



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Memorandum

Subject: **Use of NHTSA Highway Safety Grant Funds
for Certain Purchases**

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Reply to
Attn. of:

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Over the last several months, a number of questions have arisen concerning permissible purchases under the highway safety grant programs. States have asked about the conditions that attach to the purchase of equipment, the distinction between advertising, public relations, educational materials, and promotional items, and whether Federal grant funds may be used to purchase items for distribution to members of the public. I issued guidance on these issues in a January 19, 2016 memorandum, which I subsequently clarified in a February 11 memorandum applicable to certain fiscal year 2016 purchases. In this memorandum, I am issuing final guidance on these matters. For ease of reference, today's memorandum consolidates all of the relevant information from these two past memoranda into this one document. This memorandum supersedes those prior documents, and States should no longer consult them. Please distribute this memorandum to the Governors' Representatives for Highway Safety.

I. Allowable Costs

NHTSA highway safety grant funds are intended to support traffic safety in the States. Any use of NHTSA grant funds must support data-driven State traffic safety goals. When determining whether to expend grant funds under the categories below, a State or subrecipient should use good judgment as a responsible steward of tax dollars intended to support traffic safety. All costs charged to NHTSA highway safety grants must be reasonable, within the scope of the grant, address a highway safety problem, and help to meet performance measures.

Note that the OMB Super Circular has additional provisions that apply to certain items that fall within the categories below. For example, certain educational materials costs may be subject to the Super Circular provision on Conference Costs (2 C.F.R. §200.432). States should consult Subpart E of the Super Circular (Cost Principles) to determine if there are additional provisions that pertain to a particular item or use of that item.

A. Equipment

Items purchased for direct use by a State or any of its subgrantees or contractors (rather than for public distribution, as discussed later under Section I.E) are properly categorized as *equipment*. The government-wide rules covering the term of art “equipment” are well-established in law: Equipment is eligible for reimbursement as a direct expense chargeable to a specific project agreement, provided the equipment is needed to perform that project. NHTSA’s grant rules impose the additional requirement that the project for which the equipment is needed must be based on identification of a specific safety problem in the State (often referred to as “problem ID”). In other words, a State must first establish a project (documented by a project agreement), based on problem ID. If that project requires the use of equipment for its performance, the cost of that equipment may be reimbursed under the grant. No project may be created solely to purchase equipment.

For purposes of illustration of these principles, a speed measurement device such as a radar or laser unit purchased by a police agency is a piece of equipment whose expense is permitted under Section 402, provided it is identified in a project agreement whose specific safety activity (i.e., speed enforcement) requires the purchase of the speed measurement device for its performance and provided the need for that project is established by problem ID.

Fundamentally, NHTSA highway safety grants are for safety activities, and equipment serves a supporting role in accomplishing those activities through defined projects. As always, equipment must be used, managed, and disposed of in accordance with applicable Federal requirements. (Although NHTSA’s grant rules impose a requirement for advance approval of equipment only at a threshold of \$5,000 and when the useful life exceeds one year, all equipment must meet the requirements stated here, and all expenditures to purchase equipment are subject to audit.)

There have been questions about the purchase of items erroneously referred to as “safety *equipment*,” when the intent is to distribute the items to members of the public. Items intended for distribution to the public are not “equipment,” as that term is used under Federal grant law, and the Federal rules governing equipment do not apply to such items intended for distribution to the public. Instead, States should consult Section I.E below, “Safety Items for Public Distribution,” for guidance on the treatment of those items. The key to differentiating between (i) equipment and (ii) items for public distribution is the use of the item—equipment must be needed by those carrying out work under the grant, and must be used, managed and disposed of in accordance with applicable Federal requirements.

Illustrative examples of allowable safety equipment:

- Reflective safety vest for use by employee conducting a roadside survey, provided the vest is retained by the program.
- Bike helmet for use by participants in a bike rodeo event and returned to the program after the event.
- Safety gear—including helmets, safety vests, reflective material—for use by trainees during motorcycle training events and returned to the program after the training.

B. Recognition Awards

The Agency understands that an appropriate part of any State program involves recognition and reward for noteworthy accomplishments. NHTSA highway safety grant funds may be used to purchase awards, where appropriate, under a formalized recognition program that rewards superior performance or exceptional contributions to the purposes served by the NHTSA grant. An appropriate award may be a certificate, plaque, coin, or medal, if it is given under a limited, formalized recognition program.

Illustrative examples of allowable recognition awards:

- A plaque given to a State employee under the State's official personnel recognition program.
- A plaque given by the SHSO to a police department at the annual highway safety conference for specific outstanding enforcement efforts.
- A certificate given by the SHSO to an employee for exceptional work in a specific enforcement effort.
- A medal given by the SHSO at a State Lifesavers conference to an individual for a career of exceptional service to public safety.
- A medal or coin given by a subrecipient to a police officer as a formal award for specific superior highway safety enforcement performance (but not a challenge coin for general distribution).
- A certificate given by a subrecipient to a community partner for exceptional work on a collaborative highway safety project.

C. Educational materials

There have been questions about the difference between "educational materials," whose purpose is to convey substantive information about highway safety, and "promotional items," whose purpose is to generate good will or to incentivize behavior (discussed later, under Section II). The former category is an allowable expense, as discussed in this section, while the latter category is not. Paper, pamphlets, flash drives, CD-ROMs, and similar media that contain educational materials are allowable because their purpose is to contain and convey educational information. In order to be considered educational, distributed material must provide substantial information and educational content to the public (not merely a slogan) and have the sole purpose of conveying that information. If a recipient or subrecipient chooses to provide educational content on a flash drive, CD-ROM, or similar device, that device must be an economical method of conveying the information.

Illustrative examples of allowable educational materials:

- Traffic-safety-themed coloring book given to children at a school event, state fair, etc.
- A pamphlet including statistical information such as "X number of people lose their lives every year when not wearing a seat belt" and safety tips distributed at a state fair.
- A flash drive containing information about the dangers of texting and driving (e.g., statistics, ideas to prevent texting while driving).

- A folder containing information about child passenger safety (e.g., statistics about car seat or booster seat laws, proper car seat installation and use, danger of leaving children unattended in hot or cold cars, etc.) and relevant safety tips provided to parents at a car seat inspection station.
- A CD-ROM or flash drive containing training or conference materials given to attendees at a highway safety conference hosted by the recipient or subrecipient.

D. Advertising media

There have been questions about the difference between “advertising,” “public relations,” “educational materials,” and “promotional items.” These terms are not interchangeable. Educational materials are discussed directly above, under Section I.C. The differences and distinctions between the other categories are addressed later, under Sections II and III. Here, we limit the discussion to advertising media. Advertising media intended to reach a large audience—such as television or radio ads, ads on social media, signs, banners, and posters—are allowable costs under NHTSA’s highway safety grants. The Uniform Guidelines for State Highway Safety Programs provide that “the State should enlist the support of a variety of media, including mass media, to improve public awareness and knowledge and to support enforcement efforts about seat belts, air bags, and child safety seats.” (See Guideline No. 20, Section IV)

Illustrative examples of allowable advertising media:

- Banners or posters featuring the Click It or Ticket campaign for use at events.
- A “U Text. U Drive. U Pay.” banner displayed in a school.
- A television ad about the dangers of impaired driving.
- Posters displayed in bars that say “Report every drunk driver immediately at *55.”
- A yard sign telling drivers to “Watch for Motorcycles.”

E. Safety Items for Public Distribution

The purchase of *items for public distribution* (in contrast with equipment for direct use by a State or its subgrantees and contractors, as discussed under Section I.A above) using Section 402 funds is governed by different requirements. Such items do not fall within the definition of equipment, and therefore are not governed by the same principles. There are important limitations on the use of taxpayers’ funds to purchase items for distribution to members of the public. NHTSA and its grantees must be mindful of the Agency’s responsibility as a steward of public funds. In addition to the limitations and requirements described below, any purchase of items for public distribution must be justified by compelling safety benefits.

Subject to the foregoing cautions and requirements, the Agency has determined that, going forward, child restraints (i.e., child car seats); bicycle helmets; and other similar items whose *sole purpose* is to improve highway safety are allowable purchases under the Section 402 program for distribution to members of the public, *provided* these items are specifically identified in a project agreement and based on problem ID, just as is required for equipment purchases. The project may not be limited to distribution of the items, but must also contain specific performance criteria justifying the safety benefit, such as targeted population, number of

items for distribution, method of distribution, and educational component. (Separately, States may use up to five percent of occupant protection funds awarded under 23 U.S.C. § 405(b) to provide child restraints to low-income families, because that section of statute specifically authorizes this expenditure.)

For purposes of illustration of the term “sole purpose,” the purchase and public distribution of a reflector or reflectorized tape that may be attached to clothing to improve pedestrian conspicuity would be allowable (provided it is tied to a specific project to address pedestrian safety, as discussed above), but the purchase of a reflectorized backpack or jacket would be unallowable. The Agency will interpret the term “sole purpose” strictly when evaluating the purchase of items for distribution to the public, and expects States to do so as well. No promotional item or memorabilia may be purchased for distribution under this provision (see discussion of Promotional Items under Sections II and III below).

A State that finds ambiguity about whether a proposed purchase is allowed under this guidance should not proceed with that purchase. States should exercise their best judgment in this area, and should consult their Regional Administrator if they have questions about the application of this guidance to a particular project. Regional Administrators should reject projects that do not conform to the guidance.

II. Promotional Items are Not Allowable Costs under NHTSA Grants

The OMB Super Circular makes clear that no promotional items or memorabilia are allowable costs under Federal grants (see discussion under Section III below). Use of NHTSA grant funds to purchase promotional items or memorabilia is prohibited and could result in the requirement to repay the misused funds. An item that is purchased for distribution as an incentive or to increase goodwill (e.g., to police officers to maintain partnerships) is an unallowable promotional item. Any item that is distributed as a giveaway, except in strict accordance with the provisions of Section I.E above, is not allowable. NHTSA grant funds are intended to promote safety and to educate the public about traffic safety, not to provide items to individuals or groups through widespread distribution.

This promotional items guidance applies only to the use of NHTSA grant funds for these types of purchases. States and their subrecipients may use State funds or privately collected funds or donations to purchase promotional items, subject to applicable State laws and policies.

Illustrative examples of unallowable promotional items or memorabilia include:

- Bumper stickers, and/or texting thumb bands given to members of the public at a state fair.
- Keychains and/or pens given to groups at a training event.
- Shirts for volunteers at a state fair or car seat installation center (either as an incentive or to designate staffers as a team).
- Shirts for Law Enforcement Liaisons.
- Shirts or hats worn by participants in a press event.

- Challenge coins, when ordered in bulk and kept on hand to give to many people outside of a limited, formalized recognition program (for example, to all attendees at a conference, to police officers in the ordinary course of employment).

III. Governing OMB Super Circular Provision on Advertising and Public Relations Costs

The Super Circular allows Federal funds to be used only for certain specified **advertising** and **public relations** costs. *See* 2 C.F.R. § 200.421.

- The Super Circular provides that the only allowable **advertising** costs are for:
 - Recruitment of personnel required for performance of a Federal award;
 - Procurement of goods and services for the performance of a Federal award;
 - Disposal of scrap or surplus materials acquired in the performance of a Federal award except when reimbursed for disposal costs at a predetermined amount; or
 - Program outreach and other specific purposes necessary to meet the requirements of the Federal award.
- The Super Circular provides that the only allowable **public relations** costs are for:
 - Costs specifically required for the Federal award;
 - Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award; or
 - Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

The Super Circular *excludes* all other advertising and public relations costs, and *specifically excludes* “costs of **promotional items** and **memorabilia**, including models, gifts, and souvenirs”—these items are always unallowable advertising and public relations costs. 2 C.F.R. § 200.421(e)(3). Therefore, Federal grant funds are *never* available to cover the costs of **promotional items** and **memorabilia**.