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# Transportation Asset Management Plan Annual Consistency Determination Final Guidance<sup>1</sup>

## Introduction

Asset management provisions enacted in the Moving Ahead for Progress in the 21st Century Act (MAP-21) require a State Department of Transportation (DOT) to develop and implement a risk-based asset management plan in accordance with 23 U.S.C. 119, to achieve and sustain a state of good repair over the life cycle of the assets and to improve or preserve the condition of the National Highway System (NHS). Pursuant to 23 U.S.C. 119(e)(4)(A), the State DOT is required to include NHS highway pavements and bridges. This is regardless of the ownership of the relevant NHS facility. Note that 23 U.S.C. 103(a) defines NHS as including the Interstate Highway System. The statute does not provide any authority for the Federal Highway Administration (FHWA) to grant a waiver to a State DOT from the requirements to develop and implement a transportation asset management plan (TAMP).

Under the statute, FHWA must take two actions with respect to State DOT asset management activities. The first is its TAMP *development process certification/recertification* (23 U.S.C. 119(e)(6); 23 CFR 515.13(a)). The FHWA must certify at least every 4 years that the State DOT's processes for developing TAMP meet applicable requirements. The FHWA must also recertify whenever the State amends its TAMP development processes (23 CFR 515.13(c)). The second FHWA action is an *annual consistency determination*, which evaluates whether the State DOT has developed and implemented a TAMP that is consistent with the requirements of 23 U.S.C. 119. The FHWA adopted the asset management rule, 23 CFR part 515,

1

to implement these and other asset management requirements.

Pursuant to 23 U.S.C. 119(e)(5), beginning **October 1, 2019** (the second fiscal year after the October 2, 2017, effective date of the part 515 asset management rule), and in each subsequent fiscal year, FHWA must determine if a State DOT has developed and implemented a State TAMP consistent with the requirements established by 23 U.S.C. 119 and 23 CFR part 515. Not later than **August 31, 2019**, and not later than **July 31 in each year thereafter**, FHWA will notify the State DOT in writing whether the State DOT has developed and implemented a TAMP consistent with 23 U.S.C. 119 (23 CFR 515.13(b)). The State DOT must submit its implementation documentation not less than 30 days prior to the deadline for the FHWA consistency determination (23 CFR 515.13 (b)(2)). In the case of a negative determination, FHWA will specify the deficiencies the State DOT needs to address (23 CFR 515.13 (b)). The State DOT will have 30 days to correct such deficiencies, and the State DOT may submit additional information showing that the FHWA negative determination was in error, or demonstrating that the State DOT has taken corrective action that resolves any deficiencies (23 CFR 515.13(b)(3)). The FHWA determination **is not** an approval of the State DOT's investment strategies or other decisions contained in the TAMP.

This document provides a framework for undertaking and completing the *annual consistency determination*, required under 23 CFR 515.13(b), for whether a State DOT has developed and implemented a TAMP in accordance with 23 U.S.C. 119 and 23 CFR part 515. ***This document is guidance only and does not create any requirements other than those stipulated in statute or regulations.***

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<sup>1</sup> TAMP requirements were amended by the Bipartisan Infrastructure Law (BIL) (§ 11105) to require that States take into consideration extreme weather and resilience within their lifecycle cost and risk management analysis. These BIL amendments took effect on October 1, 2021 (§ 10003). As a result, State DOTs are required to consider extreme weather and resilience as part of the lifecycle cost and risk management analyses within a State TAMP (23 U.S.C. 119(e)(4)(D)). State DOTs should be aware of this new requirement and working to update their processes and TAMPs accordingly.

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The FHWA Division Offices (Divisions) have received separate guidance on TAMP *development process certification* under 23 CFR 515.13.

### Annual Consistency Determination Consideration

The FHWA's annual consistency determination for the State DOT TAMP and State DOT implementation of its TAMP will be based on the most recent TAMP submitted by the State DOT, as well as any documentation submitted by the State DOT to demonstrate implementation of the TAMP (23 CFR 515.13(b)). The FHWA will evaluate whether the TAMP:

- Was developed with FHWA-certified TAMP processes;
- Includes the required TAMP content; and
- Is consistent with other applicable requirements in 23 U.S.C. 119 and 23 CFR part 515 (23 CFR 515.13(b)(1)).

Each State DOT may determine the most suitable approach for demonstrating implementation of its TAMP, so long as the information is current, documented, and verifiable, and the information shows that the State DOT is using the investment strategies in its TAMP to make progress toward achievement of its targets for NHS asset condition and performance and to support progress toward the national goals identified in 23 U.S.C. 150(b) (23 CFR 515.13(b)(2)).

2

The FHWA considers the best evidence of plan implementation to be that, for the 12 months preceding the consistency determination, the State DOT funding allocations are reasonably consistent with the investment strategies in the State DOT's TAMP. This demonstration takes into account the alignment between the actual and planned levels of investment for various work types (i.e., initial construction, maintenance, preservation, rehabilitation and reconstruction (CFR 515.13 (b)(2)(i))). If the planned and actual levels of investments are reasonably close for each work type, then the alignment exists. In this context, the term "reasonably close" means that the deviation from the planned funding allocation is unlikely to substantially impact the achievement of the State DOT's targets for NHS asset condition and performance and the State DOT's progress toward the national goals identified in 23 U.S.C. 150(b). While this is the best method for showing implementation, FHWA will consider State DOT submission of other types of credible and convincing evidence demonstrating TAMP implementation consistent with 23 U.S.C. 119 and 23 CFR part 515. Even if the State DOT has deviated from the investment strategies included in the TAMP, FHWA may find that a State DOT has implemented its TAMP if the State DOT shows that the deviation was necessary due to extenuating circumstances beyond the State DOT's reasonable control (23 CFR 515.13(b)(2)(ii)).

*Special Guidance for First Consistency Determination (2019)*

For the first consistency determination, which will take place in 2019, FHWA will determine whether the State DOT used the investment strategies in its 2018 initial TAMP. The FHWA recognizes that some State DOTs may face difficulties demonstrating implementation of TAMP investment strategies for the 12 months prior to the 2019 FHWA consistency determination (see 23 CFR 515.13(b)(2)(i)). The FHWA has issued supplemental guidance for the 2019 determination, available at <https://www.fhwa.dot.gov/asset/guidance/faqs.cfm> (see Question and Answer 27b).

With respect to any assets the State DOT may elect to include in its plan in addition to NHS pavement and bridge assets, the FHWA consistency determination will consider only whether the State DOT has complied with 23 CFR 515.9(l) (CFR 515.13(b)(2)).

Divisions must use the attached worksheet to document whether the State DOT's most recent TAMP is consistent with the requirements of 23 U.S.C. 119 and 23 CFR part 515, as discussed in this guidance. For additional information on TAMPs, including updated guidance on documenting TAMP implementation, see "Questions and Answers" available at <https://www.fhwa.dot.gov/asset/guidance/faqs.cfm>.

### **Annual Consistency Determination Worksheet**

**3**

This worksheet includes the following tables:

Table 1. Plan Development and Content

Table 2. TAMP Implementation

Table 3. Division Consistency Review Findings

Table 1 should be used to determine if the TAMP is consistent with other applicable requirements in 23 U.S.C. 119 and 23 CFR part 515 (23 CFR 515.13(b)(1)). Table 2 should be used to determine if the State DOT has demonstrated that it is using the investment strategies in its TAMP to make progress toward achievement of its targets for NHS asset condition and performance and to support progress toward the national goals identified in 23 U.S.C. 150(b) (23 CFR 515.13(b)(2)). Table 3 should be used by the division offices to record their findings.

Table 1. Plan Development and Content

Required Elements	Indicators the TAMP Meets Element Requirements in 23 U.S.C. 119(e) and 23 CFR part 515	Review Finding (check if requirement(s) for the element met)	FHWA Review Comments (Provide explanation if requirement(s) not met.)
TAMP approved by head of State DOT (23 CFR 515.9(k))	Does the TAMP bear the signature of the head of the State DOT?		
State DOT has developed its TAMP using certified processes (23 CFR 515.13(b))	Do the process descriptions align with the FHWA-certified processes for the State DOT? [If the process descriptions do not align with the FHWA-certified processes, the State DOT must request recertification of the new processes as amendments unless the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy and validity of the processes, analyses, or investment strategies. State DOTs must request recertification of TAMP development processes at least 30 days prior to the deadline for the next FHWA TAMP consistency determination as provided in 23 CFR 515.13(c).]		
	Do the TAMP analyses appear to have been prepared using the certified processes?		
TAMP includes the required content as described in 23 CFR 515.9(a)-(g) (23 CFR 515.13(b))	Does the TAMP include a summary listing of NHS pavement and bridge assets, regardless of ownership?		
	Does the TAMP include a discussion of State DOT asset management objectives that meets requirements?		
	Does the TAMP include a discussion of State DOT measures and targets for asset condition, including those established pursuant to 23 U.S.C. 150, for NHS pavements and bridges, that meets requirements?		

Required Elements	Indicators the TAMP Meets Element Requirements in 23 U.S.C. 119(e) and 23 CFR part 515	Review Finding (check if requirement(s) for the element met)	FHWA Review Comments (Provide explanation if requirement(s) not met.)
	Does the TAMP include a summary description of the condition of NHS pavements and bridges, regardless of ownership, that meets requirements?		
	Does the TAMP identify and discuss performance gaps?		
	Does the TAMP include a discussion of the life-cycle planning that meets requirements, including results?		
	Does the TAMP include a discussion of the risk management analysis that meets requirements?		
	Does the TAMP include the results of the evaluations of NHS pavements and bridges pursuant to 23 CFR part 667?		
	Does the TAMP include a discussion of a 10-year Financial Plan to fund improvements to NHS pavements and bridges?		
	Does the TAMP identify and discuss investment strategies the State intends to use for their NHS pavements and bridges?		
	Does the TAMP include a discussion as to how the investment strategies make or support progress toward achieving and sustaining a desired state of good repair over the life cycle of the assets?		
	Does the TAMP include a discussion as to how the investment strategies make or support progress toward improving or preserving the condition of the assets and the performance of the NHS related to physical assets?		
	Does the TAMP include a discussion as to how the investment strategies make or support		

Required Elements	Indicators the TAMP Meets Element Requirements in 23 U.S.C. 119(e) and 23 CFR part 515	Review Finding (check if requirement(s) for the element met)	FHWA Review Comments (Provide explanation if requirement(s) not met.)
	progress toward achieving the State's targets for asset condition and performance of the NHS in accordance with 23 USC 150(d)?		
	Does the TAMP include a discussion as to how the investment strategies make or support progress toward achieving the national goals identified in 23 USC 150(b)?		
	Does the TAMP include a discussion as to how the TAMP's life-cycle planning, performance gap analysis, and risk analysis support the State DOT's TAMP investment strategies?		
Inclusion of Other Assets in the TAMP in 23 CFR 515.9 (l):	If applicable, does the TAMP include a summary listing of other assets, <sup>2</sup> including a description of asset condition?		
	If applicable, does the TAMP identify measures and State DOT targets for the condition of other assets?		
	If applicable, does the TAMP include a performance gap analysis for other assets?		
	If applicable, does the TAMP include a discussion of life cycle planning for other assets?		
	If applicable, does the TAMP include a discussion of a risk analysis for other assets that meets requirements in 23 CFR 515.9(l)(5)?		
	If applicable, does the TAMP include a financial plan to fund improvements of other assets?		
	If applicable, does the TAMP include investment strategies for other assets?		

<sup>2</sup> If the State DOT wants to address other assets without subjecting those assets to section 515.7 or 515.9(l) analyses, the State DOT can group such assets and identify them as assets outside the TAMP (e.g., "other assets", "non-TAMP assets", "other safety related assets", etc.). State DOTs may identify these other types of assets with their respective funding needs in a separate table or general discussion, but should clearly note that the TAMP framework was not used to arrive at the estimated funding needs/allocations for those non-TAMP assets.

Table 2. TAMP Implementation

Required Elements	Indicators the TAMP Meets Element Requirements in 23 U.S.C. 119(e) and 23 CFR part 515	Review Finding (check if requirement(s) for the element met)	FHWA Review Comments (Provide explanation if requirement(s) not met.)
Integration of TAMP into transportation planning processes that lead to the Statewide Transportation Improvement Program (STIP) (23 CFR 515.9(h))	Do State DOT planning documents or records of planning activities show that the TAMP was integrated into its transportation planning processes that lead to the STIP?		
TAMP available to the public (23 CFR 515.9(i))	Has the State DOT made its TAMP available to the public by posting on its website, or distributing in public meetings, or by some other means?		
State DOT demonstrates through current and verifiable documentation that it has implemented a TAMP meeting requirements of 23 U.S.C. 119 and 23 CFR part 515 <i>and</i> that the State DOT is following the investment strategies in the TAMP (23 CFR 515.13(b)(2)).	Has the State DOT documented evidence that the State DOT is using the TAMP investment strategies? (23 CFR 515.13(b)(2)). The best evidence is that, for the 12 months preceding the consistency determination, there was alignment between the actual and planned levels of investment (in the TAMP) for various work types as defined in 23 CFR 515.5 (i.e., initial construction, maintenance, preservation, rehabilitation and reconstruction) (23 CFR 515.13(b)(2)(i))?		
	If the State DOT deviated from the TAMP investment strategies, did they document reasons the deviation(s) were necessary due to extenuating circumstances beyond the State DOT's reasonable control <sup>3</sup> (23 CFR 515.13(b)(2)(ii)).		

7

<sup>3</sup> The determination of whether there are extenuating circumstances is a case-by-case decision that is highly dependent on the facts. The State DOT must show the deviation from its TAMP investment strategies was the result of circumstances beyond its reasonable control. In cases where the State DOT believes extenuating circumstances have caused it to deviate from the investment strategies in its TAMP, the State DOT should provide an explanation of the extenuating circumstances, the impacts, the State DOT's efforts to avoid or offset the changes and impacts, and program

Table 3. Division Consistency Review Findings

Required Elements	Indicators the TAMP Meets Element Requirements in 23 U.S.C. 119(e) and 23 CFR part 515	Review Finding (check if requirement(s) for the element met)	FHWA Review Comments (Provide explanation if requirement(s) not met.)
Division Assessment	The TAMP was developed using certified processes, includes the content required by 23 CFR 515.9, and is consistent with other applicable requirements in 23 CFR part 515.(23 CFR 515.13(b)(1)).		If not met provide list of deficiencies that need to be addressed.
	The State DOT implemented the TAMP. (23 CFR 515.13(b)(2)).		If not met provide list of deficiencies that need to be addressed.

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changes that will be undertaken to account for the changed conditions. In addition, State DOTs should consider updating or amending their TAMPs whenever there is a material impact on the accuracy and validity of the processes, analyses, or investment strategies in the plan.