Bipartisan Infrastructure Law Implementation – State Freight Plan Updates and National Highway Freight Program Funding Questions and Answers (Q&A)

Updated [December 13, 2022]

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Pursuant to 49 U.S.C. 70202(a), each State that receives funding for the National Highway Freight Program (NHFP) shall develop a comprehensive freight plan that provides for the immediate and long-range planning activities and investments of the State with respect to freight. Under the Fixing America's Surface Transportation(FAST) Act, a State was required to update its State freight plan at least once every five years, but was permitted to update the freight investment plan component of the State freight plan more frequently. The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the "Bipartisan Infrastructure Law" (BIL)) that was enacted on November 15, 2021, includes several new requirements for State freight plans, clarifies the State freight plan approval process, and modifies the length of the update to a four-year cycle for State freight plans. 49 U.S.C. 70202(e)(1).

These Questions and Answers address a State's ability to continue to obligate NHFP funds after the expiration of a FAST Act compliant freight plan.

Question 1: Does the BIL provide a grace period between the expiration of a State freight plan and approval of a BIL compliant plan?

Answer 1: NO, there is no statutory allowance for an extension or grace period.

Question 2: Did enactment of the BIL on November 15, 2021, result in the expiration or nullification of States' FAST Act compliant State freight plans?

Answer 2: NO, each State's State freight plan remains in effect until the original 5-year update cycle has expired.

Question 3: Can a State use NHFP funding for new project eligibilities from the BIL even though they only have a FAST Act compliant State freight plan?

Answer 3: YES, as long as the existing State freight plan **has not expired**, and the project is included in the freight investment plan component of a State freight plan, States may continue to program and obligate NHFP funding, including for new project eligibilities.

Question 4: Can a State amend the freight investment plan component of its State freight plan to include NHFP fiscal year projections not yet apportioned?

Answer 4: YES, if a State has a compliant State freight plan. A compliant State freight plan means a State freight plan approved under the FAST Act with a 5-year term that has not expired or an updated State freight plan in compliance with 49 U.S.C. 70202 as amended by the BIL. **For example**, if a State has a State freight plan that was approved in 2017, an update to the State freight plan is due in 2022. A State may continue to update the State freight plan and amend the freight investment plan to include future Federal funding projections until the State freight plan approved in 2017 expires in 2022. Upon expiration of the State freight plan, a State would not be able to amend the freight investment plan unless it has updated its State freight plan in compliance with 49 U.S.C. 70202.

Question 5: If a State freight plan has expired, can NHFP funds be obligated for projects already in the freight investment plan?

Answer 5: NO, to obligate NHFP funds, projects must be identified in a freight investment plan included in a freight plan that is in effect in the State. 23 U.S.C. 167(h)(5)(A). States with an expired State freight plan may not authorize any apportioned NHFP funds.

Question 6: Can States transfer funding out of NHFP to another Federal-aid program if their State freight plan has expired?

Answer 6: YES, Under 23 U.S.C. 126, a State may transfer NHFP funds, an apportioned program under 23 U.S.C. 104(b), not to exceed 50 percent of the amount of NHFP funds apportioned for a fiscal year to any other apportioned program of the State under 23 U.S.C. 104(b). If a State wants to transfer NHFP funds to a 104(b) apportioned program, see the specific fact sheet of that program and consult the FHWA State Division office regarding transferability limitations on 104(b) apportioned programs.

Question 7: Can an NHFP project be authorized via advance construction if a State freight plan has expired?

Answer 7: NO, the use of advance construction on a project may only be authorized if the project is included in the State freight plan that is in effect. Advance construction may only be authorized in accordance with all procedures and requirements applicable to a project. 23 U.S.C. 115. Because 23 U.S.C. 167(h)(5) requires that a project eligible for NHFP funds must be in a State freight plan in effect, authorizing NHFP funds in an expired State freight plan would not meet the advance construction requirements in 23 U.S.C. 115.