#), as extended under Section 442 of the Consolidated Appropriations Act, 2021, [Pub. L. 116-260](#), this notice waives the maintenance of effort and local benefit/share to local regulatory grant requirements for the Federal Fiscal Year (FY) 2021 State highway safety programs under 23 CFR Part 1300. These waivers apply to all States and jurisdictions covered by the applicable requirements.

BACKGROUND

The ongoing response to COVID-19 at Federal and State levels continues to reflect the fact that impacts remain extensive and widespread. These impacts are having a prolonged effect on the ability of States to conduct their highway safety programs under 23 U.S.C. Chapter 4. Highway safety programs rely, 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 continue to be disrupted by resource constraints and 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 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

On March 27, 2020, the CARES Act authorized the Secretary of Transportation to waive or postpone certain statutory and regulatory requirements if the Secretary determines that 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.

On April 9, 2020, NHTSA issued a notice waiving and postponing certain statutory and regulatory grant requirements for the State highway safety programs for FY 2020 activities. The waivers applied to all State and territorial highway safety offices covered by the requirements.

On December 27, 2020, as part of the Consolidated Appropriations Act of 2021, Congress extended the waiver and postponement authority it provided to NHTSA under the CARES Act through fiscal year 2021. The Secretary delegated this authority, in writing, to the NHTSA Administrator on April 23, 2021.

After a careful review of the current prevailing facts and circumstances, the relief granted by this notice is based upon both circumstances laid out by the CARES Act, above. These waivers are necessary due to both:

- (1) workforce shortages from the transfer of personnel to other COVID-19 priorities; and
- (2) operational limitations as a direct result of the COVID-19 public health emergency, preventing the timely completion by State Highway Safety Offices (SHSOs) and their sub-recipients of Federally mandated grant program requirements typically conducted during this period.

Specifically, for maintenance of effort, 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 local benefit/share to local, 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 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 as substantial impacts are identified. NHTSA will also consider unique circumstances where a waiver may be made on a case-by-case basis.

WAIVERS

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

Maintenance of Effort: NHTSA waives the maintenance of effort requirements for FY 2021 and the effect of the associated certifications provided by States in their grant applications for FY 2021.

Provisions waived – 23 U.S.C. § 405(a)(9)(A); 23 CFR Part 1300, App. B.

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 2021 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.

Provisions waived – 23 U.S.C. § 402(b)(1)(C); 23 CFR Part 1300, App. A.

States do not need to request a State-specific waiver for the Maintenance of Effort and Local Benefit/Share to Local waivers, but should confer with their Regional offices to determine if amendments to the approved highway safety plan are needed.

EXPIRATION DATE

These waivers and postponements cover grant program requirements for FY 2021 and expire on September 30, 2021.