

# Questions & Answers (Q&As) on Asset Management Initial Plans

## Introduction

The FHWA is issuing these Q&As to provide guidance for practitioners on requirements for developing and implementing an Initial Transportation Asset Management Plan (TAMP) for the National Highway System (NHS). Section 1106 of MAP-21, most of which is codified in 23 U.S.C. 119, requires States to develop and implement risk-based TAMPs for the NHS to improve or preserve the condition of the assets and the performance of the system (23 U.S.C. 119(e)(1)). The final asset management rule (23 CFR Part 515) establishes TAMP requirements, including the processes that State departments of transportation (State DOTs) must use to develop their plans and meet Federal requirements. The TAMP regulations contain special provisions that apply to the first required TAMP submission (the “Initial TAMP”), including an option for State DOTs to omit certain types of analyses from the Initial TAMP. These Q&As provide information on the Initial TAMP requirements, including guidance in response to questions FHWA received about the content of the Initial TAMPs and the administration of the statutory penalty provisions, which are described in the TAMP regulations at 23 CFR 515.15.

These Q&As do not supersede earlier guidance. These Q&As supplement the Questions & Answers dated June 7, 2017 (including any updates), posted at: <https://www.fhwa.dot.gov/asset/guidance/faqs.cfm>. The June 7, 2017, Q&As address TAMP background, requirements, due dates, and other relevant issues.

The information in these Q&As is designed for asset management practitioners. However, FHWA and State DOT managers and senior leaders need to be aware of some basic requirements for the Initial TAMP, and the potential consequences if the State DOT does not meet those requirements. Key information for nonpractitioners is summarized below. More detailed information appears in the Q&As below.

- State DOTs must submit their Initial TAMPs not later than April 30, 2018.
- There are minimum elements that must be in the Initial TAMP, including the State DOT’s proposed TAMP development processes and investment strategies.
- Special provisions for Initial TAMPs create exceptions to some TAMP requirements. For example, the Initial TAMP does not have to contain State DOT targets for the national pavement and bridge condition performance measures.
- The FHWA will use the Initial TAMP to determine whether the State DOT has adequate TAMP development processes in place, as required by 23 U.S.C. 119(e)(6) and 23 CFR 515.13(a).
- MAP-21 section 1106(b) created a transition penalty affecting NHPP funding. The penalty applies to States that have not developed and implemented a fully compliant TAMP and adopted the State performance targets required under 23 U.S.C. 150(d) by

November 20, 2018. The FHWA can extend the deadline for State DOT compliance if the State DOT has made good faith efforts to comply. The FHWA will grant extensions to all State DOTs that have (1) submitted an Initial TAMP that complies with applicable requirements, (2) have received FHWA approval for its TAMP development processes, and (3) have their section 150(d) performance targets in place. The FHWA will consider granting extensions on a case-by-case basis for State DOTs that fail to meet these three criteria. See Question 5 for further details.

- Under a second penalty contained in 23 U.S.C. 119(e)(5), before the beginning of each fiscal year, FHWA must decide whether a State DOT has met TAMP development and implementation requirements. The NHPP funding restrictions under this penalty first apply as of October 1, 2019. The FHWA will make the first determination for this penalty, called a consistency determination, not later than August 30, 2019. This consistency determination includes consideration whether the State's investments over the previous 12 months are in alignment with the State DOT's TAMP. For the August 2019 consistency determination, FHWA will consider whether the State DOT implemented the investment strategies in its Initial TAMP or has adequate justification for not doing so. See Question 5 for further details.

## Initial TAMP Q&As

### 1. Which elements are required in the initial TAMP, and how can State DOTs satisfy those elements?

Answer: Not later than April 30, 2018, the State DOT must submit to FHWA an initial TAMP approved by the head of the State DOT (23 CFR 515.9 and 515.11). The initial TAMP requirements under 23 CFR 515.7 and 515.9, as modified by 515.11, are summarized below. State DOTs must use the best available data to develop their TAMPs, including their initial TAMPs (23 CFR 515.7(g)). If a State DOT is unable to provide any portion of the information required in the initial TAMP, the initial TAMP should include an explanation for what is missing, why it was not included in the initial TAMP, and the steps the State DOT will take to ensure the missing information is included in its 2019 TAMP submission.

Initial TAMPs must include:

- A summary listing of NHS pavement and bridge assets and conditions, regardless of ownership.
- The national performance measures for NHS pavements and bridges established under 23 U.S.C. 150(c) for assessing NHS pavement and bridge conditions. As noted below, State DOTs are not required to include targets (23 CFR 515.11(b)).
- The State DOT's asset management objectives.

- A description of all the required TAMP development processes as described in 23 CFR 515.7. This includes a description of the State DOT's policies, procedures, documentation, and an implementation approach that satisfy the requirements of 23 CFR part 515.
- Analyses must be developed using the TAMP development processes, except in those areas exempted under 23 CFR 515.11(b) (see below).<sup>1</sup> However, FHWA encourages State DOTs to undertake the exempted analyses as they develop their initial TAMP, if possible, to maximize their experience with implementing the TAMP development processes. The analyses required in the initial TAMPs, and possible implementation approaches, are discussed below:
  - a. Performance Gap Analysis - The purpose of the performance gap analysis process is to identify deficiencies hindering progress toward improving and preserving the NHS and achieving and sustaining the desired state of good repair (as defined by the State DOT). *Implementation: The initial TAMP must describe the performance gap analysis process and contain the analysis. The analysis covers both condition and performance gaps, subject to the exclusion discussed below. The State DOT defines its vision of the desired state of good repair. This can be based on best available data. This vision may change once the State DOT has selected its section 150(d) targets, or has more robust available data. State DOTs can perform the gap analysis using the best available information, which may be existing conditions and the State DOT's existing or temporary targets for NHS pavements and bridges as discussed in the response to Question 5.*
    - i. Regulatory requirement (23 CFR 515.7(a)(1)): Identify gaps affecting the State DOT targets for the condition of NHS pavements and bridges, as established pursuant to 23 U.S.C. 150(d). *Implementation: Analysis and discussion of gaps between existing conditions and State DOT section 150(d) targets is not required for the initial TAMP because of the timeline for establishing section 150(d) targets. However, the State DOT should discuss condition gaps to the extent possible, and may elect to use other available targets or target surrogates. For example, the State DOT may use the minimum condition requirements for NHS bridges and Interstate pavements under 23 CFR part 490 and any temporary targets the State DOT may establish for non-interstate pavements*

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<sup>1</sup> Paragraphs (1), (2), and (3) of 23 CFR 515.11(b) mistakenly refer to sections of the proposed rule that were renumbered in the final rule. The correct references for the analyses that State DOTs are not required to include in their initial TAMPs are: 23 CFR 515.7(b) for the life-cycle planning paragraph; 23 CFR 515.7(c) for the risk management paragraph; and 23 CFR 515.7(d) for the financial plan paragraph. While this problem merits a technical correction to the regulation, the regulation specifies by topic the analyses State DOTs may exclude from their initial TAMPs. These descriptions sufficiently inform State DOTs of the option to exclude those analyses. For this reason, FHWA is giving full effect to these exclusion provisions.

- ii. Regulatory requirement (23 CFR 515.7(a)(2)): Identify gaps, if any, in the performance of the NHS that affect NHS pavements and bridges, regardless of their physical condition. *Implementation: Required in the initial plan. The scope of analysis in the initial plan can be limited, consistent with best available data. The required analysis for the initial TAMP is achievable by reviewing other State Plans and incorporating recommendations regarding improving bridges and pavements into the performance gap analysis. For example, if a designated truck lane is planned to be added to the system in 5 years, the performance gap analysis should acknowledge this.*
  - iii. Regulatory requirement (23 CFR 515.7(a)(3)): Develop alternative strategies that will close or address the identified gaps. *Implementation: Required in the initial TAMP. These strategies likely will change in the subsequent TAMP, when the State DOT has established its section 150(d) targets and has more robust available data.*
- b. Life Cycle Planning Analysis - *Implementation: A description of the process is required; however, the analysis is not required in the initial TAMP.*
  - c. Risk Management Plan - *Implementation: A description of the process is required; however, the analysis is not required in the initial TAMP.*
  - d. Financial Plan - *Implementation: A description of the process is required; however, the analysis is not required in the initial TAMP.*
  - e. Investment Strategies - The initial TAMP must include a description of the process for developing investment strategies, a set of investment strategies, and a discussion of how those strategies will make or support progress toward the national goals in 23 U.S.C. 150(b). *Implementation: Even though the initial TAMP does not need to include the analyses for Life Cycle Planning, Risk Management Plan, or a Financial Plan, State DOTs can develop investment strategies using other information sources. These include targets or surrogates for targets as discussed in the response to Question 5. The State DOTs can demonstrate how the investment strategies that they have selected improve conditions in the long run. State DOTs also can use their historical data and demonstrate whether the strategies that they have used in the past improved conditions and, if not, what course of action they should take.*

**2. When FHWA Divisions review the State DOT's initial TAMP, what are they reviewing and certifying?**

Answer: The FHWA will review the initial TAMP for two purposes:

- the first TAMP development process certification, and
- completeness of the initial plan.

The results in both areas are relevant to future FHWA determinations whether the State DOT has developed and implemented a TAMP.

**3. How will the first TAMP development process certification work?**

In the initial TAMP, each process must satisfy the requirements in 23 CFR 515.7. The submission must include descriptions of the policies, procedures, documentation, and implementation approach each process uses to meet asset management requirements (23 CFR 515.11(b)). If these requirements are met, FHWA will certify in writing the State DOT's TAMP development processes.

It is important to recognize that creating TAMP development processes in isolation, without considering other required TAMP elements, could lead to processes that are ineffective when used to develop the State DOT's 2019 TAMP. Accordingly, while only the TAMP development processes are subject to certification, FHWA recommends State DOTs consider all the TAMP elements when creating their TAMP development processes.

**4. How will FHWA determine if the Initial TAMP is complete? Why does completeness matter?**

The FHWA will assess the completeness of the initial TAMP based on the requirements summarized in Question 1, above. Based on that review, FHWA will provide the State DOT with feedback on areas needing improvement for the State DOT's 2019 TAMP submission. There is no requirement for a consistency determination in 2018. However, the completeness of the 2018 initial TAMP may affect future FHWA decisions related to the penalty provisions described in 23 CFR 515.15.

**5. What are the future penalty determinations, and how do they apply to the State DOT's Initial TAMP?**

There are two provisions in statute that require FHWA to decide whether the State DOT has properly developed and implemented the TAMP. Each determination has its own timing requirements, and each has consequences for the use of NHPP funding if the State DOT has not met applicable requirements. The two provisions are (a) the MAP-21 Section 1106(b) Transition Provision and (b) the annual compliance determination under the 23 U.S.C. 119(e)(5) penalty provision.

MAP-21 Section 1106(b) Transition Provision

As of November 20, 2018, the penalty provision in MAP-21 section 1106(b) requires FHWA to decide whether (1) the State DOT has developed and implemented an asset management plan meeting the requirements of the statute and regulations and (2) has established its 23 U.S.C. 150(d) performance targets for NHS pavements and bridges. This transition provision is implemented through 23 CFR 515.15(b)(1). MAP-21 section 1106(b)(2) and the implementing regulation provide that FHWA may defer this penalty

by granting an extension of time if FHWA determines the State DOT has made a good faith effort to meet the requirements (23 CFR 515.15(b)(2)).<sup>2</sup>

Initial TAMPs are due April 30, 2018, and State DOTs must have their performance targets in place by May 20, 2018. The FHWA Division will determine whether a section 1106(b) extension is warranted and the appropriate length of an extension. The FHWA Division may request additional information from a State DOT as needed to make its decision. The FHWA Division may grant a State DOT more than one extension, as appropriate. The FHWA will grant a section 1106(b) extension if the State DOT:

- has submitted a compliant initial TAMP by April 30, 2018;
- has received FHWA certification of its TAMP development processes; and
- has the required targets in place.

If the State DOT does not meet all three of these criteria, the FHWA Division will make the section 1106(b) extension decision after considering the State DOT's overall efforts to establish its targets and develop and implement the Initial TAMP in accordance with the statute and regulations.

#### 23 U.S.C. 119(e)(5) Annual Compliance Determination

Beginning in 2019, and in each year thereafter, FHWA must determine whether the State DOT has developed and implemented a TAMP in accordance with applicable requirements. This is the consistency determination described in 23 CFR 515.13(b). Failure to receive a positive consistency determination will trigger the penalty described in 23 U.S.C. 119(e)(5) and 23 CFR 515.15(a).

As described in 23 CFR 515.13(b), FHWA's consistency determination will be based on the State DOT's TAMP and its TAMP implementation actions during the previous 12 months. Regarding implementation, FHWA will consider whether the State DOT used the investment strategies in its TAMP as required by 23 CFR 515.13(b)(2). In 2019, this means determining whether the State DOT used the investment strategies in its 2018 initial TAMP. The FHWA recognizes that some State DOTs will exclude the life-cycle planning, risk management, and financial plan analyses from their 2018 initial TAMPs, as permitted by the regulation. Some State DOTs may adopt investment strategies that are broad enough to compensate for the potential effects of this gap in information. However, State DOTs may find that their 2018 TAMP investment strategies prove inadequate or impossible to apply over the full 12 months due, at least in part, to the absence of those analyses. To address this situation, for the 2019 consistency determination only, FHWA will treat this situation as an extenuating circumstance under 23 CFR 515.13(b)(2)(ii).

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<sup>2</sup> The determination of the MAP-21 section 1106(b) penalty does not affect other performance management-related penalties established by MAP-21.

That is, the State DOT may justify a deviation from its TAMP investment strategies if those strategies were inadequate due to the exclusion of the life-cycle planning, risk management, or financial plan analyses. The State DOT's 2019 consistency submission should clearly demonstrate the connection(s) between the absence of the analysis for life-cycle planning, risk management, and/or the financial plan and the deviation(s). The 2019 submission also should explain how the State DOT has resolved the problem (for example, by amending its investment strategies after completing the full set of TAMP analyses).

**6. Must a State DOT include targets for pavements and bridges in its initial TAMP?**

Answer: No. The TAMP regulations provide that State DOTs are not required to include 23 U.S.C. 150(d) targets in their Initial TAMPs because the deadline for setting those targets is less than 6 months before the deadline for submission of the initial TAMP on April 30, 2018 (23 CFR 515.11(b)).<sup>3</sup> However, FHWA encourages (but does not require) State DOTs that have performance targets, whether developed to meet 23 U.S.C. 150(d) requirements or for other reasons, to include those targets if possible. This will provide the State DOT with more experience in analysis and implementation. A State DOT that includes targets can test the effectiveness of its proposed TAMP development processes. If a State DOT wishes to have targets in its initial TAMP, options include:

- Establishing 23 U.S.C. 150(d) targets for NHS pavement and bridge conditions early enough to use them voluntarily in the initial TAMP.
- Including any State measures and targets that the State DOT has established previously and wants to use in its asset management analyses. States should include any long-term targets that they have developed for evaluating the state of good repair of their assets.
- Establishing temporary targets for use in the initial TAMP. For example, State DOTs may use the minimum condition requirements for NHS bridges and Interstate pavements, as established under 23 CFR part 490. Also, States are encouraged to set targets for non-Interstate pavements to get full coverage for NHS pavements. The State DOT can use various sources of information for temporary targets, such as strategic plans and other State plans.

**7. How can State DOTs prepare the required elements of their initial TAMPs if they do not have targets? For example, what is the process for identifying the gaps affecting the State DOT targets for the condition of NHS pavements and bridges?**

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<sup>3</sup> State DOTs must include their 23 CFR part 490 targets for NHS pavements and bridges in the June 30, 2019, submission of a complete asset management plan (see 23 CFR 515.11(a)(2) and (c)). For State DOTs wishing to update their plans prior to that date, please note that State DOTs may amend their TAMPs at any time. Minor technical corrections and non-material changes do not require submission to FHWA. Other amendments require submission and FHWA action as described in 23 CFR 515.13(c). Note that provisions in 23 CFR part 490 affect the timing and procedures for amending 23 U.S.C. 150(d) targets.

Answer: If a State DOT does not have its section 150(d) targets available, we encourage the State DOT to use one of the alternatives described in the response to Question 6 when developing the initial TAMP. If the State DOT chooses not to do so, it will be more difficult to show how its TAMP development processes work.

In the case of performance gaps, FHWA believes that State DOTs can do a performance gap analysis and develop strategies to close the gaps without having set their section 150(d) targets. Using existing data, State DOTs can identify their long-term performance gaps. Those long-term gaps can serve as the basis for the performance gap analysis.

**8. Must the initial TAMP include data from NHS owners other than the State?**

Answer: Yes. States must include data from other NHS owners in their initial TAMP as provided in 23 CFR 515.7(f).

**9. Must State DOTs use “best available data” to develop their initial TAMPs?**

Answer: Yes. States must use the best available data (23 CFR 515.7(g)).

**10. Must State DOTs use bridge and pavement management systems to analyze the condition of NHS pavements and bridges when developing their initial TAMPs?**

Answer: Yes. States must use bridge and pavement management systems to develop their initial TAMPs (23 CFR 515.7(g)). The systems must meet the minimum standards in 23 CFR 515.17. The minimum standards specify the required capabilities for the management systems, but do not require the use of any specific types of tools for data-gathering or analysis. State DOTs have the flexibility to choose how they will achieve the required capabilities.

**11. Does 23 CFR 515.9(l) (minimum TAMP content for assets other than NHS pavements and bridges) always apply to other assets that State DOTs may wish to discuss in its TAMP?**

Answer: No, the applicability of section 515.9(l) depends on what result the State DOT desires.

The asset management statute and regulations encourage State DOTs to increase the usefulness of their TAMPs by including assets in addition to the required NHS pavements and bridges. By doing so, such “other” highway physical assets become an integral part of the TAMP’s detailed evaluation of needs and the development of TAMP



investment strategies for the assets covered by the TAMP. If the State DOT wishes to include evaluations of other assets in the TAMP, then section 515.9(l) applies. The section defines the minimum information and analysis requirements for those voluntarily-included assets.

By contrast, if the State DOT does not wish to evaluate the needs of other assets in its TAMP, it is not required to do so. Section 515.9(l) does not apply to the mere inclusion of summary information about investment needs related to assets not analyzed in the TAMP. As noted in the preamble to the final rule, a general discussion of needs and intended spending relating to other assets does not make such other assets subject to TAMP requirements (81 FR 73196, at 73222 (October 24, 2016)).

If the State DOT includes in its TAMP Financial Plan the anticipated expenditures or needs line items for other program areas and non-highway assets, the State DOT does not need to do the analysis required by section 515.9(l). If the State DOT wants to address other highway physical assets, such as pavement markings, guardrail, safety attenuators, etc., to illustrate the financial gaps and needs without undertaking the section 515.9(l) analysis, 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 must clearly note that the TAMP framework was not used to arrive at the estimated funding needs/allocations for those non-TAMP assets.