

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

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DATE: August 3, 2012
TO: Transportation Commission, Executive Director, Senior Management Team
FROM: Laurie Freedle, Kurtis Morrison
RE: MAP 21 – Funding and Budget Law Changes

Summary

This memorandum summarizes provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) that are relevant to the Transportation Commission and the CDOT budget. MAP-21 is notable for its increased flexibility for state departments of transportation due to:

- increased **transferability** of funds by state DOTs between the core programs; and
- **consolidation** and reduction in the number of federal transportation programs; and
- **expanded eligible activities** that can be funded by the core programs.

This memorandum discusses each of these three points and how each one may impact the Transportation Commission and the CDOT budget. Most notably, MAP-21 will impact the CDOT budget by requiring the changes and decisions to be made by the Commission as discussed in the following two subsections.

New Funding Programs. The Transportation Commission has a number of options for the CDOT budget under MAP-21. Given MAP-21's new programs and required set-asides within certain programs, OFMB will manage the following revenue programs:

- National Highway Performance Program;
- Surface Transportation Program;
- STP—Metro;
- STP – Off-System Bridges;
- Highway Safety Improvement Program;
- HSIP – Rail-Highway Crossings;
- Transportation Alternatives; and
- TA – Recreational Trails.¹

For the department budget document, this means that we retain the Metro, Off-System Bridge and Rail Highway Crossings as mandatory programs. Recreational Trails is mandatory unless the state opts out of it, and Transportation Enhancements and Safe Routes to School become one program called Transportation Alternatives, which the TC may structure in various ways, as discussed later in this memo.

Eliminated/Other Line-Items. Under MAP-21, some line items no longer receive dedicated streams of funding or are eliminated. The following line-items fall into this classification:

¹ Spending for Recreational Trails is a required set-aside of revenue from the Transportation Alternatives (TA) program. The Governor is given the authority to opt out from this requirement, thereby eliminating the set-aside and providing the funding to the broader TA program.

- Transportation Enhancement (eliminated but covered under TA); and
- Safe Routes to Schools (no dedicated funds but eligible under TA and STP).

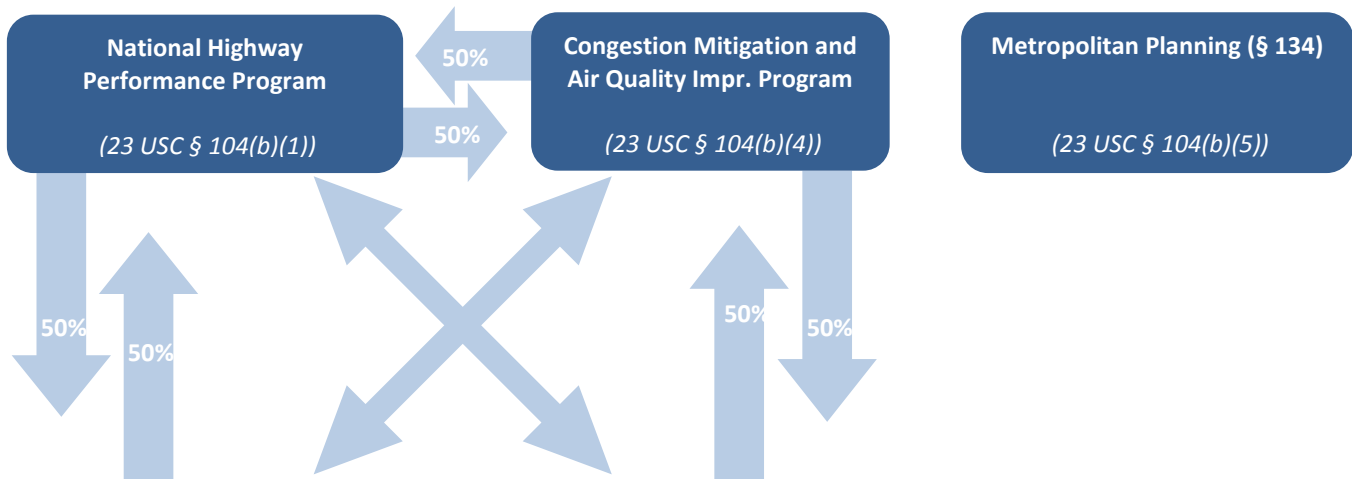
The Transportation Enhancement program is abolished and may be removed by the Transportation Commission. However, all eligible activities funded by the TE program may be eligible under the new Transportation Alternatives program. Although the Safe Routes to School (SRTS) program is no longer an independent program, federal law retains SRTS as a classification of eligible activities within other programs. Therefore, the Transportation Commission may choose to fund this as a separate line item, to fund SRTS eligible activities within the Transportation Alternatives program, or not fund the line item. The T&I Committee of the Commission directed staff to proceed with the FY 13 call for projects at the July workshop with the understanding that funding is yet to be determined.

Funding Levels. In general, funding for all core programs will remain flat during MAP-21's duration. In FY 2013, the first year of MAP-21's enactment, Colorado's federal transportation dollars are pinned to the same amount Colorado received in FY 2009. In FY 2014, all states are guaranteed a return of 95 cents for every \$1.00 collected by the federal government in federal fuel taxes. This amount may slightly alter Colorado's federal funding received, since donor states will receive more funding, causing other states to absorb this redistribution. However, for Colorado, this change will likely be irrelevant given that overall funds will increase by approximately 1.4 percent to adjust for inflation. Appendix I summarizes the federal formula process in which federal transportation dollars will be apportioned to programs benefiting Colorado.

I. Transferability of Federal-Aid Highway Funds

Under MAP-21, there is the ability to transfer up to 50 percent of program funds to any other formula programs.² This provision applies to all "104(b)" programs – National Highway Performance Program, Surface Transportation Program, Highway Safety Improvement Program, and Congestion Mitigation and Air Quality Improvement Program. However, Metropolitan Planning funds are not transferable,³ nor are formula funds suballocated to areas based on population.⁴ Similarly, transfers into and out of the Transportation Alternatives program are not permitted. Chart 1 summarizes MAP-21 transferability.

Chart 1.
MAP-21 Transferability of Core Program Funds



² 23 USC § 126(a).

³ 23 USC § 126(b)(1).

⁴ 23 USC § 126(a)(2).



The consolidation of 90 federal programs into approximately 30 federal programs means that greater funding will be provided by formula grants to Colorado (as opposed to competitive discretionary grants), and CDOT compliance will be much lighter due to the reduction in federal statutes and related regulations. The consolidations of MAP-21 collapse programs into six core programs:

- National Highway Performance Program;
- Surface Transportation Program;
- Congestion Mitigation and Air Quality Program;
- Highway Safety Improvement Program;
- Metropolitan Planning; and
- Transportation Alternatives.

Appendix II summarizes each of the programs along with eligible activities that the Transportation Commission may cover within each program.

III. Expansion of Project/Activity Eligibilities

Of the six core programs, MAP-21 expands the types of projects that may be funded by program funds. This provides CDOT the ability to fund projects through a wider range of programs. Appendix II summarizes the eligible activities for each of the core programs. The broadened eligibility for each program, combined with the transferability of funds between programs, increases the Transportation Commission's means to fund projects and allocate priorities.

IV. Miscellaneous Provision Impacting Budgets

There are also a number of provisions in MAP-21 that may impact the Transportation Commission in setting the CDOT budget, specifically due to penalty triggers, opt-out provisions, and required set-asides. The following subsections discuss each.

Penalty Triggers. MAP-21 places significant emphasis on performance measures and meeting benchmarks. A number of provisions are built into the core programs in which a failure to meet a benchmark may result in funding obligation increases. Although the measures do not result in funding losses or rescissions, Congress did place certain triggers in which an unmet threshold or benchmark may result in required additional spending in a deficient area, thereby binding the Transportation Commission in future fiscal years.

- ***NHPP – Interstate System Condition Trigger.*** If for two consecutive years, the condition of Colorado's Interstate Highways falls below the minimum condition level set by the USDOT, the Transportation Commission will be required to dedicate additional funding to improve Interstate conditions. Specifically, the Commission must:

- increase NHPP funds dedicated to improve system conditions, by an amount equal to the Colorado FY 2009 Interstate Maintenance program funds expended for system repairs;⁵ and
- transfer STP funds (excluding MPO suballocations) to the NHPP, by an amount equal to ten percent of the amount of Colorado FY 2009 Interstate Maintenance program funds expended for system repairs.

If triggered, the requirement remains in place for each year until the Interstate system exceeds the condition threshold.⁶

- **NHPP – NHS Bridge Condition Trigger.** If the USDOT determines that more than ten percent of the total deck area of state on-system bridges are classified as “structurally deficient,” an amount equal to 50 percent of funds apportioned to the state for FY 2009 is required to be set aside for bridge repair or rehabilitation from a state’s NHPP allocation.⁷ The set aside penalty remains in effect until the state rises above the ten percent structurally deficient level, as determined by USDOT.⁸
- **HSIP – High-risk Rural Roads.** If the fatality rate on rural roads in a state increases over the most recent two-year period, the state is required to obligate at least 200 percent of the amount of funds the state dedicated for high-risk rural roads. The increased funding must be obligated in the subsequent fiscal year.⁹

Transportation Alternatives Program.

- **Flexibility for Excess Reserved Funding.** Beginning in FY 2014, if the unobligated TA balance reserved by a state DOT exceeds 100 percent of the reserved amount, then the state may obligate the excess funds for any activity that is: (1) eligible to receiving TA funding; or (2) for any USDOT-approved CMAQ project.¹⁰
- **Recreational Trails Projects.** Each state DOT is required to reserve a portion of TA funding in an amount equal to those funds received in FY 2009 for the Recreational Trails program. States must also provide one percent of the TA Recreational Trails reserved funds back to the USDOT for administrative costs.¹¹ States have the ability to opt out of the Recreational Trails program if the **Governor notifies the USDOT no later than 30 days prior to apportionments** being made.¹² Colorado must decide in the coming weeks as to whether to request the flexibility to use the Recreational Trails set-aside for other Transportation Alternatives, or to retain the set-aside strictly for Recreational Trails activities.

Surface Transportation Program – Off-System Bridges. The STP program remains largely in the same state as in previous years. However, the Transportation Commission is required by MAP-21 to obligate for off-system bridges an amount that is not less than 15% of the amount of funds apportioned to the State for the highway bridge program for fiscal year 2009, except that amounts allocated under the section above shall not be obligated to carry out this subsection.

⁵ Guidance is expected from the FHWA in the coming months.

⁶ 23 USC § 119(f)(1).

⁷ 23 USC § 119(f)(2)(A).

⁸ 23 USC § 119(f)(2)(B).

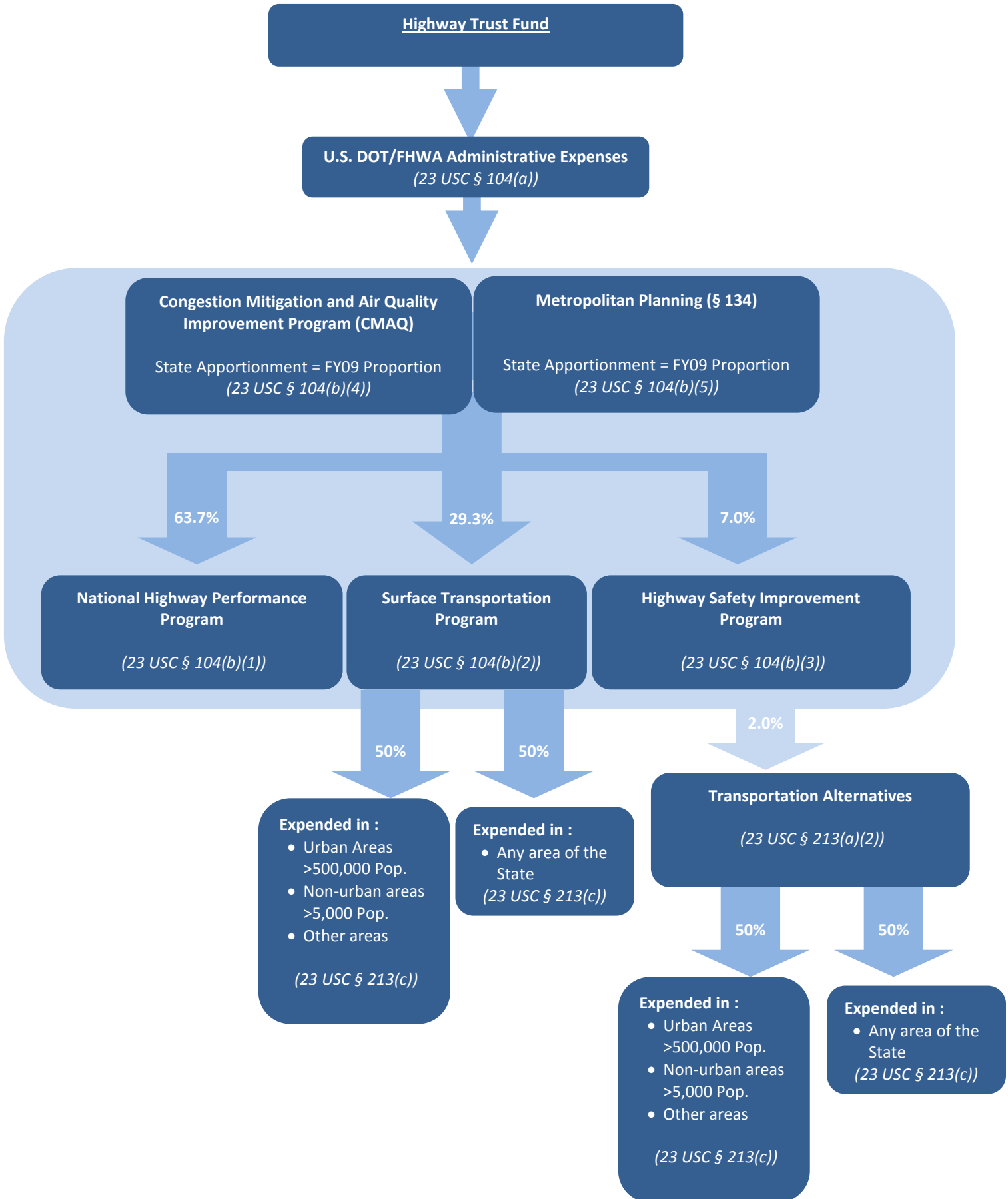
⁹ 23 USC § 148(g)(1).

¹⁰ 23 USC § 213(d).

¹¹ 23 USC § 213(f).

¹² 23 USC § 213(g).

**Appendix I.
MAP-21 Funding Formula**



**Appendix II.
MAP-21 Core Program Eligible Activities**

National Highway Performance Program	Surface Transportation Program	Highway Safety Improvement Program	CMAQ	Transportation Alternatives
<i>New Program</i>	<i>Continued Program</i>	<i>Continued Program</i>	<i>Continued Program</i>	<i>New Program</i>
<ul style="list-style-type: none"> • Achieving Goals. Projects supporting progress toward achievement of national performance goals for improving infrastructure condition, safety, mobility, or freight movement on NHS. • Construction. Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the NHS, including bridges, tunnels and highway safety improvements. • Bridges/Tunnels. Inspection and evaluation of bridges and tunnels and highway infrastructure assets on the NHS (signs, sign structures, earth retaining walls, drainage structures). • Inspections. training of bridge/tunnel inspectors. • Off-System Highways. Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the NHS, and construction of an eligible transit project. • Bicycle/Ped. Bicycle and ped. walkways. • Safety. NHS highway safety improvements. • Information/Control Facilities. Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs. • Asset Mgmt. Plan. Development and implementation of a State asset management plan for the NHS, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management. • ITS. ITS capital improvements. • Environ. Restoration, pollution abatement. • Noxious Weeds. Control of noxious weeds and aquatic noxious weeds. • Mitigation. Environmental mitigation efforts related to NHPP projects. • Bus Terminals. Construction of publicly owned intracity or intercity bus terminals 	<ul style="list-style-type: none"> • Highways. Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for highways. • Anti-icing. Replacement, rehabilitation, preservation, protections and application of environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges, bridge approaches, and tunnels on public roads of all functional classifications. • Bridge/Tunnel. Construction of a new bridge or tunnel at a new location on a Federal-aid highway. • Inspections. Inspection and evaluation of bridges, tunnels, other highway assets, and training of bridge and tunnel inspectors. • Transit. Capital costs for transit projects eligible for federal assistance. • Bicycle/Ped./Car-share. Carpool projects, fringe and corridor parking facilities and programs, including electric vehicle and natural gas vehicle infrastructure, bicycle transportation and pedestrian walkways, and the modification of public sidewalks to comply with ADA. • Safety. Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings; • Alternatives. Transportation alternative activities. • Environ. Environmental mitigation efforts and transportation control measures listed in the Clean Air Act. • Mgmt. Systems. Development and establishment of management systems. • Mitigation. Environmental mitigation efforts relating to projects funded under this title. • Intersections. Projects relating to intersections that—have disproportionately high accident rates; 	<p>Activities must be located on a public road, or on a publicly owned bicycle or pedestrian pathway or trail:</p> <ul style="list-style-type: none"> • Plan. Strategies, activities, and projects on a public road that are consistent with a State strategic highway safety plan, and: (1) correct or improve a hazardous road location or feature; or (2) address a highway safety problem. • Intersections. Intersection safety improvements. • Shoulders. Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition); • Warning Devices. Installation of rumble strips or other warning devices, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians, including persons with disabilities. • Surfacing. Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes. • Bicycle/Ped. Improvements for pedestrian or bicyclist safety or safety of persons with disabilities. • Rail Crossings. Construction and improvement of a railway-highway grade crossing safety feature, including installation of protective devices; and conduct of a model traffic enforcement activity at a railway-highway crossing. • Calming. Construction of a traffic calming feature. • Hazard Elim. Elimination of a roadside hazard. • Signage. Installation, replacement, and other improvement of highway signage and pavement markings, or a project to maintain minimum levels of retroreflectivity, that addresses a highway safety problem consistent with a state strategic highway safety plan; • EMS. Installation of a priority control system for emergency vehicles at signalized intersections; • Control Devices. Installation of a traffic 	<p>Projects/programs must:</p> <ul style="list-style-type: none"> • be in an area that is or was designated as a nonattainment areas, and • meet or be one of the following: <ul style="list-style-type: none"> ○ determined as likely to contribute to the attainment of a national ambient air quality standard or the maintenance of a national ambient air quality standard in a maintenance area, and a high level of effectiveness in reducing air pollution; ○ included in a state implementation plan approved under the Clean Air Act and the project will have air quality benefits; ○ determined as likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or other factors; ○ to establish or operate a traffic monitoring, management, and control facility or program; ○ improves traffic flow, including projects to improve signalization, construct HOV lanes, improve intersections, add turning lanes, improve transportation systems management and operations that mitigate congestion and improve air quality, and implement ITS strategies, incident and emergency response, or mobility (such as through real-time traffic, transit, and multimodal traveler information); ○ involves the purchase of integrated, interoperable emergency communications equipment; ○ be for purchase of diesel retrofits, the conduit of outreach activities designed to provide information and technical assistance to owners and operators of diesel equipment and vehicles regarding the purchase and installation of diesel retrofits; or ○ shift traffic demand to non-peak hours or other transportation modes, increase vehicle occupancy rates, or otherwise reduce demands for roads through such means as telecommuting, ridesharing, car-sharing, alternative work hours, and pricing. 	<ul style="list-style-type: none"> • Transportation Alternatives, defined as: <ul style="list-style-type: none"> ○ construction, planning, design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety related infrastructure, and transportation projects to achieve ADA compliance; ○ construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs; ○ conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users; ○ construction of turnouts, overlooks, and viewing areas; ○ community improvement activities, including: inventory, control, or removal of outdoor advertising; historical preservation and rehabilitation of history transportation facilities; vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; archaeological activities relating to impacts from implementation of a transportation project ○ environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation: • Recreational Trails program • Safe Routes to School program • Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

<p>servicing the NHS.</p>	<p>have high levels of congestion; and are located on a Federal-aid highway.</p> <ul style="list-style-type: none"> • <i>ITS.</i> Infrastructure-based intelligent transportation systems capital improvements. • <i>Abatement.</i> Environmental restoration and pollution abatement; • <i>Noxious Weeds.</i> Control of noxious weeds and establishment of native species; • <i>Congestion.</i> Projects and strategies designed to support congestion pricing, including electric toll collection and travel demand management strategies and programs; • <i>Recreational Trails.</i> Recreational trails projects. • <i>Parking.</i> Truck parking facilities; • <i>Asset Mgmt. Plan.</i> Development and implementation of a State asset management plan for the National Highway System; • <i>Minor Collector.</i> Construction and operational improvements for any minor collector if—the minor collector and the project are in the same corridor as, and in proximity to, a Federal-aid highway designated as part of the National Highway System; the construction or improvements will enhance the level of service on the Federal-aid highway and improve regional traffic flow; and the construction or improvements are more cost-effective, as determined by a cost-benefit analysis, than an improvement to the Federal-aid highway. 	<p>control or other warning device at a location with high crash potential.</p> <ul style="list-style-type: none"> • <i>Planning.</i> Transportation safety planning; • <i>Data.</i> Collection, analysis, and improvement of safety data. • <i>Enforcement.</i> Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety. • <i>Work Zones.</i> Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers) and crash attenuators. • <i>Wildlife.</i> The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife. • <i>School Zones.</i> Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones. • <i>Rural Roads.</i> Construction and operational improvements on high risk rural roads; • <i>Improvements.</i> Geometric improvements to a road for safety purposes that improve safety. • <i>Audits.</i> Road safety audits; • <i>HDHODP.</i> Roadway safety infrastructure improvements consistent with the recommendations included in the FHWA “Highway Design Handbook for Older Drivers and Pedestrians” • <i>Parking.</i> Truck parking facilities. • <i>Misc.</i> Systemic safety improvements. 		
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