

Recreational Trails Program Interim Guidance

Federal Highway Administration
Office of Planning and Environment
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Calculation of Nonhighway Recreational Fuel Use (Report *under development*). Appendix
This report will be completed in summer 1999.

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Recreational Trails Program Purpose

The Recreational Trails Program (RTP) was authorized in the Transportation Equity Act for the 21st Century (TEA-21) in 1998. The RTP is a Federal-aid assistance program to help the States provide and maintain recreational trails for both motorized and nonmotorized recreational trail use. The program provides funds for all kinds of recreational trail uses, such as pedestrian uses (hiking, running, wheelchair use), bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles. Each State develops its own procedures to solicit projects from project sponsors, and to select projects for funding, in response to recreational trail needs within the State. The RTP encourages all kinds of trail enthusiasts to work together to provide a wide variety of recreational trail opportunities.

Recreational Trails Program Major Changes Under TEA-21

- The Recreational Trails Program (RTP) replaced the National Recreational Trails Funding Program.
- The Recreational Trails Program has a total of \$270 million in contract authority funding as a Federal-aid program for the six years of TEA-21:
 - FY 1998: \$30 million;
 - FY 1999: \$40 million;
 - FY 2000 - 2003: \$50 million annually.
- The Federal administrative takedown was reduced from 3 percent to 1½ percent.
- The program is subject to the overall Federal-aid highway obligation limitation.
- The Uniform Transferability provision may affect the RTP, however, in most States, the program is administered by an agency other than the DOT. The DOT may not unilaterally transfer RTP funds to highway funding categories.
- States must establish, or have established, a State Recreational Trails Advisory Committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.
- The Federal share from the RTP is raised to 80 percent. Federal agencies may sponsor projects and provide additional Federal funds up to 95 percent, other Federal program funds may be used to provide the non-Federal share, and States may allow programmatic matching shares.
- Donations of materials, services, or new right-of-way may be provided by any project sponsor, including public agencies (except Federal agencies may not claim the value of right-of-way).
- The program is legislatively exempt from the Section 4(f) requirement.
- States are encouraged to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform construction and maintenance of recreational trails.

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Recreational Trails Program Guidance

Introduction and Background

The Recreational Trails Program (RTP) is a Federal-aid assistance program to help the States provide and maintain recreational trails for both motorized and nonmotorized recreational trail use. The program provides funds for all kinds of recreational trail uses, such as pedestrian uses (hiking, running, wheelchair use), bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles. Each State develops its own procedures to solicit projects from project sponsors, and to select projects for funding, in response to recreational trail needs within the State. The RTP encourages all kinds of trail enthusiasts to work together to provide a wide variety of recreational trail opportunities.

The Transportation Equity Act for the 21st Century (TEA-21) authorized the Recreational Trails Program as a Federal-aid program, and codified it in Federal statutes under section 206 of title 23, United States Code (23 U.S.C. 206). The RTP replaced the original National Recreational Trails Funding Program (also known as the Symms Act), which was authorized by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and amended by the National Highway System (NHS) Designation Act of 1995. TEA-21 eliminated the original program from 16 U.S.C. 1261.

RTP Legislation:

§ 206. Recreational trails program

(b) PROGRAM.—In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

The U.S. Department of Transportation, Federal Highway Administration (USDOT/FHWA) administers the RTP in consultation with staff from the Department of the Interior (National Park Service and Bureau of Land Management) and the Department of Agriculture (U.S. Forest Service). Federal land management agencies are eligible to apply to the States for RTP funds.

This program guidance incorporates legislative citations. Some legislative provisions or requirements do not need additional program guidance. Except as noted, citations refer to section 206 of title 23 United States Code (23 U.S.C. 206). Where used, the symbol “§” means “section”.

The previous program guidance dated May 7, 1996, and supplemental guidance dated January 15, 1997, remain in effect for funds allocated under ISTEA and the NHS Designation Act. This new guidance supersedes all previous program guidance for funds made available under TEA-21, including FY 1998 funds allocated prior to the enactment of TEA-21. However, see *How to Treat Funds Allocated Prior to TEA-21* on page 21 for options to administer funds obligated prior to the enactment of TEA-21.

Many trails provide both a recreational and transportation purpose. RTP funds may be used on any trail which provides recreation. Using RTP funds on a trail project does not make the trail ineligible for other Federal highway funds if the trail also provides a transportation purpose.

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Administrative and Financial Procedures

State Responsibilities

Legislation: Transportation Equity Act for the 21st Century (Pub. L. 105-178, June 9, 1998, as amended by Pub. L. 105-206).

SEC. 1103. APPORTIONMENTS.

(f) RECREATIONAL TRAILS PROGRAM.—Section 104(h) of such title [title 23 U.S.C.] is amended to read as follows:

“(h) RECREATIONAL TRAILS PROGRAM.—

“(3) ELIGIBLE STATE DEFINED.—In this section, the term ‘eligible State’ means a State that meets the requirements of section 206(c).”.

(n) STATE DEFINED.—For the purposes of apportioning funds under sections 104, 105, 144, and 206 of title 23, United States Code, the term “State” means any of the 50 States and the District of Columbia.¹

RTP Legislation as codified in 23 U.S.C. 206:

(c) STATE RESPONSIBILITIES.—To be eligible for apportionments under this section—

(1) the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section, and

(2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

Section 206(c) lists the two major requirements for a State to be eligible to receive apportionments under the RTP. The State also must use its apportionment in accordance with the RTP and other applicable Federal legislation and regulations. If a State does not meet these requirements, it will lose eligibility and not receive an apportionment. If a State becomes ineligible but would like to regain eligibility, it must comply with the requirements listed under *State Certification to Regain Eligibility* (page 7). Certification is required only for a State which loses eligibility.

State Agency Designation

Each State Governor designated a State agency or agencies to administer the Recreational Trails Program (RTP) under the original National Recreational Trails Fund Act. FHWA recognizes the agency previously designated by the Governor unless the Governor or the Governor’s designee informs the FHWA division office in writing that another agency has been designated. This letter should be forwarded to the FHWA Washington Headquarters program office. An Appendix lists the State agencies and contact information.

In most States, the Governor designated a State resource agency to administer this program, rather than the State Department of Transportation (DOT) which is usually responsible for FHWA programs. Therefore, decisions regarding the use of RTP funds must be made by the designated agency, and not by the State DOT (except in those States where the DOT administers the program).

¹ Under § 1103(n) of TEA-21, territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands) are not eligible to receive apportionments under the Recreational Trails Program. Puerto Rico received funds in FY 1993, but did not meet eligibility requirements in FY 1996 or 1997.

The State agency responsible for the RTP must keep the State DOT informed and involved to coordinate this program with transportation programs for planning purposes, including incorporation into State and metropolitan transportation improvement programs, and to coordinate similar programs such as bicycle and pedestrian activities, transportation enhancement activities, and the scenic byways program. Likewise, if the State DOT administers the program, it should keep appropriate State resource agencies informed and involved.

In States where an agency other than the State DOT administers the RTP, the FHWA division office should work directly with the State's administering agency in the project approval process, and should have direct financial transactions with that State agency. There is no Federal requirement to include the DOT within the project approval or financial transaction processes, except for an agreement on obligation limitation available for the RTP and incorporation of RTP projects within State and metropolitan transportation improvement programs.

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State Recreational Trail Advisory Committee

Establishment and Representation

Each State must have established a State Recreational Trail Advisory Committee that represents both motorized and nonmotorized recreational trail users. FHWA will continue to recognize the advisory committee (board) established by a State under the original National Recreational Trails Fund Act as long as the committee continues to meet the RTP's legislative requirements (see below). The State may determine committee membership (including voting and nonvoting members), roles, protocols and procedures, and authorities.

The committee membership must include trail *users*. There must be representation of off-road motorized recreational trail users, and representation of nonmotorized recreational trail users. An advisory committee consisting only of State officials, natural resource organizations, and recreational business interests would not qualify under this program.

Committee membership should represent trail uses which take place within the State. For example, snowmobile or cross-country ski representation is irrelevant in States where snow trail use is insignificant. But, if a type of trail use is significant, the State should consider representation from that user group. For example, if there is an organized user group for a type of trail use within the State, the State should consider representation from that type of trail use.

The committee membership may include representation from any kind of recreational trail uses or multiple representation from particular trail uses. There may be representation of local, State, or Federal agencies, land use or natural resource organizations, trail advocacy organizations, recreational businesses, etc.

- States are encouraged to include representation of people with disabilities.
- States with significant trail use on Federal lands are encouraged to include representation or participation from appropriate Federal agencies.
- States are encouraged to include representation or participation by youth conservation or service corps interests.
- States may wish to include representation from recognized Indian tribal governments.

Advisory committee meetings should be held in accordance with State laws and policies regarding public involvement.

Duties of the Advisory Committee

The Federal legislation lists duties for the State Recreational Trail Advisory Committee:

- §206(c)(2) Represent both motorized and nonmotorized recreational trail users.²
 Meet not less often than once per fiscal year.

² The Small State Exclusion (§206(d)(3)(B)) does *not* exempt small States from the requirement to have both motorized and nonmotorized representation on the State Recreational Trail Advisory Committee.

- §206(d)(3)(C) May waive, in whole or in part, the requirements that the State use 30 percent of its RTP funds for motorized recreation and 30 percent for nonmotorized recreation, if the committee determines and notifies the Secretary [of Transportation] that the State does not have sufficient projects to meet these requirements.³
- §206(d)(4) A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section [206].

Under §206(d)(4), appropriate guidance would include:

- Developing project sponsor criteria (which kinds of project sponsors may receive grants).
- Developing project eligibility criteria (which kinds of projects the State would consider for funding).
- Developing project evaluation and selection criteria.
- Providing guidance to determine compliance with the diverse trail use requirement.
- Determining appropriate State policy to determine matching share criteria.

States may assign other duties to their advisory committees, such as:

- Issue guidance to the State to meet the environmental mitigation or benefit requirement in §206(e) (see page 57). The committee should have performed this duty under the National Highway System Designation Act of 1995. Since the environmental mitigation or benefit requirement remains in effect, the advisory committee should be involved in assisting the State as it considers how to continue meeting this requirement.
- Recommend projects or select projects for funding.
- Discuss statewide trail management issues and offer recommendations for improvements.
- Provide a forum to discuss statewide trail user issues.
- Assist in statewide recreational trail outreach and public involvement programs.
- Assist the State in other trail policy issues.

Although the RTP legislation does not require a State to use its advisory committee to approve projects for funding, the legislation requires the State to receive guidance from the committee on how it solicits and selects trail projects for funding. This guidance would include procedures for on-the-ground trail projects and for trail education projects.

³ If the State Recreational Trail Advisory Committee exempts the State from either or both of the 30 percent requirements, the State must forward a record of the decision to the FHWA division office, and the FHWA division office must forward a copy to the FHWA Headquarters program office.

State Certification to Regain Eligibility

The following certification procedures only apply to States that lose eligibility to receive apportionments under the Recreational Trails Program (RTP).

The RTP has two major requirements for States to be eligible to receive an apportionment:

- §206(c)(1) the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section; and
- §206(c)(2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

FHWA cannot make apportionments to ineligible States. If a State is ineligible at the time apportionments are made, an apportionment will not be made to that State, and the funds will be distributed to the eligible States. If a State is ineligible to receive an apportionment in one fiscal year, it may become eligible to receive an apportionment in the next fiscal year if it certifies to FHWA that it meets the legislative requirements before the start of the next fiscal year, and FHWA finds that the State meets the requirements. FHWA established this procedure to ensure that funds go to those States which are eligible consistent with the legislation.

To regain eligibility under the RTP, a State must certify in writing to the FHWA division office that it meets certain requirements of the program as outlined below. The FHWA division office should forward the certification letter to the FHWA Headquarters program office. The deadline for a State's certification letter to be received by FHWA Headquarters to receive an apportionment in the following fiscal year is July 1 of the prior fiscal year.

The certification letter must include the following:

- Name the agency or agencies designated by the Governor to administer the Recreational Trails Program within the State.
- Certify that the State has established a State Recreational Trail Advisory Committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year. (See *State Recreational Trail Advisory Committees* on page 5).
- Certify that the State will conform with the 30 percent minimum requirements for motorized recreation use and nonmotorized recreation use. Exceptions:
 - DC, RI, DE, and CT are exempt from this requirement (§206(d)(3)(B)).
 - The State's Recreational Trail Advisory Committee may exempt the State from this requirement (§206(d)(3)(C)).⁴
- Certify that the State will conform with the 40 percent minimum requirement for diverse trail use. There are no exceptions to this requirement.
- Be signed by the Governor or the official designated by the Governor to administer this program.

⁴ A State may certify that it will conform with these requirements unless the State Recreational Trail Advisory Committee votes to exempt the State from this requirement.

The State agency responsible for the RTP should provide a copy of this letter to the State DOT and other appropriate State agencies. If the State DOT manages the RTP, it should provide a copy to the State resource agency and other appropriate State agencies.

If the FHWA division finds that the State has become eligible for an apportionment, it will inform the FHWA Headquarters program office, and the State will receive an apportionment in the next fiscal year.

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Funding Apportionments

Legislation from TEA-21:

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(7) RECREATIONAL TRAILS PROGRAM.—For the recreational trails program under section 206 of such title \$30,000,000 for fiscal year 1998, \$40,000,000 for fiscal year 1999, and \$50,000,000 for each of fiscal years 2000 through 2003.

RTP Legislation: 23 U.S.C. 206:

(i) CONTRACT AUTHORITY.—Funds authorized to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

USDOT Administrative Costs

Legislation, 23 U.S.C. 104(h)

(h) RECREATIONAL TRAILS PROGRAM.—

(1) ADMINISTRATIVE COSTS.—Whenever an apportionment is made of the sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct an amount, not to exceed 1½ percent of the sums authorized, to cover the cost to the Secretary for administration of and research and technical assistance under the recreational trails program and for administration of the National Recreational Trails Advisory Committee. The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or nonprofit organizations to perform these tasks.

Apportionment to the States

Legislation, 23 U.S.C. 104(h)

(h) (2) APPORTIONMENT TO THE STATES.—After making the deduction authorized by paragraph (1) of this subsection, the Secretary shall apportion the remainder of the sums authorized to be appropriated for expenditure on the recreational trails program for each fiscal year, among the States in the following manner:

(A) 50 percent of that amount shall be apportioned equally among eligible States.

(B) 50 percent of that amount shall be apportioned among eligible States in amounts proportionate to the degree of non-highway recreational fuel use in each of those States during the preceding year.

(3) ELIGIBLE STATE DEFINED.—In this section, the term ‘eligible State’ means a State that meets the requirements of section 206(c).

Legislation, TEA-21 §1103(n)

(n) STATE DEFINED.—For the purposes of apportioning funds under sections 104, 105, 144, and 206 of title 23, United States Code, the term “State” means any of the 50 States and the District of Columbia.

Apportionments and notification to the States are made on October 1 of each fiscal year (23 U.S.C. 104(e); 118(a)). If a State does not receive notification of its apportionment on October 1, it should contact its FHWA division office. Apportioned funds are available for obligation on the effective date of apportionment.

Calculation of Nonhighway Recreational Fuel Use

Part of the apportionment to each State is based on an estimate of nonhighway recreational fuel use within each State. A section *Calculation of Nonhighway Recreational Fuel Use* will be provided as an appendix to this program guidance upon completion of a fuel use study in mid-1999.

Only a few States collect data on nonhighway recreational fuel use, and they use various methods to collect their data. FHWA contracted with the Oak Ridge National Laboratory (ORNL) to estimate the amount of nonhighway recreational fuel use in 1992. ORNL provided a report to FHWA in July 1994. However, some States raised concerns about the results of the study. In September 1998, FHWA reopened the contract with ORNL to review the original model and consider corrections and other factors that may influence nonhighway recreational fuel use. A draft report is expected in late spring 1999, and the final report is expected in the middle of 1999. The results will be incorporated into future year apportionments.

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Obligation Limitation

The Recreational Trails Program is subject to the same annual obligation limitation as the Federal-aid highway program. The Congress determines the annual obligation limitation through authorization legislation (as in TEA-21 §1102(a)) or through annual appropriations acts.

As specified in law, the FHWA allocates obligation limitation to each State Department of Transportation as one sum. This means the State agency responsible for the RTP must negotiate with the State DOT to provide obligation authority for the RTP.

There are several options that the State DOTs may offer the State resource agencies:

- The State DOT may determine that the RTP may receive an amount of obligation limitation equal to 100 percent of its apportionment in years when the obligation limitation is less than the apportioned amounts, but limit the obligation limitation not to exceed 100 percent of the apportionment in years when the obligation limitation is greater than the apportioned amounts.
- The State DOT may determine that the RTP may receive the same pro rata amount of obligation limitation that the DOT receives for its overall Federal-aid obligation limitation.
- The State DOT may arrive at some other share of obligation limitation, depending on the ability of both the State resource agency and the DOT to use the State's full obligation limitation.

Obligation and Spending Deadlines

Under 23 U.S.C. 118(b)(2), apportioned funds are available for obligation for four fiscal years: the current fiscal year plus 3 years. For example, the deadline to obligate funds apportioned in FY 1998 is September 30, 2001. The funds are treated in a "first in, first out" manner; older year funds are considered obligated before newer year funds. The unobligated balance of funds will be withdrawn if the unobligated balance exceeds the sum of the apportionments issued for the current fiscal year and the three prior fiscal years. For example, on October 1, 2002, no funds will lapse as long as the unobligated balance is less than the sum of apportionments for FY 1999, 2000, 2001, and 2002; any unobligated balance in excess of that sum will lapse.

Under TEA-21, RTP funds are apportioned to the States. Unobligated apportioned funds do not need to be returned as did unobligated allocated funds prior to TEA-21. Apportioned funds are carried over by the States.

The deadline to expend funds and to receive payment of funds is September 30th of the fifth fiscal year after the period of availability for obligation (31 U.S.C. 1552).⁵ For example, the deadline for the State to receive payment of funds apportioned in FY 1998 is September 30, 2006.

⁵ Legislation from 31 U.S.C. 1552:

Procedure for appropriation accounts available for definite periods

On September 30th of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.

A State may establish a shorter deadline for a project sponsor to expend funds after obligation. If a project does not go forward within a reasonable amount of time, the State should deobligate the project, and reobligate the funds for a project which is ready to move forward.

Uniform Transferability

Legislation from TEA-21:

SEC. 1310. UNIFORM TRANSFERABILITY OF FEDERAL-AID HIGHWAY FUNDS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by inserting after section 109 the following:

“Sec. 110. Uniform transferability of Federal-aid highway funds

“(a) GENERAL RULE.—Notwithstanding any other provision of law but subject to subsections (b) and (c), if at least 50 percent of a State’s apportionment under section 104 or 144 for a fiscal year or at least 50 percent of the funds set-aside under section 133(d) from the State’s apportionment section 104(b)(3) may not be transferred to any other apportionment of the State under section 104 or 144 for such fiscal year, then the State may transfer not to exceed 50 percent of such apportionment or set aside to any other apportionment of such State under section 104 or 144 for such fiscal year.

“(b) APPLICATION TO CERTAIN SET-ASIDES.—No funds may be transferred under this section that are subject to the last sentence of section 133(d)(1) or to section 104(f) or to section 133(d)(3). The maximum amount that a State may transfer under this section of the State’s set-aside under section 133(d)(1) or 133(d)(2) for a fiscal year may not exceed 25 percent of (1) the amount of such set-aside, less (2) the amount of the State’s set-aside under such section for fiscal year 1997.

“(c) APPLICATION TO CERTAIN CMAQ FUNDS.—The maximum amount that a State may transfer under this section of the State’s apportionment under section 104(b)(2) for a fiscal year may not exceed 50 percent of (1) the amount of such apportionment, less (2) the amount that the State’s apportionment under section 104(b)(2) for such fiscal year would have been had the program been funded at \$1,350,000,000. Any such funds apportioned under section 104(b)(2) and transferred under this section may only be obligated in geographic areas eligible for the obligation of funds apportioned under section 104(b)(2).”.

(b) CONFORMING AMENDMENT.—

The analysis for chapter 1 of such title is amended by inserting after the item relating to section 109 the following:

“110. Uniform transferability of Federal-aid highway funds.”.

This section allows States to transfer up to 50 percent of the apportionments in Federal-aid highway program funding categories to other Federal-aid highway program categories, with limitations on transfers from the Surface Transportation Program Safety Program, the Transportation Enhancement Activities, and the Congestion Mitigation and Air Quality Improvement Program. This provision could affect the RTP, either with transfers out, or transfers in. However, in most States, the RTP is administered by an agency other than the State DOT; therefore a DOT may not unilaterally transfer the funds to other highway programs, unless it is the sole State agency responsible for administration of the program. A transfer of funds into or out of the RTP would require concurrence of the other State agency and/or the Governor.

State Suballocations

Diverse, Motorized, and Nonmotorized Minimum Requirements

RTP Legislation: 23 U.S.C. 206:

(d) (3) USE OF APPORTIONMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), of the apportionments made to a State for a fiscal year to carry out this section—

(i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;

(ii) 30 percent shall be used for uses relating to motorized recreation; and

(iii) 30 percent shall be used for uses relating to nonmotorized recreation.

Requirement

The RTP legislation requires that States use 40 percent of their funds apportioned in a fiscal year for diverse recreational trail use, 30 percent for motorized recreation, and 30 percent for nonmotorized recreation. The 40-30-30 requirement applies to the on-the-ground trail projects and to the educational projects, but does not apply to the State administrative costs.⁶ The 40-30-30 requirement only applies to Federal funds apportioned through the RTP, not to funds from other sources.

The 40-30-30 requirement affects each State's annual **apportionment**. A State does not need to meet the 40-30-30 minimums in each fiscal year's **obligations**, if some funds remain unobligated.⁷

Overlap / Category Definitions

The diverse, motorized, and nonmotorized percentages in §206(d)(3)(A) are minimum requirements which must be met, and may be exceeded. States should not select projects in three mutually exclusive categories. A project for diverse motorized use (such as snowmobile and off-road motorcycle use) may satisfy the 40 percent diverse use requirement and the 30 percent motorized use requirement simultaneously. A project for diverse nonmotorized use (such as pedestrian and bicycle use) may satisfy the 40 percent diverse use requirement and the 30 percent nonmotorized use requirement simultaneously. States should consider diverse motorized use projects, diverse nonmotorized use projects, and projects which benefit both motorized and nonmotorized use simultaneously.

⁶ Educational costs do not need to be split 40-30-30. For example, a State may use all of its educational funds for a motorized trail safety program. This safety program may count toward the 30 percent motorized requirement.

⁷ For example, if there are insufficient eligible motorized projects at the end of FY 1999 to meet the 30 percent requirement, a State may obligate 70 percent for the diverse and nonmotorized categories and also obligate funds for any eligible motorized projects, and then reserve the remaining funds for motorized use. A State also may obligate 70 percent of the FY 2000 funds (after receiving the FY 2000 apportionment) for diverse or nonmotorized projects. The State should obligate the remaining FY 1999 and 2000 funds for eligible motorized projects as they are developed. However, the State should try to obligate all available funds each fiscal year in case there is not sufficient obligation limitation available in future years.

To provide more flexibility in project selection, FHWA established five categories to account for the 40-30-30 requirements:

- 1. Nonmotorized project for a single use:** A project primarily intended to benefit only one mode of nonmotorized recreational trail use, such as pedestrian only, or equestrian only. Projects serving various pedestrian uses (such as walking, hiking, wheelchair use, running, bird-watching, nature interpretation, backpacking, etc.) constitute a single use for the purposes of this category. *Note: wheelchair use by mobility-impaired people, whether operated manually or powered, constitutes pedestrian use, not motorized trail use.* Projects serving various nonmotorized human-powered snow uses (such as skiing, snowshoeing, etc.) constitute a single use for this category.
- 2. Nonmotorized diverse use project:** A project primarily intended to benefit more than one mode of nonmotorized recreational trail use such as: walking, bicycling, and skating; both pedestrian and equestrian use; or pedestrian use in summer and cross-country ski use in winter.
- 3. Diverse use project including both motorized and nonmotorized uses:** A project intended to benefit both nonmotorized recreational trail use **and** motorized recreational trail use. This category includes projects where motorized use is permitted, but is not the predominant beneficiary. This category includes projects where motorized and nonmotorized uses are separated by season, such as equestrian use in summer and snowmobile use in winter. Other examples: a common trailhead project serving separate ATV and bicycle trails; purchasing a machine to groom both snowmobile and cross-country ski trails.
- 4. Motorized single use project:** A project primarily intended to benefit only one mode of motorized recreational use, such as snowmobile trail grooming. A project may be classified in this category if the project also benefits some nonmotorized uses (it is not necessary to exclude nonmotorized uses), but the primary intent must be for the benefit of motorized use.
- 5. Motorized diverse use project:** A project primarily intended to benefit more than one mode of motorized recreational use, such as: motorcycle and ATV use; or ATV use in summer and snowmobile use in winter. A project may be classified in this category if the project also benefits some nonmotorized uses (it is not necessary to exclude nonmotorized uses), but the primary intent must be for the benefit of motorized use.

Projects in categories 1 and 2 count toward the 30 percent nonmotorized use requirement.
Projects in categories 2, 3, and 5 count toward the 40 percent diverse trail use requirement.
Projects in categories 4 and 5 count toward the 30 percent motorized use requirement.

States can meet the 40-30-30 requirements easily by selecting projects which qualify under both the motorized and diverse categories, or the nonmotorized and diverse categories, simultaneously.⁸

Maintenance and Official Use

Use of motorized vehicles for official purposes only (emergency, enforcement, maintenance) may be permitted on otherwise nonmotorized trails at the discretion of the appropriate Federal, State, or local officials or land managers. Use of motorized vehicles on a trail for official purposes only on an otherwise nonmotorized trail does not constitute diverse recreational trail use for motorized and nonmotorized trail users. For example, a trail open only for cross-country ski or snowshoe use is still an exclusively nonmotorized trail even if it is maintained with a motorized grooming machine.

Waivers

Small State Exclusion

RTP Legislation: 23 U.S.C. 206:

- (d) (3) (B) SMALL STATE EXCLUSION.—Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

This provision exempts Connecticut, Delaware, the District of Columbia, and Rhode Island from the requirements that they use 30 percent of their funds for motorized use and 30 percent of their funds for nonmotorized use. It does not exempt these States from the 40 percent diverse trail use requirement or from the requirement for both motorized and nonmotorized representation on the State Recreational Trail Advisory Committees.

Advisory Committee Waiver Authority

RTP Legislation: 23 U.S.C. 206:

- (d) (3) (C) WAIVER AUTHORITY.—A State recreational trail advisory committee established under subsection (c)(2), may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).

If the State's Recreational Trail Advisory Committee determines that the State does not have sufficient eligible projects to meet one of the 30 percent requirements, the committee may exempt the State from either or both of the 30 percent requirements. This decision should take place in a public meeting. The State must forward a record of the decision to the FHWA division office, and the FHWA division office must forward a copy to the FHWA Headquarters program office.

⁸ For example, if a State used 10% of its funds for single use nonmotorized projects, 35% on diverse nonmotorized projects, 20% on diverse projects for both motorized and nonmotorized use, 5% on single use motorized projects, and 30% on diverse motorized projects, then it would have used 45% on nonmotorized projects, 35% on motorized projects, and 85% on diverse projects. The State would meet all the requirements. A project benefitting both motorized and nonmotorized use where motorized use does not predominate would qualify under the diverse category, but not under the motorized or nonmotorized categories.

Because the 40-30-30 requirements are specific for each fiscal year, a State Recreational Trail Advisory Committee may not establish a long-term policy waiving the motorized or nonmotorized requirements. The decision must be made each fiscal year.

No State may waive the 40 percent diverse trail use requirement. Past experience indicates that States can meet this requirement with no difficulty.

State Administrative Costs

RTP Legislation: 23 U.S.C. 206:

- (d) (3) (D) STATE ADMINISTRATIVE COSTS.—State administrative costs eligible for funding under paragraph (2)(F) shall be exempt from the requirements of subparagraph (A).

The Diverse, Motorized, and Nonmotorized requirements do not apply to State administrative costs. See *State Administrative Costs* on page **39**.

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Federal Share and Matching Share

The following section applies only to RTP funds apportioned under TEA-21. For funds allocated in FY 1993, 1996, and 1997, use the Program Guidance from May 7, 1996, and the supplemental program guidance of January 15, 1997.

RTP Legislation: 23 U.S.C. 206:

(f) FEDERAL SHARE.—

(1) IN GENERAL.—Subject to the other provisions of this subsection, the Federal share of the cost of a project under this section shall not exceed 80 percent.

(2) FEDERAL AGENCY PROJECT SPONSOR.—Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that—

(A) the share attributable to the Secretary of Transportation may not exceed 80 percent of the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency may not exceed 95 percent of the cost of a project under this section.

(3) USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE.—Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(4) PROGRAMMATIC NON-FEDERAL SHARE.—A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed 80 percent.

(5) STATE ADMINISTRATIVE COSTS.—The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).⁹

General Federal / Matching Share

The Federal share under the Recreational Trails Program is a maximum. States may require a larger matching share, and States or project sponsors may provide a greater non-Federal share resulting in a lower Federal share.

1. Federal Share under the RTP: The Federal share through the RTP for trail projects and trail-related educational programs is limited to 80 percent. The “sliding scale” provision of 23 U.S.C. 120(b) does **not** apply to RTP projects; it only applies to the State administrative costs.
2. Federal Agency Project Sponsor: A Federal agency project sponsor may provide its own funds toward RTP projects as additional Federal share up to 95 percent of the project cost. The limitation is intended to ensure commitment to the project from State, local, or private co-sponsors.

⁹ 23 U.S.C. 120(b) provides for additional Federal share under the Federal-aid highway program in States with large amounts of Federal lands in proportion to the total land area within the State. This is known as the “sliding scale” provision. The FHWA division and State DOT can provide this percentage for a particular State.

Under this provision, a Federal agency project sponsor may provide any amount of funds, provided the total Federal share does not exceed 95 percent.¹⁰

3. Funds from Federal Programs: RTP funds may be matched with funds available under other Federal funding programs, if the project also is eligible for funding under the other Federal program. Federal funds received by any project sponsor from another Federal program may be credited as if they were the non-Federal share, and may be used to match RTP project funds up to 100 percent of the project cost. However:
- Funds from Federal agency project sponsors must be credited as additional Federal share (paragraph 2 above), not as part of the non-Federal share.
 - Other Federal program funds may require a non-Federal share. For example, a \$10,000 RTP project may use \$8,000 in RTP funds and be matched by \$2,000 in Federal Transportation Enhancement (TE) funds, but the TE funds are limited to an 80 percent Federal share, or \$1,600. The sponsor would have to provide a \$400 match from non-Federal sources.
 - Although other Federal program funds may be used to match RTP funds, this does not mean that RTP funds may be used to match other Federal program funds. For example, although Federal Transportation Enhancement (TE) funds may be used to match RTP funds, RTP funds may not be used to match TE funds.

Examples of other Federal programs which may be used to match RTP funds include:

- State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).
- HUD Community Development Block Grants (42 U.S.C. 5301 et seq.).
- Public Works Employment Act of 1976 (42 U.S.C. 6701 et seq.).
- Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988 (Pub. L. 100-692; 16 U.S.C. 461).¹¹
- Job Training Partnership Act of 1982 (29 U.S.C. 1501 et seq.).
- National and Community Service State Grant Program (42 U.S.C. 12501 et seq.).
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193; 42 U.S.C. 401 et seq.).
- Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8).
- Federal-aid highway program funds, such as the Federal Lands Highway Program, National Scenic Byways Program, and Transportation Enhancement Activities (23 U.S.C. 101 et seq.).
- Funds made available under the Federal Emergency Management Administration.
- Federal funds made available to Indian tribes.
- Challenge Cost-Share programs of Federal land management agencies.

¹⁰ For example:

- The RTP may provide 80 percent of the project funds, a Federal agency sponsor may provide 15 percent, and a State, local, or private sponsor may provide 5 percent.
- The RTP may provide 80 percent of the project funds, a Federal agency sponsor may provide 10 percent, and a State, local, or private sponsor may provide 10 percent.
- The RTP may provide 60 percent of the project funds, a Federal agency sponsor may provide 35 percent, and a State, local, or private sponsor may provide 5 percent.
- The RTP may provide 50 percent of the project funds, a Federal agency sponsor may provide 25 percent, and a State, local, or private sponsor may provide 25 percent.

¹¹ This particular program exists only in Pennsylvania, but other similar heritage program funds exist in other States.

Federal program funds for youth conservation or service corps provide an opportunity to use qualified youth conservation or service corps for construction and maintenance of recreational trails under the RTP.

Indian tribal funds may be used as non-Federal match for the purposes of this program regardless of the source of the funds. This may include Federal lands highway funds.

4. **Programmatic Non-Federal Share:** The programmatic non-Federal share provides States with more flexibility to select projects. For example, Sponsor A and Sponsor B may each propose \$10,000 projects. Sponsor A may offer to provide \$2,500 (25 percent) of the project cost while Sponsor B may have only \$1,500 (15 percent) available. The State, at its option, may determine that the excess match from Sponsor A may account for the insufficient match from Sponsor B, and fund both projects as if both met the 20 percent match requirement.

Projects using either the Federal Agency Project Sponsor provision, or the Funds from Federal Programs provision, or both, may not be included in a State's calculation of the programmatic non-Federal share.

5. **State Administrative Costs:** State administrative costs under the RTP require a State match. The State match may use the "sliding scale" provisions of 23 U.S.C. 120(b), which provides for a higher Federal share in States with larger shares of Federal lands.

Non-Federal Matching Share

- See *Matching Share Provisions* on page **28** for information on allowable matching shares.
- See *Donations of Funds, Materials, Services, or New Right-of-Way* on page **20** and *Value of Private Donations* on page **26** for information on using donations toward the non-Federal matching share.

The non-Federal matching share is a minimum requirement.¹² Any project sponsor may provide a larger non-Federal share.¹³ A State may choose to require a larger non-Federal matching share from project sponsors.

States may choose to provide the non-Federal share of projects from State funds, such as providing matching funds for motorized projects from a State motorized trail fund, or providing matching funds from another State trail program fund.

Each State should work with its State Recreational Trail Advisory Committee to establish policies for providing matching shares.

¹² Except for individual projects funded under the Programmatic Non-Federal Share provision. However, the sum of a State's RTP projects calculated under this provision must meet the 20 percent minimum non-Federal share.

¹³ Except the total Federal share for a project sponsored by a Federal agency is limited to 95 percent by the Federal Agency Project Sponsor provision.

Donations of Funds, Materials, Services, or New Right-of-Way

RTP Legislation: 23 U.S.C. 206:¹⁴

(h) PROJECT ADMINISTRATION.—

(1) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, SERVICES, OR NEW RIGHT-OF-WAY.—

(A) IN GENERAL.—Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) Federal project sponsors.—Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

This section provides that any project sponsor (except for Federal agencies), whether a private individual or organization, or a public agency, may donate funds, materials, services (including volunteer labor), or new right-of-way to be credited to the non-Federal share of an RTP project.

Federal project sponsors may provide funds, materials, or services as part of the Federal share, but may not provide new right-of-way.

New right-of-way means the value of land lawfully acquired for the purpose of the recreational trail project. It does not include the value of land already under owned or managed by an agency or organization. For example:

- If a town government (land trust, State park, etc.) lawfully purchases new land for the purpose of constructing a trail or trail facility or to protect a trail corridor, the value of the purchase may be credited to the non-Federal share.

However:

- The town (land trust, State park, etc.) may not use the value of land within a previously established town park (land trust, State park, etc.) as credit to the non-Federal share.
- The town may not use the value of land transferred from the control of one town agency to another as credit to the non-Federal share (such as a transfer from a town development authority to a town park authority); a transfer of control from one municipal authority to another does not constitute purchase of new right-of-way.

¹⁴ Note: The RTP legislation is more permissive than the Federal highway program legislation in 23 U.S.C. 323.

How to Treat Funds Allocated Prior to TEA-21

Several States still have unobligated funds remaining from funds allocated in FY 1993, 1996, or 1997, prior to TEA-21.

- If a State returns unobligated Program Code 384/38B/38C funds¹⁵ for the annual August redistribution, it will receive them back when funds are reallocated in the next fiscal year.
- If a State has projects originally obligated in FY 1993, 1996, or 1997 which were completed under budget, retracted, or otherwise were closed out and have funds deobligated, the funds may be obligated for other projects.

However, funds **allocated** under the National Recreational Trails Funding Program in FY 1993, 1996, and 1997 still use program codes 384, 38B, and 38C. The Federal share is still 50 percent (except 38B is 100 percent). The 50 percent matching share also applies to old FY 1993 funds which originally were 100 percent (since they are 384/38B/38C funds).

If a State has funds left over from FY 93/96/97 projects, it may deobligate the leftover funds and reobligate the remaining funds for other projects. However, the Federal share remains at 50 percent.

States should try to obligate and spend all remaining 384/38B/38C funds and close those accounts.

Under TEA-21, all FY 1998 RTP funds were converted to apportioned Q94 funds, but the obligation date determined the Federal share. The new legal requirements (including allowing Federal agency sponsors to provide additional Federal share, allowing Federal program match, and programmatic match) are in effect for all FY 1998-2003 funds obligated after June 9, 1998.

For FY 1998 funds allocated under the Surface Transportation Extension Act of 1997, that were obligated prior to signing TEA-21 on June 9, 1998:

- If a project was obligated at 50 percent Federal share and has no project amendments, it stays at 50 percent.
- If a project was obligated at 50 percent Federal share and it needs more funds, use the TEA-21 provisions for the additional funds.
- If a project was obligated at 50 percent Federal share and it runs under budget or otherwise has funds deobligated: Since all FY 1998 funds are Q94 funds, the fund should be reobligated for new projects using the TEA-21 provisions.
- If a project was obligated at 50 percent Federal share, but it has not moved forward yet, a State has the option of deobligating the project and reobligating using the new rules. But, if the project already has had significant work take place, do not use this method, since the project would lose the eligibility to pay for work taking place before the new date of obligation.

¹⁵ Program 384 was for on-the-ground projects; 38B for State administrative costs; 38C for educational costs.

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Project Administration

The State agency responsible for administering the Recreational Trails Program will develop its own procedures and criteria for selecting projects. The State agency may solicit and receive applications from subgrantees, as defined in §206(d)(4), and review, rank, and select projects. The State must submit an annual program with a list of selected projects to the FHWA division office for authorization after the funds have been apportioned and obligation authority has been provided.

The program must include an estimated cost of program administration and a list of selected projects. At a minimum, the State must provide sufficient information about each project selected to allow FHWA to enter each trail project into the Fiscal Management Information System (FMIS).

Some States may wish to include all selected projects in their annual program as one Federal project for the purpose of authorization and reporting in FMIS, although sufficient detail information still is needed for individual trail projects. Other States may wish to submit groups of similar projects or individual projects for Federal authorization. The FHWA division may authorize the program and authorize the State to proceed with the selected projects. (See page 31 for FHWA approval process). If necessary, FHWA may provide partial authorizations. FHWA form 1240 may be used for project authorization. Funds will be obligated when the trails project is authorized. The authorization shall be deemed a contractual obligation of the Federal Government to reimburse the State for allowable project costs incurred. Projects may be modified by request of the State agency and authorization of the FHWA division. The FHWA division and the State may agree on procedures whereby minor modifications do not require FHWA authorization. ***We need to revise this page to incorporate FHWA Memo on Project Authorization/Project Agreement, October 29, 1998.***

All recipients and subrecipients of funds through the RTP must comply with applicable Federal laws, regulations, and Executive Orders. States will document compliance for all projects under the National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and other applicable laws (such as laws regarding threatened and endangered species, hazardous wastes and contaminated properties, historic and archaeological resources, etc.). Monitoring and reporting for RTP grants shall be in accordance with USDOT grant regulations found in 49 CFR 18.40.

Once funds have been obligated, States should ensure that project sponsors proceed with project implementation and expend the funds within a reasonable time frame. The deadline to expend funds and to receive payment of funds is September 30th of the fifth fiscal year after the period of availability for obligation (31 U.S.C. 1552, see page 11). For example, the deadline for payment of funds apportioned in FY 1998 is September 30, 2006.

A State may establish a shorter deadline for a project sponsor to expend funds after obligation. Good cash management procedures generally result in minimal time between obligation and proceeding with the project. If a project sponsor is unable to proceed with an authorized project within a reasonable amount of time, the State should deobligate those funds and submit another eligible project for authorization which is ready to move forward.

Grant Management

The FHWA has determined that the Recreational Trails Program apportionments to States will be awarded and administered in accordance with the provisions in 49 CFR part 18, the USDOT's regulation that implements the government-wide Common Rule for grants and cooperative agreements to State and local governments. The highway regulations in 23 CFR are not appropriate for the RTP because:

- RTP projects do not involve highway construction (23 CFR 1.1).
- In most States, the State DOT is not the agency responsible for RTP administration.
- Most RTP projects involve relatively small amounts of funds; procedures reasonable for highway construction projects are too burdensome on small project sponsors.

States are to follow State law and procedures when awarding and administering RTP subgrants to local and Indian tribal governments in accordance with 49 CFR 18.37. Subawards by a State to institutions of higher education, hospitals, and nonprofit organizations are to be awarded and administered by the State in accordance with 49 CFR part 19, the USDOT's regulation that implements the government-wide common rule for grants and cooperative agreements to institutions of higher education, hospitals, and nonprofit organizations. The USDOT regulations are available on the World Wide Web at: www.fhwa.dot.gov/legsregs/legislat.html.

Eligible Subgrantees

The RTP is intended to be a program through which States provide grants to trail project sponsors through an open competition process based on the merit of project proposals.

States may make subgrants and direct payments to any project sponsor, whether a public agency or a private organization. (See *Who May Sponsor a Project* on page 45.) However, States may have more restrictive qualifications:

- Some States, by their own State policy or regulation, restrict subgrants to public agencies and do not provide grants to private organizations.
- Some States restrict grants to public agencies and private nonprofit organizations.

OMB Circulars

The U.S. Office of Management and Budget (OMB) establishes the regulations which must be used to administer Federal grants. The USDOT's regulation in 49 CFR 18.22 refers to applicable OMB circulars to determine allowable costs. All OMB circulars are available on the World Wide Web at www.whitehouse.gov/WH/EOP/omb/html/circular.html. (You must use exact lower case and upper case.)

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the RTP is 20.219.

Allowable Costs

Allowable costs are regulated in 49 CFR 18.22. Section 18.22(b) lists the appropriate cost principles for various kinds of organizations.

For the costs of a—	Use the principles in—
State, local, or Indian tribal government.	OMB Circular A-87.
Private, nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM [sic] Circular A-122 as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

In general, costs are allowable, as specified in the appropriate OMB Circular, if the costs are necessary, reasonable, and benefit this grant program. Examples of unallowable costs are those for purposes not related to this program.

OMB Circular A-87 lists Cost Principles for State, Local, and Indian Tribal Governments.

- Attachment A covers *General Principles for Determining Allowable Costs*.
- Attachment B covers *Selected Items of Cost*. Among the selected items is “Compensation for personnel services”. Generally, reasonable personnel services related to a project are allowable.
- Attachment C covers *State/Local-Wide Central Service Cost Allocation Plans*.
- Attachment D covers *Public Assistance Cost Allocation Plans*.
- Attachment E covers *State and Local Indirect Cost Rate Proposals*. Although some indirect costs are allowed under the Federal regulations, some States may disallow indirect costs. If the State allows some indirect costs, the State must determine whether or not the indirect cost rates are reasonable in terms of the on-the-ground benefit for the project. States in which the State DOT is responsible for the RTP should note that §1212(a) of TEA-21 revised 23 U.S.C. 302(b) to allow State DOTs to charge indirect costs.

If the applicant is **not** a State, local, or Indian tribal government, use the appropriate attachment for the appropriate OMB Circular. For example, OMB Circular A-122, Attachment A, Section C, covers indirect costs for nonprofit organizations.

Audit Requirements

Audit requirements for RTP grants and subgrants are found in 49 CFR 18.26, which refers to OMB Circular A-133: *Audits of States, Local Governments, and Non-Profit Organizations*.

Public Employee Costs

To verify allowable costs for State and local government employees, see OMB Circular A-87, Attachment B, item 11. Public labor is **not** volunteer or a donation. If a public employee is paid for time on a project, then the labor would be counted as part of the project cost (provided the labor is an appropriate allowable cost under OMB Circular A-87). It is not an “in-kind donation” since money is paid to the employee.¹⁶ However, the dollar value of the employee’s time may be counted toward the project sponsor’s matching funds. For Federal agency sponsors, the value of a Federal employee’s time may be counted toward the Federal agency’s share.

Value of Private Donations

To verify how to value donated services by private people to a governmental unit, see OMB Circular A-87, Attachment B, item 11(i). To verify how to value donated services by private people to a private project sponsor, see OMB Circular A-122, Attachment B, item 12.

¹⁶ Example: Given a \$100,000 RTP project, where \$50,000 is the allowable cost for right-of-way and materials and \$50,000 is allowable for public agency labor, then, of the total \$100,000 cost, the Federal share payable from the RTP is \$80,000. The public agency pays \$100,000 in cash (for right-of-way, materials, and labor) and submits a voucher for an \$80,000 reimbursement.

Given a \$100,000 project where \$50,000 is for materials, \$35,000 is allowable public labor, and \$15,000 is the allowable value of private volunteer labor, the Federal share payable from the RTP is still \$80,000. The public agency pays \$85,000 cash, claims the \$15,000 value of the private volunteer labor, and submits a voucher for \$80,000.

Given a \$100,000 project where \$20,000 is for materials, \$30,000 is privately donated materials, \$20,000 is allowable public labor, and \$30,000 is private volunteer labor, in this case, the Federal RTP payment is limited to \$40,000, because the cash outlay was only \$40,000. This would be a case of the private in-kind match exceeding the Federal share.

Payment

Several methods of payment are permissible under 49 CFR 18.21. Section 18.21(b) specifies that, *Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee.* . . . Because most trail projects will consist of some form of construction, and may have substantial delay between project obligation and actual disbursement, the preferred method of payment for the RTP will be reimbursement as provided in §18.21(d). However, since many of the project sponsors may not have sufficient working capital, the FHWA, at a State's request, may authorize working capital advances as provided in §18.21(e). There also may be situations where full advances may be authorized as provided in §18.21(c).

Reimbursement to the State will be for the Federal share of allowable costs incurred on project-related activities. Applicable cost principles are listed in 49 CFR 18.22. After FHWA authorizes the State's project(s) and the funds have been obligated, the State agency may submit reimbursement vouchers to FHWA as costs are incurred for portions of project work completed under the RTP. States should bill for reimbursement using the PR-20 Current Billing System. Construction engineering costs (including allowable costs for environmental evaluation and documentation, permits, or approvals) may be reimbursed. However, reimbursement will not be permitted for costs incurred prior to the date of program authorization by FHWA.

Advances and Working Capital Advances

Advances and Working Capital Advances are permitted under the RTP on a case-by-case basis when the reimbursement method would be too burdensome on a project sponsor.

Under the Cash Management Improvement Act (31 U.S.C. 205), an advance made to a State before the State actually disburses the funds requires the State to pay interest on the advanced funds. This process is governed by an agreement between the State and the U.S. Treasury. However, a State may advance funds to a non-State project sponsor, then submit a voucher to FHWA for reimbursement, and not incur interest payments.

The Working Capital Advance method may be used if a project sponsor needs sufficient working capital to initiate a project. For example, a project sponsor may need initial funds to purchase materials. The State may advance a portion of the funds to the project sponsor. The sponsor must submit vouchers to the State for payment as the project progresses.

The full Advance method may be used if a project sponsor needs the full advance to complete the project. For example, a project may consist of purchasing trail construction or maintenance equipment (such as a snow trail grooming machine). The State may provide the full advance to the project sponsor. Then the project sponsor will be able to purchase the equipment. After the State provides the advance to the project sponsor, the State may submit a voucher to FHWA for reimbursement.

Matching Share Provisions

The Common Rule regulations, 49 CFR parts 18 and 19, are the best resources for answering financial administration questions.

- 49 CFR 18.24 and 19.23 describe allowable matching shares.
- 49 CFR 18.24(a) and 19.23(a) list the basic rule for matching.
- 49 CFR 18.24(b) lists qualifications and exceptions.
- 49 CFR 18.24(c) and sections of 19.23 discuss how to value donations. Any RTP project sponsor which is a private organization or non-Federal public agency may offer to donate funds, the fair market value of materials, services (including volunteer labor), or lawfully acquired new right-of-way toward the non-Federal share of an RTP project. Federal agency sponsors may provide funds or the fair market value of materials or services toward the Federal agency's share in accordance with 23 U.S.C. 206(f)(2).

Condemned Land as Matching Value: The RTP legislation prohibits using RTP funds for condemnation of any kind of interest in property. To be consistent with the RTP legislation, it is not permissible to use the value of condemned land toward the matching requirement for an RTP project.

User Fees

Nothing in the RTP legislation prohibits project sponsors from charging fees for use. States and project sponsors may negotiate appropriate fees that a project sponsor may charge for use within a recreation area. 49 CFR 18.25 states:

- “(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds. . .”
- (g)(3) allows program income to count toward the match.
- “(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period.”

The basis for charging user fees should be determined and specified in the project agreement between the State and the subgrantee. The income should be used to support the project or other projects eligible for assistance under the RTP.

States and project sponsors should consider:

- The facility must be open to the public, not only club members or municipal residents.
- The fee must be “reasonable” which would be determined in negotiation between the State and the project sponsor. The State Recreational Trail Advisory Committee would be a useful forum to discuss this issue. The fee should not be set so high as to restrict general public access.
- It may be appropriate for club members to receive a discount, since a portion of their membership may be counted toward use of the area, but the price differential should not be set so high as to restrict general public access.
- Charging a fee to use a recreation area may eliminate landowner liability protection offered under State Recreational Use Statutes.

Real Property and Equipment

Management of real property is regulated under 49 CFR 18.31 and 49 CFR 19.32, and management of equipment is regulated under 49 CFR 18.32 and 49 CFR 19.34.

Section 1303 of TEA-21 modified 23 U.S.C. 156 regarding proceeds from the sale or lease of real property: *A State shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal . . . of real property acquired. . .*” If a State purchases property with RTP funds and sells or leases the property to a private organization, it must charge fair market value. Likewise, if a private organization purchases property with RTP funds and then sells or leases the property to a unit of government or another private party, it must charge fair market value. The basis for selling or leasing the property should be determined and specified in the project agreement.

Disposition of real property is regulated under 49 CFR 18.31(c) and 49 CFR 19.32(c). States should ensure that each project agreement establishes a minimum timeframe for property to remain open for public access for the use for which the funds were intended. See page 42.

Disposition of equipment is regulated under 49 CFR 18.32(e) and 49 CFR 19.34. States should ensure that each project agreement for equipment purchase or lease establishes sufficient controls for the equipment to be used for the purpose for which it was intended.

Procurement

Procurement is regulated under 49 CFR 18.36(a): *States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.*

Local government subgrantees of States will follow procurement procedures specified by the State. The provisions of 49 CFR 18.36(b) through (i) are not applicable to States or subgrantees of States. The requirement of 49 CFR 18.36(j) regarding competitive bids does not apply to RTP projects because they are not highway construction. States will follow 49 CFR 18.37, which governs subgrants by a State to local and Indian tribal governments. Subgrantees of States that are institutions of higher education, hospitals, or nonprofit organizations are to follow the procurement procedures in 49 CFR 19.40 et seq.

Compliance

(d) (4) GRANTS.—

(A) IN GENERAL.—A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) COMPLIANCE.—A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

Projects Completed Under Budget

If a project sponsor completes a project under budget, the remaining unspent funds must be deobligated. The deobligated funds may be reobligated for another RTP project, provided the State continues to meet the 40-30-30 requirements. If several projects are completed under budget, the remaining funds may be combined and reobligated for other eligible RTP projects, provided the State continues to meet the 40-30-30 requirements.

Minimum and Maximum Grant Amounts

The RTP legislation does not establish minimum or maximum grant amounts. A State may establish its own minimum or maximum grant amounts.

- Some States established minimum grant amounts to reduce the per-project administrative burden. However, the State should consider provisions to waive this requirement for projects with a final cost less than the minimum grant amount.
- Some States established maximum grant amounts to allow various project sponsors around the State to obtain funds. However, the State should consider provisions to waive this requirement for special circumstances. For example, a project to acquire land may require an amount greater than the maximum, otherwise the land may be lost to some other kind of development.

Grant Management Questions and Answers

Q: A question has arisen first whether mileage to the project site is reimbursable for volunteers donating their time. This has led to a larger question whether donated or volunteer services are reimbursable for other than the non-Federal match.

A: The legislation states that the value of *donated* funds, materials, and services may be used as part of the match. If there is reimbursement, there is no donation. OMB Circular A-87 section (B)(11)(i)(1) prohibits reimbursement for donated services. This would apply to mileage incurred by a volunteer traveling from home or office to a project site, or mileage incurred by a volunteer traveling between individual sites which are part of an overall project. Once there is reimbursement, there is no donation; it becomes a project cost. The value of mileage may be counted toward the donation. However, this must be included in the project work plan, and there must be sufficient record-keeping.

Q: If the State makes a grant to another State agency, may the State deduct a percentage share for State administrative overhead?

A: A State making a grant to another State agency (such as to a State university) may not deduct a percentage share for general State administration unrelated to the administration of the RTP.

FHWA Approval

The FHWA division office may approve a State's projects for a fiscal year only if:

- The State's Recreational Trails Advisory Committee has met at least once within the current fiscal year, or in the previous fiscal year more recently than the completion of the State's grant cycle in that previous fiscal year.
- The State agency responsible for the RTP has submitted the list of selected projects to the State DOT for incorporation within the State Transportation Improvement Program (STIP), and to applicable Metropolitan Planning Organizations (MPOs) for incorporation within the metropolitan TIPs. See *Planning Requirements* on page 35.
- The State's projects either:
 - satisfy the 40-30-30 requirements, **or**
 - the State has set aside, for future obligation, the amount of funds necessary to meet the 40-30-30 requirements, **or**
 - the FHWA division office has received the State's waiver under §206(d)(3)(C),¹⁷ and the FHWA division office has forwarded the State's waiver to the FHWA Headquarters program office.
- If the State is using funds for administrative costs, the State's administrative costs are related to the administration of the RTP. The funds must be obligated under Program Code QR1 in FHWA's Fiscal Management Information System (FMIS) (see below).
- If the State is using funds for educational projects, the funds must be obligated under Program Code QR2 in FMIS (see below).

Upon FHWA approval of the RTP projects, the State may advance the RTP projects for implementation, subject to subsequent incorporation into the STIP.¹⁸ Costs incurred prior to FHWA approval are not eligible for reimbursement.

In States where an agency other than the State DOT administers the RTP, the FHWA division office will have a direct approval relationship with that State agency. There is no requirement to include the State DOT within the project approval process, except for submittal of the list of projects for incorporation within the STIP and applicable TIPs, and for coordination purposes.

FHWA division offices should forward a list of approved projects to the FHWA Headquarters program office for information purposes. This information should include each project location, including the Congressional district(s), project amount, and trail uses.

¹⁷ §206(d)(3)(B), the Small State Exclusion, exempts Connecticut, Delaware, the District of Columbia, and Rhode Island from the 30 percent motorized and 30 percent nonmotorized requirements. No documentation is required from these States for this waiver provision.

¹⁸ FHWA divisions should develop an agreement with the Federal Transit Administration (FTA) regional office for joint STIP approval when RTP projects are added into the STIP.

Fiscal Management Information System (FMIS) Coding

The following program codes have been assigned for the Recreational Trails Program in FHWA's Fiscal Management Information System (FMIS):

- Q94 General trail related projects (permissible uses A, B, C, D, or E).
- QR1 State administrative costs (permissible use F).
- QR2 Educational projects (permissible use G).

For further details, see the Memorandum from the Office of Fiscal Services (page 33).

FHWA enters initial apportionments into FMIS under Program Code Q94. However, there is no need to transfer funds among codes. Obligations under QR1 and QR2 automatically draw down from Q94, and are capped at their maximum amounts (7 percent and 5 percent, respectively).

FMIS Work Type Codes

The Work Type Codes in FMIS allow States to account for the overlap between the diverse recreational trail use, motorized use, and nonmotorized use categories. The codes below are the only work type codes which may be used for the Recreational Trails Program. Each trail project must be coded with the correct Work Type Code. Coding accuracy is necessary to monitor the program.

Code Type of Project

Y210 State Administrative funds (*Program Code QR1 only*).

For projects using Program Codes Q94 (project funds) or QR2 (educational funds):

Y047 Independent bicycle and pedestrian project (may also include in-line skate use).

Y051 Independent pedestrian project.

Y052 Independent bicycle project.

Y053* Nonmotorized project for a single use.

Y054* Nonmotorized diverse use trail project (such as both pedestrian and equestrian use).

Y055* Diverse trail use project for both motorized and nonmotorized use (such as equestrian use in summer and snowmobile use in winter, or a common trailhead project serving separate ATV and bicycle trails).

Y056* Motorized single use project (such as snowmobile trail grooming).

Y057* Motorized diverse use project (such as light truck, motorcycle, and ATV use).

* *These codes are exclusive to the Recreational Trails Program.*

- Projects coded as Y047, Y051, Y052, Y053, and Y054 count toward the 30 percent non-motorized minimum. Use of wheelchairs by mobility-impaired people, whether operated manually or powered, constitutes pedestrian use, not motorized trail use.
- Projects in Y056 and Y057 count toward the 30 percent motorized minimum.
- Projects in categories Y047, Y054, Y055, and Y057 count toward the 40 percent diverse trail use minimum.



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: **Information:** Amended FHWA Program Codes
QR1, QR2, Q94 and R94

Date: October 1, 1998

From: Chief, Finance Division

Reply to
Attn. of: HFS-22

To: Associate Administrators
Staff Office Directors
Director, ITS Joint Program Office
Federal Lands Highway Program Administrator
Regional Administrators
Division Administrators

This memorandum supersedes my September 30, 1998 memorandum on this subject. The program descriptions are amended and Program Code R94's use has been clarified.

The following FHWA Program Codes have been assigned to identify and account for funds for the Recreational Trails Program in Section 1112 of the Transportation Equity Act for the 21st Century (TEA-21) (P.L. 105-178). The funds are available for Fiscal Year plus 3. The following Program Codes are assigned to identify and account for these allocations:

Program Code	Treasury Symbol	Description	DAFIS Accounting Classification String
QR1	69X8083 HTF	Recreational Trails Program State Administrative Expenses, (up to 7%), (FMIS Only) Sec. 1112(c), P.L. 105-178. <u>Available FY + 3 Years.</u>	XR94-050-60-0-QR1050
QR2	69X8083 HTF	Recreational Trails Program Environmental Protection and Safety Education (FMIS Only) Limited Amount - up to 5%. Sec. 1112(e), P.L. 105-178. <u>Available FY + 3 Years.</u>	XR94-050-60-0-QR2050
Q94	69X8083 HTF	Recreational Trails Program Sec. 1112, Subject to Limitation, P.L. 105-178. <u>Available FY + 3 Years.</u>	XR94-050-60-0-Q94050

Obligations for Program Codes QR1, QR2, and Q94 shall be entered through the Fiscal Management Information System (FMIS).

Program Code	Treasury Symbol	Description	DAFIS Accounting Classification String
R94	69X8083 HTF	Recreational Trails Program 1-1/2% Administrative Takedown. Sec. 1103(f), P.L. 105-178. <u>Available FY + 3 Years.</u>	XR94 -010-60-0-R94010

Obligations for Program Code R94 shall be entered through the Departmental Accounting and Information System (DAFIS). This is an administrative takedown code that is **only** for FHWA headquarters' use.

The Accounting Policy and Procedures Handbook, FHWA Order H 2700.2 will be revised to include the new codes.

Questions regarding these codes may be directed to Denise Rafati at 202-366-2867.

/s/ original signed by

A. Thomas Park

Archive - See HTML Version

Project Eligibility and Requirements

Planning Requirements

RTP Legislation: 23 U.S.C. 206:

(d) USE OF APPORTIONED FUNDS.—

(1) IN GENERAL.—Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that—

(A) have been planned and developed under the laws, policies, and administrative procedures of the State; and

(B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-4 et seq.), that is in effect.

Other Legislation: 23 U.S.C. 135(f)(2) [and nearly identical language in 23 U.S.C. 134(h)(3)] regarding the State [metropolitan] transportation improvement program:

(f) (2) INCLUDED PROJECTS.—

(B) CHAPTER 2 PROJECTS.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

The RTP is codified under Chapter 2 of title 23 U.S.C.¹⁹ Therefore, the metropolitan and statewide transportation planning requirements apply to the RTP. RTP projects must be consistent with statewide and applicable metropolitan long-range transportation plans. RTP projects must be included within the State Transportation Improvement Program (STIP) and applicable Metropolitan Transportation Improvement Programs (metropolitan TIPs). (See *Submittal to Transportation Agencies*).

Coordination with transportation agencies is recommended:

- To help protect the continuity of existing and proposed trail and greenway corridors;
- To avoid duplication of efforts;
- To coordinate complementary projects, such as Transportation Enhancement activities.

Section 206(d) requires the State to have a recreational trail plan. Each State is responsible for developing its own plans, laws, policies, and administrative procedures to administer the RTP, as long as the intent of the RTP is met. Under the original program, RTP projects were to be identified in, or further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan (SCORP) required by the Land and Water Conservation Fund Act of 1965 (LWCF). However, because of the lack of funds available to the States under the LWCF in recent years, many States allowed their SCORPs to lapse. The explanatory report included with TEA-21

¹⁹ Draft RTP legislation prior to the enactment of TEA-21 would have required RTP projects to be included in State and metropolitan transportation plans and programs. This proposed requirement within the RTP was deleted from the final legislation. However, the RTP was included in chapter 2 (23 U.S.C. 206), and was not exempted from the transportation planning requirements. Therefore, the overall transportation planning legislation takes precedent.

notes: “Due to a lack of funding over the past several years, some States may not have updated SCORPs in effect; so the requirement that projects be included in a SCORP would apply only to those States that have a current updated SCORP in effect.”. If the SCORP is no longer in effect, then the project only needs to be identified in or further a specific goal of a State recreational trail plan. Either way, States need to have a State trail policy plan. Projects selected must also be incorporated into State and metropolitan transportation improvement programs.

Submittal to Transportation Agencies

The legislation in 23 U.S.C. 134 and 135 requires FHWA-funded projects to be included in the STIP and applicable TIPs; this includes RTP projects. In States where an agency other than the State DOT administers the RTP, the administering agency must forward the list of RTP projects approved for funding to the State DOT for incorporation into the STIP, and to applicable MPOs for incorporation into their TIPs. The State DOT and the MPOs would be expected to accept the list of approved RTP projects without modifications. In States where the State DOT administers the RTP, the DOT must inform applicable MPOs of approved RTP projects within their jurisdiction for incorporation into their TIPs.

Unless the RTP projects are determined to be regionally significant, they may be grouped and submitted as one line item to the State DOT for incorporation into the STIP, and to applicable MPOs for incorporation into their TIPs. If an RTP project is determined to be regionally significant, it must be listed individually within the STIP and any applicable TIP.

Other Planning Considerations

The RTP provides States with an incentive to develop State trail plans. States are encouraged to consider various partnerships for recreational trail opportunities. For example, RTP funds may help:

- Indian tribes interested in providing trail-related tourism opportunities.
- Defense installations interested in providing public recreational opportunities on their bases.
- Universities interested in providing public recreational access.
- Large private land holdings that may provide public recreational access.

Planning Costs

Statewide trail planning is an eligible cost under State administrative costs (page 39). Otherwise, trail planning is not listed among the permissible uses in the RTP legislation. A project proposal solely for the purpose of trail planning would not be eligible for funding under permissible use categories A, B, C, D, E, or G (listed on page 37, and described on pages 37–40). However, if trail planning is a relatively small portion of an overall trail project, it may be allowed.

Permissible Uses

Eligible Project Categories

RTP Legislation: 23 U.S.C. 206:

(d) (2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

- (A) maintenance and restoration of existing recreational trails;
- (B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;
- (C) purchase and lease of recreational trail construction and maintenance equipment;
- (D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be—
 - (i) permissible under other law;
 - (ii) necessary and required by a statewide comprehensive outdoor recreation plan that is required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.) and that is in effect;
 - (iii) approved by the administering agency of the State designated under subsection (c)(1); and
 - (iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
- (E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;
- (F) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section; and
- (G) operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year.

A State may use up to 7 percent of its RTP apportionment each fiscal year to pay costs to the State incurred in the administration of the RTP program (see below for details). A State may use up to 5 percent of its RTP apportionment each fiscal year for the operation of educational programs to promote safety and environmental programs (see below for details). A State must use not less than 88 percent of its RTP apportionment each fiscal year for trail projects that qualify under subparagraphs A through E. For the purpose of calculating the 40-30-30 requirements, a State must consider projects funded under subparagraphs A, B, C, D, E, and G (but not F).²⁰ If a State uses less than 7 percent for administrative costs or less than 5 percent for educational costs, the funds must be used for trail projects.

Category A, *maintenance and restoration of existing trails*, may be interpreted broadly to include any kind of trail maintenance, restoration, rehabilitation, or relocation. This category may include maintenance and restoration of trail bridges, or providing appropriate signage along a trail. See *Environmental Benefit or Mitigation* on pages 41 and 57 for guidance on project selection.

²⁰ If a State uses less than 7 percent of its apportionment for administrative costs, the 40-30-30 requirements apply to the full amount funded under the other categories. For example, if a State uses only 4 percent of its apportionment for administrative costs, the 40-30-30 requirements apply to the remaining 96 percent.

Category B, *development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails*, may be interpreted broadly to include development or rehabilitation of any trailside and trailhead facility.²¹ The definition of “rehabilitation” means extensive repair needed to bring a facility up to standards suitable for public use (not routine maintenance). Trailside and trailhead facilities should have a direct relationship with a recreational trail; a highway rest area or visitor center is not an appropriate use of RTP funds. If a State has difficulty deciding about the eligibility of a particular trailside or trailhead facility, it should work with its State Recreational Trail Advisory Committee.

Category C, *purchase and lease of recreational trail construction and maintenance equipment*, includes purchase and lease of any trail construction and maintenance equipment, including lawn mowers and trail grooming machines, provided the equipment is used primarily to construct and maintain recreational trails. This provision does not include purchase of equipment to be used for purposes unrelated to trails. For example, a lawn mower purchased under this program must be used primarily for trail and trailside maintenance, not to maintain open lawn areas or sport fields.

Category D, *construction of new recreational trails*, is self-explanatory for projects not located on Federal land. For projects on Federal land, the most important requirement is that the Federal agency land manager must approve of the project in accordance with other applicable Federal laws and regulations. This category may include construction of new trail bridges, or providing appropriate signage along a trail.

Category E, *acquisition of easements and fee simple title to property*, is self-explanatory. This category may include acquisition of old road or railroad bridges to be used as recreational trail bridges. However, §206(g)(1) prohibits condemnation of any kind of interest in property. Therefore, acquisition of any kind of interest in property must be from a willing landowner or seller.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to the RTP. Implementation regulations are found in 49 CFR Part 24. See *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* on page 66.

²¹ The National Recreational Trails Advisory Committee approved the following statement on December 2, 1992: The terms “trailside and trailhead facilities” mean trail components or associated facilities which serve the purpose and safe use of the recreational trail and may include but not be limited to the following: 1) Drainage, 2) Crossings, 3) Stabilization, 4) Parking, 5) Signage, 6) Controls, 7) Shelters, and 8) Water, Sanitary, and Access Facilities.

State Administrative Costs

RTP Legislation: 23 U.S.C. 206:

(d) USE OF APPORTIONED FUNDS.—

(2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

(F) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section.

(d) (3) (D) STATE ADMINISTRATIVE COSTS.—State administrative costs eligible for funding under paragraph (2)(F) shall be exempt from the requirements of subparagraph (A).

(f) (5) STATE ADMINISTRATIVE COSTS.—The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).

A State may use up to 7 percent of its apportionment each fiscal year to pay costs to the State incurred in the administration of this program. This figure is 7 percent of the State's apportionment rounded down to the nearest dollar. If the State's costs incurred in administering this program are less than 7 percent of the State's apportionment, then the State's administrative costs are limited to actual costs. The 7 percent figure is the maximum amount allowable; States may use less than this amount (or none), and use the funds for trail projects.

Allowable administrative costs include items such as:

- Staff time to administer this program.
- Meetings of the State recreational trail advisory committee.
- Program staff attendance at trail-related training sessions, meetings, and conferences.
- Newsletters, websites, or other communications related to recreational trails.
- Statewide trail planning related to this program.
- Statewide trail conference support. States using RTP funds for conference support should acknowledge the RTP and the FHWA, and invite FHWA division office participation.

State administrative costs are exempt from the 40-30-30 suballocation requirements; the 40-30-30 shares are calculated after the State deducts its administrative costs. However, if a State chooses to use its administrative funds in this manner (or, for example use part of the administrative funds to administer a motorized program and part to administer a nonmotorized program), it may do so.

The Federal share of the State administrative costs shall be determined in accordance with 23 U.S.C. 120(b). This is the same Federal share used for major Federal-aid highway programs. In most States this is 80 percent, but it is higher in States with significant percentages of Federal lands.

Statewide Trail Planning

RTP Legislation: 23 U.S.C. 206:

(d) USE OF APPORTIONED FUNDS.—

(1) IN GENERAL.—Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that—

(A) have been planned and developed under the laws, policies, and administrative procedures of the State; and

(B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), that is in effect.

State administrative costs may include statewide trail planning related to the RTP. The RTP requires States to have a recreational trail plan, and RTP projects must be included in transportation STIPs and TIPs (as described under *Planning Requirements* on pages 35–36). RTP projects must be identified in, or further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan (SCORP) required by the Land and Water Conservation Fund Act of 1965 (LWCF). However, because of the lack of funding under LWCF over the past several years, many States have allowed their SCORPs to lapse. Because the RTP requires a State trail plan, it is reasonable to allow a State’s RTP administrative funds to be used toward the cost of developing and updating a statewide trail plan.

Educational Projects

Category G, *operation of educational programs to promote safety and environmental protection*, permits a State to use up to 5 percent of its apportionment each fiscal year for the operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails. This figure is 5 percent of the apportionment rounded down to the nearest dollar. This is the maximum allowable—a State may use less than this amount.

Educational projects are subject to the same Federal share and matching share requirements as trail projects in categories A through E.

Educational projects are counted within the overall 40-30-30 requirement. This does not mean educational funds need to be 40-30-30. For example:

- If a project is for snowmobile safety training, it also counts as a motorized project to satisfy the 30 percent motorized recreation requirement (but not as a diverse project).
- If a project is to provide a video on motorcycle and ATV safety, it counts as a motorized project and as a diverse project.
- If a project is to provide environmental interpretive information for a pedestrian nature trail, it also counts as a nonmotorized project to satisfy the 30 percent nonmotorized recreation requirement (but not as a diverse project).
- If a project is to provide trail etiquette information for pedestrians, bicyclists, and equestrians, it counts as nonmotorized project and as a diverse project.

Typical education projects may include:

- Development and operation of trail safety education programs.
- Development and operation of trail-related environmental education programs.
- Production of trail-related educational materials, whether on information displays, in print, video, audio, interactive computer displays, etc.

Other Eligibility Considerations / Possible Project Priorities

Accessibility

States are encouraged to consider giving extra project evaluation credit to proposals which provide enhanced recreational access for people with disabilities. See *Accessibility* on page 50.

Eligibility to Use Other Federal Highway Funds

Many trails provide both a recreational purpose and transportation purpose. RTP funds may be used on any trail which provides a recreational purpose. Using RTP funds on a trail project does *not* designate a trail as purely recreational, nor does it make the trail ineligible for other Federal highway funds. If a trail provides a transportation purpose, it may use other Federal highway funds, regardless of whether or not RTP funds also are used on the trail. In addition, RTP projects may use funds from other Federal highway funding categories as matching funds as noted on pages 18-19.

Environmental Mitigation or Benefit

Section 206(e) requires a State to consider projects which benefit the natural environment. This provision is an opportunity for States to consider innovative project proposals to make environmental improvements to existing trail facilities. See page 57.

Law Enforcement

Law enforcement is not among the permissible uses in the RTP legislation. However, there may be options to assist with trail-related law enforcement. For example:

- A trailside or trailhead facility may be used as a base station by law enforcement officers using trail project funds, provided the facility is primarily a general public use trail facility, and not primarily a law enforcement facility.
- A trailside or trailhead booth providing trail-related educational information may be used by law enforcement officers (using educational funds).
- A trail patrol primarily for educational purposes (for example, providing information on the use of safety gear) may include appropriate law enforcement (using educational funds).
- A project sponsor may provide an overall trail safety education seminar which includes a session on trail-related law enforcement (using educational funds).

Millennium Trails Program

The Millennium Trails Program is an initiative of the White House Millennium Council in partnership with the USDOT that will recognize, promote, and stimulate the creation to trails to “honor the past and imagine the future” as part of America’s legacy for the year 2000. For further information, go to www.dot.gov/mtp and www.millenniumtrails.org. States are encouraged to consider giving extra project evaluation credit to projects which receive *Millennium Trails* recognition.

Minimum Timeframe for Public Use

The RTP legislation does not require a minimum timeframe for a trail project to remain open to the public. Each State should establish a minimum timeframe appropriate for the type of trail use. For example:

- A State may choose to invoke the Continuing Recreational Use provision of Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965. See page **62**.
- If a project is located on an easement or on leased land, the State should establish a minimum timeframe for the easement or lease. The project should remain open for public access for the use for which the funds were intended.
- Snow trails disappear when the snow melts. If a State provides a grant for snow trail grooming, the State may consider allowing the location of snow trails to vary from year to year.

National Recreation Trails

In consultation with the Department of the Interior and the Department of Agriculture through the Federal Interagency Council on Trails, States are encouraged to give extra project evaluation credit to projects on National Scenic Trails, National Historic Trails (provided the project provides a recreational purpose), and trails designated as National Recreation Trails.

Water Trails

The definition of “recreational trail” in the RTP legislation includes “aquatic or water activities”. Therefore, water trails are eligible for funding. Canoe, kayak, or rowboat trails may count toward a State’s 30 percent nonmotorized requirement. Motorboat or personal water craft trails may count toward a State’s 30 percent motorized requirement. However, water trails and related facilities (such as boat launches and aquatic resource education programs) are eligible under the Wallop-Breaux aquatic resources program administered by the U.S. Fish & Wildlife Service. The Wallop-Breaux Trust Fund receives its funding in part based on an estimate of motorboat fuel use. The RTP funding originally was intended to be attributable to fuel use by snowmobiles, off-road motorcycles, ATVs, and light trucks. States should consider the most appropriate funding source for water trails and related projects and for land trails and related projects.

Youth Conservation or Service Corps

States are encouraged to consider giving extra project evaluation credit to projects and project sponsors which incorporate qualified youth conservation or service corps. See page **48**.

Uses Not Permitted (Projects Not Eligible)

RTP Legislation: 23 U.S.C. 206:

- (g) USES NOT PERMITTED.—A State may not obligate funds apportioned to carry out this section for—
- (1) condemnation of any kind of interest in property;
 - (2) construction of any recreational trail on National Forest System land for any motorized use unless—
 - (A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and
 - (B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;
 - (3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land—
 - (A) has been designated for uses other than wilderness by an approved Bureau of Land Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and
 - (B) the construction is otherwise consistent with the management direction in the approved management plan; or
 - (4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.

Other Uses Not Permitted

FHWA has determined that the following kinds of projects are inconsistent with the RTP legislation:

Condemned Land as Matching Value

The RTP legislation prohibits using RTP funds for condemnation of any kind of interest in property. An RTP project may be located on land condemned with funds from other sources. However, to be consistent with the RTP legislation, it is not permissible to use the value of condemned land toward the match requirement for an RTP project.

Feasibility Studies

Trail feasibility studies are not among the permissible uses in the RTP legislation. The permissible uses relate to actual on-the-ground trail projects. Therefore, a project proposal for the purpose of performing a trail feasibility study would not be eligible.

Law Enforcement

Routine law enforcement is not among the permissible uses in the RTP legislation. However, options for trail-related law enforcement are listed under Permissible Uses.

Planning

Trail planning is not listed among the permissible uses in the RTP legislation. Therefore, a project proposal solely for the purpose of trail planning would not be eligible for funding under permissible use categories A, B, C, D, E, or G. However, if trail planning is a relatively small portion of an overall trail project, it may be allowed. See *Other Issues, Construction Engineering Costs and Planning Costs* on page 64. Statewide trail planning under category F is described on page 39.

Railroads

To maintain consistency with the USDOT railroad safety policy, RTP projects should not be approved on railroad rights-of-way on which the railroad tracks are in place, if trail users will traverse on or between the railroad tracks, except for providing a railroad crossing in coordination with the railroad owner, operator, and State agency with jurisdiction over railroads. RTP projects may be located within or along railroad rights-of-way if trail users will not traverse on or between railroad tracks and if adequate safety measures are implemented in coordination with the railroad owner, operator, and State agency with jurisdiction over railroads.

Roads

The RTP is intended to provide funds for recreational trail-related projects. Therefore, RTP funds may not be used for improvements to roads and/or bridges intended to be generally accessible by low clearance passenger vehicles (regular passenger cars), unless those roads/bridges are specifically designated for recreational trail use by the managing agency. RTP funds may be used on high clearance primitive roads (generally not accessible by regular passenger cars, but accessible with higher clearance light trucks, such as high clearance sports utility vehicles), and for bridges on high clearance primitive roads. Eligible high clearance primitive roads/bridges may include old county, town, or township rights-of-way no longer maintained for general passenger vehicle traffic, provided the project does not open the road to general passenger vehicle traffic.

Sidewalks

RTP funds should not be used to provide paths or sidewalks along or adjacent to public roads or streets, unless:

- the path or sidewalk is needed to complete a missing link between other recreational trails, or
- the State Recreational Trail Advisory Committee approves allowing RTP funds to be used for paths or sidewalks along or adjacent to public roads or streets.

Wilderness Areas

Federally-designated Wilderness areas are subject to the restrictions of the Wilderness Act (16 U.S.C. 1131).

Project Sponsors

Who May Sponsor a Project

RTP Legislation: 23 U.S.C. 206:

(d) (4) GRANTS.—

(A) IN GENERAL.—A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) COMPLIANCE.—A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

The RTP is intended to be a program through which States provide grants to trail project sponsors.

States may provide grants to organizations and agencies such as:

- **private organizations. Examples include:**²²
 - youth conservation or service corps
 - youth clubs (Boy Scouts, Girl Scouts, Campfire, 4-H, etc.)
 - police athletic leagues
 - trail clubs or trail associations
 - land trusts
 - conservation organizations
 - utilities (such as private electric utilities offering public recreation areas)
 - private schools, colleges, or universities
 - private operators of recreational facilities open to the publicNothing in the RTP legislation prohibits States from making grants to for-profit organizations.
- **municipal agencies. Examples include:**
 - city, town, township, village, borough, parish, or county agencies
 - public education institutions such as school districts
 - regional park or forest agencies
 - public utilities (such as water and sewer districts or public electric utilities)
 - public housing agencies
- **State agencies. Examples include:**
 - State park agencies
 - State forest agencies
 - State fish and game or wildlife agencies
 - State public housing agencies
 - State public education institutions (State schools, colleges, universities)
- **Federal agencies. Examples include:**

²² Some States, by their own State policy or regulation, restrict subgrants to public agencies and do not provide grants to private organizations. Some States provide grants to private nonprofit tax-exempt organizations, but do not provide grants to other private organizations.

- Bureau of Indian Affairs
 - Bureau of Land Management
 - Bureau of Reclamation
 - Department of Defense military installations
 - National Park Service
 - Tennessee Valley Authority
 - U.S. Army Corps of Engineers
 - U.S. Fish and Wildlife Service
 - U.S. Forest Service
- **Other government entities. Examples include:**
 - Indian tribal governments
 - multistate public agencies or authorities
 - public transit operators

States may provide grants to partnerships of public and private organizations, such as municipal or State agencies working with youth conservation or service corps, or trail clubs working with youth conservation or service corps. States should provide RTP program and application information to youth conservation or service corps organizations within their State.

States should provide RTP program and application information to each Indian tribal government within their State.

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Federal Agency Partnerships

Federal agencies are helpful partners in developing trail projects. As well as being potential project sponsors, Federal agencies have technical expertise to facilitate the development of trail projects.

The Rivers, Trails, and Conservation Assistance Program (RTCA), administered by the National Park Service (NPS), works cooperatively with State, regional, and local nonprofit groups, organizations, and public agencies to assist in establishing and developing trails, greenways, and other recreation and conservation resources.

The Bureau of Land Management (BLM) manages multiple-use trail systems to provide resource-dependent recreation opportunities primarily in 12 western States, and may provide technical assistance in other States. BLM's goal is to provide trails for all Americans, including people with disabilities, that meet the needs of visitors to public lands.

The U.S. Forest Service (USFS) manages 214,000 km (133,000 miles) of trails, many of which provide multiple-use trail opportunities. The USFS also performs extensive research and technology development with regard to trail construction and maintenance. FHWA is working with the USFS to further some of this research and provide some of this information to the public.

Other Federal agencies may be partners in developing RTP projects, such as the U.S. Army Corps of Engineers, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the Tennessee Valley Authority, and Department of Defense military bases.

Youth Conservation or Service Corps

TEA-21 requires the USDOT to encourage the use of youth conservation or service corps.

Legislation: TEA-21 §1112(e):

(e) ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS.—The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform construction and maintenance of recreational trails under section 206 of title 23, United States Code.

The definition of a *qualified youth conservation or service corps* is taken from existing titles and chapters of the United States Code (U.S.C.). See page **71** under *Definitions*.

States are encouraged to enter into contracts and cooperative agreements with qualified youth conservation and service corps because corps can help the States and project sponsors with their trail construction and maintenance programs and projects.²³

States and project sponsors may:

- Enter into partnerships, contracts, cooperative agreements, or grant agreements with State and local youth conservation or service corps for RTP projects.
- Give extra project evaluation credit to projects and project sponsors which incorporate qualified youth conservation or service corps.
- Set target percentage goals or set aside a portion of RTP funds for projects which involve youth conservation or service corps.

Other benefits of working with corps include:

- Federal funds used to support youth conservation or service corps may be applied toward the non-Federal share of an RTP project.
- Corps organizations often are able to bring other matching funds into projects.
- Corps activities often are funded from a mix of public and private sources.
- Corps organizations often are able to recruit, hire, train, and provide advancement opportunities for economically or educationally disadvantaged people, especially young adults.

²³ For more information on youth conservation and service corps, or to obtain a list of potential corps organizations, contact the National Association of Service and Conservation Corps, Suite 1000, 666 11th St NW, Washington DC 20001-4542. Phone: 202-737-6272; Fax: 202-737-6277; Email: nascc@nascc.org.

Design, Construction, Maintenance, and Signage Criteria

Design Guidance

States should adopt their own standards for design, construction, rehabilitation, and maintenance of trails. Federal land management agencies will use their own standards. FHWA division offices should encourage the State agency to coordinate standards and guidelines with the State DOT, and with Federal land management agencies. See *Manuals and Guides for Trail Design Construction, Maintenance, and Signage* on page 53 for suggested manuals and guides, along with their sources, and sources for technical assistance.

For trails serving various user groups, the trail manager and the State agency responsible for administering the RTP should determine the appropriate design guides, provided the guides meet minimum standards for the intended user groups.

Signage

Signs which function as traffic control devices must conform with the *Manual on Uniform Traffic Control Devices* (MUTCD). Part IX of the MUTCD, *Traffic Controls for Bicycle Facilities*, covers the bicycle related signs, pavement markings, and signals which may be used on highways or bike-ways. Part 9 is for bicycle facilities, and is suitable for shared use paths (nonmotorized multiple-use trails which may provide a transportation purpose).²⁴ The publication *Standard Highway Signs* has the detailed drawings for the highway signs prescribed in the MUTCD.²⁵ These documents are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

Signs which do not function as traffic control devices are not subject to the MUTCD. However, informational signs and kiosks must take into consideration the needs of various users, such as:

- People who are blind or who have low vision.
- People who use wheelchairs.
- Children.

The International Association of Snowmobile Administrators (IASA) has developed its own standards for snowmobile trails based on research from the US Forest Service. The primary difference from the MUTCD is an allowance for smaller sized signs.

²⁴ **Note: The MUTCD is currently being revised.** Proposed amendments to Part 9, Traffic Controls for Bicycle Facilities, were published in the *Federal Register* on June 24, 1999 (64 FR 33802-33806).

²⁵ From the PREFACE of *Standard Highway Signs*: “Except where a STANDARD AND MINIMUM sign size is specified, signs smaller than STANDARD and shown in that tables [sic] as MINIMUM may sometimes be justified on local streets and secondary roads having low volume, low speed and no special hazard. Indiscriminate use of minimum-sized signs is to be avoided. The necessary design information for these MINIMUM sizes is presented as a guide to sign fabrication only in the interest of uniformity. Application criteria for all signs are specified in the MUTCD.”

Accessibility (Access for People with Disabilities)

NOTE: This section will be revised in late summer or the autumn of 1999. A Regulatory Negotiation Committee is expected to report to the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) in July 1999. The Committee is developing Americans with Disabilities Act Accessibility Guidelines (ADAAG) for picnic and camping facilities, beaches, and trails.

The Americans with Disabilities Act of 1990 is civil rights legislation which prohibits discrimination against people on the basis of disability. While specific technical standards have not yet been finalized for recreation facilities (including recreational trails), State and local government trail developers and operators nevertheless have statutory responsibilities to provide opportunities for the participation of people with disabilities in recreational trails funded under the RTP. Federal laws that affect the design, construction, alteration, and operation of trail facilities include the Architectural Barriers Act of 1968 (ABA), the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 (ADA). Current regulations implementing these statutes contain requirements that apply to existing trail construction and program operations and adopt technical standards to guide new trail construction and alterations of existing networks.

- Buildings and facilities newly-constructed or altered with Federal funds are subject to the accessibility requirements contained in the Uniform Federal Accessibility Standards (UFAS), the standard currently referenced in the ABA.
- Accessibility in Federally-assisted programs is governed by the requirements of the USDOT regulations (49 CFR part 27) implementing Section 504 of the Rehabilitation Act (29 U.S.C. 794).
- The Americans with Disabilities Act of 1990 (ADA) is the newest legislation intended to improve access for people with disabilities. The U.S. Department of Justice's (DOJ) title II implementing regulations (28 CFR part 35) describe the obligations of State and local governments for existing facilities and program operations, and require title II entities (public entities) to comply with either UFAS or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) developed by the U.S. Architectural and Transportation Barriers Compliance Board (the Access Board) when newly constructing or altering facilities. Private sector entities, including lessees, concessionaires, and contractors to State and local governments, are governed by the DOJ title III implementing regulations, which adopt ADAAG as the standard for accessible design.

Recreation guidelines are being developed by the Access Board. A Regulatory Negotiation Committee is expected to report to the Access Board in July 1999. These guidelines will provide technical criteria more specific to the design of new recreational trails and the alterations of existing systems. Until then, however, trail designers should follow the advice contained in the DOJ preamble to their title III regulation: "To the extent that a particular type or element of a facility is not specifically addressed by the standards, the language of this section (that new and altered facilities should be 'readily accessible to and usable by individuals with disabilities') is the safest guide." The concept of program accessibility, established in regulations implementing the Rehabilitation Act and extended to State and local governments (irrespective of Federal funding) under title II of the ADA, should guide the operation of existing trails programs and facilities.

RTP projects are primarily recreational in nature, rather than serving a more utilitarian transportation function. States should consider the potential uses of each trail project, consider what is reasonable and feasible, and provide for users in an appropriate manner. It is not necessary to construct every recreational trail according to the ADA guidelines, but trail project sponsors must not install barriers or other features that would make it more difficult for people with disabilities to use the trail. States should make sure they maintain program accessibility. Failure to provide some kind of program of accessible recreational opportunities for people with disabilities may constitute discrimination.

Trail designers should seek opportunities to incorporate accessible features and elements, and to include trail routings that meet accessibility criteria to ensure that there are recreation opportunities for a variety of users within an overall recreational trails program. Where trail-related facilities, such as parking, shelters, toilets, drinking fountains, and other features are provided on or along an accessible trail site, they should provide the required level of accessibility and be served by an accessible route. Trail designers should account for people with disabilities that may arrive at trail facilities by horse, ATV, snowmobile, with assistance, or by other means.

Other facilities, including transportation facilities, also must be constructed, altered, and operated so as to be accessible to people with disabilities. Transportation and pedestrian linkages serving or intersecting accessible recreational trails should contain accessible elements, including curb ramps, sidewalks, and similar improvements.

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Manuals and Guides for Trail Design Construction, Maintenance, and Signage

The following manuals and guidelines may provide information useful for trail design, construction, and maintenance. Copies may be purchased or acquired from the source indicated. U.S. Government regulations may be purchased from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington DC 20402-9328. Many of these documents are available on websites.

Federal Documents Relating to the Americans with Disabilities Act

- The U.S. Architectural and Transportation Barriers Compliance Board has a toll-free number to obtain technical assistance on accessibility issues. Call 800-872-2253. TTY 800-993-2822.
- The U.S. Department of Justice has a toll-free number to obtain technical assistance, including title II and title III technical assistance manuals. Call 800-514-0301. TTY 800-514-0383.

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities (ADAAG); available in USDOT regulations, 49 CFR Part 37. Also, an *Interim Final Rule* was published in the *Federal Register*, June 20, 1994 (59 FR 31676; 31745); from: U.S. Architectural and Transportation Barriers Compliance Board (Access Board), 1331 F Street NW, Suite 1000, Washington DC 20004-1111. The *Interim Final Rule* included Section 14, “Public Rights of Way,” which is now reserved (withdrawn).

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance; available in USDOT regulations, 49 CFR Part 27 (44 FR 31442). This implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified handicapped individual in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Nondiscrimination on the Basis of Disability in State and Local Government Services; available in U.S. Department of Justice regulations, 28 CFR Part 35 (56 FR 35694). This implements subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities.

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; available in U.S. Department of Justice regulations, 28 CFR Part 36 (56 FR 35544). This implements title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

Uniform Federal Accessibility Standards, published in the *Federal Register*, August 7, 1984 (49 FR 31528); from the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), 1331 F Street NW, Suite 1000, Washington DC 20004-1111.

Recommendations for Accessibility Guidelines: Recreational Facilities and Outdoor Developed Areas, July 1994, a report to the U.S. Architectural and Transportation Barriers Compliance Board by the Recreation Access Advisory Committee, from: Access Board, Recreation Report, 1331 F Street NW, Suite 1000, Washington DC 20004-1111. The Access Board is currently developing guidelines for recreation facilities.

Accessible Public Rights-of-Way, Federal Highway Administration, U.S. Access Board, U.S. Department of Justice [expected late 1999]. This document will provide guidance to meet the Americans with Disabilities Act Accessibility Guidelines on public rights-of-way, including sidewalks and shared use paths.

Designing Sidewalks and Trails for Access, Federal Highway Administration [under development]. Part I will consist of a research report, will be available September 1999. Part II will be a Guidebook of recommended best practices, which will be published in late 1999 or early 2000. This report and guidebook document the state of the practice and will recommend best practices for sidewalks, shared use paths, and recreational trails intended primarily for use by pedestrians.

Transportation Trails

The American Association of State Highway and Transportation Officials, *Guide for the Development of Bicycle Facilities*, 1991 (AASHTO Guide); from the American Association of State Highway and Transportation Officials, 444 North Capitol Street NW, Suite 225, Washington DC 20001. The AASHTO guide is recommended as minimum guidelines for the construction and design of bicycle facilities and shared use paths, but not for bicycle trails over rough terrain intended for use by mountain bikes. **A new AASHTO Guide is expected in 1999.**

Federal Land Management Agency Publications

- The U.S. Forest Service (USFS) has developed a Recreation Opportunity Spectrum (ROS), which provides a framework for satisfying and defining classes of outdoor recreation environments, activities, and experience opportunities. Contact a local USFS unit or Bureau of Land Management (BLM) office for more information about ROS.

United States Department of Agriculture—Forest Service, *Standard Specifications for Construction of Trails*, June 1984; from Forest Service—USDA, Engineering Staff—Washington Office, Attn: Publications Specialist, PO Box 2417, Washington DC 20013.

United States Department of Agriculture—Forest Service, *Soil Stabilizer for Use on Universally Accessible Trails*, October 1995; from San Dimas Technology & Development Center, San Dimas CA 91773.

United States Department of Agriculture—Forest Service, *Trails Management Handbook*, revised November 1991; from Forest Service—USDA, Engineering Staff—Washington Office, Attn: Publications Specialist, PO Box 2417, Washington DC 20013.

United States Department of Agriculture—Forest Service, *Trails Construction and Maintenance Notebook*, April 1997; from Forest Service—USDA, Technology & Development Program, Building 1, Fort Missoula, Missoula MT 59804-7294.

United States Department of the Interior—Bureau of Land Management, *BLM Handbook 9114-1 Trails*; from the Bureau of Land Management, 1849 C Street NW, Washington DC 20240.

Private Sector Trail Publications

Several other sources may be useful for trail design, construction, and maintenance:

Universal Access to Outdoor Recreation: A Design Guide, MIG Communications, 1802 5th St, Berkeley CA 94710. This guide details how to increase access to the outdoors for people of varying abilities.

Ryan, Karen-Lee, *Trails for the Twenty-First Century*, 1993, The Rails-to-Trails Conservancy, 1100 17th St NW 10th Floor, Washington DC 20036; Phone 202-331-9696; Fax 202-331-9680. This manual provides guidelines for the construction and design of multiple-use trails, such as rail-to-trail conversions, other similar existing corridors, and heavily used bicycle routes.

Flink, Charles A and Robert M Searns; Loring LaB Schwarz, editor, *Greenways*, 1993, The Conservation Fund, Island Press, 1718 Connecticut Avenue NW, Suite 300, Washington DC 20009.

Birkby, Robert C, *Lightly on the Land, the SCA Trail Building and Maintenance Manual*, The Mountaineers, 1001 SW Klickitat Way, Seattle WA 98134.

Proudman, Robert D and Reuben Rajala, *AMC Field Guide to Trail Building and Maintenance, 2nd Edition*, 1981; Appalachian Mountain Club Books, 5 Joy Street, Boston MA 02108.

Demrow, Carl and David Salisbury, *The Complete Guide to Trail Building and Maintenance, 3rd Edition*. Appalachian Mountain Club Books, 5 Joy Street, Boston MA 02108.

Ski Industries America, *Cross Country Close to Home: A Ski Area Development Manual*; 1989, United Ski Industries Association, 8377-B Greensboro Drive, McLean VA 22102.

Wernex, Joe, *Off-Highway Motorcycle & ATV Trails: Guidelines for Design, Construction, Maintenance, and User Satisfaction, 2nd Edition*; 1993, American Motorcyclist Association, 13515 Yarmouth Drive, Pickerington OH 43147; Phone 614-856-1900; Fax 614-856-1920.

Traffic Control Devices

The following manuals shall be used for traffic control devices (signs, signals, and markings):

- United States Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices*; from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402. Part 9 is for bicycle facilities, and is suitable for shared use paths. **Note: The MUTCD is currently being revised.** Proposed amendments to Part 9, Traffic Controls for Bicycle Facilities, were published in the *Federal Register* on June 24, 1999 (64 FR 33802-33806).
- United States Department of Transportation, Federal Highway Administration, *Standard Highway Signs*; from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402. This document provides detailed specifications for signs authorized in the MUTCD.

Trail Conflict

Conflicts on Multiple Use Trails, Federal Highway Administration, FHWA-PD-94-031, available from FHWA R&T Report Center, 9701 Philadelphia Court Unit Q, Lanham MD 20706. To order, send a fax to 301-577-1421. While not a design manual, this report provides information about the causes of trail conflict and offers possible methods toward solutions.

Disclaimers

The use of trade names and identification of firms, corporations, or sources is for the convenience of the reader; such use does not constitute an official endorsement or approval by the United States Government of any product or service to the exclusion of others that may be suitable.

The use of trade names and identification of firms, corporations, or sources does not constitute an endorsement or approval by the United States Government regarding liability for any claims, actions, demands, or suits which may arise by reason of any person relying on the information contained in their documents. Readers should note particular disclaimers in each publication.

The Department of Transportation/Federal Highway Administration, the Department of Agriculture/U.S. Forest Service, the Department of the Interior/Bureau of Land Management/National Park Service, and other public agencies assume no responsibility for the interpretation or application of their respective manuals or guidelines by other than their own respective employees.

Environmental Requirements

Program Environmental Requirements

RTP Legislation: 23 U.S.C. 206:

(e) ENVIRONMENTAL BENEFIT OR MITIGATION.—To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(h) (2) RECREATIONAL PURPOSE.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

Section (e) requires a State to consider projects which benefit the natural environment. This provision is an opportunity for States to consider innovative project proposals to make environmental improvements to existing trail facilities.

Under the National Highway System Designation Act of 1995, the State Recreational Trail Advisory Committee should have issued guidance to the State to implement this section. Although the advisory committee requirement does not appear in the current RTP, the State's advisory committee would be an appropriate forum to consider policies and project ideas related to this requirement.

Section (h)(2) exempts the RTP from the requirements of Section 4(f) of the Department of Transportation Act of 1966 (23 U.S.C. 138; 49 U.S.C. 303). See *Recreational Purpose* on page 66 for further details on this exemption.

General Environmental Requirements

Documentation of compliance with the National Environmental Policy Act (NEPA) and other Federal environmental laws, regulations, and Executive Orders must be provided as part of an authorized project under the RTP. FHWA procedures in 23 CFR 771 apply to the RTP. Most RTP projects will qualify as Categorical Exclusions (CE) under NEPA (23 CFR 771.117). However, each project must be reviewed to assure that it does not have a significant impact on the environment.

States and FHWA divisions may agree on *programmatic categorical exclusions* in which FHWA pre-approves all projects meeting a pre-defined set of conditions that ensure that environmental impacts are not significant.

Air Quality

Many RTP projects and project-related activities are exempt from air quality conformity requirements of the Clean Air Act Amendments of 1990. In general, exempt projects include:

- Projects which are not located within air quality nonattainment or maintenance areas subject to the transportation conformity rule (40 CFR parts 51 and 93).
- Projects funded under categories A, C, F, and G (see pages 37–40), because these projects do not involve new construction.

- Projects funded under categories B and E which do not involve new construction.
- Projects funded under categories D and E which are only for nonmotorized use.

However, RTP projects and project-related activities which involve new construction within air quality nonattainment or maintenance areas may be subject to the air quality conformity rule (40 CFR parts 51 and 93). Examples include:

- Projects funded under categories B and E for new construction of facilities which may have an air quality impact; for example, providing a major parking facility at a trailhead.
- Projects funded under categories D and E which will permit motorized use.

RTP projects which are subject to conformity requirements must be included in a conforming transportation plan and Transportation Improvement Program.

Hazardous Wastes and Contaminated Properties

Contaminated sites may be encountered during the development of RTP projects. Abandoned rail-road lines being converted into trails are of particular concern. Site assessments and appropriate steps for remediation may be necessary.

Historic and Archaeological Resources

Trail development projects should be coordinated with the State Historic Preservation Officer to determine the potential for effects on properties on or eligible for the National Register of Historic Places.

Noxious Weeds

States should consider whether or not an assessment of the spread of noxious weeds should be performed in conjunction with RTP projects.

Threatened and Endangered Species

The occurrence of a protected species could be an important issue to consider during the development of an RTP project. Trail location should be coordinated with the U.S. Fish and Wildlife Service and formal consultation pursued if the presence of protected species warrants further study.

Land Ownership

RTP Legislation: 23 U.S.C. 206:

(h) (4) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

Each agreement between a State and a private organization should specify the duties and responsibilities of the parties involved. There must be an easement filed of record which specifies the minimum length of time for the agreement to maximize the public investment in the project.

Although the RTP legislation does not require government agencies to provide written assurance of public access, States should consider whether written assurance is needed. For example, if a State provides funds for a project on public lands, the State should assure that the managing agency will assure public access to the project for the use originally intended.

See also *Minimum Timeframe for Public Use* on page 42.

Public Involvement

There is no specific legislation requiring a public involvement process under the RTP, but States should consider appropriate methods to involve the public both in State procedures and in project development and selection. The State Recreational Trail Advisory Committee may assist in developing public involvement policies and programs.

Federal agencies are required to have public involvement in the development of their land management plans, and should involve the public in project proposals.

States should consider outreach to various trail enthusiast organizations within State as well as recreation business concerns and other interests which may be affected by recreational trail use.

Public involvement is required in the State and metropolitan transportation planning processes, including approval of STIPs and TIPs. Public involvement also is required in the development of Statewide Comprehensive Outdoor Recreation Plans (SCORPs).

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Other Issues Related to the RTP

Other Requirements

Buy America

“Buy America” provisions apply to steel and iron used in a “Federal-aid highway construction project”. Based on the definitions of “construction” in 23 U.S.C. §101 (“all expenses incidental to the construction or reconstruction of a highway”...) and “project” (“an undertaking”), the Buy America provisions will not apply to most RTP projects.

- If a trail project uses steel I-beams for a bridge, “Buy America” might apply, but there is threshold exemption—0.1 percent of the contract or \$2,500, whichever is greater. See 23 CFR 635.410(b)(4).
- Trail grooming and maintenance equipment are not included in the “Buy America” requirement, because the trail equipment is not a “construction project” and is not permanently incorporated into the final project.
- Trail signs might be considered part of a project but the cost for the signs would have to exceed the \$2,500 threshold.

Convict Labor

Federal law prohibits the use of convict labor for construction projects within the right-of-way of a Federal-aid highway (23 U.S.C. 114(b)). Under title 23, all public roads are “Federal-aid highways”, except those that are functionally classified as local roads or rural minor collectors.²⁶ Therefore, if an RTP project is within the right-of-way of a Federal-aid highway, convict labor shall not be used. If an RTP project is **not** within the right-of-way of a Federal-aid highway, then 23 U.S.C. 114(b) does not apply.

Unless the Recreational Trails Program project is within the right-of-way of a Federal-aid highway, the State may use its State procedures with regard to convict labor. RTP funds may be used to pay for construction costs incurred by convict labor for projects which are not within the right-of-way of a Federal-aid highway. In determining the value of convict labor, States should note that the value of paid labor may not exceed the actual cost incurred by the State of local government agency. Convict labor is not volunteer labor or donated labor (which may be valued at fair market value).

²⁶ Federal-aid highways include the National Highway System (which includes Interstate highways), and all roads functionally classified as principal arterials, minor arterials, urban collectors, and rural major collectors.

Continuing Recreational Use (Land and Water Conservation Fund)

RTP Legislation: 23 U.S.C. 206:

(h) (3) CONTINUING RECREATIONAL USE.—At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund apportionments for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-8(f)(3)).

At the option of each State, RTP funds may be treated as Land and Water Conservation Fund (LWCF) funds for the purposes of Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460l—8(f)(3)]. Section 6(f)(3) is the cornerstone of the U.S. Department of the Interior's compliance and stewardship efforts to ensure that Federal recreation investments are maintained in public outdoor recreation use in perpetuity. The LWCF grants-in-aid program is administered by the National Park Service (NPS).

Major changes to the Land and Water Conservation Fund Act may be made in 1999 or 2000. This would affect the authorities and procedures below. If changes are made, this section of program guidance will be revised.

A State opting to apply Section 6(f)(3) protection will be applying the same level of protection to projects funded under the RTP as applied to acquisition or development projects funded under the LWCF grant-in-aid program. This section assures that once an area is protected by Section 6(f)(3), it is continually maintained in public recreation use unless property of reasonably equivalent usefulness and location of at least equal fair market value is substituted.

Conversions generally occur in the following situations: 1) property interests are conveyed for non-public or non-recreation uses, 2) non-eligible recreation facilities are developed within the project area, or 3) recreation use of the assisted site is terminated.

The State agency administering the RTP must specify which projects will be subject to protection under Section 6(f)(3) of the LWCF Act. A State may opt to protect certain projects and leave others unprotected. However, the State must be consistent in its identification of projects which will be protected. If a State opts to apply Section 6(f)(3) protection, it may not rescind its decision after FHWA authorizes the project. It will be subject to the Department of the Interior's conversion process.

During the identification of projects to be granted Section 6(f)(3) status, the State agency administering the RTP should consult with other Federal, State, and local agencies such as departments of housing, economic development, transportation, etc., to ensure that the other proposed actions do not conflict with the proposed trail and Section 6(f)(3) designation. Where conflicts may occur, efforts should be made to develop the trail and other governmental proposals jointly, and to document any decisions with a Memorandum of Agreement. This will help to reduce possible land use conflicts due to the Section 6(f)(3) designation.

Before Section 6(f)(3) protection can be applied to a trails project under the RTP, the project applicants must have sufficient control and tenure of the project site as specified in the LWCF Manual

(Sections 640.1.8 and 640.3.4) in order to provide reasonable assurance that a conversion will not occur without approval of NPS.

States desiring to place a trails project under Section 6(f)(3) protection must submit to the appropriate NPS field office the following information within 60 days of the date of the project agreement:

- 1) A copy of the program application.
- 2) A narrative description of the project.
- 3) A dated project boundary map as described in LWCF Manual Section 660.2.6 which clearly delineates the area to be included under the conversion provisions of Section 6(f)(3).

Upon receipt and review of the above material, the NPS field office will notify the State whether or not the project has been approved for Section 6(f)(3) protection.

The State has the option of applying Section 6(f)(3) protection to the entire trail project even if only a portion is funded through the RTP. However, the minimum area to be protected must be self-sustaining without reliance upon adjoining areas not identified in the scope of the project.

If a State elects to add Section 6(f)(3) protection to projects funded under the RTP, then any conversion to other than public outdoor recreation use must have the approval of the NPS through the LWCF conversion process set forth in 36 CFR 59.3.

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Construction Engineering, Planning, and Environmental Costs

Construction engineering costs (including allowable costs for environmental evaluation and documentation, permits, or approvals) may be reimbursed. However, reimbursement will not be permitted for costs incurred prior to the date of program authorization by FHWA.

The RTP does not have a limitation on allowable construction engineering costs, nor does the Common Rule. Furthermore, section 1305 of TEA-21 eliminated the Federal highway program limits on construction engineering costs of a State highway administration. Because there are no Federal legislative or regulatory limitations on allowable construction engineering costs, State laws or regulations must be followed. If there are no State laws or regulations regarding construction engineering costs, then the State Recreational Trail Advisory Committee may provide guidance to the State in accordance with §206(d)(4). This would allow the State to establish its own policy.

Planning Costs

Statewide trail planning is an eligible cost under State administrative costs (pages 39–40). Otherwise, trail planning is not listed among the permissible uses in the RTP legislation. A project proposal solely for the purpose of trail planning would not be eligible for funding under permissible use categories A, B, C, D, E, or G. However, if trail planning is a relatively small portion of an overall trail project, it may be allowed. The RTP gives the State Recreational Trail Advisory Committee authority to provide guidance on which kinds of projects the State should fund that are consistent with the permissible uses (23 U.S.C. 206(d)(4)(A)). An advisory committee may decide that a project-specific trail plan which is part of an overall trail project may be considered part of a project's construction engineering costs.

Environmental Evaluation and Documentation Costs

A project proposal solely for the purpose of covering environmental evaluation and documentation costs would not be eligible for RTP funding under permissible use categories A, B, C, D, E, or G. However, reasonable environmental evaluation and documentation costs—including costs associated with environmental permits and approvals—may be included as part of an approved project's construction engineering costs. The State Recreational Trail Advisory Committee may provide guidance on the extent of allowable construction engineering costs within individual projects.

In some States, the project sponsor may need to comply with environmental documentation requirements before submitting the project application to the State. This may place an excessive burden on some project sponsors, because costs incurred prior to FHWA's project approval are not eligible for reimbursement.

Disadvantaged Business Enterprises (DBE)

Section 1101(b) of TEA-21 places significant emphasis on increasing opportunities for Disadvantaged Business Enterprises:

Legislation: TEA-21 Section 1101(b):

Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

The RTP is included within title I of TEA-21, therefore, the DBE requirement applies to the RTP. Implementing regulations are found in 49 CFR Part 26.

The objective of the DBE requirement is to provide disadvantaged business enterprises with opportunities to compete for government contracts. The State agency responsible for the RTP is required to have a DBE program which meets 49 CFR Part 26. The State agency responsible for the RTP must submit a DBE program conforming to this part to the FHWA division office (49 CFR 26.21 et seq.). The State is required to make efforts to advise DBEs of the existence of the RTP, and the opportunities associated with it. Each State DOT should have a directory of qualified DBEs. The State agency responsible for the RTP may incorporate the State DOT's directory as its own. See also 49 CFR 26.81 regarding the Unified Certification Program. The State DOT will probably be the lead State agency for this program.

The USDOT's DBE program is not a quota or set-aside program, and it is not intended to operate as one. Section 26.41 makes clear that the 10 percent statutory goal is an aspirational goal at the national level. It does not set any funds aside for any person or group. It does not require any recipient (State, contractor, individual project sponsor) to have specific percentage goals.

States may provide direct RTP grants to project sponsors based on the merits of their project applications. However, if a State provides a large proportion of its grants directly to project sponsors, extra efforts to seek out DBEs for those projects let for competitively bid contracts may be necessary. Many projects bid out for contracts under the RTP are likely to be within the range for which many DBEs are qualified and in which they might be interested in bidding on, either as prime contractors or as subcontractors.

Each financial assistance agreement must include the assurance specified in 49 CFR 26.13.

If a State cannot meet the DBE requirement, it will need to apply for an exemption as provided in 49 CFR 26.15.

If there is evidence of any effort to circumvent the DBE requirement, a violation of Title VI of the 1964 Civil Rights Act could be found.

Fair Labor Wages (Davis-Bacon Act)

Under current law, the prevailing rate of wage applies “...on highway projects on the Federal-aid highways authorized under the highway laws providing for expenditure of Federal funds upon the Federal-aid systems...” [23 U.S.C. 113(a)]. Under title 23, all public roads are “Federal-aid highways”, except those that are functionally classified as local roads or rural minor collectors.²⁷ FHWA interprets the language of §113(a) as applying only when a Federal-aid project takes place within the right-of-way of a Federal-aid highway. Therefore, if an RTP project is within the right-of-way of a Federal-aid highway, Davis-Bacon wage rates must be followed. If an RTP project is **not** within the right-of-way of a Federal-aid highway, then 23 U.S.C. 113(a) does not apply.

Recreational Purpose

RTP Legislation: 23 U.S.C. 206:

(h) (2) RECREATIONAL PURPOSE.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

Section (h)(2) exempts the RTP from the requirements of Section 4(f) of the Department of Transportation Act of 1966 (23 U.S.C. 138; 49 U.S.C. 303).²⁸ This allows the USDOT/FHWA to approve RTP projects which are located on land within publicly owned parks or recreation areas without requiring a waiver or other Section 4(f) documentation.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

All RTP project sponsors must comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to the extent applicable. This Act upholds the Fifth Amendment of the U.S. Constitution: “. . . *nor shall private property be taken for public use, without just compensation*”. Regulations implementing this Act are found in 49 CFR Part 24. These regulations will be applied to evaluating the acquisition of real property and any potential displacement activities.

²⁷ Federal-aid highways include the National Highway System (which includes Interstate highways), and all roads functionally classified as principal arterials, minor arterials, urban collectors, and rural major collectors.

²⁸ Section 4(f) is codified in 23 U.S.C. 138 and 49 U.S.C. 303 with some variations in the language. As codified in 23 U.S.C. 138: “...*the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge...unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm...*”. Section 4(f) was intended to protect public parks and recreation areas from becoming prime locations for highway projects, and did not anticipate programs such as the Recreational Trails Program that were intended to benefit the park or recreation area.

Tips for Project Sponsors

Each State has its own procedures to solicit and select recreational trails projects for funding. A project sponsor should develop its proposal sufficiently so that the project may move quickly into implementation after project approval.

Potential project sponsors should contact the State to find out the program requirements and criteria for project selection. A project sponsor should:

- Prepare a project development plan. What aspects need to be addressed? Identify issues and steps which are critical to the project development process.
- Develop a workable project. What are the trail needs? What can be done realistically?
- Get public support for the project. How does the project benefit the community? Are there other potential project sponsors?
- Find other funding sources. The normal Federal share is limited to 80 percent. Some State or local governments may provide some matching funds, but usually the project sponsor has to provide most or all of the match.
- Consider donations of materials and services, including volunteer labor.
- Consider how to involve youth conservation or service corps in the project.
- Develop a good project design.
 - Consider the natural environment in which the project is located.
 - Consider community benefits.
 - Consider user needs, including use by people with disabilities.
- Consider potential problems:
 - Environmental impacts—these must be minimized and mitigated, and may require some documentation.
 - Permits—various permits may be needed prior to submitting the project proposal.
 - Possible opposition—some people may oppose a project for various reasons, including concerns about property rights, liability, safety, historic or archaeological impacts, or environmental impacts.
- Complete the project application.
- If the project is approved, the project sponsor(s) should initiate the project as soon as possible. States may withdraw project approval if a sponsor does not show evidence of project progress within a reasonable time frame.

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Definitions

RTP Legislation: 23 U.S.C. 206:

§ 206. Recreational trails program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) **MOTORIZED RECREATION.**—The term ‘motorized recreation’ means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) **RECREATIONAL TRAIL.**—The term ‘recreational trail’ means a thoroughfare or track across land or snow, used for recreational purposes such as—

(A) pedestrian activities, including wheelchair use;

(B) skating or skateboarding;

(C) equestrian activities, including carriage driving;

(D) nonmotorized snow trail activities, including skiing;

(E) bicycling or use of other human-powered vehicles;

(F) aquatic or water activities; and

(G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

Other title 23 definitions

The RTP is codified under title 23 U.S.C., therefore some title 23 definitions are relevant to the program:

Legislation: 23 U.S.C. 217 (Bicycle Transportation and Pedestrian Walkways)

(h) **USE OF MOTORIZED VEHICLES.**—Motorized vehicles may not be permitted on trails and pedestrian walkways under this section [217], except for—

(1) maintenance purposes;

(2) when snow conditions and State or local regulations permit, snowmobiles;

(3) motorized wheelchairs;

(4) when State or local regulations permit, electric bicycles; and

(5) such other circumstances as the Secretary deems appropriate.

(j) (2) **ELECTRIC BICYCLE.**—The term ‘electric bicycle’ means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

(3) **PEDESTRIAN.**—The term ‘pedestrian’ means any person traveling by foot and any mobility impaired person using a wheelchair.

(4) **WHEELCHAIR.**—The term ‘wheelchair’ means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.

The snowmobile and electric bicycle provisions in §217(h)(2) and (3) permit these motorized vehicles on bicycle transportation and pedestrian walkway projects funded with regular Federal-aid highway program funds. However, under the RTP, snowmobiles and electric bicycles are motorized vehicles and may not be counted as nonmotorized uses.

Under the RTP, any person using a wheelchair as defined in §217(j)(4) is a pedestrian. If a project is intended to allow only pedestrians, including people using wheelchairs, the project only may satisfy the 30 percent nonmotorized requirement, but not the diverse requirement.

Maintenance and Official Use. Use of motorized vehicles for official purposes only (emergency, enforcement, maintenance) may be permitted on otherwise nonmotorized trails at the discretion of

the appropriate Federal, State, or local officials or land managers. Use of motorized vehicles on a trail for official purposes only on an otherwise nonmotorized trail does not constitute diverse recreational trail use for motorized and nonmotorized trail users. For example, a trail open only for cross-country ski or snowshoe use is still an exclusively nonmotorized trail even if it is maintained with a motorized grooming machine.

Other Definitions

Nonmotorized project for a single use: A project primarily intended to benefit only one mode of nonmotorized recreational trail use, such as pedestrian only, or equestrian only. Projects serving various pedestrian uses (such as walking, hiking, wheelchair use, running, bird-watching, nature interpretation, backpacking, etc.) constitute a single use for the purposes of this category. *Note: wheelchair use by mobility-impaired people, whether operated manually or powered, constitutes pedestrian use, not motorized trail use.* Projects serving various nonmotorized human-powered snow uses (such as skiing, snowshoeing, etc.) constitute a single use for this category.

Nonmotorized diverse use project: A project primarily intended to benefit more than one mode of nonmotorized recreational trail use such as: walking, bicycling, and skating; both pedestrian and equestrian use; or pedestrian use in summer and cross-country ski use in winter.

Diverse use project including both motorized and nonmotorized uses: A project intended to benefit both nonmotorized recreational trail use **and** motorized recreational trail use. This category includes projects where motorized use is permitted, but is not the predominant beneficiary. This category includes projects where motorized and nonmotorized uses are separated by season, such as equestrian use in summer and snowmobile use in winter. Other examples: a common trailhead project serving separate ATV and bicycle trails; purchasing a machine to groom both snowmobile and cross-country ski trails.

Motorized single use project: A project primarily intended to benefit only one mode of motorized recreational use, such as snowmobile trail grooming. A project may be classified in this category if the project also benefits some nonmotorized uses (it is not necessary to exclude nonmotorized uses), but the primary intent must be for the benefit of motorized use.

Motorized diverse use project: A project primarily intended to benefit more than one mode of motorized recreational use, such as: motorcycle and ATV use; or ATV use in summer and snowmobile use in winter. A project may be classified in this category if the project also benefits some nonmotorized uses (it is not necessary to exclude nonmotorized uses), but the primary intent must be for the benefit of motorized use.

Qualified Youth Conservation or Service Corps

The definition of a *qualified youth conservation or service corps* is taken from existing titles and chapters of the United States Code (U.S.C.).

Legislation: 42 U.S.C. 12572:

TITLE 42 — THE PUBLIC HEALTH AND WELFARE
CHAPTER 129 — NATIONAL AND COMMUNITY SERVICE
SUBCHAPTER I — NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Division C — National Service Trust Program

Part I — Investment in National Service
Sec. 12572. Types of national service programs eligible for program assistance

(a) Eligible national service programs

The recipient of a grant under section 12571(a) of this title and each Federal agency receiving assistance under section 12571(b) of this title shall use the assistance, directly or through subgrants to other entities, to carry out full- or part-time national service programs, including summer programs, that address unmet human, educational, environmental, or public safety needs. Subject to subsection (b)(1) of this section, these national service programs may include the following types of national service programs:

- (1) A community corps program that meets unmet human, educational, environmental, or public safety needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.
- (2) A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under division I of this subchapter, the Public Lands Corps established under the Public Lands Corps Act of 1993 (16 U.S.C. 1721 et seq.), the Urban Youth Corps established under section 12656 of this title, and other conservation corps or youth service corps that performs service on Federal or other public lands or on Indian lands or Hawaiian home lands), that—
 - (A) undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;
 - (B) includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited-English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and
 - (C) provides those participants who are youths and young adults with—
 - (i) crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and
 - (ii) the opportunity to develop citizenship values and skills through service to their community and the United States.
- (3) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under part I of division B of this subchapter.
- (4) A service program that is targeted at specific unmet human, educational, environmental, or public safety needs and that—
 - (A) recruits individuals with special skills or provides specialized preservice training to enable participants to be placed individually or in teams in positions in which the participants can meet such unmet needs; and
 - (B) if consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.
- (5) An individualized placement program that includes regular group activities, such as leadership training and special service projects.
- (6) A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

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- (A) students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);
- (B) teams composed of such students; or
- (C) teams composed of a combination of such students and community residents.
- (7) A preprofessional training program in which students enrolled in an institution of higher education—
- (A) receive training in specified fields, which may include classes containing service-learning;
- (B) perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and
- (C) agree to provide service upon graduation to meet unmet human, educational, environmental, or public safety needs related to such training.
- (8) A professional corps program that recruits and places qualified participants in positions—
- (A) as teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;
- (B) that may include a salary in excess of the maximum living allowance authorized in subsection (a)(3) of section 12594 of this title, as provided in subsection (c) of such section; and
- (C) that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under division D of this subchapter) of the participants.
- (9) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—
- (A) the housing needs of low-income families and the homeless; and
- (B) the need for community facilities in low-income areas.
- (10) A national service entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.
- (11) An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other national service programs described in this subsection.
- (12) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such area that meet unaddressed community and individual needs, including projects that would—
- (A) meet the needs of low-income children and youth aged 18 and younger, such as providing after-school “safe-places”, including schools, with opportunities for learning and recreation; or
- (B) be directed to other important unaddressed needs in such area.
- (13) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.
- (14) A program that seeks to eliminate hunger in communities and rural areas through service in projects—
- (A) involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;
- (B) involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;
- (C) seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or
- (D) providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.
- (15) Such other national service programs addressing unmet human, educational, environmental, or public safety needs as the Corporation may designate.

Legislation: 42 U.S.C. 12656:

TITLE 42 — THE PUBLIC HEALTH AND WELFARE
CHAPTER 129 — NATIONAL AND COMMUNITY SERVICE
SUBCHAPTER I — NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Division J — Miscellaneous

Sec. 12656. Urban Youth Corps

(a) Findings

The Congress finds the following:

- (1) The rehabilitation, reclamation, and beautification of urban public housing, recreational sites, youth and senior centers, and public roads and public works facilities through the efforts of young people in the United States in an Urban Youth Corps can benefit these youths, while also benefitting their communities, by—
 - (A) providing them with education and work opportunities;
 - (B) furthering their understanding and appreciation of the challenges faced by individuals residing in urban communities; and
 - (C) providing them with a means to pay for higher education or to repay indebtedness they have incurred to obtain higher education.
- (2) A significant number of housing units for low-income individuals in urban areas has become substandard and unsafe and the deterioration of urban roadways, mass transit systems, and transportation facilities in the United States have contributed to the blight encountered in many cities in the United States.
- (3) As a result, urban housing, public works, and transportation resources are in need of labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels.
- (4) Urban youth corps have established a good record of rehabilitating, reclaiming, and beautifying these kinds of resources in a cost-efficient manner, especially when they have worked in partnership with government housing, public works, and transportation authorities and agencies.

(b) Purpose

It is the purpose of this section—

- (1) to perform, in a cost-effective manner, appropriate service projects to rehabilitate, reclaim, beautify, and improve public housing and public works and transportation facilities and resources in urban areas suffering from high rates of poverty where work will not be performed by existing employees;
- (2) to assist government housing, public works, and transportation authorities and agencies;
- (3) to expose young people in the United States to public service while furthering their understanding and appreciation of their community;
- (4) to expand educational opportunity for individuals who participate in the Urban Youth Corps established by this section by providing them with an increased ability to pursue post-secondary education or job training; and
- (5) to stimulate interest among young people in the United States in lifelong service to their communities and the United States.

(c) Definitions

For purposes of this section:

- (1) Appropriate service project

The term “appropriate service project” means any project for the rehabilitation, reclamation, or beautification of urban public housing and public works and transportation resources or facilities.

- (2) Corps and Urban Youth Corps

The term “Corps” and “Urban Youth Corps” mean the Urban Youth Corps established under subsection (d)(1) of this section.

- (3) Qualified urban youth corps

The term “qualified urban youth corps” means any program established by a State or local government or by a nonprofit organization that—

- (A) is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban or public works or transportation setting;
- (B) gives participants a mix of work experience, basic and life skills, education, training, and support services; and
- (C) provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

Abbreviations and Acronyms

AASHTO	American Association of State Highway and Transportation Officials.
ABA	Architectural Barriers Act of 1968.
ADA	Americans with Disabilities Act of 1990.
ADAAG	Americans with Disabilities Act Accessibility Guidelines.
ATV	All-terrain vehicle.
BLM	Bureau of Land Management (U.S. Department of the Interior).
CFR	Code of Federal Regulations (Regulations of Federal agencies).
CMAQ	Congestion Mitigation and Air Quality Improvement Program.
DOI	Department of the Interior.
DOJ	Department of Justice.
DOT	Department of Transportation.
FHWA	Federal Highway Administration (U.S. Department of Transportation).
FMIS	FHWA Fiscal Management Information System.
FR	<i>Federal Register</i> (A publication of official Federal Government announcements).
FTA	Federal Transit Administration.
FY	Fiscal Year. The Federal FY is from October 1 to September 30.
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991.
LWCF	Land and Water Conservation Fund (Act of 1965).
MPO	Metropolitan Planning Organization (for urbanized areas over 50,000 population).
MUTCD	Manual on Uniform Traffic Control Devices.
NEPA	National Environmental Policy Act (of 1969).
NHS	National Highway System (260,000 km of primary roads in the United States).
NHS Act	National Highway System Designation Act of 1995.
NPS	National Park Service (U.S. Department of the Interior).
OMB	U.S. Office of Management and Budget.
Pub. L.	Public Law.
RTCA	Rivers, Trails, and Conservation Assistance Program of the National Park Service.
RTP	Recreational Trails Program.
SCORP	Statewide Comprehensive Outdoor Recreation Plan.
STIP	State Transportation Improvement Program.
STP	Surface Transportation Program.
TE, TEA	Transportation Enhancement Activity, authorized for 10 percent of the STP Program.
TEA-21	Transportation Equity Act for the 21 st Century.
TIP	Transportation Improvement Program.
UFAS	Uniform Federal Accessibility Standards.
U.S.C.	United States Code (Federal statute).
USFS	U.S. Forest Service (Department of Agriculture).
4(f)	Section 4(f) of the Department of Transportation Act of 1966 (23 U.S.C. 138; 49 U.S.C. 303).
6(f)	Section 6(f) of the Land and Water Conservation Fund Act of 1965.

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