

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Distracted Driving Grant Program

AGENCY: Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of funding availability.

SUMMARY: Pursuant to the recently enacted Moving Ahead for Progress in the 21st Century Act (MAP-21), the Department of Transportation (DOT) announces the availability of funding authorized in the amount of \$17.525 million in Federal fiscal year (FY) 2013 funds to provide grants to States for enacting and enforcing distracted driving laws. The FY 2013 funds are subject to an annual obligation limitation that may be established in appropriations law. Therefore, the amount available for the grants in FY 2013 may be less than the amount identified above.

A State's distracted driving law must meet statutorily-specified criteria in order for the State to receive a grant. States that are awarded grants also must follow post-award grant requirements. This notice describes the statutorily-specified criteria, the application requirements and the administrative requirements for the Distracted Driving Grant Program.

The Department is publishing this notice to give States an opportunity to submit applications for the newly authorized distracted driving grants as soon as possible in FY 2013. Funds for this grant program are authorized beginning on October 1, 2012.

DATES: To receive a grant under the Distracted Driving Grant Program, a State must submit an application by the deadline established by the Secretary. Applications for FY 2013 distracted driving grants must be received by 11:59 p.m. Eastern Time on [INSERT

DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Applications received after that date will not be considered. Applications will not be accepted on a rolling basis after the deadline.

ADDRESSES: Applications must be submitted electronically to the following E-mail address: DOT-DDGrants@dot.gov. Only applications submitted to that E-mail address will be deemed properly filed. Instructions for submitting applications are included in Section IV (Application Process).

FOR FURTHER INFORMATION CONTACT: For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, Telephone number: 202-366-1834; E-mail: Jin.Kim@dot.gov.

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I. Background

In 2010, there were nearly 33,000 motor-vehicle related deaths on our Nation's highways. Driving while distracted is a deadly habit that contributes to a significant

portion of that total, with 3,000 lives lost in crashes where distraction was a factor. The epidemic of distracted driving is one of our greatest highway safety challenges.

On July 6, 2012, the President signed into law the “Moving Ahead for Progress in the 21st Century Act” (MAP-21), Public Law 112-141, which created a new distracted driving grant program. MAP-21 authorizes the Secretary of Transportation to provide incentive grants to States that enact and enforce laws prohibiting distracted driving. MAP-21 authorizes funding beginning in fiscal year (FY) 2013. The Administrator of the National Highway Traffic Safety Administration (NHTSA) oversees State highway safety programs on behalf of the Secretary, including application, review, award and administration of grants.

MAP-21 authorizes \$22.525 million in FY 2013 for the Distracted Driving Grant Program from the Highway Trust Fund. See 23 U.S.C. 405(a)(1)(D). Of this amount, up to \$5 million may be expended for the development and placement of broadcast media to support the enforcement of State distracted driving laws. After reserving \$5 million for broadcast media support, \$17.525 million is authorized in FY 2013 to provide grants under 23 U.S.C. 405(e) (hereinafter “Section 405(e)”). However, since these FY 2013 grant funds are subject to an annual obligation limitation, the amount of available funds for the FY 2013 grants may be less.

II. Eligibility

The Distracted Driving Grant Program, as enacted by MAP-21, derives its definition of “State” from 23 U.S.C. 401. In accordance with 23 U.S.C. 401, the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of

the Northern Mariana Islands, Guam and the Virgin Islands (“the States”) are eligible to apply for distracted driving grants.

III. Qualification Requirements

A. General. In FY 2013, a State may qualify for a grant under Section 405(e) in one of two ways. A State may qualify by having a comprehensive primary enforcement distracted driving law (hereinafter “Distracted Driving Grant”). See Section III.B. Alternatively, in the first year only, a State may qualify by having a primary enforcement texting law if the State is ineligible for a Distracted Driving Grant (hereinafter “First-Year Texting-Ban Grant”). See Section III.C. The basis for an award under this grant program is a State statute that complies with the criteria set out in Section 405(e). (See Sections B and C and the permitted exceptions and definitions below for an outline of the provisions.)

Permitted exceptions. In accordance with MAP-21, a State statute may provide for the following exceptions and still meet the qualification requirements for a grant (either as a Distracted Driving Grant or a First-Year Texting-Ban Grant) —

- a driver who uses a personal wireless communications device to contact emergency services;
- emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; and
- an individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the

scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to section 31152 of title 49.

No other exceptions are permitted under MAP-21.

Definitions. Section 405(e) defines certain terms. The operation of the State statute must be consistent with the following definitions:

- “Driving” means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise; and does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.
- “Personal wireless communications device” means a device through which personal wireless services (as defined in section 332(c)(7)(C)(i) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(C)(i))) are transmitted, but does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.
- “Primary offense” means an offense for which a law enforcement officer may stop a vehicle solely for the purpose of issuing a citation in the absence of evidence of another offense.
- “Public road” has the meaning given such term in 23 U.S.C. 402(c).
- “Texting” means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, e-mailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

In addition, Section 405(e) requires States to enforce the law in order to qualify for a grant. While Section 405(e) does not define the term “enforce,” we will use the definition that DOT has historically used in similar programs (e.g., Public Law 109-59, Section 2005). In order to meet the requirement that the State enforce a statute, the law must not only be enacted but be in operation, allowing citations to be issued. Therefore, a law that has a future effective date or that includes a provision limiting enforcement (e.g., by imposing written warnings) during a “grace period” after the law goes into effect would not be deemed in effect or being enforced until the effective date is reached or the grace period ends. A State whose law is either not in effect or contains a “grace period” or “warning period” on the due date for grant applications (see “Dates” section above) will not qualify for a FY 2013 grant under this program.

B. Distracted Driving Grant. In order to qualify for a Distracted Driving Grant, a State must have enacted and be enforcing a statute that meets all the requirements set out in Section 405(e), as outlined below:

(1) Prohibition on texting while driving. The State statute must –

(a) Prohibit drivers from texting through a personal wireless communications device while driving;

(b) Make violation of the statute a primary offense; and

(c) Establish –

(i) a minimum fine for a first violation of the statute; and

(ii) increased fines for repeat violations.

(2) Prohibition on youth cell phone use while driving. The State statute must –

(a) Prohibit a driver who is younger than 18 years of age from using a personal wireless communications device while driving;

(b) Make violation of the statute a primary offense;

(c) Require distracted driving issues to be tested as part of the State's driver's license examination; and

(d) Establish –

(i) a minimum fine for a first violation of the statute; and

(ii) increased fines for repeat violations.

C. First-Year Texting-Ban Grant. In the first year only of this grant program, a State that is ineligible for a Distracted Driving Grant (Section III.B) may qualify for a First-Year Texting-Ban Grant if the State has enacted a primary enforcement texting law before July 6, 2012. Specifically, the State statute must –

(1) Prohibit drivers from texting through a personal wireless communications device while driving; and

(2) Make a violation of the statute a primary offense.

IV. Application Process

A. Application Contents. The DOT Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, found at 49 CFR part 18, directs applicants to use standard application forms or those prescribed by the granting agency with the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980. Accordingly, States interested in applying for Section 405(e) grant funds in FY 2013 must submit Standard Form (SF) 424, Application for Federal Assistance, signed by the Governor's Representative for Highway Safety. Please

see www07.grants.gov/assets/SF424Instructions.pdf for instructions on how to complete the SF 424.

As a part of an attachment to SF 424, applicants must specify the grant for which the applicant is applying (Distracted Driving Grant or First-Year Texting-Ban Grant), and identify the State statute (by citation), including each provision of the State statute that meets each of the qualification requirements for a Section 405(e) grant.

Applications must be submitted electronically to the following E-mail address: DOT-DDGrants@dot.gov. Only applications submitted to that E-mail address will be deemed properly filed.

B. Application Deadline. For FY 2013 Distracted Driving Grants or First-Year Texting-Ban Grants, grant applications must be received by 11:59 p.m. Eastern Time on [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Late applications will not be considered.

C. Application Review. DOT will review each application and State statute to verify compliance with all of the provisions of Section 405(e). DOT reserves the right to seek clarification from any applicant about the information in its application, but expects applications to be complete upon submission. Applicants will be notified of award by letter to the Governor.

V. Program Funding and Award

As noted above, MAP-21 authorizes \$22.525 million in FY 2013 for the Distracted Driving Grant Program. See 23 U.S.C. 405(a)(1)(D). In the first fiscal year of this program, MAP-21 provides that DOT may award up to 25 percent of the amount available for Section 405(e) grants to those States that have enacted a primary

enforcement texting-ban law before July 6, 2012, and are otherwise ineligible for a grant under this program (i.e., First-Year Texting-Ban Grant). See 23 U.S.C. 405(e)(6). Therefore, subject to the availability of funds, DOT intends to make available approximately \$5.6 million for First-Year Texting-Ban Grants in FY 2013 (Section III.C). In FY 2013, DOT further intends to reserve \$5 million of the amount available for Section 405(e) grants for broadcast media support, as is authorized in MAP-21. See 23 U.S.C. 405(e)(7). Accordingly, subject to the availability of funds, of the \$17.525 million reserved in FY 2013 to provide grants under Section 405(e), DOT intends to make available approximately \$11.9 million for Distracted Driving Grants (Section III.B) and approximately \$5.6 million for First-Year Texting-Ban Grants (Section III.C).

Section 405(e) does not specify how distracted driving grants are to be allocated among the qualifying States. Four of the six grant programs authorized in MAP-21 Section 31105 (Occupant Protection, State Traffic Safety Information System, Impaired Driving Countermeasures and Graduated Driver Licensing Laws) allocate grant funds in proportion to the State's apportionment under 23 U.S.C. 402 for FY 2009. DOT will use this process to allocate grant funds to States under both parts of this grant program (Distracted Driving Grants and First-Year Texting-Ban Grants), consistent with past practice in a number of highway safety grant programs. In addition, consistent with limitations in some other highway safety programs, a cap of 10 percent of the total amount authorized for FY 2013 Section 405(e) will apply to each grant award. The amount of funds awarded to a State under this program will depend on the grant for which a State is applying and the total number of States qualifying for each type of grant under the program.

VI. Use of Grant Funds

A. Eligible uses of grant funds. MAP-21 stipulates that each State that receives a Section 405(e) grant must use at least 50 percent of the grant funds (1) to educate the public through advertising containing information about the dangers of texting or using a cell phone while driving; (2) for traffic signs that notify drivers about the distracted driving law of the State; or (3) for law enforcement costs related to the enforcement of the distracted driving law. See 23 U.S.C. 405(e)(5)(A). The remaining grant funds, but no more than 50 percent, may be used for any eligible project or activity under 23 U.S.C. 402. See 23 U.S.C. 405(e)(5)(B).

B. Matching requirement. MAP-21 Section 31105 does not specify a Federal share for the activities funded by the Distracted Driving Grant Program. However, 23 U.S.C. 120 specifies a Federal share of 80 percent for any project or activity carried out under Title 23. Because the Distracted Driving Grant Program is a program under Title 23, the Federal share is 80 percent.

VII. Administration

The requirements of 49 CFR part 18, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, govern the implementation and management of grants awarded under the Distracted Driving Grant Program. For ease of administration, States may fulfill financial and reporting requirements through the processes (e.g., vouchering, reporting) applied to the other highway safety grants in Title 23, Chapter 4. This includes the requirement that qualifying States submit a plan explaining, by countermeasure area, how awarded grant

funds will be used, including those that will be used to address distracted driving and those that will be used for eligible projects under 23 U.S.C. 402.

VIII. Additional Information

Beginning with FY 2014 grants, July 1 of the prior year is the single application deadline for highway safety program grants and national priority program grants. See MAP-21 Sections 31101 and 31102. While DOT is publishing this notice to give States an opportunity to submit applications for these newly authorized grants in FY 2013, in the near future, DOT intends to issue regulations implementing highway safety program grants and national priority safety program grants under Sections 402 and 405 for FY 2013 and 2014, as applicable. DOT intends to award Distracted Driving Grants under Section 405(e) for FY 2014 and future years pursuant to the single application process to be set forth in those upcoming regulations.

Authority: Pub. L. 112-141, Section 31105(e); 23 U.S.C. 405(e) (as set forth in MAP-21); delegation of authority at 49 CFR §§ 1.94 and 1.95.

Issued on:

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Ray LaHood

Secretary

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