



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

MEMORANDUM

Subject: **Information:** Territorial Highway Program
(THP) Implementation Guidance as Revised by
The FAST Act

Date: February 25, 2016

From: /s/ Walter C. Waidelich, Jr
Associate Administrator for Infrastructure

Reply to Attn. of: HIPA-10

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

On December 4, 2015, the President signed the Fixing America's Surface Transportation Act (FAST Act) (P.L.114-94) into law. The FAST Act amended 23 U.S.C. 165, Territorial and Puerto Rico Highway Program. The attached THP Implementation Guidance provides information on funding, eligible activities, and requirements of the THP. Guidance for the Puerto Rico Highway Program will be issued separately.

This memorandum supersedes the "Territorial Highway Program Implementation Guidance" dated October 24, 2012.

The effective date of this FAST Act THP implementation guidance is October 1, 2015. The THP requirements in effect on October 1, 2015, will apply to all THP obligations made on or after that date.

This document will be accessible on the FAST Act Web site (<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

Territorial Highway Program (THP) Implementation Guidance
February 25, 2016

A. PROGRAM PURPOSE

In recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the purpose of the THP is to assist each territory in the construction and improvement of 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 1101(a)(4) of the Fixing America's Surface Transportation Act (FAST Act) authorizes funds for the THP.
2. Sections 1115 and 1446 of the FAST Act amend the THP under 23 U.S.C. 165.
3. 23 U.S.C 165, Territorial and Puerto Rico Highway Program provides program requirements.

C. FUNDING

1. **Authorization Levels:** The FAST Act authorizes \$42,000,000 annually for FY2016 through 2020 for the THP. The Fiscal Management Information System (FMIS) program code is as shown below.

ZT10 – Territorial Highway Program

This allocated program is subject to the redistribution of certain authorized funds provision under section 1102(f) of the FAST Act. This “lop-off” provision requires that each fiscal year any authorized funds that exceed the amount of obligation limitation provided for the program be deducted and then distributed to the States for use on projects eligible under the Surface Transportation Block Grant Program. Therefore, the above authorized amounts will be reduced to the amount of obligation limitation available for the program.

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

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

3. **Period of Availability:** THP funds are contract authority. THP obligations are reimbursed from the Highway Account of the Highway Trust Fund. THP 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 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 FAST Act.

4. **Obligation Limitation:** THP funds are subject to the annual obligation limitation imposed on the Federal-aid highway program. They are also subject to August Redistribution per section 1102(d) of the FAST Act. Any THP funds that cannot be obligated by the end of the fiscal year will be withdrawn after August 1 and the obligation limitation will be distributed to the States. The funds and carryover obligation limitation will be returned to the territories in the following fiscal year if the funds have not lapsed.
5. **Federal share:** The Federal share for THP funds is 100%, per 23 U.S.C. 120(g).

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 or a designee [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) as amended by the FAST Act (see Surface Transportation Block Grant Program Implementing Guidance);
 - 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 (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;
 - g. Research and development as are necessary in connection with the planning, design and maintenance of the highway system.
2. **Routine Maintenance:** 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), as amended by section 1446 of the FAST Act. Only the following types of THP-funded projects may be carried out on local roads:
- a. Construction, including replacement, on existing bridges and tunnels. (Construction of a new bridge or tunnel at a new location on a local road is not eligible with THP funds);
 - b. Highway and transit safety infrastructure improvements and programs, including railway-highway grade crossings;
 - 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, 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 section 1404 of SAFETEA-LU (23 U.S.C. 402 note);
 - 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. 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;
 - i. Surface transportation infrastructure modifications to facilitate direct intermodal interchange, transfer, and access into and out of a port terminal;
 - j. A project described in section 101(a)(29), as in effect on the day before the date of enactment of the FAST Act (former Transportation Alternatives Projects);
 - k. Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs; and
 - l. As approved by the Secretary.

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, as amended by the FAST Act, except for those provisions identified below or otherwise identified in the territory-specific program agreement that are determined by the Secretary to be inconsistent with the needs of the territory and the intent of this program. The applicable sections will be included in each territory agreement as described below in I, "Territorial Highway Program Agreement."
2. The following provisions of Chapter 1 of title 23, U.S.C. do not apply 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 freight policy

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 <http://fhwainter.fhwa.dot.gov/legsregs/directives/orders/45511.cfm>. Transfers of funds under the THP to another State, FHWA, or another agency for administration should be coordinated with the Office of Program Administration. 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 Administrator to govern the Federal-aid highway program in the territory. 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, including those executed after enactment of MAP-21, should be reevaluated a minimum of every two years from the date of last approval. The agreement will include the following elements per 23 U.S.C. 165(c):

1. Implementation of a program in accordance with applicable provisions of Chapter 1 of Title 23 of the U.S.C. [23 U.S.C. 165(c)(5)(A)(i)];
2. Confirmation that the territory will design and construct the Territorial Highway System in accordance with standards appropriate for the territory and approved by the Secretary or his designee. [23 U.S.C. 165(c)(5)(A)(ii)];
3. Agreement by the territory to maintain all facilities constructed or operated under this program to meet the needs of present and future traffic. [23 U.S.C. 165(c)(5)(A)(iii)];
4. Implementation of standards for traffic operations and uniform traffic control devices that are approved by the Secretary or his designee. [23 U.S.C. 165(c)(5)(A)(iv)];
5. Inclusion of a listing of all applicable sections of chapter 1 of title 23 U.S.C. [23 U.S.C. 165(c)(4)(B)];
6. Identification of the kind of technical assistance to be provided to the territory. [23 U.S.C. 165(c)(5)(B)(i)];
7. Inclusion of the appropriate provisions for information sharing among the territories. [23 U.S.C. 165(c)(5)(B)(ii)];
8. Identification of the oversight role and responsibilities of the territory and the division office. [23 U.S.C. 165(c)(5)(B)(iii)]; and
9. An attachment with a listing or map of the highways designated and approved as the Territorial Highway System.