

REFERENCE SERIES: Transportation in Connecticut ARTICLE NO. 12 FHWA Transportation Alternatives (TAP) Program

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Introduction

This simple guide provides insight on the Federal Highway Administration's (FHWA) Transportation Alternatives Program (TAP). As such, the article outlines the TAP in relation to the Recreational Trails Program (RTP), Safe Routes to School (SRTS) Program, and Transportation Enhancement (TE) Program. More information is available from the FHWA website at www.fhwa.dot.gov/map21/factsheets/tap.cfm. This article focuses on the legislative changes affecting the structure and funding for these program initiatives, which are relevant to local project administrators and regional planning organizations (RPOs).

The provisions of the federal transportation bill, Moving Ahead for Progress in the 21st Century (MAP-21), went into effect on October 1, 2012, for federal fiscal years 2013 and 2014. This act replaces the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Many non-motorized transportation activities that were previously eligible in some form under individual SAFETEA-LU programs are now recognized under the MAP-21 Transportation Alternatives (TAs) apportionment via 23 U.S.C. 213. Albeit confusing at times, much of the elements familiar to the Recreational Trails Program (RTP), Safe Routes to School (SRTS) Program, and Transportation Enhancement (TE) Program are contained in Section 213 and remain relatively unaffected by the legislation. The greatest changes are a reduction in the funding level available to the State of Connecticut's non-motorized transportation users for activities under the Transportation Alternatives Program (TAP) as well as alterations to the program structure.

Continuance and Administration of Non-Motorized Transportation Programs

Connecticut's leaders in transportation remain committed to supporting initiatives for non-motorized transportation users, including the RTP, SRTS Program, and TE activities. Solicitations in the last several years, by both the Department of Transportation (Department) and the Department of Energy and Environmental Protection (CT DEEP), identified projects that will remain eligible under the TAP. Some modifications of project scopes and budgets may still be necessary, however, to fit within MAP-21 rules and available funding.

The Department will continue to administer the SRTS and TE Programs, whereas the CT DEEP will continue to administer the RTP. These programs will be managed by the State agencies on behalf of the Federal Highway Administration (FHWA) according to federal provisions for TAs, as defined under 23 U.S.C. 213.

Safety and preservation of the existing system are the main priorities of the Department. However, the Department fully recognizes the benefits of, and public support for, activities that enhance our communities, as well as our transportation system.

The Department will persevere with efforts to assist development and implementation of non-motorized transportation projects, to the best of its ability, given reduced funding levels and changed options under MAP-21. In doing so, the Department will maintain a Non-Motorized Transportation Coordinator for daily coordination and representation on issues of interest to this demographic.

This article highlights the TAP provisions under MAP-21. Additional information on the subcomponents of the program, i.e. SRTS Program, TE Program and RTP, are explored in the Reference Series: Transportation in Connecticut under separate articles:

- Article No. 03 FHWA Transportation Enhancement Program
- Article No. 07 FHWA Safe Routes to School (SRTS) Program
- Article No. 11 FHWA Recreational Trails Program (RTP)

These articles can be accessed from the Department's website (www.ct.gov/dot/pamphlets).

Eligible Project Types

Under Section 213(b), the eligible projects subsection, a State may obligate the funds reserved under Section 213 for any of the following projects or activities:

- transportation alternatives, as defined in Section 101;
- recreational trails program under Section 206;
- safe routes to school program under Section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109-59); or
- planning, designing, or constructing boulevards and other roadways largely in the right-of-way.

The TA definition in Section 213 therefore allows the use of the funding described in its subsections for the RTP, SRTS Program and boulevard initiatives in addition to TE-like activities.

For RTP funds set-aside under the MAP-21 TAP, the eligible project sponsor provisions under 23 U.S.C. 206 are retained.

Definition of Transportation Alternatives

MAP-21 Section 101(a)(29) has replaced the definition of "transportation enhancement activities" provided under SAFETEA-LU Section 101(a)(35) with a new definition referred to as "transportation alternatives". At first glance, the TA definition shows a strong foundation in moving the TE activities forward under the new legislation. Modifications to the definition resulted in expansions as well as scale backs on previously allowed activities. MAP-21 transportation alternatives under 23 U.S.C. 101(a)(29) are as follow.

- A. Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- B. Construction, planning, and design of infrastructure- related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.
- C. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.
- D. Construction of turnouts, overlooks, and viewing areas.
- E. Community improvement activities, including— (i) inventory, control, or removal of outdoor advertising; (ii) historic preservation and rehabilitation of historic transportation facilities; (iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and (iv) archaeological activities relating to impacts from implementation of a transportation project eligible under this title.
- F. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to— (i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329; or (ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

Several previously eligible activities are not included in MAP-21: pedestrian and bicycle safety and educational programs; acquisition of scenic or historic easements and sites; scenic or historic highway programs including tourist and welcome centers; and establishment of transportation museums.

Non-motorized forms of transportation, including on-road and off-road trail facilities and infrastructure projects/systems, and non-drivers remain a focus. Routine maintenance is not eligible as a TAP activity except under the RTP. Although the education category was not explicitly listed as a TA in MAP-21, bicycle and pedestrian safety education for kindergarten through 8th grade continues to be an eligible SRTS activity. Additionally, the new TAs appear to better support implementation of activities to address National Environmental Policy Act of 1969 (NEPA) requirements, safety related improvements and other federal regulations. Americans with Disabilities Act (ADA) compliancy is also more actively cited as eligible activities, thus bringing attention to needs in this area and an available funding source.

A key point to note is that language preceding the list of approved activities has been modified. The following is the comparison:

- SAFETEA-LU “Transportation Enhancement Activities” – per federal legislation, the term means, “with respect to any project or the areas to be served by the project, any of the following activities as the activities relate to surface transportation”;
- MAP-21 “Transportation Alternatives” – per federal legislation, the term means, “any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation”.

The new language is broader, more programmatic than the previous project/activity oriented definition. Additionally, the new wording of the individual categories is also broader. Such broader language could lead to changes in interpretative guidance at the federal level.

Program Funds

It should be noted that MAP-21 is a two-year bill, which, in and of itself, creates less stability and access to funds. Estimated funds for many programs are, therefore, immediately reduced by half since a four-year program was often assumed. Unfortunately, this is further reduced by lower anticipated annual funding levels under MAP-21 TAP and the need to balance RTP, SRTS Program and TE Program from the same reserves.

The FHWA has indicated that it will apportion TA as a single program under which the RTP, SRTS Program, TE-like and boulevard initiatives will be eligible. Funding tables released by the FHWA show significant losses through this combined apportionment for TA. As a whole, the three programs combined suffered a 30 percent loss in funding that will require reevaluation of priorities and focus to ensure that the essential needs of non-motorized transportation system users are met, including persons with disabilities, seniors and children.

Nationally, the TA program will be funded at a level equal to two percent of the total of all MAP-21 authorized for appropriation from the Highway Trust Fund for Federal-aid highway and research projects. This national amount would then be multiplied by a ratio of FFY2009 State share of TE apportionment to FFY2009 National TE apportionments to calculate the State’s share of TA. A state that has not opted out of RTP, such as Connecticut, would reserve funds for obligation to RTP projects from the TA apportionment; this amount would be equal to the RTP fund apportioned in 2009 for that state as per Section 213(f)(1). FHWA Notice N4510.761 contains a funding table estimating the Connecticut share of TA for FY2013 as \$8,576,285.

RTP Set-Aside

A set-aside for the RTP from the TA apportionment is provided through a subappropriation for states that do not opt out of the program outlined under Section 213(f). The value of the set-aside is based on the FFY2009 RTP apportionment to the state. One-percent of the State's FFY2013 RTP set-aside (\$9,622) is subject to be returned to the federal government for administration of the program, leaving \$952,294 in available funds for FFY2013.

Suballocations

A suballocation TA program is required. However, per the FHWA, the RTP set-aside under Section 213(f) is excluded from the suballocation rules. Instead, the RTP set-aside is deducted from the State's FFY2013 TA share prior to suballocation. After the RTP set-aside (\$962,216), an estimated \$7,614,069 remains available in Connecticut for TA eligible project types under Section 213(a) in FFY2013.

Fifty percent of the remaining TA funds (\$3,807,035) may be obligated in any area of the State for FFY2013, referred to in Connecticut as the State Allocation. The remaining 50 percent (\$3,807,034) will be distributed to areas based on population; this portion is referred to in Connecticut as the RPO Allocation.

- State Allocation 50% Anywhere in State - Connecticut may utilize the 50 percent available for use anywhere in the state to support an eligible project type under Section 213(b). This includes TE-like, SRTS Program and boulevard projects. The State may also fund additional RTP projects beyond those programmed with the subapportioned RTP funds. The State may also transfer these funds to another apportionment of the State under the Section 104(b) of Title 23: National Highway Performance Program, Surface Transportation Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program, or Metropolitan Planning.
- RPO Allocation 50% Suballocation by Population - For the remaining 50 percent of TA funds suballocated by population, Connecticut may fund any eligible project type under Section 213(b). However, program funds suballocated by population will remain constrained by suballocation rules and non-transferable to other Federal-aid programs. The RPO Allocation is available for obligation to any eligible entity in proportion to their relative shares of the State's population. Distribution will be to (1) urbanized areas in the State with an urbanized population over 200,000, (2) in areas of the State other than urban areas with a population greater than 5,000 and (3) other areas of the State.

Any of the eligible project types, TE-like, RTP, SRTS Program or boulevard initiatives, described in Section 213(b) could be performed with suballocated TA funds. However, once the State Allocation balance is expended, any project funded by TA is subject to the suballocation by population rules – i.e. RPO Allocation. Also, RTP projects not funded by the set-aside or the State Allocation would also be subject to the suballocation by population rules.

Match to Federal Funds

TA funding is available on a cost reimbursement basis with an 80 Federal /20 Other split per 23 U.S.C. 120. The ability to utilize RTP funds as match to other federal programs as well as the ability to apply other federal programs as the nonfederal match to RTP is maintained under 23 U.S.C. 206. However, SRTS infrastructure projects are no longer eligible for 100% federal funding; these projects are now also subject to the 80 Federal /20 Other split.

Per FHWA staff, soft match options are maintained under 23 U.S.C. 323. Currently, the Department handles innovative financing and soft match on a case-by-case basis through review and coordination with the FHWA division office.

Eligible Entity

Eligible entity within Section 213 is defined as follows:

- a local government;
- a regional transportation authority;
- a transit agency;
- a natural resource or public land agency;
- a school district, local education agency, or school;
- a tribal government; and
- any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails (other than a metropolitan planning organization or a State agency) that the State determines to be eligible, consistent with the goals of this subsection.

MPOs and the Department, although no longer “eligible entities” can continue to administer TA projects on behalf of an eligible entity – i.e. Project Sponsor. This is particularly relevant for larger, complex projects that cross municipal boundaries or require the advanced technical assistance and project management skills of MPO and Department staff. Additionally, nonprofits are not eligible as direct grant recipients of TAP funds but may also partner with any eligible entity on an eligible project type.

Conversely, agencies like DEEP will qualify as direct recipients as a natural resource or public land agency. Rural RPOs and transit districts also appear to generally qualify as eligible entities. MetroNorth and Amtrak will likely also qualify as transit agencies.

Competitive Processes

A competitive process is required under Section 213(c)(4) to allow eligible entities the option to submit projects for funding. The competitive process requirement applies to all TA funds, including RTP set-aside and suballocated funds. The competitive process is, therefore, applicable to RTP, SRTS Program, TE-like and boulevard initiatives. For suballocated funds in urbanized areas over 200,000 population, the MPO serving the Transportation Management Area (TMA) will continue to prioritize projects in consultation with the Department per 23 U.S.C. 213(c). All of these programs have functioned with competitive processes, whether formal or informal in structure. As such, there will likely be little change to program processes in this respect.

Title 23 Requirements

Examples of Title 23 requirements would be Davis Bacon prevailing wage rate, competitive bidding such as Quality Based Selection (QBS), and other contracting requirements. Both TE-like initiatives and the SRTS Program, moving forward, remain effectually contained in the same hierarchy of Title 23 as they were previously.

- Under SAFETEA-LU, TE activities were considered a subcomponent of the Surface Transportation Program (STP) under Title 23 Section 133 and, thus, followed the federal requirements of Title 23 with limited exceptions provided.
- SRTS was considered a subcomponent of the Highway Safety Program under SAFETEA-LU Section 402, created from Section 1404 of Public Law 109–59. Title 23 with limited exceptions was applicable to SRTS and explicitly stated in the language of the law.

TE-like activities, termed TAs, will also continue as a subcomponent of the federal Surface Transportation Program under MAP-21 as Section 133(a)(11). As such, the policy and procedural requirements that apply to the Surface Transportation Program will continue to apply to the provisions for funding and implementation of TE-like activities.

TAP provides explicit leniency from Title 23 for RTP initiatives under Section 213(f) from being treated as Federal-aid highway projects. As such, RTP projects implemented with set-aside funds will not be subject to Title 23 requirements. However, any RTP projects drawing from TA funds other than the set-aside will be subject Title 23 requirements.

Functional Classification

Under 23 U.S.C. 133(c), restrictions on functional classification for TA and RTP projects was officially removed which provides states more flexibility for administering these projects consistent with their intent. This section of language is particularly pertinent to off-road facilities and, with this language, RTP and TA initiatives may also be undertaken on roads functionally classified as local or rural minor collectors.

For TE-like activities, this is simply a formal incorporation of previous policy and clarification. The SRTS Program will continue with the flexibility, previously provided under Public Law 109-59, to fund infrastructure projects carried out on any public road or any bicycle and pedestrian pathway or trail in the vicinity of schools.

Other Notes and Resources

The *Reference Series: Transportation in Connecticut* is comprised of short articles on transportation topics pertinent to Connecticut. The series is provided as a first step in understanding the transportation planning, development, design and implementation process.

Many article topics focus on elements particularly relevant to locally administered transportation projects. These simple guides are the product of coordination between the Federal Highway Administration, the University of Connecticut's CTI-Technology Transfer Center and the State of Connecticut Department of Transportation.

The full detail of transportation programs and processes, particularly rules of eligibility, special provisions, requirements, or constraints is not within the purview of these reference documents. It is imperative that municipal staff contact their RPO early in the process for guidance. In addition to the CT DOT website, www.ct.gov/dot, the Local Project Administration website, www.t2center.uconn.edu, of the University of Connecticut's CTI-Technology Transfer Center provides many resources for municipal staff and managers of local projects.

Find more articles on transportation topics specific to Connecticut at www.ct.gov/dot/pamphlets.

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Connecticut Department of Transportation

2800 Berlin Turnpike

P.O. Box 317546

Newington, CT 06131-7546

Website: www.ct.gov/dot