



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** National Highway
Performance Program (NHPP)
Implementation Guidance as Revised by the
FAST Act

Date: March 9, 2016

From: /s/ Signed by Thomas D. Everett for
Walter C. Waidelich, Jr
Associate Administrator for Infrastructure

In Reply Refer To:
HIPA-10

To: Division Administrators
Directors of Field Services

On December 4, 2015, the President signed into law the Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94). The FAST Act amended the National Highway Performance Program (NHPP) in 23 U.S.C. 119. The attached NHPP Implementation Guidance provides information on funding, eligible activities, and requirements of the NHPP.

This memorandum supersedes the "NHPP Implementation Guidance" dated November 19, 2012.

The effective date of this FAST Act NHPP Implementation Guidance is October 1, 2015. The NHPP requirements in effect on October 1, 2015, will apply to all NHPP obligations on or after that date, whether funded from new NHPP authorizations or NHPP funds authorized in previous years.

This document will be accessible on the FAST Act Website (<http://www.fhwa.dot.gov/fastact/>) and through the Policy Guidance Center. (<https://www.fhwa.dot.gov/pgc/>)

If you have any questions, please contact Mr. David Bartz (512-536-5906) or Mr. Peter Kleskovic (202-366-4652) of the Office of Program Administration.

Attachment

National Highway Performance Program (NHPP) Implementation Guidance
March 9, 2016

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A. PROGRAM PURPOSE

The purposes of the National Highway Performance Program (NHPP) are:

1. To provide support for the condition and performance of the National Highway System (NHS);
2. To provide support for the construction of new facilities on the NHS; and
3. To ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in a State's asset management plan for the NHS.

B. GOVERNING AUTHORITIES

1. Section 1101 of the Fixing America's Surface Transportation Act (FAST Act) authorizes funds for the NHPP.
2. Section 1102 of the FAST Act provides obligation limitation and exceptions.
3. Section 1104 of the FAST Act updates apportionment instructions in 23 U.S.C. 104.
4. Section 1106 of the FAST Act amends the NHPP in 23 U.S.C. 119.
5. Section 1111 of the FAST Act amends 23 U.S.C. 144 for Bundling of Bridge Projects.
6. Section 1406 of the FAST Act amends the Performance Periods in 23 U.S.C. 119.
7. Section 1407 of the FAST Act amends 23 U.S.C. 119 to add an additional eligibility.
8. Section 1446 of the FAST Act amends 23 U.S.C. 119 for technical corrections.

C. FUNDING

1. **Authorization Levels:** Estimated annual NHPP funding under the FAST Act is:

Estimated Annual NHPP Funding	
FY 2016	\$22.323 B
FY 2017	\$22.819 B
FY 2018	\$23.244 B
FY 2019	\$23.723 B
FY 2020	\$24.217 B

The NHPP will be supplemented in FYs 2019 and 2020 by the following amounts:

Supplemental Funding under 23 U.S.C. 104(h)(1)	
FY 2019	\$53,596,122
FY 2020	\$66,717,816

The FAST Act distributes formula funds annually based on the amounts of formula funds each State received under MAP-21. The methodology for making the apportionments under 23 U.S.C. 104 is discussed in [FHWA Notice 4510.802](#).

From the State's NHPP apportionment, 2 percent is to be set aside for State Planning and Research (SPR). (23 U.S.C. 505, as amended by the FAST Act)

The FAST Act program codes for these NHPP funds are as follows:

Program Code	Program Description	Statutory Reference
Z001	National Highway Performance Program (NHPP)	Section 1101(a)(1)
Z002	National Highway Performance Program (NHPP) Exempt	Section 1102(b)(13)

2. **Period of Availability:** NHPP funds are contract authority. NHPP obligations are reimbursed from the Highway Account of the Highway Trust Fund. NHPP funds are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Thus funds are available for obligation for up to 4 years.

NHPP funds from previous authorizations continue to be available for their original period of availability, but are subject to 23 U.S.C. 119, as amended by the FAST Act.

3. **Obligation Limitation:** NHPP funds are subject to the annual obligation limitation imposed on the Federal-aid highway program except for \$639,000,000 in each of fiscal years 2016 through 2020 that are exempted by Section 1102(b)(13) of the FAST Act.
4. **Federal share:** The Federal share is governed by 23 U.S.C. 120, except as provided in 23 U.S.C. 119(e)(5). It is generally 80 percent. The Federal share for projects on the Interstate System is 90 percent unless the project adds lanes that are not high-occupancy-vehicle or auxiliary lanes. For projects that add single occupancy vehicle capacity, that portion of the project will revert to the 80 percent level. An upward sliding scale adjustment is available to States having public lands. (See <http://www.fhwa.dot.gov/legisregs/directives/notices/n4540-12.cfm>). States may choose a lower Federal share on Federal-aid projects as provided in 23 U.S.C. 120.

Certain types of improvements, predominantly safety improvements, listed in 23 U.S.C. 120(c)(1), may have a Federal share of 100 percent. Use of this provision is limited to 10 percent of the total funds apportioned to a State under 23 U.S.C. 104. See FHWA Memo, "Increased Federal Share under 23 U.S.C. 120(c)(1)," dated November 25, 2014 (<http://www.fhwa.dot.gov/federalaid/141125.cfm>).

23 U.S.C. 120(f) allows funds apportioned under 23 U.S.C. 104 to be used at 100 percent Federal share for Federal-aid highways within Indian reservations, national parks, and monuments.

The Federal share for workforce development, training, and education activities carried out with NHPP funds under 23 U.S.C. 504(e)(1)(A)-(F), is 100 percent. Under 23 U.S.C. 504(b)(3)(A)(ii), NHPP funds can be used as the non-Federal share to match the 50 percent Federal share for projects funded by the Local Technical Assistance Program.

The Federal share for projects that are located on toll roads and subject to the provisions of 23 U.S.C. 129 is limited to 80 percent.

Section 1435 of the FAST Act amended Section 1528 of MAP-21 concerning the Federal share for Appalachian Development Highway System (ADHS) projects as provided in 40 U.S.C. 14501. For FYs 2012 through 2050, the Federal share for local access roads and ADHS projects that contribute to the completion of the ADHS and are included in the latest approved Cost to Complete Estimate, may be up to 100 percent, as determined by the State. Work on completed segments of the ADHS or a section that was listed as ineligible in the latest approved Cost to Complete Estimate, could be eligible for NHPP or Surface Transportation Block Grant (STBG) funds, but only at a Federal share specified in 23 U.S.C. 120.

Projects incorporating Innovative Project Delivery as described in 23 U.S.C. 120(c)(3) may be increased by up to 5 percent of the total project cost not to exceed a 100 percent Federal share, subject to limitations in 23 U.S.C. 120(c)(3). (FAST Act §1408(a))

The Federal share for NHPP projects and activities is reduced to 65 percent for States that have not developed and implemented an asset management plan in the required time periods as provided in Section 119(e)(5). ([See Section E.2.](#) of this memorandum)

5. **Transferability of NHPP Funds:** 23 U.S.C. 126 (Transferability of Federal-aid Highway funds) provides for and has conditions on the transfer of funds apportioned under 23 U.S.C. 104(b). Transferred funds are to be obligated for the same purposes and to meet the same requirements of the category to which they were transferred. (See FHWA Order 4551.1, “Fund Transfers to Other Agencies and Among Title 23 Programs” dated August 12, 2013, <http://www.fhwa.dot.gov/legsregs/directives/orders/45511.cfm>).

The ability to transfer NHPP funds is restricted by 23 U.S.C. 119(f)(1), if:

- a. The State’s Interstate System condition (excluding bridges) falls below the minimum threshold established under 23 U.S.C. 150(c)(3); or

- b. More than 10 percent of the total deck area of bridges in the State on the NHS is located on bridges that have been classified as structurally deficient. ([See Section F.](#) of this memorandum).

D. ELIGIBILITY

1. **General:** NHPP funds may be obligated only for a project on an “eligible facility” that is a project, part of a program of projects, or an eligible activity supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, congestion reduction, system reliability, or freight movement on the NHS. Projects must be identified in the Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP) and be consistent with the Long-Range Statewide Transportation Plan and the Metropolitan Transportation Plan(s).

Under the NHPP, an “eligible facility” includes only those facilities located on the NHS, as defined in 23 U.S.C. 103, except as specified in the statute.

2. **Eligible Activities:** Subject to the general eligibility requirements described in Section D.1. of this memorandum, the following activities are listed as eligible in 23 U.S.C. 119(d):
 - a. Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the NHS. The terms “Construction” and “Operational improvement” are defined in 23 U.S.C. 101(a).
 - b. Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the NHS.
 - c. Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the NHS.
 - d. Inspection and evaluation, as described in 23 U.S.C. 144, of bridges and tunnels on the NHS, and inspection and evaluation of other highway infrastructure assets on the NHS. This includes, but is not limited to, signs, retaining walls, and drainage structures.
 - e. Training of bridge and tunnel inspectors, as described in 23 U.S.C. 144.
 - f. Construction, rehabilitation, or replacement of existing ferry boats and ferry boat facilities, including approaches that connect road segments of the NHS. Eligible ferry approaches are described in 23 U.S.C. 129(b). Eligible ferry boats and facilities are described in 23 U.S.C. 129(c).
 - g. Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the NHS, and construction of a transit project eligible for assistance under chapter 53 of Title 49, U.S.C., if:

- (i) The highway project or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway on the NHS;
 - (ii) The construction or improvements will reduce delays or produce travel time savings on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and
 - (iii) The construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway on the NHS.
- h. Bicycle transportation and pedestrian walkways in accordance with 23 U.S.C. 217. The project or activity must be associated with an NHS facility.
- i. Highway safety improvements on the NHS. The term "Safety improvement project" is defined in 23 U.S.C. 101(a).
- j. Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs. The project or activity must be associated with an NHS facility.
- k. 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.
- l. Infrastructure-based intelligent transportation systems capital improvements, including the installation of vehicle-to-infrastructure communication equipment. The project or activity must be associated with an NHS facility.
- m. Environmental restoration and pollution abatement in accordance with 23 U.S.C. 328. The project must be associated with an NHS facility.
- n. Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with 23 U.S.C. 329. The project or activity must be associated with an NHS facility.
- o. Environmental mitigation efforts related to projects funded under this section, as described in 23 U.S.C. 119(g). The project or activity must be associated with an NHS facility.
- p. Construction of publicly owned intracity or intercity bus terminals servicing the NHS.

The following activities are made eligible by other subsections of 23 U.S.C. 119, as amended by Section 1106 of the FAST Act:

- q. Upon request of a State and subject to the approval of the Secretary, if Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance is approved for an NHPP-eligible project, the State may use NHPP funds to pay the subsidy and administrative costs associated with providing Federal credit assistance for the project. (23 U.S.C. 119(h))
- r. Reconstruction, resurfacing, restoration, rehabilitation, or preservation of a bridge on a Federal-aid highway that is not on the NHS. To use this provision, States must

- ensure any obligations required under 119(f), NHS Bridge Condition requirements, are satisfied. The obligation requirements are discussed in Section F of this memorandum. (23 U.S.C. 119(i))
- s. A State may use funds apportioned under this section for projects intended to reduce the risk of failure of critical infrastructure in the State. In this subsection, the term “critical infrastructure” means those facilities the incapacity or failure of which would have a debilitating impact on national or regional economic security, national or regional energy security, national or regional public health or safety, or any combination of those matters. This eligibility is limited to facilities that are eligible under 23 U.S.C. 119(j).

The following activities were made eligible by other sections of 23 U.S.C.:

- t. Workforce development, training, and education activities under 23 U.S.C. 504(e).
- u. Preferential parking for carpools associated with an NHS facility, including the addition of electric vehicle charging stations or natural gas vehicle refueling stations, as provided for in 23 U.S.C. 137(f).

E. STATE PERFORMANCE MANAGEMENT

- 1. Performance Management:** The rulemaking mandated by 23 U.S.C. 150(c) will establish:

- a. Performance measures for Interstate and NHS pavement condition and NHS bridge condition;
- b. Minimum conditions for Interstate pavements; and
- c. Data elements necessary to collect and maintain standardized data to carry out a performance-based approach.

Under 23 U.S.C. 150(d), States will establish targets for these measures within 1 year of the effective date of the final rulemaking promulgated under 23 U.S.C. 150(c).

- a. States will report to USDOT on their progress in achieving targets within 4 years of enactment of MAP-21 and then every 2 years thereafter. (23 U.S.C. 150(e))
- b. MPOs will report on progress in their Metropolitan Transportation Plan (4 or 5 year frequency). (23 U.S.C. 134(i)(2)(C))
- c. A State that does not meet or make significant progress toward targets for the NHS described in 23 U.S.C. 150(d) must document in its next performance target report under Section 150(e) the actions it will take to achieve the targets. (23 U.S.C. 119(e)(7) as amended by Section 1406 of the FAST Act)

- 2. Asset Management:** The rulemaking required by 23 U.S.C. 119(e)(8) will establish the process for States to use in developing a risk-based asset management plan for preserving

and improving the condition of the NHS. The rulemaking will also establish minimum standards for States to use in developing and operating bridge and pavement management systems as required by 23 U.S.C. 150(c)(3)(A)(i). States are encouraged to include all infrastructure assets within the right-of-way corridor.

The plan must include, at a minimum, the following:

- a. Summary list, including condition, of the State's NHS pavements and bridges;
- b. Asset management objectives and measures;
- c. Performance gap identification;
- d. Lifecycle cost and risk management analysis;
- e. Financial plan; and
- f. Investment strategies. (23 U.S.C. 119(e)(4))

Each State's process must be reviewed and certified, and then recertified at least every 4 years. Under 23 U.S.C. 119(e)(6), if certification is denied, the State will have at least 90 days to cure deficiencies. If a State has not developed and implemented an asset management plan consistent with requirements by the beginning of the 2nd fiscal year after the establishment of the process, or in any subsequent fiscal year, the Federal share payable on account of any project or activity carried out by the State in that fiscal year under NHPP is reduced to 65 percent. (23 U.S.C. 119(e)(5))

F. INTERSTATE SYSTEM AND NHS BRIDGE CONDITION

1. **Interstate condition:** The Secretary will establish the minimum level of condition for Interstate pavements. (23 U.S.C. 150(c)) Under 23 U.S.C. 119(f), as amended by Section 1406 of the FAST Act, if Interstate pavement conditions in a State fall below the minimum set by the Secretary, the State must devote the following resources to improve Interstate pavement conditions during the following fiscal year (and each year thereafter if the condition remains below the minimum):
 - a. Obligate NHPP funds in the amount at least equal to the State's FY 2009 Interstate Maintenance (IM) apportionment, to increase by 2 percent per year over the amount required to be obligated in the previous fiscal year after FY 2013; and
 - b. Transfer STBG funds equal to 10 percent of the amount of the State's FY 2009 IM apportionment to NHPP. This transfer cannot be from suballocated amounts of STBG funds.
2. **NHS Bridge condition:** 23 U.S.C. 119(f) established a minimum standard for NHS bridge conditions. If more than 10 percent of the total deck area of NHS bridges in a State is on structurally deficient bridges for three consecutive years prior to the date of the determination, the State must devote NHPP funds equal to 50 percent of the State's FY 2009 Highway Bridge Program apportionment under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to improve bridge conditions during the following fiscal year and each year thereafter in which the percentage of deck

area on structurally deficient bridges remains at or above 10 percent of the total deck area on NHS bridges.

G. TRANSITION PERIOD

Until a State has in effect an approved asset management plan and has established performance targets under 23 U.S.C. 150(d), but not later than 18 months after the promulgation of the final rule under 150(c), FHWA may approve obligations of NHPP funds for projects that otherwise meet the requirements of 23 U.S.C. 119(d). The FHWA may extend this transition period if FHWA determines that the State has made a good faith effort to establish an asset management plan and performance targets. (MAP-21 section 1106(b))

H. BUNDLING OF BRIDGE PROJECTS

This provision encourages States to save costs and time by bundling multiple eligible bridges into one project using STBG or NHPP funds under one project agreement. In accordance with 23 U.S.C. 144(j), each bridge project to be included in a bundle to be funded from NHPP funds must:

1. Have the same financial characteristics, such as the same funding category or subcategory and the same Federal share;
2. Be eligible under 23 U.S.C. 119;
3. Be included as a single bundled project in the applicable TIP or STIP; and
4. Be awarded to a single consultant or contractor pursuant to a contract for engineering and design or construction.

Bundled bridge projects carried out under 23 U.S.C. 144(j) are exempt from the payback provisions of section 23 U.S.C. 102(b).