



Implementation Challenges with the Federal Safe Routes to School Program

**An Examination of Title 23 Regulations, the Impact on Project Costs and
Timing, and Opportunities for More Efficient Project Delivery**

April 23, 2009

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Working Group on Implementation



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Disclaimer:

Members of the Working Group on Implementation participated in numerous conference calls to review the information gathered and identify potential best practices and legislative recommendations. The information presented in this memo is a collaborative product of the Working Group. Individual participants in the Working Group do not necessarily agree with every recommendation presented within.

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Safe Routes to School: Early Achievements

Safe Routes to School (SRTS) is a national movement to create safe, convenient, and fun opportunities for children to bicycle and walk to and from schools. The program has been designed to reverse the decline in children walking and bicycling to schools. In addition to reducing traffic and improving safety, SRTS can play a critical role in reversing the alarming nationwide trend toward childhood obesity and inactivity and also address concerns about air quality and greenhouse gas emissions.

In 1969, approximately 50% of children walked or bicycled to school, with approximately 87% of children living within one mile of school walking or bicycling. Today, fewer than 15% of schoolchildren walk or bicycle to school, including just half of those living within one mile. As a result, kids today are less active, less independent, and less healthy. As much as 20 to 30% of morning traffic can be generated by parents driving their children to schools, and traffic-related crashes are the top cause of death and major injury for children in the U.S. ages 1 to 17.

Concerned by the long-term health and traffic consequences of this trend, in 2005, the U.S. Congress approved \$612 million in funding for five years of state implementation of SRTS programs in all 50 states and the District of Columbia through Section 1404 of SAFETEA-LU, the federal surface transportation bill. State Departments of Transportation make this funding available to communities to construct new bike lanes, pathways, and sidewalks and to launch SRTS education, promotion and enforcement campaigns in elementary and middle schools.

Congress envisioned Safe Routes to School as a multi-faceted program with an overall goal of

A Demonstrated Need for Safe Routes to School – Recipients Speak Out

In December 2008, the Safe Routes to School National Partnership conducted a survey on the implementation of SRTS. Only recipients of federal SRTS funding that were at least part-way through the implementation process were asked to complete the survey. A total of 88 responses from were received.

Some comments on the need for the SRTS program follow:

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“So many children ride a bus to/from school or are driven to/from school by a family member. The SRTS program is great. It provides funding for school districts and communities to implement safety education training programs and infrastructure that makes it safer for children to walk/bicycle to/from school. School districts and communities don't always have the funding for these types of programs or infrastructure improvements.” – IL recipient

“It's great that this funding is available and making a difference around schools.” – AZ recipient

“The amount of funding available is great, it lets you construct substantial projects that Cities cannot afford to do.” – CA recipient

“The goals of the program are excellent.” – CT recipient

“There was tremendous interest and oversubscription to SRTS in Illinois. It's clearly a highly desired program, with big responses from communities. The DOT did a great job of promoting the program.” – IL recipient

encouraging more children to walk and bicycle to school. To accomplish that goal, several related purposes were identified, including improving safety for child pedestrians and bicyclists, encouraging children to lead healthy and active lifestyles, and facilitating projects that reduce traffic congestion, fuel consumption and air pollution near schools.

The majority of each state's funding must be spent on awards to municipalities, schools, and non-profit agencies to retrofit roads and build sidewalks, bike lanes and pathways to allow children to more safely walk and bicycle to school. A smaller percentage of funding (10 percent to 30 percent) supports non-infrastructure activities, including walking and bicycling safety education, driver awareness campaigns, more robust enforcement of speed limits and traffic safety rules, promotional events to encourage more children to walk and bicycle, and more.

Within six months of the law's passage, the Federal Highway Administration (FHWA) had issued guidance on administering the program and state Departments of Transportation (DOTs) moved to hire state SRTS coordinators and develop their own application guidelines and procedures.



Now, three-and-a-half years after the law was originally signed, all states have their state SRTS coordinators in place and each state has issued at least one round of application guidelines. Many states have already awarded all of their available money through fiscal year 2009, generally through multiple award cycles. Across all states, as of December 2008, 89 percent of federal funds from fiscal years 2005 through 2008 have been awarded and more than 4,400 local schools are benefiting from the federal program and are implementing their SRTS programs and initiatives. Funding requests greatly exceed

available dollars, and federally-funded SRTS programs are popular in their local communities.

In communities all across the country, federal SRTS dollars are already at work, helping schools and cities to encourage more children to be safe, healthy and active on their way to and from school, and helping communities find solutions to traffic congestion, safety concerns, poor air quality and high rates of childhood obesity and related diseases.

Overview of an Early Challenge

While the federal SRTS program is still early in its existence, enough award cycles and projects have been initiated to allow for an analysis of the program's initial implementation challenges and opportunities. Based on input and feedback from current and prospective local SRTS award recipients, state SRTS coordinators, and other stakeholders at the national, state, and local levels, it is clear that one challenge pertains to the regulations that govern SRTS projects, which affect project costs and the efficiency of project delivery.

In creating the federal Safe Routes to School (SRTS) program, Congress placed the funds under the same rules and regulations—often referred to as Title 23 regulations—as large-scale, complex, federally-funded highway projects. In effect, this means that Safe Routes to School recipients must go through several steps of paperwork and approvals with the state Department of Transportation (DOT) and the Federal Highway Administration (FHWA) before a project is authorized to begin. And, although it is a federal statute, state implementation and interpretations of what the regulations require vary widely.

While the federal SRTS program has been very popular at the local level, a common observation heard from local award recipients and state coordinators alike is that the time and effort needed to comply with regulations is high given the small size and scope of the typical SRTS award. It has also been pointed out that other similar federal programs such as Transportation Enhancements don't have the same regulatory requirements as SRTS. The average SRTS award size as of December 2008 is approximately \$154,000, while typical road and highway projects constructed under the title 23 regulations can be tens of millions of dollars.

As part of SAFETEA-LU, Congress established a National Safe Routes to School Task Force to examine the SRTS program and make recommendations for advancing the federal program. There were 17 members of the Task Force representing various transportation, health, and education organizations. In July 2008, the Task Force report, "Safe Routes to School: A Transportation Legacy," was issued. The Task Force report identified the federal-aid regulatory requirements as one implementation challenge:

"State SRTS coordinators have indicated that funding SRTS projects is difficult under the current SRTS legislation. In fact, this was the number one issue state SRTS coordinators cited when asked to identify what aspects of the legislation should change. Typically SRTS projects are relatively small when compared with other transportation projects commonly funded through the Federal-aid program and this has generated an administrative burden for funding recipients that is out of proportion with the funding amount."

In addition to the observations of the state SRTS coordinators charged with implementing the federal SRTS funding in their state, the obligation rates from each state echo these concerns. As of December 31, 2008, state DOTs have awarded an impressive 89% of available SRTS funds from FY2005-2008. However, just 33% of available SRTS funds have been obligated. Funds are generally obligated when the state has contracted with the local recipient for the award. Due to the reimbursement nature of the SRTS program, a local recipient cannot begin their project until the state DOT has obligated their funding and authorized them to proceed. The gap between award and obligation, which totals \$234.6 million in unobligated but awarded funds, speaks to the length of time it takes for states to get through the initial contracting and regulatory stages with local recipients before a project can begin.

As the current transportation bill expires in September 2009, legislators are examining the range of transportation programs to determine whether programs should be continued, and if so, what

changes are needed to ensure effective use of federal dollars. This presents an opportune time to examine the current SRTS program and identify what is working well, what could be improved, and how the program could be strengthened.

As an advocate for the federal SRTS program, the Safe Routes to School National Partnership embarked upon an effort, beginning in the fall of 2007, to identify recommended changes to the federal SRTS program in preparation for the new transportation bill. The Partnership sought recommendations from award recipients and partner affiliates, discussed ideas at the Partnership's 2007 Annual Meeting, and had detailed discussions with its Federal Initiatives Committee, State Advocacy Committee, and Steering Committee, which includes representation from national, state and local organizations. The [platform of recommendations](#) for the next transportation bill was adopted by the Partnership's steering committee in August 2008, and unveiled at the Partnership's annual meeting in September 2008. The focus of the platform is on how to strengthen and expand a promising and much-needed federal program. Key recommendations of the Partnership's SRTS reauthorization platform include:

- Increase funding to better meet the demand from schools and communities nationwide;
- Expand funding eligibility to include high schools and safe routes to bus stops;
- Reduce overhead and delays; and
- Support greater and more comprehensive evaluation and research.

Focusing on the recommendation to reduce overhead and delays, the following specifics were outlined in the Partnership's platform:

- Continue to protect the environment and labor laws, but require FHWA to ease the burdens and reduce the overhead related to the process posed by the Title 23 and common rule guidelines and reimbursement nature of the program via regulation, particularly for smaller projects, low-impact infrastructure, and non-infrastructure projects.
- Require state DOTs to reduce the overhead and ease the burdens of local grant administration to ensure effective use of federal dollars and to avoid unnecessary delays in implementing projects.

These recommendations were crafted to stress the Partnership's commitment to existing environment and labor regulations such as the National Environmental Policy Act (NEPA) and Davis-Bacon, which have been developed over the years and provide critical protections to individuals and communities, while also expressing the need to find a way to apply those regulations as efficiently as possible to small-scale projects like SRTS. Given the concerns cited by state SRTS coordinators and local SRTS recipients about the Federal-aid regulatory requirements, it is important that the Partnership work with Congress to identify an appropriate legislative remedy that is consistent with other bicycle and pedestrian transportation programs. If the Partnership were to wait past the next transportation bill to address this issue, it could easily be five more years before the next opportunity to make legislative changes arises.

Using federal dollars as efficiently as possible will mean more funding available for SRTS programs and infrastructure upgrades, and less funding spent on project administration and overhead. This is especially important when there is an average of 2.5 applicants for every SRTS recipient nationwide. In addition, improving the project delivery timeframe will mean that infrastructure upgrades will be constructed more quickly and non-infrastructure projects will launch sooner—allowing SRTS programs to start positively impacting the health, environment, and safety of children and school environments more quickly, while also putting more Americans to work more rapidly on construction.

Formation and Goals of the Working Group

Once the Partnership’s legislative platform for the next transportation bill was complete, a Working Group on Implementation was created to delve more deeply into the existing implementation challenges. The Working Group’s focus was to examine the Title 23 regulations governing federal highway projects more closely and their effect on the costs, implementation timeline, and staffing requirements for the federal SRTS program. In addition, the Working Group sought to identify what improvements could be made by state DOTs within the existing legislative structure, and solutions that would require action by FHWA and Congress.

Participants in the Working Group on Implementation—which are listed in the appendix of this report—include individuals working on SRTS and Transportation Enhancements projects at the local and state level and representatives from the Non-Motorized Transportation Pilot Program (section 1807 of SAFETEA-LU), which shares many commonalities in regulatory requirements with the federal SRTS program. While representatives from the Non-Motorized Transportation Pilot Program provided important context on regulations affecting both SRTS and the Pilot, the focus of the Working Group’s effort and this report are on the federal SRTS program.

The working group had three goals:

1. How are the Title 23 requirements affecting the Safe Routes to School program?
2. What best practices have some states utilized to expedite projects and reduce overhead?
3. How can we make project delivery more efficient in the next transportation reauthorization bill?

In order to address these goals, the working group carried out the following activities:

- Researched the federal regulations and guidance governing Title 23 to get an understanding of the processes involved.
- Conducted interviews with seven state SRTS coordinators and two of the Non-Motorized Transportation Pilot Program sites to identify state current practices, challenges, and promising ideas. (See Appendix for a list of interviewees.)
- Met with FHWA staff administering Safe Routes to School and the Transportation Enhancements program to discuss the current law, implementation, and options for addressing challenges.

- Held monthly Working Group phone calls starting in October 2008 to review information as it was collected and to discuss problems, challenges, and opportunities.
- Conducted a survey of local, federally-funded SRTS projects that had begun implementation to collect detailed information on the regulatory processes, costs, time to comply, and feedback on the implementation process.

The remainder of this report examines the information collected by the Working Group on Implementation, and offers recommendations for making project delivery more efficient in the short-term and long-term. The purpose of the report is three-fold:

- To provide more comprehensive background on the title 23 requirements and the impact on SRTS;
- To identify and disseminate among state SRTS coordinators the range of best practices that state DOTs have developed to improve project delivery and administrative costs; and
- To propose potential legislative and administrative solutions that Congress and FHWA could undertake to make SRTS projects more efficient, without undermining environmental and labor protections.

Background on Title 23 and Related Regulations

Title 23 is the chapter that governs federal-aid highways. The bulk of the Title 23, Chapter 1 regulations consist of environmental and labor regulations and contracting provisions that have been put into place over many years to provide important protections to individuals and communities. The next few paragraphs summarize what is involved in complying with chapter 1 of Title 23. While the focus of these paragraphs is on SRTS, these regulations apply to a range of federally-funded transportation projects and programs.

After going through the application process and being selected by the state for funding (which may take up to a year from the time guidelines are released), SRTS recipients must first sign project agreements or contracts with the state DOT; this can take several months and in some cases more than a year. After receiving a signed contract, the school or city can proceed with fulfilling the regulatory and federal paperwork requirements. One example of the regulatory processes that projects must comply with is the National Environmental Policy Act (NEPA). The environmental review process includes an assessment of whether the project will have a positive, negative, or no impact on parks or recreational property, historic sites or features, threatened and endangered species, and water resources like wetlands, floodplains, or bodies of water. Generally, bicycle and pedestrian projects qualify by federal regulation [23 CFR 771.177(c)] for an “undocumented” categorical exclusion from the environmental review process; however, with SRTS states still often require their projects to submit lengthy forms with sign-offs from various agencies to document that the projects qualify for the exclusion.

Federal regulations also require the use of free and open competitive bidding for any consultants, and limit the use of city or county employees to carry out projects except in specific circumstances.

So while many municipalities may already have employees on staff charged with constructing sidewalks, for example, they would usually have to go through a competitive bid process to hire a firm to do the construction for the Safe Routes to School project. Municipal/state employees can only be used in circumstances where they can document that it is not cost-effective to go through a competitive procurement process (called “force account construction”); this practice is not widely used for SRTS. Regulations also require that all SRTS projects are funded on a reimbursement basis, which creates financial challenges for many schools and communities that must absorb the costs of carrying out a SRTS project and then wait for the state to pay them back.

A listing of the key requirements of Title 23 follows:

- Requires project agreements between the recipient and the state DOT.
- Obliges the recipient to submit proof of completion or appropriate forms to the state DOT in several different areas before the project can be bid out, including:
 - Submission of plans, specs and estimates to the state DOT. Plans must follow existing design standards.
 - Right-of-way clearance.
 - Public hearings.
 - Environmental impact studies completed (often called NEPA), which can entail an environmental review, a larger environmental impact study, or a categorical exclusion from the environmental review process.
 - The project must be programmed in the statewide and metropolitan transportation plans (STIP and TIP).
 - If the project is in an air quality attainment or maintenance area, it must meet transportation conformity regulations (Clean Air Act).
- Requires the state DOT to submit forms to the FHWA division administrator (this is a federal employee of FHWA that is assigned to the state DOT) attesting that all requirements are complete. The FHWA division administrator will then give the authorization to proceed, which the state DOT will then provide to the local project.
- Entails the use of free and open competitive bidding, including equal opportunity for disadvantaged business enterprises (DBEs) during bidding and contracting to comply with the Civil Rights Act of 1964. Lays out a specific process for how bids are received and tabulated, and how the final decision is to be made.
- Requires that all work on the project must be done following the Davis-Bacon rules about prevailing minimum wages. Municipal/state employees can only be used in circumstances where they can document that it is not cost-effective to go through a competitive procurement process (called “force account construction”.)
- Reimburses funds as work progresses. Funding can only be provided in advance in special circumstances under a “working capital advance” process. Any funds expended before the authorization to proceed is given may not be reimbursed.

Applicability of Title 23 to SRTS

In the SAFETEA-LU transportation law from 2005, which created the SRTS program, Congress inserted language saying that SRTS funds shall be “treated the same as those apportioned under chapter 1 of Title 23 USC.” The same language was applied to the Non-Motorized Transportation Pilot Program.

Per the guidance issued from the Federal Highway Administration on SRTS, available at <http://safety.fhwa.dot.gov/saferoutes/srtsguidance.htm>, “the above language means that SRTS infrastructure projects and non-infrastructure activities need to comply with applicable provisions in



Title 23, such as project agreements, authorization to proceed prior to incurring costs, etc. In addition, infrastructure projects under the Safe Routes to School program must comply with Davis Bacon prevailing wage rates, competitive bidding, and other contracting requirements, etc., even for projects not located within the right-of-way of a federal-aid highway.”

These federal regulations were originally created to safeguard important environmental and labor protections for multi-million dollar highway projects with a significant potential impact on property, human life, and the environment. In the SRTS program, these regulations are being applied to small-scale local infrastructure projects with minimal impacts on property, people and the environment. And, many states require that non-infrastructure SRTS projects—which do not include any construction at all—go through a similar process. In practice, these regulations add a number of steps in terms of paperwork and approvals to the implementation process which may be disproportional to the size and scope of the SRTS awards.

It is important to note that similar language about Title 23 from the SRTS law does not appear in the law governing the Transportation Enhancements (TE) program, which has been a significant source of bicycle/pedestrian project funding since 1991 through the adoption of ISTEA. In fact, the TE legislative language directs the Secretary to develop categorical exclusions from environmental review related to transportation enhancements, and to develop a nationwide agreement with the Advisory Council on Historic Preservation regarding review of TE projects—both of which are intended to make the review process more efficient.

In another example, the Governor’s 402 safety funds administered by the National Highway Traffic Safety Administration (NHTSA) are often implemented with low administrative burden. The legislative language governing the 402 safety funds does apply Title 23 regulations but Congress provided an exception in the legislative language applying Title 23 “except as determined by the Secretary to be inconsistent with this section.” This allows the Transportation Secretary to selectively apply the relevant portions of Title 23 to the 402 safety funds, enabling states to have a more

efficient process.

One example of the impact of this inconsistency in language is on procurement. Starting in 1996, FHWA allowed Transportation Enhancements, Recreational Trails, and other federal-aid construction projects that were taking place outside the public highway right-of-way to be exempted from the federal procurement process and instead to use a state or municipality's procurement process. SRTS is not allowed this same flexibility, however, due to the wording in the legislation on title 23.

In addition, anecdotally, some state DOTs have shared that the more stringent language used in the SRTS legislation can send an unintentional message to State DOTs that the SRTS program is to be administered differently than the precedents with TE and 402 safety funds, and with stricter attention to the various regulatory requirements.

Impact on Safe Routes to School Projects

The impact of these regulations on SRTS projects is wide-ranging. In addition, another challenge is that although Title 23 regulations are federal, state implementation and interpretation of those regulations varies widely. Some states have found creative solutions to make project delivery under Title 23 more efficient, while other states are adding their own regulations on top of Title 23, causing further complexities.

However, regardless of the state's implementation procedures, a number of common issues have been reported about the impact of Title 23 regulations on implementation, as detailed below. As the Report of the National SRTS Task Force puts it, "State coordinators have observed that these requirements deter some schools from applying for funding and often result in delays to project implementation as well as a high amount of project funding being spent on administrative tasks."

In addition to issues discussed below, the sidebar on the next page includes illustrative quotes and statistics from the working group's survey of individuals implementing federally-funded SRTS projects.

- **Deterring applicants:** When eligible entities are made aware of the regulatory burden, they may opt out of applying for SRTS funding—or return their award without proceeding. In Maryland, two recipients returned their Safe Routes to School awards once they fully understood the time and effort it would take to comply with the regulations. In Oregon, many communities have chosen not to apply for Safe Routes to School funding, due to fears about the time and cost involved in the process.
- **Causing delays in projects:** The time to get approval to proceed with bidding and construction has slowed ground-breaking on infrastructure projects. For example, New Hampshire awarded infrastructure awards in December 2007. Nine months later, the first of their recipients received the notice to proceed with the bidding process, which adds another

few months before the project can break ground. Oklahoma estimates it will take two years from when an infrastructure award is awarded to when it will be completed. In Michigan, as of fall 2008, it has taken nine months to get the first three of their infrastructure recipients ready to bid out their project; the rest are still working through the compliance process. Even non-infrastructure projects are affected—Minnesota estimates it takes five to seven months from the time a non-infrastructure project is announced before the recipient will be given the authorization to proceed. While these timeframes may sound fairly expeditious when compared with the time to construct a highway project, the average SRTS award is \$154,000 for relatively simple projects like building sidewalks and bike lanes or painting crosswalks.

- **Requiring higher overhead:** Regulatory compliance adds to the expense of a project due to the staff time needed to complete the paperwork and to seek the required approvals and sign-offs; this makes the projects more expensive and dilutes the impact and efficiency of the much-needed federal dollars. Localities that have existing contractors who do a variety of projects often are not allowed to use them without going through a competitive bidding process which can add to the cost and delay construction.
- **Reducing the eligibility of a wide range of applicants:** While the federal legislation permits funding to be awarded to a wide range of recipients

Perspectives from SRTS Recipients

In December 2008, the Safe Routes to School National Partnership conducted a survey on the implementation of SRTS. Only recipients of federal SRTS funding that were at least part-way through the implementation process were asked to complete the survey. A total of 88 responses from were received.

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A total of 80.0% of survey respondents said that the implementation process was either somewhat or extremely time-consuming and challenging—with the remainder saying the process was manageable (16.0%) or somewhat fast and easy (4.0%).

“The bid requirements and environmental reviews are cumbersome and costly. We have estimated the cost to complete these requirements to be approximately \$30,000, while the cost to construct the new sidewalk is \$37,000.” – MD recipient

“The city has been waiting well over 1 year (now 2 years from application date) to receive funds. Many of the school site staff and volunteers have moved on.” – CA recipient

“The installation of the bike rack roof was stalled, leading to the cost increasing from \$40,000 to \$72,000. Other infrastructure items may be cancelled to pay for the bike rack roof.” – OR recipient

“As a small nonprofit organization, having to expend money up front and then requesting reimbursement creates big cash flow issues.” – AZ recipient

“It will end up taking the contractor about three months to build a project that took 2.5 years to go through the various stages of design and approval.” – CT recipient

“This is the least friendly process I have participated in and I have been part of millions of dollars of state, federal, and local awards.” – NE recipient

including schools and non-profit organizations, the regulatory compliance issues effectively limit most applicants to cities and counties. Due to the requirements and level of expertise needed to comply, FHWA recommends in its guidance for SRTS that states encourage “non-traditional partners” (i.e. schools, nonprofits, etc.) unfamiliar with the regulatory process pair with county or city public works agencies. Many states have chosen to implement this recommendation as a requirement, meaning that schools and nonprofits are only able to apply for funding if they have a sponsoring agency from the county or city government that will subcontract or partner with the school or non-profit.

- **Deterring low-income schools from participating:** These regulations also affect which communities can benefit from Safe Routes to School, as some level of expertise is needed to manage the federal process. And while the Safe Routes to School program funds 100 percent of project costs, the federal regulatory processes serve as deterrents to low-income, underserved communities which may not have engineering staff available to comply with regulations. In addition, under-served communities have greater difficulty footing the bill for the project until they are reimbursed by the state. Several state coordinators expressed concern about this issue and are taking action. Michigan, for example, provides a design/build contractor to their eight poorest communities as they lack the capacity to apply for the funding without additional assistance.
- **Dampening the impact of SRTS:** The impact of these regulatory delays and burdens can also affect the ultimate success of a Safe Routes to School program. These projects and activities are often driven by local advocates and parent volunteers, and it is difficult to maintain their enthusiasm throughout the process which can last a year or more from the time an application is first submitted for funding. Advocates often don’t understand the delays and it can hamper the ultimate success and impact of the SRTS program. In addition, parents generally only stay involved with SRTS while their child attends the school. When it takes longer than a year or two to get a project completed, parent leaders of SRTS may have moved on to a different school along with their children.

Best Practices as Immediate Solutions

While the federal and state regulations have a number of requirements that cannot be changed without legislative authority, there are accommodations that can be made within the existing law. Some of these accommodations are recommended by FHWA in their program guidance; yet not all states take advantage of them. Other best practices have been developed by state DOTs during the implementation process over the past several years.

Part of implementing a new program requires a learning process about what works and what does not. If more states were to adopt the range of best practices listed below and fully utilize what flexibility does exist within the regulations, SRTS recipients would experience a simplified implementation process, fewer delays, and lower overhead.

Best practices that state DOTs can implement immediately within the existing law include:

- **Retool the state’s application and award timeline to match the school year.** One source of delay in starting projects comes when the state announces an award at an inopportune time during the school year. The best way to impact the rate at which children walk and bicycle to and from school is to have an SRTS program that lasts the entire school year. When awards are made without matching them to the school year, it can mean that by the time the regulatory compliance process is completed, a non-infrastructure program must start mid-way through the year, or that construction has to be done during the school year instead of during the summer when traffic is lighter. In the ideal circumstance, a state would assess the average time from award to implementation for both infrastructure and non-infrastructure awards, and set application and award deadlines that allow projects to begin with a new school year.

- **Use mini-grants or planning awards.** A number of states have adopted a mini-grant or planning award model, to help the often small and resource-strapped schools and



organizations receive funding in small increments to develop a more comprehensive SRTS approach—and lay the groundwork for a future, larger infrastructure or non-infrastructure award. In Wisconsin, schools and communities can apply for planning assistance instead of an actual award, and a subcontractor for the state helps the community develop a SRTS plan. Since it is not an award, the school or community does not have to lay out any funds to participate,

alleviating issues with reimbursement. In Missouri, the SRTS office set up a “memo-project” contract with the Highway Safety office as the recipient. Non-infrastructure recipients can then receive up to \$3,000 in one-time simple and flexible mini-grants from the Highway Safety office with minimal administrative burden.

- **Ensure adequate staffing within the state DOT contracting department.** Because the SRTS awards are small, dozens of new recipients are often approved for each award cycle. Each recipient requires a contract or project agreement. Some states have struggled with staff shortages in the contracting office, delaying SRTS project implementation, often by many months. Ensuring that the state DOT has adequate staff assigned to the DOT makes a difference.
- **Develop a checklist for recipients of the various steps in the implementation process.** It would be helpful for each SRTS award recipient to have a list of each required form, who to contact to follow up on each step in the approval process, and the anticipated length of time

for each step. Over one-third (37.5%) of the respondents to the working group's survey of SRTS recipients said that they did not receive clear instructions or a checklist of next steps from the state DOT after notification of the award.

- **Ensure that there are separate application and compliance forms for non-infrastructure and infrastructure awards.** At least a handful of states have a uniform process for non-infrastructure and infrastructure application requests and regulatory compliance—which means that, for example, an education or encouragement project may be required to fill out forms concerning construction. This can lead to confusion and additional delay. States should develop separate forms for non-infrastructure projects which are geared toward typical non-infrastructure activities.
- **Hire contractors to perform work instead of making direct awards.** Some states have found success with hiring a contractor or contractors to carry out the implementation of infrastructure and non-infrastructure projects. These contractors are then responsible for handling Title 23 compliance. In addition, the contractor absorbs the costs of carrying out the projects, alleviating issues with reimbursement to dozens of local recipients. Delaware hired several state contractors to do the design and build for their infrastructure recipients. The awards were announced in May 2008—and within four months, one project was already completed and the rest were under construction. Since the contractor was already familiar with federal regulations and compliance and could do compliance forms and approvals on several projects at one time, it significantly expedited the implementation process. DC and Massachusetts have a similar arrangement with contractors, and infrastructure projects are also moving quickly in those states. While this approach has proven effective in several states, it has not yet been tested in a high-population or geographically-spread-out state.
- **Bundle SRTS projects as one line for the STIP and TIP** (state and regional plans for transportation projects). States and localities are required to develop long-range transportation plans, and it can often be a time-consuming process to amend the STIP or TIP to add a specific transportation project. However, only “regionally significant” projects must be listed individually in STIPs and TIPs. Since the large majority of SRTS projects are small in scope, they do not meet the test of “regionally significant” and do not have to be listed individually. Numerous states have created a bulk line-item for SRTS projects within the STIP and TIPs, which saves individual recipients from having to navigate the process of having each individual project added to the STIP and TIP. This should be done in all states.
- **Utilize the “undocumented categorical exclusion” for bicycle and pedestrian projects for the NEPA environmental review process.** Current federal regulations for the NEPA environmental review process set out a process for “categorical exclusions” for projects that do not involve significant environmental impacts. Per 23 CFR 771.177(c), the regulations list twenty types of activities that do not normally require NEPA documentation or FHWA approval. Included in the list are two items relevant to SRTS: 1) Activities that do not involve or lead directly to construction, which would include SRTS non-infrastructure activities; and 2)

Construction of bicycle and pedestrian lanes, paths, and facilities, which would include SRTS infrastructure improvements. Projects listed as categorical exclusions do not have to go through the NEPA process unless a special circumstance is involved meriting further review. These projects are commonly identified as “undocumented categorical exclusions.” Other projects may qualify for a “documented categorical exclusion” by filling out additional paperwork and consulting with state agencies.

While FHWA guidance on SRTS does say that SRTS projects, “except in unusual circumstances,” fall under the categorical exclusion for NEPA, it does not explicitly instruct states that these should be “undocumented categorical exclusions.” As a result, some states are requiring recipients to prove that they qualify for a categorical exclusion by completing a multi-page form with sign-offs from numerous state agencies to document the project qualifies for the exclusion. Other states, including Maryland, do not use the categorical exclusion and require projects to go through at least a minimal environmental review. These approaches add to the paperwork burden on recipients and are contrary to the federal intent of NEPA. In the simplest approach, some states—including Oklahoma—have secured the sign-off from the FHWA division administrator waiving environmental review for non-infrastructure projects as a group without any additional paperwork requirements for individual recipients.

- **Provide additional technical assistance to SRTS recipients.** One option for states is to develop a cadre of consultants or DOT staff that can serve as a resource for non-traditional recipients like schools or non-profit organizations to help them understand and navigate the regulatory and approval process. In one example, the state of Vermont has engineering firms on retainer to provide engineering services and administration for communities that receive SRTS funding. Communities have the choice of procuring a consultant on their own or to use one of the state’s consultants.

Recommendations for Legislative and Administrative Solutions

During the working group’s discussions and research, a number of options were discussed on how to make SRTS project delivery more efficient. This is clearly a sensitive area as federal regulations were developed over the years to ensure that labor and environmental protections are in place. These protections are important to the Safe Routes to School National Partnership.

Solving this complex problem requires that Congress and FHWA examine the implementation of SRTS. As the current surface transportation bill expires in September 2009, Congress will be revisiting the federal Safe Routes to School program and a host of other transportation programs. This provides an opportunity for Congress to give legislative guidance on how to protect the intent of the environmental and labor regulations while adapting them for smaller-scale projects.

If Congress includes additional language on this issue in the next authorization of SRTS, it can help ensure that the SRTS guidance developed by FHWA is re-examined with a focus on efficient project delivery and for consistency with other bicycle/pedestrian programs such as Transportation Enhancements and the 402 Safety funds. It also sends a signal to state DOTs and FHWA that it is important to utilize existing best practices and accommodations to make SRTS implementation more cost-effective and timely, while also protecting environment and labor.

FHWA also has an important role to play in working together with the state DOTs to develop a simplified and expedited regulatory process that is more appropriate for smaller-scale projects like SRTS—and to ensure that state SRTS coordinators have the necessary training and support to implement the program.



A menu of options for Congress and FHWA are presented below that could prove helpful in addressing the implementation challenges associated with Title 23; however, selecting the appropriate options will require conversations with key members of Congress and input from SRTS advocates and the labor and environmental communities to ensure that the intent of the federal regulations are being respected and simply adapted for smaller-scale projects.

Legislative Solutions

Congress can provide important direction for the administration of SRTS by making a few changes to the existing legislative language, such as:

- **Make the legislative language governing SRTS more consistent with other bicycle/pedestrian programs.** Section 1404 (i) and (j) of SAFETEA-LU state that SRTS funds and projects “shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.” As discussed in the “Applicability of Title 23 to SRTS” section on pages 9-11, while Transportation Enhancements and the Governor’s 402 safety funds are subject to title 23, the legislative language is not as specific as the SRTS language, allowing FHWA more flexibility in administration. This has led to inconsistencies in how these programs are administered. In addition, some state DOTs have shared that the more stringent language in SRTS sends the message that the program is to be administered with stricter attention to the regulatory requirements in Title 23.

By making the language in SRTS consistent with the language in the 402 safety funds or TE, Congress will make clear that SRTS is to be treated similarly to other bicycle and pedestrian programs. This change will also rely on existing precedent within other transportation programs and legislative language, giving more flexibility to FHWA and State DOTs in administering the program.

- **Add in a separate obligation authority for SRTS funds.** While not specifically a part of the implementation process, a number of SRTS supporters have identified the lack of an obligation authority as a barrier to distribution of funds. A state’s highway funding is subject to an obligation limit set by the federal government—meaning that the state DOT cannot obligate the full share of funding. As SRTS does not have its own obligation authority, some state DOTs may “under-obligate” SRTS in order to provide a higher obligation level and additional funding for road projects or other authorities. This means that even when a state DOT appears to have funding for SRTS remaining, the coordinator may not be able to proceed with another application cycle. If an obligation authority specific to SRTS were provided, it would ensure that the funding Congress provides for SRTS will be used fully for the intended purpose.
- **Require FHWA to issue new guidance for SRTS in collaboration with state DOTs.** As state DOTs and FHWA have several years of experience implementing SRTS, it is now more clear what procedures and processes could be put into place to make SRTS implementation more efficient. We commend FHWA for moving so quickly to develop the program guidance after the legislation was adopted; however, existing guidance for SRTS was created on January 3, 2006 and has only undergone minor revisions since that time. Congress could require FHWA and the state DOTs to work together to develop revised guidance that encourages the use of the programmatic categorical exclusion, expedited procurement techniques and best practices that facilitate project delivery. As SRTS projects are small, low-impact, and constructed within the existing built environment, many existing procedures for improving project delivery are already established but not consistently being used for administering SRTS project. This would make it clear that the Congressional intent is to improve the efficiency of project delivery without sacrificing environment and labor provisions. By engaging the state DOTs and FHWA, it would hopefully result in improved guidance with greater flexibility and best practice options for state DOTs.
- **Exclude projects of a certain scope or size from these regulations.** Title 23 was originally created to govern multi-million dollar complex highway projects, and so the processes are more complex than what may make sense for smaller, simpler SRTS projects. One possible solution would be to exempt all non-infrastructure projects as they do not involve construction, and infrastructure projects such as purchase of mobile speed trailers that do not involve or lead to construction. Title 23 is focused on construction projects and much of the bidding, labor and environmental provisions do not generally make sense when applied to education, encouragement, and enforcement projects—which are sometimes very small awards of just a few thousand dollars.

Another option would be to exclude infrastructure projects of a certain award size or impact level from Title 23. For infrastructure projects, an appropriate dollar threshold or a definition of “low-impact” (such as building within the existing right-of-way) would need to be established for the infrastructure exemption. For example, infrastructure projects under \$50,000, indexed for inflation, could be exempted as the purpose of SRTS projects are to get

families and children out of cars and into healthy, green habits. The requirements for contracting, bidding, and approvals can nearly double the cost of these small infrastructure projects. In addition, programs like Community Development Block Grants through Housing and Urban Development (HUD) provide funds for installation of sidewalks with less paperwork and quicker project delivery. One potential negative to this recommendation is that setting a dollar threshold for title 23 compliance could create an abundance of states offering only small infrastructure awards which would not be large enough to carry out more comprehensive construction needed at most schools. We recommend further research into federal block grant programs to determine if there are viable models and programming methods for some or all SRTS funding.

Specific suggestions for legislative language tracking the solutions identified in this section are provided in Appendix 3, along with an explanation of proposed changes.

Administrative Solutions

The Safe Routes to School National Partnership applauds FHWA and State DOTs for embracing the start-up of the SRTS program. Now that the program is several years into implementation and past the initial learning process, some of the current implementation challenges can be addressed through changes that should be made by FHWA and the state DOTs. There are two primary roles that these federal and state agencies could play in improving the implementation timeframe and costs:

- 1. Issue new guidance on SRTS.** As discussed in the legislative solutions section above, FHWA and state DOTs could work together to develop new guidance for the administration of SRTS. Based on a dialogue between state DOTs and FHWA about state and federal regulatory processes, the guidance should ideally include several elements:
 - Incorporate the range of best practices that have been developed by many states during implementation thus far (see the “Best Practices as Short-Term Solutions” section on pages 13-16). However, it should be noted that not all best practices will be applicable in every state. The guidance should respect the fact that there is not a one-size-fits-all solution.
 - Provide recommendations on how to simplify implementation and ensure some level of consistency from state to state in the regulatory process, length of time for implementation, and cost of compliance—while allowing for variations among states based on geography, population, and special circumstances.
 - Clarify that SRTS projects should be treated as “undocumented categorical exclusions” for NEPA unless special circumstances exist.
 - Address any new issues raised by Congress during reauthorization, such as revisions to the legislative language governing SRTS.
 - Where possible, adopt best practices from other programs or agencies with more efficient project delivery. As one example, the Community Development Block Award program through Housing and Urban Development (HUD) provides funding for installation of sidewalks and other community development projects. Experiences with this program involved much less paperwork and allowed for quicker construction.

- Provide guidance on resolving overlap between state and federal regulations. For example, California requires environmental review at the state level and recipients have to comply both with NEPA and the state environmental process (CEQA). FHWA could provide guidance on resolving overlaps.
- Set goals for implementation timelines and overhead costs for state DOTs when implementing SRTS.
- Ensure that all FHWA division administrators have similar interpretations of the SRTS guidance and provide consistent guidance from state to state as issues arise.

2. Provide training and technical assistance for SRTS coordinators based on the new guidance.

FHWA already contracts with the National Center for Safe Routes to School to provide training and technical assistance to state SRTS coordinators and local SRTS recipients. State SRTS coordinators have a list-serv to facilitate communication with each other and participate in regular conference calls. However, there is more that could be done, including:

- Develop a required training module for new and existing SRTS coordinators specifically on regulatory compliance and SRTS implementation. Several state SRTS coordinators turn over each year, and there is currently no introductory training module or manual to help these coordinators learn more about effective implementation of SRTS. In addition, many existing SRTS coordinators are struggling with the regulatory compliance issues unique to SRTS. New training and ongoing technical assistance—including on specific techniques for improving project delivery such as utilizing the “undocumented categorical exclusion” process—could help ensure consistency of implementation among states, and within a state when personnel changes occur.
- Develop a series of tools and resources specifically targeted to SRTS coordinators on important best practices topics for implementation of SRTS programs. While there are learning opportunities on the coordinator conference calls and discussions over the list-serv, it would be beneficial to capture that critical information into best practices documents available to all coordinators over time. This will help state SRTS coordinators learn from each other, and ensure that information is collected and disseminated in a thoughtful way.

While there is no guarantee that every state DOT will administer its SRTS program as instructed in the FHWA guidance and take advantage of all opportunities to improve project delivery, it is still important to ensure that the guidance and legislation provide the best available and most current information on how to ensure that SRTS projects are implemented in a timely and cost-effective manner. Having consistent and up-to-date guidance provides a common understanding for the FHWA division administrators that often provide rulings and input to state SRTS coordinators on implementation and administration issues. It also provides shared expectations for local and state SRTS advocates as to what to anticipate from SRTS funding in their communities and states. Finally, it sends a clear message from Congress and FHWA that it is important that SRTS projects do not need to be overly burdensome.

Conclusions

Clearly, regulatory compliance is a complex issue that affects a wide range of transportation programs beyond just the federal Safe Routes to School program. However, Congress clearly intended SRTS to engage schools, local governments, and non-profits in smaller-scale projects to improve the infrastructure and environment around schools for children walking and bicycling, so that this may improve safety, increase walking and bicycling, and improve public health. To make SRTS awards more feasible for all applicants, we recommend that changes be made in how many states administer the program and in the overall federal legislative language governing SRTS.

While SRTS infrastructure projects wait to pass regulatory processes and be constructed, many children—especially those in low-income urban areas—continue to walk and bicycle to school in unsafe conditions. Other children who live within a short distance of their school may be prohibited from walking or bicycling due to traffic and safety concerns, increasing school bus transportation costs for the school district and traffic in the community. And, while both infrastructure and non-infrastructure projects are delayed, children continue their habits of physical inactivity, potentially putting them on a path towards overweight and obesity.



The Safe Routes to School National Partnership has issued a [series of recommendations](#) for the reauthorization of the federal Safe Routes to School program, and making project delivery more efficient and cost-effective by addressing the federal regulations is a key focus. The Partnership will be working with members of Congress and the SRTS community to address regulatory issues in the next transportation bill. Thank you for your careful consideration of this important issue.

For more information, questions, or to discuss solutions, please contact Margo Pedroso, Policy Manager, Safe Routes to School National Partnership at margo@saferoutespartnership.org or (301) 292-1043.

Appendix 1: Members of the Working Group on Implementation and Interview Participants

Members of the Working Group on Implementation

- Elaine Clegg, Special Projects Manager, Idaho Smart Growth and Boise City Councilmember and Idaho SRTS Advisory Committee member; Boise, ID
- John Corrigan, Safe Routes to School Coordinator, New Hampshire Department of Transportation; Concord, NH
- Ted Curtis, Non-Motorized Transportation Pilot Program Manager, Columbia Public Works Department; Columbia, MO
- Mary Ebeling, Non-Motorized Transportation Pilot Program Manager, Sheboygan County Planning and Resources; Sheboygan, WI
- Mary Grill, Safe Routes to School Contract Manager, Michigan Fitness Foundation; Lansing, MI
- Cynthia Hoyle, AICP, Transportation Planning Consultant, Champaign-Urbana Mass Transit District; Urbana, IL
- Deb Hubsmith, Director, Safe Routes to School National Partnership; Fairfax, CA
- Joan Pasiuk, Bicycling and Walking Program Director, Transit for Livable Communities; Minneapolis, Minnesota
- Margo Pedroso, Policy Manager, Safe Routes to School National Partnership; Washington, DC
- Joe Pelaia, Safe Routes to School Coordinator, Maryland Highway Safety Office; Hanover, MD
- Ian Thomas, Executive Director, PedNet Coalition; Columbia, MO

Interview Participants

- Bryan Armstrong, Interim Safe Routes to School Coordinator, Michigan Department of Transportation; Lansing, MI
- Sarah Coakley, Safe Routes to School Coordinator, Delaware Department of Transportation; Dover, DE
- James Cope, Manager of Planning Programs, Massachusetts Executive Office of Transportation; Boston, MA
- John Corrigan, Safe Routes to School Coordinator, New Hampshire Department of Transportation; Concord, NH
- Becky Crowe, SRTS Program Manager, Federal Highway Administration; Washington, DC
- Dan Dawson, Non-Motorized Transportation Pilot Program Coordinator, Marin County Department of Public Works; San Rafael, CA
- Christopher Douwes, Trails and Enhancements Program Manager, Federal Highway Administration; Washington, DC
- Jennifer Hefferan, Safe Routes to School DC Coordinator, DC Department of Transportation; Washington, DC
- Ernestine Mbroh, Director of Safe Routes to School, Oklahoma Department of Transportation; Oklahoma City, OK
- Joe Pelaia, Safe Routes to School Coordinator, Maryland Highway Safety Office; Hanover, MD
- Craig Tackabery, Assistant Director of Public Works, Marin County Department of Public Works; San Rafael, CA

Appendix 2: Safe Routes to School Law

Excerpted from P.L. 109-59 – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)

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):

(17) SAFE ROUTES TO SCHOOL PROGRAM- For the safe routes to school program under section 1404 of this Act--

- (A) \$54,000,000 for fiscal year 2005;
- (B) \$100,000,000 for fiscal year 2006;
- (C) \$125,000,000 for fiscal year 2007;
- (D) \$150,000,000 for fiscal year 2008; and
- (E) \$183,000,000 for fiscal year 2009.

SEC. 1404. SAFE ROUTES TO SCHOOL PROGRAM.

(a) Establishment- Subject to the requirements of this section, the Secretary shall establish and carry out a safe routes to school program for the benefit of children in primary and middle schools.

(b) Purposes- The purposes of the program shall be--

- (1) to enable and encourage children, including those with disabilities, to walk and bicycle to school;
- (2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and
- (3) to facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

(c) Apportionment of Funds-

(1) IN GENERAL- Subject to paragraphs (2), (3), and (4), amounts made available to carry out this section for a fiscal year shall be apportioned among the States in the ratio that--

- (A) the total student enrollment in primary and middle schools in each State; bears to
- (B) the total student enrollment in primary and middle schools in all States.

(2) MINIMUM APPORTIONMENT- No State shall receive an apportionment under this section for a fiscal year of less than \$1,000,000.

(3) SET-ASIDE FOR ADMINISTRATIVE EXPENSES- Before apportioning under this subsection amounts made available to carry out this section for a fiscal year, the Secretary shall set aside not more than \$3,000,000 of such amounts for the administrative expenses of the Secretary in carrying out this subsection.

(4) DETERMINATION OF STUDENT ENROLLMENTS- Determinations under this subsection concerning student enrollments shall be made by the Secretary.

(d) Administration of Amounts- Amounts apportioned to a State under this section shall be administered by the State's department of transportation.

(e) Eligible Recipients- Amounts apportioned to a State under this section shall be used by the State to provide financial assistance to State, local, and regional agencies, including nonprofit organizations, that demonstrate an ability to meet the requirements of this section.

(f) Eligible Projects and Activities-

(1) INFRASTRUCTURE-RELATED PROJECTS-

(A) IN GENERAL- Amounts apportioned to a State under this section may be used for the planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.

(B) LOCATION OF PROJECTS- Infrastructure-related projects under subparagraph (A) may be carried out on any public road or any bicycle or pedestrian pathway or trail in the vicinity of schools.

(2) NONINFRASTRUCTURE-RELATED ACTIVITIES-

(A) IN GENERAL- In addition to projects described in paragraph (1), amounts apportioned to a State under this section may be used for noninfrastructure-related activities to encourage walking and bicycling to school, including public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and managers of safe routes to school programs.

(B) ALLOCATION- Not less than 10 percent and not more than 30 percent of the amount apportioned to a State under this section for a fiscal year shall be used for noninfrastructure-related activities under this subparagraph.

(3) SAFE ROUTES TO SCHOOL COORDINATOR- Each State receiving an apportionment under this section for a fiscal year shall use a sufficient amount of the apportionment to fund a full-time position of coordinator of the State's safe routes to school program.

(g) Clearinghouse-

(1) IN GENERAL- The Secretary shall make grants to a national nonprofit organization engaged in promoting safe routes to schools to--

(A) operate a national safe routes to school clearinghouse;

(B) develop information and educational programs on safe routes to school; and

(C) provide technical assistance and disseminate techniques and strategies used for successful safe routes to school programs.

(2) FUNDING- The Secretary shall carry out this subsection using amounts set aside for administrative expenses under subsection (c)(3).

(h) Task Force-

(1) IN GENERAL- The Secretary shall establish a national safe routes to school task force composed of leaders in health, transportation, and education, including representatives of appropriate Federal agencies, to study and develop a strategy for advancing safe routes to school programs nationwide.

(2) REPORT- Not later than March 31, 2006, the Secretary shall submit to Congress a report containing the results of the study conducted, and a description of the strategy developed, under paragraph (1) and information regarding the use of funds for infrastructure-related and noninfrastructure-related activities under paragraphs (1) and (2) of subsection (f).

(3) FUNDING- The Secretary shall carry out this subsection using amounts set aside for administrative expenses under subsection (c)(3).

(i) Applicability of Title 23- Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project or activity under this section shall be 100 percent.

(j) Treatment of Projects- Notwithstanding any other provision of law, projects assisted under this subsection shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.

(k) Definitions- In this section, the following definitions apply:

(1) IN THE VICINITY OF SCHOOLS- The term `in the vicinity of schools' means, with respect to a school, the area within bicycling and walking distance of the school (approximately 2 miles).

(2) PRIMARY AND MIDDLE SCHOOLS- The term `primary and middle schools' means schools providing education from kindergarten through eighth grade.

Appendix 3: Proposed Legislative Changes

<p>P.L. 109-59 – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)</p>	
<p style="text-align: center;">Excerpts pertaining to Safe Routes to School Title 23 Applicability</p> <p>Black text is existing statute; red text is suggested additions</p> <p>(i) Applicability of Title 23- Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code except to the extent that the Secretary determines that any requirement of such title (other than section 113) is not consistent with the objectives of this section, and except that</p> <p style="padding-left: 40px;">(1) AVAILABILITY OF FUNDS-Such funds shall not be transferable and shall remain available for obligation for four years. If a state allows funds to expire, the Secretary shall redistribute expired funds to states that obligated available funds within two years; until expended;</p> <p style="padding-left: 40px;">(2) OBLIGATION AUTHORITY-the obligation authority for such funds shall be 100 percent; and</p> <p style="padding-left: 40px;">(3) FEDERAL SHARE-the Federal share of the cost of a project or activity under this section shall be 100 percent—</p> <p style="padding-left: 80px;">(A) States and eligible recipients may elect to contribute other funds to a safe routes to school project; and</p> <p style="padding-left: 80px;">(B) If a State elects to consider supplemental funds as part of an eligible recipient’s application, the State must ensure that disadvantaged schools and schools in</p>	<p style="text-align: center;">Rationale for changes</p> <p>Subjects SRTS grants to title 23 regulations, but gives the Secretary the flexibility to make changes where necessary. Davis-Bacon (section 113) cannot be waived. This language is consistent with other transportation programs like TIFIA, state infrastructure banks, section 402 highway safety funds. This does not mean that title 23 regs will not be applied, it just gives FHWA more flexibility in issuing guidance that relieves some regulatory burden.</p> <p>Adds a four-year expiration on SRTS funds, and instructs the Secretary to redistribute to states that obligate funds expeditiously. With no expiration date currently, states have no incentive to spend funds in a timely manner.</p> <p>Adds an obligation authority for SRTS funds. This is one of the most common difficulties SRTS coordinators face—they are often hamstrung in awarding funds as the SRTS funds get obligated at lower rates to allow a state DOT to obligate other projects at higher rates.</p> <p>Clarifies that states and grantees may provide additional funds to an SRTS project even if the federal share is 100%, but that states must make sure consideration of any matching funds does not disadvantage low-income and high-need schools. Some states are preventing local applicants from contributing to overall project cost, limiting projects.</p>

areas with higher risks of death and injury to child pedestrians and cyclists are not at a competitive disadvantage in the selection process.

(j) Treatment of Projects-

(1) NON-INFRASTRUCTURE PROJECTS-Non-infrastructure projects and infrastructure projects that do not involve or lead directly to construction assisted under this subsection shall not be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code;

(2) INFRASTRUCTURE PROJECTS—The Secretary is hereby directed within a year to develop regulations and/or guidance for federal-aid projects under this section that encourages the use of the programmatic categorical exclusion, expedited procurement techniques, and other best practices to facilitate productive and timely expenditure for projects that are small, low impact, and constructed within an existing built environment; and

(3) STATE PROCESSES-The Secretary shall work with state departments of transportation to ensure that the new guidance and/or regulations are being implemented by states and FHWA staff consistently to avoid unnecessary delays in implementing projects and ensuring effective use of federal dollars.

~~Notwithstanding any other provision of law, projects assisted under this subsection shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.~~

Exempts non-infrastructure projects from title 23 regulations, which are written to govern construction projects. Also exempts those few infrastructure projects that do not involve construction, e.g. mobile speed trailers are considered infrastructure, but do not involve any construction/installation.

Requires the Secretary to examine the regulatory burden on SRTS projects and issue new guidance or regulations that eases burden.

Requires the Secretary to work with state DOTs to examine their own regulatory burden due to state processes and make sure they are doing what they can to improve project delivery time and effective use of federal dollars.

Strikes the existing stricter language on title 23 and replaces with new (j) (1)-(3).