

May 6, 2019

Mr. Jeffrey A. Rosen
Deputy Secretary
Office of the Secretary (OST)
U.S. Department of Transportation (DOT)
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re: Docket No. DOT-OST-2017-0069;

Dear Deputy Secretary Rosen:

The American Association of State Highway and Transportation Officials (AASHTO) appreciates the opportunity to submit comments regarding potential revisions to existing U.S. Department of Transportation (USDOT) guidance documents. We submit these comments in response to the “Notice of Review of Guidance” issued by the USDOT on February 5, 2019 (84 Fed. Reg. 1820). Our comments focus principally on guidance documents issued by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA).

AASHTO is a nonprofit, nonpartisan association representing the State transportation departments in the 50 states, the District of Columbia, and Puerto Rico. It represents all five transportation modes: air, highways, public transportation, rail, and water. Its primary goal is to foster the development, operation, and maintenance of an integrated national transportation system. Our members work closely with U.S. Department of Transportation (USDOT) agencies to operate, maintain, and improve the nation’s transportation system.

Given the broad scope of the USDOT’s request, it would be infeasible to discuss every guidance document that may warrant revision or elimination. Therefore, we have organized this comment letter as follows: Part I addresses overall principles regarding the use of guidance; Part II discusses several key guidance documents that affect AASHTO members; and Part III includes a more detailed catalog (in table format) that identifies key guidance documents by topic area and indicates whether revision or other change is needed.

If you would like to discuss the issues raised in this letter, please contact Matthew Hardy, Ph.D., AASHTO's Program Director for Planning and Performance Management at (202) 624-3625.

Sincerely,

A handwritten signature in black ink, reading "Carlos M. Braceras". The signature is written in a cursive style with a large, prominent initial "C".

Carlos M. Braceras
President, American Association of State Highway and Transportation Officials
Executive Director, Utah Department of Transportation

Part I. Principles for Use of Guidance

We welcome the USDOT's initiative to undertake a comprehensive review of existing guidance documents and identify guidance that should be eliminated or revised. We offer the following comments about USDOT's overall approach to this review.

1. *Good guidance plays an important role in facilitating compliance with federal laws and regulations.* Statutory language and regulations can be complex, and provisions relevant to a specific type of project or activity can be scattered among different parts of a code. Guidance can help simplify compliance in several ways - for example, by bringing together relevant information in one place; by outlining a step-by-step process for achieving compliance; by answering frequently asked questions about key terms and concepts.
2. *Regular updates are needed because guidance can become outdated as statutes and regulations change.* A transportation reauthorization bill typically includes dozens of amendments to statutory requirements governing the work of State DOTs. Those statutory changes lead to rulemakings, and often those rulemakings are still under way when the next reauthorization bill is enacted. Changes in administration can also result in new rulemakings. As a result, guidance becomes outdated, and outdated guidance can be misleading. Periodic efforts to review and update agency guidance therefore are critically important.
3. *Guidance should not be used - directly or indirectly - to impose new requirements.* By definition, guidance is non-binding. But interpretations established in guidance can greatly influence the way statutes and regulations are applied, and in this way they often have the same impact as amendments to agency statutes or regulations. We encourage USDOT in reviewing its guidance to emphasize that interpretations and compliance methods suggested in the guidance are not binding.
4. *Effective opportunities for stakeholder involvement should be provided when developing or revising guidance documents.* In some cases, a formal public process is legally required - for example, when there is a statute that requires significant Federal Transit Administration (FTA) guidance to be published for notice-and-comment in the Federal Register before the guidance is issued. But even where there is no legal requirement to do so, it is a good practice to involve the regulated community and the public generally when developing important guidance documents. We recognize that this process may be infeasible at times - for example, when issuing interim guidance about the effect of a recent court decision or new legislation. However, as a general practice, guidance documents should be made available for public comment before they are finalized.
5. *Guidance may need to be revised to resolve conflicting interpretations.* Documents themselves can be interpreted differently by different offices or individuals within the same agency. Inconsistent interpretations may reflect problems in the guidance documents themselves or may reflect a lack of coordination within the agency. In any case, when inconsistent interpretations arise, the solution may involve updating the guidance to provide clearer direction to officials in the field and greater certainty to those responsible for compliance with the guidance.

6. *Rescinding or automatically “sunsetting” outdated guidance is not necessarily helpful and can have unintended consequences.* One possible approach to outdated guidance is simply to rescind the guidance altogether until new guidance can be developed. This approach would eliminate the risk of confusion caused by outdated guidance, but it would have other drawbacks; for example, State DOTs may be relying upon portions of that guidance for ongoing projects and activities. To the extent that USDOT is considering withdrawal of existing guidance that affects State DOTs, we encourage thorough outreach to State DOTs and other stakeholders before any decisions are made.

Part II. Key Priorities for Updating Guidance

Based on input from our members, we have identified several specific guidance documents that should be significantly updated or rescinded set forth in the following. For all these particular matters, when the guidance is updated, the department should strive to maximize state opportunities for flexibility.

A. Guidance on Fiscal Constraint; Timing of NEPA Approvals in Relation to Planning.

Existing Guidance. The FHWA issued guidance in 2008 and 2011 addressing the transportation planning and air quality conformity requirements that must be met before completion of the National Environmental Policy Act (NEPA) process for a highway or transit project.¹ The 2008 and 2011 guidance states that the transportation planning regulations require that a highway project in an air quality nonattainment or maintenance area must be in an approved, financially constrained transportation plan and STIP/TIP before FHWA issues a NEPA approval document. More specifically, the guidance itself requires that “At least one subsequent phase (e.g., PE, final design, ROW, utility relocation, or construction) of the project has to be included in the approved STIP/TIP before FHWA can sign the ROD or FONSI or approve a CE.” This specific requirement also is included in the 2011 guidance. The 2008 and 2011 guidance requires projects located outside metropolitan areas to be included in the fiscally constrained STIP, regardless of whether the area is subject to air quality conformity requirements. FHWA sought to clarify these requirements in a 2017 guidance document, which largely reiterated existing requirements.²

Description of Problem. We have several concerns with the current guidance:

- There is no basis in transportation planning statutes or regulations for requiring “at least one subsequent phase” to be included in the TIP/STIP prior to NEPA completion. Under the planning regulations, a project must be included in the fiscally constrained transportation plan, which has a time horizon of 20 years or longer; it must be included in the fiscally constrained TIP/STIP only if the project is planned for the 4-year period covered by those documents. In other words, the planning regulations allow the flexibility to complete the NEPA process even if there are no funds available to commence further work within the 4-year timeframe of the TIP/STIP. The 2008 and 2011 guidance takes this flexibility away by requiring “at least one subsequent phase” to be included in the TIP/STIP. There is no basis for this requirement in the regulations.
- There is no basis in transportation planning statutes or regulations for requiring a project in an air quality attainment area (where conformity does not apply) to be included in a

¹ FHWA, “Transportation Planning Requirements and Their Relationship to NEPA Process Completion” (Jan. 28, 2008), available at : https://www.fhwa.dot.gov/Planning/tpr_and_nepa/tprandnepa.cfm; FHWA, “Supplement to January 28, 2008 “Transportation Planning Requirements and Their Relationship to NEPA Process Completion”” (Feb. 9, 2011), available at https://www.fhwa.dot.gov/Planning/tpr_and_nepa/tprandnepasupplement.cfm.

² FHWA, “Clarifying Guidance on Flexibilities in Fiscal Constraint” (May 15, 2017), available at: https://www.fhwa.dot.gov/planning/clarify_fiscal_constraint.cfm.

fiscally constrained plan and TIP/STIP prior to NEPA completion. For such projects, the planning requirements could be satisfied instead by requiring the project to be included in the fiscally constrained STIP prior to construction. Setting the NEPA completion date as a hard deadline for including a project in the plan and TIP/STIP creates unnecessary inflexibility and can delay completion of the NEPA process, especially for larger projects where the details of project funding sources cannot be finalized until NEPA is complete.

- FHWA’s guidance on the relationship among planning, fiscal constraint, and the NEPA process is spread among several separate but overlapping guidance documents, primarily the 2008, 2011, and 2017 documents noted above. A single unified guidance document that provides greater flexibility would reduce confusion and inconsistent interpretations.

Recommendation. We recommend, at a minimum, updating the 2008 and 2011 guidance to eliminate the requirement for “at least one subsequent phase” to be included in the TIP/STIP prior to NEPA completion. More broadly, we recommend that USDOT reconsider the underlying legal and policy justification for requiring a project to be included in a metropolitan plan and TIP/STIP prior to NEPA completion. Project delivery could be significantly streamlined, especially for larger and more complex projects, by allowing NEPA approval to be granted subject to compliance with fiscal constraint and air quality conformity requirements prior to construction. We also recommend replacing the 2008, 2011, and 2017 guidance documents into a single, unified guidance document on the relationship among planning, conformity, and NEPA requirements.

B. Technical Advisory T6640.8A.

Existing Guidance. The FHWA issued guidance in 1987 regarding the “format, content and processing” of environmental documents prepared under NEPA. This guidance is known as Technical Advisory T6640.8A.³

Description of Problem. The Technical Advisory (TA) is severely outdated: it has been in effect for more than 30 years, and major changes to environmental requirements and best practices have occurred during that time. For example:

- The Clean Air Act Amendments of 1990 established air quality conformity and fiscal constraint requirements. Those requirements are not reflected at all in the TA.
- SAFETEA-LU, enacted in 2005, established the environmental review process requirements in 23 U.S.C. 139, which has been significantly amended by later legislation. The Section 139 requirements are reflected in FHWA’s regulations but not in the TA.
- MAP-21, enacted in 2012, authorized the issuance of a Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) as a single document, and that authority

³ FHWA, “Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental Documents” (Oct. 30, 1987), available at:

https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx.

was codified in 23 U.S.C. 139 by the FAST Act in 2015. The authority to issue a combined FEIS/ROD is not reflected in the TA.

- In July 2006, FHWA issued guidance on “Improving the Quality of Environmental Documents.”⁴ This guidance embraced the principles of preparing succinct, reader-friendly NEPA documents using the approaches outlined in a handbook prepared jointly by FHWA, AASHTO, and the American Council of Engineering Companies (ACEC).⁵

These are just a few examples of the many ways in which this 1987 guidance document has become severely outdated. And yet this guidance is still widely cited because it is the only guidance document that comprehensively outlines the required contents and organization of NEPA documents for highway projects.

Recommendation. We recommend comprehensively updating the TA to reflect current requirements, in cooperation with AASHTO and other stakeholders. If that is impractical given constraints on agency resources, we recommend rescinding the guidance because it is so outdated that the potential for confusion outweighs the potential benefit of keeping it in place.

C. Buy America - Guidance on “Manufactured Products” Waiver

Existing Guidance. Section 313 of Title 23 of the U.S. Code establishes “Buy America” requirements applicable to federal-aid highway projects. Generally, these requirements prohibit FHWA from providing Title 23 funds for a project “unless steel, iron, and manufactured products used in such project are produced in the United States.” However, FHWA has authority to grant waivers and, in 1983, it granted a nationwide waiver for certain “manufactured products.”⁶ FHWA issued guidance in 1997 stating that the term “steel and iron manufactured products” refers to products that consist “predominately” of steel and iron.⁷

Description of the Problem. The 1997 memo used a highly subjective term - “predominately” - and did not define that term in percentage terms, nor did it provide even general parameters for determining whether a particular product consists “predominately” of steel and iron. FHWA sought to resolve this confusion in 2012 by issuing a new memo that defined “predominantly” to mean a product that “consists of at least 90% steel or iron content when it is delivered to the job site for installation.”⁸ But the 2012 guidance was struck down by a court in 2015, because the court found that FHWA had erred by failing to allow for notice-and-comment before issuing the

⁴ The 2006 FHWA guidance on improving the quality of environmental documents is available at:

https://www.environment.fhwa.dot.gov/Env_initiatives/EDC/iqed_memo.aspx.

⁵ The 2006 FHWA-AASHTO-ACEC report on improving the quality of environmental documents is available at: (http://environment.transportation.org/center/products_programs/reports/improving_quality_nepa.aspx).

⁶ 48 Fed. Reg. 53099 (Nov. 25, 1983).

⁷ FHWA, “Buy America Policy Response” (Dec. 22, 1997), available at:

<http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm>.

⁸ FHWA, “Clarification of Manufactured Products under Buy America” (Dec. 21, 2012) (rescinded), available at: <https://www.fhwa.dot.gov/construction/contracts/121221.cfm>.

new guidance.⁹ As a result, the 1997 guidance is the only guidance that remains in effect, and it provides little clarity as to the scope of the manufactured products waiver.

Recommendation. We recommend that FHWA initiate a public notice-and-comment process to re-issue the 2012 guidance, with modifications as appropriate, to provide greater clarity as to the scope of the manufactured-products waiver.

D. Emergency Relief Manual

Existing Guidance. Section 125 of Title 23 of the U.S. Code establishes the Emergency Relief (ER) program within the federal-aid highway program. The ER program provides funding for repair or reconstruction projects on Federal-aid highways and highways on Federal lands that suffered serious damage from natural disasters or catastrophic failures from external causes. The statute includes a cost limitation: the total cost of the project may not exceed the cost of constructing a “comparable facility,” which is defined as a facility that “meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.”¹⁰ FHWA’s principal guidance document for this program is the Emergency Relief Manual (ERM), which was updated most recently in 2013.¹¹ The ERM defines the concepts of “restoration in kind” and “replacement in kind,” which are used to determine whether a project constitutes a “comparable facility.”¹²

Description of the Problem. The key issue with the current guidance involves States’ ability to consider upgrades to existing facilities to improve resilience. The guidance does allow some flexibility to consider resilience-related improvements:

- The description of “restoration-in-kind” allows for “additional protective features or changes” if justified “on the basis of economy of construction, improved resiliency to prevent future recurring damage, or technical feasibility.”
- Similarly, the description of “replacement in kind” mentions that roadways and bridges should be designed to the current geometric and construction standards, and that additional resilience features may be considered.

We welcome the language that allows for improvements to resiliency as part of restoration-in-kind and replacement-in-kind projects. However, we are concerned that it remains unclear whether resiliency-related improvements would be considered “betterments” that are ineligible for ER funds. We also note that the new requirements of 23 CFR 667 require States to identify repeat damage locations, and where repeat damage occurs, evaluate the root cause of such damage and undertake an analysis of reasonable alternatives to address the risk. Where that

⁹ See *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union v. Fed. Highway Admin.*, 151 F. Supp. 3d 76, 85-94 (D.D.C. 2015).

¹⁰ 23 U.S.C. 125(d)(2).

¹¹ FHWA, “Emergency Relief Manual (Federal-Aid Highways)” (May 31, 2013), available at: <https://www.fhwa.dot.gov/reports/erm/er.pdf>.

¹² *Id.*, p. 22.

analysis suggests a need to upgrade a facility to improve resilience, the State should be allowed to make those improvements with ER funds.

Recommendation. The ERM should be reviewed for consistency with the more recent recognition of the need to be more resilient in the face of extreme weather and climate change. Specifically, the guidance should clarify that repairing or replacing facilities “current standards” can include measures that improve resilience.

E. CMAQ

Existing Guidance. Section 149 of Title 23 of the U.S. Code establishes the Congestion Mitigation and Air Quality Improvement Program (CMAQ) program. The CMAQ program provides funding to States for a variety of projects that improve air quality and reduce congestion, including projects that contribute to meeting air quality conformity requirements by reducing emissions of ozone, carbon monoxide, and particulate matter. FHWA’s current CMAQ guidance consists of interim guidance issued in 2013 and 2014 after the enactment of MAP-21.¹³

Description of the Problem. The current guidance is outdated in several respects:

- The guidance does not reflect any changes in the FAST Act.
- Section IV of the guidance provides outdated approaches, values, and information for evaluating the cost-effectiveness and priority of CMAQ funds.
- There are inconsistencies between the CMAQ guidance and other FHWA bicycle funding guidance. One definitive source of information should be developed.
- Current reporting requirements and procedures are not included in this guidance.
- Information needs to be added for states that have former non-attainment/maintenance areas that are still receiving CMAQ funds based on those areas being non-attainment/maintenance.
- The guidance does not address Buy America compliance for CMAQ-funded projects.

Recommendations. We recommend comprehensively updating the CMAQ guidance to reflect legal and technology changes that have occurred since the guidance was last updated in 2014. These updates would include updating the guidance to reflect the FAST Act; clarifying Buy America requirements for CMAQ projects; address new technologies, such as intelligent transportation systems (ITS) technologies, electric vehicles, and connected and automated vehicles (CAV) technology; and clarify various other requirements - e.g., for Buy America

¹³ FHWA, “Interim Program Guidance Under MAP-21” (Nov. 12, 2014), and “Revised Interim Guidance on CMAQ Operating Assistance under MAP-21 (July 2014), available at: https://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/.

compliance; modeling air quality impacts; considering projected traffic growth or induced demand; and use of the CMAQ Emissions Toolkits.

F. Stewardship Agreements

Existing Guidance. Section 106(c) of Title 23 of the U.S. Code provides authority for States to “assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections with respect to the projects unless the Secretary determines that the assumption is not appropriate.” The statute also provides that the “Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.” Pursuant to that authority, FHWA has adopted a practice of entering into “Stewardship and Oversight Agreements” with States, which provide in minute detail for the allocation of responsibilities between FHWA and a State DOT on many aspects of the federal-aid highway program.¹⁴

Description of the Problem. Stewardship and Oversight Agreements have greatly increased in size and complexity over the years. Moreover, they impose approval requirements and notice requirements on States that are not required by statute, including as to areas where, by statute, the States supposedly have assumed USDOT’s responsibility, such as design standards. These agreements generally exceed 50 single spaced pages and consist in considerable part of provisions imposing obligations or restrictions on States.

Recommendation. FHWA should revise the standard text of such agreements to eliminate, or at least reduce, unnecessary approvals and then publish the revision for public comment. Reform of these agreements would reduce hard-to-estimate direct costs as well as enable States to spend less time on regulatory compliance and more time on delivering projects and programs to the public.

¹⁴ See <https://www.fhwa.dot.gov/federalaid/stewardship/>.

Part III. Catalog of Guidance by Topic Area

A. Guidance AASHTO Supports

Comment #	Topic Area	Guidance Document and/or Section of Guidance Document	Do We Support It? (Yes or No)
1	Reality-Right of Way	https://www.fhwa.dot.gov/real_estate/policy_guidance/fedfundeap.cfm	Yes
2	Reality-Right of Way	https://www.fhwa.dot.gov/federalaid/150731.cfm	Yes
3	Reality-Right of Way	https://www.fhwa.dot.gov/real_estate/policy_guidance/airguide.cfm	Yes
4	Reality-Right of Way	https://www.fhwa.dot.gov/federalaid/110922.cfm	Yes
8	Design/Geometric Design	Design Standards for Highways Final Rule	Yes
9	Design/Geometric Design	Design Standards and Section 1404 of the FAST Act	Yes
10	Design/Geometric Design	Federal Register Notice: Revision of Thirteen Controlling Criteria for Design and Documentation of Design Exceptions	Yes
11	Design/Geometric Design	Memo: Revisions to the Controlling Criteria for Design and Documentation for Design Exceptions	Yes
14	Design/Geometric Design	Relationship between Design Speed and Posted Speed	Yes
15	Design/Geometric Design	Department of Justice/Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets Roads or Highways are Altered through Resurfacing Guidance	Yes
16	Design/Geometric Design	AASHTO Roadside Design Guide 4th Edition	Yes
17	Design/Geometric Design	Coordination of Vertical Clearance Design Exceptions on the Interstate System	Yes
18	Design/Geometric Design	Americans with Disabilities ACT (ADA) Accessibility Guidelines and Detectable Warnings	Yes
20	Design/Geometric Design	Developing Geometric Design and Processes for Non-Freeway RRR Projects	Yes
23	Design/Geometric Design	2016 Interstate Standards	Yes
24	Design/Geometric Design	2011 Green Book	Yes
25	Design/Geometric Design	Evolving Geometric Design Decisions-Making in the United States	Yes
26	Design/Geometric Design	Illinois DOT Guidelines for Reducing Wrong-Way Crashes	Yes
27	Design/Geometric Design	NTSB Highway Accident Reports	Yes
28	Design/Geometric Design	ADAAG Detectable Warnings	Yes

29	Design/Geometric Design	Research and Guidance Report: Designing Sidewalks and Trails for Access, Part II, Best Practices Design Guide	Yes
30	Design/Geometric Design	Clear Zone and Horizontal Clearance Frequently Asked Questions	Yes
31	Design/Geometric Design	FHWA Safety resources on wrong-way crashes	Yes
32	Design/Geometric Design	Pedestrians and Accessibility Design	Yes
34	Bicycles and Pedestrians	Strategies for Accelerating Multimodal Project Delivery	Yes
35	Bicycles and Pedestrians	Bicycle and Pedestrian Facility Design Flexibility	Yes
110	3R criteria	Guidance: Technical Advisory T 5040.28, Oct 17, 1988	Yes
111	Geometric Design Information	2011 Green Book	Yes
123	Pavement and Materials / Management	Guidelines for Development and Approval of State Data Quality Management Programs	Yes
133	Disadvantaged Business Enterprise	DBE Goal Submission Schedule; https://www.fhwa.dot.gov/civilrights/memos/dbememogalcycle.cfm	Yes

B. Guidance AASHTO Recommends Modifying

Comment #	Topic Area	Guidance Document and/or Section of Guidance Document	Concerns	Modification Needed
136	Asset Management	Financial Planning and Fiscal Constraint for Transportation Plans and Programs Questions and Answers; https://www.fhwa.dot.gov/planning/fscfcntrntques.cfm	TIPs and STIPs are flexible planning documents, not financial tracking documents. FMIS project authorization requests are based on the project estimates completed just weeks before project award. These estimates will vary from the earlier project estimates used to produce and amend the TIP/STIP. In addition, the availability of federal funding categories and the need to use advance construction could change between the TIP/STIP development and the FMIS project authorization request. The information for these two documents/activities should be consistent, but does not need to be exactly the same due to the timing of when full TIP/STIP updates occur. State DOTs are currently required to modify TIPs/STIPs to equal the exact FMIS project authorization request. This requires additional project administration work that adds little, if any, value.	We request adding the following to existing guidance (Financial Planning and Fiscal Constraint for Transportation Plans and Programs Questions and Answers): Does the financial information included in the Financial Management Information System (FMIS) project authorization request have to be exactly the same as the TIP/STIP? <i>"No, the FMIS project authorization request is not required to be exactly the same as the TIP/STIP financial information. The FMIS project authorization should be based on the latest financial information available. TIPs/STIPs are planning documents, not financial tracking documents, and will include financial information available at the time the program/project was defined.</i> <i>The TIP/STIP financial information should be within a reasonable threshold compared to the FMIS project authorization request as established by the state, MPOs and FHWA Division Office. If not, a TIP/STIP amendment could be required. For example, if a FMIS project authorization request exceeds 25 percent and \$1 million compared to the TIP/STIP amount, a TIP/STIP amendment could be required to demonstrate fiscal constraint."</i>
22	Design/Geometric Design	Transportation Enhancement Activities - Guidance	Last update was as far as 11 years ago	The guidance appears to be obsolete or outdated. If the guidance is still necessary, then we recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
134	Disadvantaged Business Enterprise	https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-guidance	At least 12 separate documents - they should be compiled in a single document for ease of use.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to develop one guidance document.
135	Disadvantaged Business Enterprise	Introductory matter to Final Rules published in the Federal Register	USDOT DOCR will often refer to this introductory matter to justify an interpretation of the regulations.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to develop one guidance document.
45	Environmental	FHWA TECHNICAL ADVISORY T 6640.8A October 30, 1987, Section V. Environmental Impact Statement (EIS) - FORMAT AND CONTENT, Subsection G. Environmental Consequences Item 19. Historic and Archeological Preservation, Section 106 MOA requirement for FONSI or ROD	Often execution of a Section 106 adverse effects MOA takes several months for a less complex project and upwards of a year for larger projects with multiple affected historic properties. Ensuring mitigation for an adverse effect is identified and agreed upon is part of the Section 106 process. Decisions made during NEPA and to address Section 4(f) are based primarily on whether there is an adverse effect on a historic property and not on the specific mitigation for that the adverse effect. Having a draft of the MOA available prior to executing a FONSI or ROD will serve the same purpose of clearly identifying the vast majority of the mitigation that will be carried out without waiting for multiple parties to review and refine what are usually items of less relevance and importance to the overall Section 106 mitigation effort. A draft MOA in the FONSI or ROD will still allow compliance with 36 CFR 800.6(a)(4) "Involve the public" and 36 CFR 800.8(c)(4) "Approval of the undertaking" and still provide critical information to allow for final Section 4(f) approvals and determinations needed to approve a FONSI or ROD and it will not affect completion of the Section 106 process as per 36 CFR 800.	FHWA TECHNICAL ADVISORY T 6640.8A October 30, 1987, Section V. Environmental Impact Statement (EIS) - FORMAT AND CONTENT, Subsection G. Environmental Consequences Item 19. Historic and Archeological Preservation, Section 106 MOA requirement for FONSI or ROD; Proposed Revision: "... (b) a formal concurrence from SHPO on the assessment of effect for the project, a draft memorandum of agreement (MOA) indicating proposed mitigation for any adverse affects, and a statement in the NEPA document mitigation commitments indicating all terms and conditions of the final MOA will be implemented".

46	Environmental	FHWA Section 4(f) Policy Paper July 20, 2012 Question 7B. Does Section 4(f) apply when there is an adverse effect determination under the regulations implementing Section 106 of the NHPA?	<p>As currently stated in the guidance, use of land from a historic site, even if the land in question has been found, in consultation with the SHPO, to not contribute to the significance of the historic site the agency is still required to prepare additional documentation to demonstrate compliance with Section 4(f).</p> <p>Making the proposed modification will make the treatment of individual historic properties consistent with the treatment of historic districts in the Section 4(f) Policy Paper answer to Question 7C: How is a Section 4(f) use determined in historic districts? This guidance states:</p> <p>“Answer: When a project requires land from a non-historic or non-contributing property lying within a historic district and does not use other land within the historic district that is considered contributing to its historic significance, FHWA’s longstanding policy is that there is no direct use of the historic district for purposes of Section 4(f).”</p> <p>The second example used in the 7B guidance answer should be changed to reflect the same approach used for a historic district.</p>	<p>Current Language: “Answer: FHWA’s determination of adverse effect under the Section 106 process (See 36 CFR 800.5) does not automatically mean that Section 4(f) will apply. Nor does a determination of no adverse effect mean that Section 4(f) will not apply in some cases. When a project permanently incorporates land of a historic site, regardless of the Section 106 determination, Section 4(f) will apply (emphasis added)”.</p> <p>Proposed Revision: “Answer: When a project requires land from within the boundary of a historic property and that property is determined to be property that is considered not contributing to the property’s historic significance, there is no direct use of the historic district for purposes of Section 4(f).”</p>
47	Environmental	Order 6640.1A FHWA Policy on Permissible Project Related Activities During the NEPA Process October 1, 2010 Par. 5 What is FHWA’s policy regarding which project activities may be advanced prior to a National Environmental Policy Act Decision?	<p>A higher level of design for an undertaking in which only the no-build/no-action and a single build/action alternative is studied is not contradictory to the requirements of 40 CFR 1506.1(a) which states: “Until an agency issues a record of decision, as provided in 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would: 1) have an adverse environmental impact; or 2) Limit the choice of reasonable alternatives.”</p> <p>Nor is this approach contradictory to 40 CFR 1502.2(f) which provides the following: “Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).”</p> <p>Final design is not a permission to advertise or award a construction contract or issue a notice to proceed to begin construction and will not affect the decision of an agency to do something or not do something to address a project with a valid purpose and need.</p>	<p>We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to allow final design related activities when an EA or EIS studies only a single build/action alternative.</p>
48	Environmental	FHWA Technical Advisory T 6640.8A, October 30, 1987 https://www.environment.fhwa.dot.gov/Legislation/NEPA/guidance_preparing_env_documents.aspx	<p>a. The Technical Advisory was published in 1987 and is outdated. We recommend that it be updated as it provides useful guidance on the overall content requirements of NEPA documents. Needed revisions include, but are not limited to, addressing the following:</p> <ul style="list-style-type: none"> • Requirements related to topics, such as environmental justice, community impacts, growth, traffic and transportation, paleontology, natural communities, and indirect and cumulative impacts • Description and number of c-list and d-list categories per 23 CFR 771.117 • 23 USC 139 requirements • Air quality-related laws and regulations including transportation conformity regulations, federal Clean Air Act, and guidance on evaluating Mobile Source Air Toxics. • 23 CFR 772 • 23 CFR 774 and the Section 4(f) Policy Paper • Current requirements on alternatives analysis 	<p>We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders. The Technical Advisory was published in 1987 and is outdated.</p>

49	Environmental	The Importance of Purpose and Need in Environmental Documents, September 18, 1990 https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_purpose_need.aspx	The Purpose and Need guidance would be more useful if it is updated to include: <ul style="list-style-type: none"> • How the need for air quality improvements can affect project need as it relates to transportation control measures and transportation demand management. • Requirements related to level of detail of alternatives analysis and procedures for obtaining public and participating agency input on purpose and need. • Updated citation to the FHWA Technical Advisory T 6640.8A as it is outdated. 	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders. The updates should include: How the need for air quality improvements can affect project need as it relates to transportation control measures and transportation demand management; and Requirements related to level of detail of alternatives analysis and procedures for obtaining public and participating agency input on purpose and need.
51	Environmental	FHWA Visual Impact Assessment Guidelines	We have been working on state-specific guidance on what we want this to look like for us that does not create so much cost and take so much time for sometimes no benefit to the project. In working with other states, it seems like no one is actually able to implement these guidelines without some kind of modification, and even then, the actual approach is not quite like the FHWA guidelines request. We are doing our best - so maybe it is time, now that the states have tried to implement these guidelines, to revisit them and make them better.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
107	Environmental	Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents	Projects over 140,000 AADT require an MSAT analysis. The analyses continue to show the same results – emissions dropping substantially between existing and design years, for all alternatives and no build. The results of the analysis do not inform decision making or help make sure we are meeting any type of requirement, standard, or guideline.	Raise the threshold for MSAT analysis. Suggest: 250,000 AADT.
108	Environmental	Construction Noise Handbook: https://www.fhwa.dot.gov/environment/noise/construction_noise/handbook/	The FHWA handbook has not been updated since 2006 and some equipment noise has become quieter since publication. This may be causing us to overestimating construction noise levels and subsequent impacts that are based on data in the FHWA Handbook	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to include new information from NCHRP 25-49 Development of a Highway Construction Noise Prediction Model.
109	Environmental	Guidance for Preparing and Processing Environmental and Section 4(f) Documents FHWA TECHNICAL ADVISORY T 6640.8A October 30, 1987	Guidance for Preparing and Processing Environmental and Section 4(f) Documents FHWA TECHNICAL ADVISORY T 6640.8A October 30, 1987	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to reflect current NEPA regulations for streamlining and planning and Environmental Linkages, Environmental Justice, and Bike/Pedestrian policy.
124	Environmental	Environment and Planning Linkage Processes Legal Guidance, Feb 2005	Update to include process guidance for states whose MPOs do not perform PEL analysis, which is then assumed by state DOTs. Current guidance is geared primarily to states in which MPOs complete the PEL analysis.	Guidance should be modified to indicate appropriate circumstances to conduct PEL vs preparing a tiered NEPA document since both serve pre-NEPA documentation function.
125	Environmental	Guidance on Environmental Justice and NEPA	Current guidance does not address the fact that the country overall will be majority minority. Reconsider the definition of who should be considered minority. Are there other parameters that could be looked at to get the same results.	Incorporate Title VI protected groups under Environmental Justice
128	Environmental	Supplement to January 28, 2008 Transportation Planning Requirements and Their Relation to NEPA Process Completion	Without applying grandfathering provisions to the effective date of this guidance for projects already underway, this supplement prevented un-programmed projects from obtaining NEPA approval, thereby wasting years of time/cost effort to advance them through the project planning/NEPA evaluation process	Replacement - The NEPA approval process should be decoupled from Transportation Planning Conformity

129	Environmental	Guidance for Preparing and Processing Environmental and Section 4(f) Documents (T6640.8A)	This guidance is over 30 years old and should be completely updated to reflect regulatory changes, changes in technology and communication and transportation legislation that has been passed since 1987	While the guidance document itself is useful and not in need of revision, Section 4(f) itself should be revised to exclude duplicative protection under Section 106 of the NHPA. Section 4(f) should also be revised to streamline the review/comment period for draft 4(f) documents to 30 days from the current 45, and eliminate the requirement that documents be circulated to DOI for review/comment if the affected resource is not under their jurisdiction.
130	Environmental	Federal Highway Administration Guidance on Invasive Species - FHWA, 8/10/1999, https://www.environment.fhwa.dot.gov/env_topics/ecosystems/roadside_use/vegmgmt_rdu3_13.aspx		Develop best management practices for all project types including maintenance.
121	Environmental	(4F) 23 CFR 774 Park, Rec Areas	The time and money involved	Amend the 4F policy paper to explicitly allow for use of 2 forms where there is a sliver take from a historic district (with not adverse effects) and also the use of a contributing bridge and/or individually eligible bridge (De minimis programmatic Evaluation for use of Historic Bridges)
114	Major Project Financial Plans	23 USC 106(i) Major Project Requirements Guidance Documents; https://www.fhwa.dot.gov/majorprojects/resources/070119.cfm	For projects fully funded on the TIP, the financial plan does not add much value.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders. Consider modifying new guidance to exclude projects from the financial plan requirement if they are fully funded on the TIP.
36	Pedestrians and Accessible Design	https://www.fhwa.dot.gov/programadmin/pedestrians.cfm		We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to create a single, consistent, guidance document.
37	Public Transportation	FTA Third Party Contracting Guide, FTA Best Practices Procurement & Lessons Learned Manual, FTA 2018 Master Agreement	Conflicting guidance - These three guidance documents all contain different instructions and guidance. We had to create a "crosswalk" of the different direction and come up with a matrix that tries to address the three pieces of guidance. Even working directly with FTA contacts did not yield consistent, final instructions	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to create a single, consistent guidance document to include a Procurement and Third Party Contracting guidance.
38	Public Transportation	FTA Buy America general guidance (https://www.transit.dot.gov/buyamerica)	There is likely a much more streamlined approach to complying with Buy America requirements rather than requiring every agency that procures a vehicle to conduct a full audit. The current procedures are extremely burdensome, especially to small agencies that do not necessarily have the in-house capacity to conduct in-person inspections for procurements that are generally less than 10-20 vehicles.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to develop new guidance that streamlines certification requirements for Buy America.
39	Public Transportation	FTA Circular 4702.1B Title VI Requirements and Guidelines for FTA Recipients	Agencies receiving both FHWA and FTA funding for transportation planning must complete a Title VI Program, compliant with FTA rules, and a Title VI Plan, compliant with FHWA guidance. Some of the information contained in those documents is duplicative, but much of it is not.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to develop one set of new guidance. Having one set of guidance for those agencies receiving both FHWA and FTA funding would eliminate a staff time and staff cost burden currently being experienced.
41	Public Transportation	FTA's Formula Grants for Rural Areas Guidance (C9040.1G), Section VIII-5: In-Kind Match for Intercity Bus	The examples given in items 5e (2) and (3) are confusing because the net project cost and the contributed costs match exactly, which is rare and makes the example difficult to follow.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to develop formulas for inputting net costs and unsubsidized connecting service (in-kind match) that would clearly calculate the amount eligible for FTA operating assistance, it would be helpful.

42	Public Transportation	Validation Process- This can be found under "Failure to Report" section of the 2018 Policy Manual.	Validation Issues are overly burdensome and time consuming. The requirements and parameters are not specified in the manual and there is no guidance other than what the analyst provides in their responses on how to answer data driven issues. Often, the agency cannot provide a reasonable explanation of why their data would change from year to year, other than a fluctuation in service, weather, age, population decline/increase in rural areas.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to simplify and streamline the Validation Process. Specifically, incorporate flexibility for transit system in rural areas.
43	Public Transportation	2018 NTD Reduced Reporter Policy Manual; https://www.transit.dot.gov/ntd/2018-ntd-reduced-reporting-manual	NTD does not offer an in-person training for all the requirements for the Rural and Reduced Reporter	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders to provide a reduced reporter training at the same, or equal level as the Tribal and Urban reporter.
115	Reality-Right of Way	Guidance on Hardship Acquisition and Condemnation: https://www.fhwa.dot.gov/real_estate/policy_guidance/hardacq.cfm	The 2004 document is unnecessary	The guidance appears to be obsolete or outdated. If the guidance is still necessary, then we recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
101	Transporation System Operations	Active Traffic Management (ATM) Implementation and Operations Guide: https://ops.fhwa.dot.gov/publications/fhwahop17056/index.htm	Given the Age of the "Guide for Highway Capacity and Operations Analysis of Active Transportation and Demand Management Strategies" publication we think advances have been made recently with technologies and they need to be reflected. Though the base theories and information are still helpful the information needs to strive to remain current.	We recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
116	Utilities	Program Guide: Utility Relocation and Accommodation on Federal Aid highway Projects, Sixth Edition	The Guide was issued in 2003 and it needs to be updated	The guidance appears to be obsolete or outdated. If the guidance is still necessary, then we recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
117	Utilities	Highway Utility Guide	The Guide was issued in 1993 and it needs to be updated (if it is still needed)	The guidance appears to be obsolete or outdated. If the guidance is still necessary, then we recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
118	Utilities	Utility Relocation and Accommodation: A History of Federal Policy Under the Federal-Aid Highway Program, Part I: Utility Relocation	It was moved to the National Transportation Library	The guidance appears to be obsolete or outdated. If the guidance is still necessary, then we recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.
119	Utilities	Utility Relocation and Accommodation: A History of Federal Policy Under the Federal-Aid Highway Program, Part II: Utility Accommodation	It was moved to the National Transportation Library	The guidance appears to be obsolete or outdated. If the guidance is still necessary, then we recommend comprehensively updating this guidance in cooperation with AASHTO and other stakeholders.