



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: **ACTION:** The Territorial Highway Program – Implementation Guidance as Revised by the Bipartisan Infrastructure Law

Date: March 8, 2024

From: Hari Kalla **HARI KALLA** Digitally signed by HARI KALLA
Date: 2024.03.08 09:11:53
+0500
Associate Administrator for
Infrastructure

In Reply Refer To:
HISM-40

To: Director of Field Service, South
Director of Field Services, West
Puerto Rico Deputy Division Administrator
Florida Division Administrator
Hawaii Division Administrator

On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the "Bipartisan Infrastructure Law") (BIL) into law. Section 11126 of BIL amended the Territorial Highway Program (THP), codified at 23 U.S.C. 165(c). The attached Territorial Highway Program (THP) Implementation Guidance provides information on funding, eligible activities, and requirements of the THP.

THP requirements within the BIL took effect on October 1, 2021, and apply to all related funding obligated on or after that date, whether funded from new THP authorizations or THP funds authorized in previous years. The attached guidance supersedes the "Territorial Highway Program Implementation Guidance as Revised by the FAST Act" dated February 25, 2016.

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

This document will be accessible on the FHWA Bipartisan Infrastructure Law Website (<https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>) and through the Federal Highway Administration's Policy and Guidance Center (<https://www.fhwa.dot.gov/pgc/>).

For questions about the THP, please contact Mr. Omar Elkassed (213) 894-6718 or Omar.Elkassed@dot.gov of the Office of Stewardship, Oversight, and Program Management.

Attachment

**Territorial Highway Program (THP) Implementation Guidance
(March 8, 2024)**

TABLE OF CONTENTS

- A. PROGRAM PURPOSE**
- B. GOVERNING AUTHORITIES**
- C. FUNDING**
- D. DEFINITION**
- E. ELIGIBILITY**
- F. APPLICABLE FEDERAL-AID REQUIREMENTS**
- G. TECHNICAL ASSISTANCE**
- H. TRANSFERS**
- I. TERRITORIAL HIGHWAY PROGRAM AGREEMENT**

A. PROGRAM PURPOSE

The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law” (BIL)) continues to allocate funds to assist the governments of the U.S. territories (defined at 23 U.S.C. 165(c)(1) as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands) in constructing and improving a system of arterial and collector highways and necessary inter-island connectors (23 U.S.C. 165(c)(2)(A)).

B. GOVERNING AUTHORITIES

1. Section 11101(a)(4) of the of the Bipartisan Infrastructure Bill (BIL) authorizes Highway Trust Fund (HTF) contract authority (CA) for the Territorial Highway Program (THP).
2. Section 165 of title 23, U.S.C., as amended by BIL section 11126, provides program requirements for the THP.

C. FUNDING

1. **Authorization Levels:** Authorized annual THP funding under the BIL is codified at 23 U.S.C. 165(a)(2):

Authorized Annual THP Funding	
Fiscal Year (FY)	BIL THP Highway Trust Fund (HTF) Contract Authority (CA)
2022	\$45,990,000
2023	\$47,040,000
2024	\$47,880,000
2025	\$48,825,000
2026	\$49,770,000

The Fiscal Management Information System (FMIS) Program Code for these BIL THP funds is:

Program Code	Program Description	Title 23 or BIL Reference
YT10	Territorial Highway Program	23 U.S.C. 165(a)(2)

2. **Funds Distribution:** The Federal Highway Administrator has been delegated the authority to carry out the THP (*see* 49 CFR 1.85(a)(1)), and has administratively set the following funding distribution formula for the territories identified in 23 U.S.C. 165(c)(1):

a. American Samoa	10 percent
b. Commonwealth of the Northern Mariana Islands	10 percent
c. Guam	40 percent
d. U.S. Virgin Islands	40 percent

3. **Period of Availability:** THP funds are contract authority and are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized (23 U.S.C. 118(b)). Thus, funds are available for obligation for 4 fiscal years.

THP funds made available under previous authorizations continue to be available for their original period of availability, but new obligations must follow the requirements and eligibilities of 23 U.S.C. 165, as amended by the BIL (*see* BIL, § 10003).

4. **Obligation Limitation:** The amount of CA authorized for the THP (*see* table in section C.1. above) is subject to annual obligation limitation (Ob Lim) imposed on the Federal-aid highway program.

Each fiscal year, the amount of CA authorized for the THP will be reduced (known as “lop-off”) according to section 11102(f) of the BIL or the corresponding provision in the annual Department of Transportation (DOT) appropriations act.¹ Any authorized funds that exceed the amount of obligation limitation provided for will be deducted from the THP and distributed to the States, for use on projects eligible under the Surface Transportation Block Grant Program (STBG). When THP funds are allocated after being reduced through the “lop-off” process, they are accompanied by an equal amount of non-formula Ob Lim. When THP funds are obligated, an equal amount of Ob Lim is used.

THP obligation authority is also subject to August redistribution of Ob Lim per section 11102(d) of the BIL or the corresponding provision in the annual appropriations act. THP funds and related Ob Lim that will not be obligated by the end of the fiscal year will be withdrawn after August 1, and the Ob Lim will be redistributed among the States as

¹ For an example of an obligation limitation provision in an annual DOT appropriations act, see the Consolidated Appropriations Act, 2023 (Public Law 117-328), division L, title I, section 120(e). The obligation limitation provisions in an annual DOT appropriations act enacted after BIL supersede the obligation limitation provisions in BIL.

formula Ob Lim. Carryover THP funds and an equal amount of new Ob Lim will be returned to the territories in the following fiscal year if the funds have not lapsed.

5. **Federal share:** As provided in 23 U.S.C. 120(g), the Federal share for THP funds is 100 percent.

D. DEFINITION

Territorial Highway System: A system of arterial and collector highways, and necessary inter-island connectors, that is designated by the Governor or chief executive officer of a territory and is approved by the Secretary of Transportation (*see* 23 U.S.C. 165(c)(2)(A)).

E. ELIGIBILITY

1. **Eligible Projects:** Funds from the THP may be used for the following project types identified in 23 U.S.C. 165(c)(6)(A):
 - a. Projects eligible for the Surface Transportation Block Grant Program under 23 U.S.C. 133(b) (see [Implementation Guidance for the Surface Transportation Block Grant Program \(STBG\) as Revised by the Bipartisan Infrastructure Law](#));
 - b. Cost-effective, preventive maintenance consistent with 23 U.S.C. 116(e);
 - c. Ferry boats, terminal facilities, and approaches in accordance with 23 U.S.C. 129(b) and 129(c);
 - d. Engineering and economic surveys and investigations for the planning and the financing of future highway programs;
 - e. Studies of the economy, safety, and convenience of highway use;
 - f. Regulation and equitable taxation of highway use; and
 - g. Research and development as is necessary in connection with the planning, design, and maintenance of the highway system.
2. **Ineligible Projects:** Funds from the THP cannot be used for routine maintenance (23 U.S.C. 165(c)(6)(B)).
3. **Location of Projects:** THP projects may not be located on local roads except for projects identified in 23 U.S.C. 165(c)(7). Per that provision, only the following types of THP-funded projects may be carried out on local roads:
 - a. A bridge or tunnel project (other than the construction of a new bridge or tunnel at a new location);
 - b. Highway and transit safety infrastructure improvements and programs, including projects eligible under 23 U.S.C 130 and installation of safety barriers and nets on bridges;
 - c. Fringe and corridor parking facilities and programs in accordance with 23 U.S.C. 137 and carpool projects in accordance with 23 U.S.C 146.
 - d. Recreational trails projects eligible for funding under 23 U.S.C. 206 including the maintenance and restoration of existing recreational trails, pedestrian and bicycle projects in accordance with 23 U.S.C. 217 (including modifications to comply with

- accessibility requirements under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)), and the safe routes to school program under 23 U.S.C. 208;
- e. Planning, design, or construction of boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways;
 - f. Development and implementation of an asset management plan and a performance-based management program for other public roads;
 - g. Protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) for bridges (including approaches to bridges and other elevated structures) and tunnels on public roads, and inspection and evaluation of bridges and tunnels and other highway assets;
 - h. Surface transportation planning programs, highway and transit research and development and technology transfer programs, and workforce development, training, and education under chapter 5 of title 23, United States Code;
 - i. Surface transportation infrastructure modifications to facilitate direct intermodal interchange, transfer, and access into and out of a port terminal;
 - j. Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs;
 - k. Projects and strategies designed to reduce the number of wildlife-vehicle collisions, including project-related planning, design, construction, monitoring, and preventative maintenance;
 - l. The installation of electric vehicle charging infrastructure and vehicle-to-grid infrastructure;
 - m. Rural barge landing, dock, and waterfront infrastructure projects in accordance with 23 U.S.C. 133(j);
 - n. For transportation alternatives projects described in 23 U.S.C. 101(a)(29), as in effect before enactment of the FAST Act, i.e., before December 4, 2015 (former Transportation Alternatives projects); and
 - o. As approved by the Secretary of Transportation.

F. APPLICABLE FEDERAL-AID REQUIREMENTS:

1. In accordance with 23 U.S.C. 165(c)(4), the THP is subject to all provisions of chapter 1 of title 23, U.S.C., except for those provisions determined by FHWA to be inconsistent with the needs of the territories and the intent of 23 U.S.C. 165(c). The sections of chapter 1 of title 23, U.S.C., that are applicable to each territory and the extent of the applicability of those sections are described in the territory-specific program agreement (23 U.S.C. 165(c)(4), 165(c)(5)(A)(i)). The following sections have been determined by FHWA to be inconsistent with the needs of all territories and the intent of this program. These sections will be included in each territory agreement as described in paragraph I below and will not be applicable to the THP:
 - a. Section 103 – National Highway System
 - b. Section 107 – Acquisition of rights-of-way–Interstate System
 - c. Section 111 – Agreements relating to use of and access to rights-of-way–Interstate System
 - d. Section 119 – National highway performance program
 - e. Section 126 – Transferability of Federal-aid highway funds

- f. Section 127 – Vehicle weight limitations – Interstate System
- g. Section 130 – Railway-highway crossings
- h. Section 131 – Control of outdoor advertising
- i. Section 134 – Metropolitan transportation planning
- j. Section 136 – Control of junkyards
- k. Section 137 – Fringe and corridor parking facilities
- l. Section 141 – Enforcement of requirements
- m. Section 143 – Highway use tax evasion projects
- n. Section 148 – Highway safety improvement program
- o. Section 149 – Congestion mitigation and air quality improvement program
- p. Section 150 – National goals and performance management measurement
- q. Section 152 – Hazard elimination program
- r. Section 153 – Use of safety belts and motorcycle helmets
- s. Section 154 – Open container requirements
- t. Section 158 – National minimum drinking age
- u. Section 159 – Revocation or suspension of drivers' licenses of individuals convicted of drug offenses
- v. Section 161 – Operation of motor vehicles by intoxicated minors
- w. Section 162 – National scenic byways program
- x. Section 163 – Safety incentives to prevent operation of motor vehicles by intoxicated persons
- y. Section 164 – Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence
- z. Section 166 – HOV facilities
- aa. Section 167 – National Highway Freight Program

G. TECHNICAL ASSISTANCE: Pursuant to 23 U.S.C. 165(c)(3), the FHWA division office or the Office of Federal Lands Highways may, upon request by a territory, provide technical assistance to enable the territories to engage in highway planning; to conduct environmental evaluations; to administer right-of-way acquisition and relocation assistance programs; and to design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

H. TRANSFERS: General guidance on fund transfers can be found in [FHWA Order 4551.1, Fund Transfers to Other Agencies and Among Title 23 Programs](#). Transfers of funds under the THP to another State, territory, FHWA, or another agency for administration should be coordinated with the Office of Stewardship, Oversight, & Program Management. Transfers to the Federal Transit Administration will be made under the provisions of 23 U.S.C. 104(f)(1).

I. TERRITORIAL HIGHWAY PROGRAM AGREEMENT: Each territory will enter into an agreement with the FHWA to govern the Federal-aid highway program in the territory (23 U.S.C. 165(c)(5)(A)). Existing agreements shall continue in force until replaced by a new agreement entered into in accordance with 23 U.S.C. 165(c)(5)(A) (23 U.S.C. 165(c)(5)(D)). Agreements are to be reevaluated and, as necessary, revised, a minimum of every 2 years from the date of last approval (23 U.S.C. 165(c)(5)(C)). Each agreement will require a territory to:

1. Implement a program consistent with applicable provisions of chapter 1 of title 23, U.S.C., including the identification of the sections of chapter 1 of title 23, U.S.C., that are applicable to the territory and the extent of the applicability of those sections (23 U.S.C. 165(c)(5)(A)(i));
2. Confirm that the territory will design and construct the Territorial Highway System consistent with standards appropriate for the territory and approved by FHWA (23 U.S.C. 165(c)(5)(A)(ii));
3. Agree to maintain all facilities constructed or operated under the THP to meet the needs of present and future traffic (23 U.S.C. 165(c)(5)(A)(iii));
4. Implement standards for traffic operations and uniform traffic control devices that are approved by FHWA (23 U.S.C. 165(c)(5)(A)(iv));
5. Include a listing of all sections of chapter 1 of title 23, U.S.C., that are applicable to the territory (23 U.S.C. 165(c)(4)(B));
6. Identify the kind of technical assistance to be provided to the territory (23 U.S.C. 165(c)(5)(B)(i));
7. Include the appropriate provisions for information sharing among the territories (23 U.S.C. 165(c)(5)(B)(ii));
8. Identify the oversight role and responsibilities of the territory and the division office (23 U.S.C. 165(c)(5)(B)(iii)); and
9. Attach a listing or map of the highways designated and approved as the Territorial Highway System (23 U.S.C. 165(c)(2)(A)).