



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

Memorandum

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Subject: **INFORMATION**: Design Standards and
Section 1404 of the FAST Act

Date: October 6, 2016

From: /s/ Thomas D. Everett
Associate Administrator for Infrastructure

In Reply Refer To:
HIPA

To: Directors of Field Services
Division Administrators
Director of Technical Services
Federal Lands Highway Division Engineers

Flexibility in the design process provides designers with the freedom to develop projects that meet the functional and operational characteristics of drivers, pedestrians, bicyclists, and transit in a way that fits their local context, maintains the desires of and the connections between communities, and is safe for travel. This memorandum provides guidance regarding the implementation of provisions contained in the Fixing America's Surface Transportation Act (FAST Act) that encourage additional flexibility in the design of transportation projects to meet the needs of all users and to improve communities.

Section 1404(a) of the FAST Act amends section 109 of title 23, United States Code (U.S.C.), to require the consideration of certain factors during the design of projects on the National Highway System (NHS), and expands the list of publications to be considered by the Secretary of Transportation when developing design criteria for projects on the NHS. Section 1404(b) of the FAST Act allows local jurisdictions to use a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction is located for the design of a project on the NHS if specific conditions are met. The FHWA intends to incorporate the provisions of Section 1404 into the next significant revision of 23 CFR 625.

Section 1404(a)

Section 1404(a) of the FAST Act requires the Secretary of Transportation, when developing design criteria for the NHS, to consider the *Urban Street Design Guide*, published by the National Association of City Transportation Officials (NACTO), and the *Highway Safety Manual (HSM)*, published by the American Association of State Highway and Transportation Officials (AASHTO), in addition to other design considerations previously contained in 23 U.S.C. 109(c)(2).

The FHWA encourages design flexibility and full consideration of community context in transportation projects, including consideration of the NACTO *Urban Street Design Guide* in conjunction with other resources when developing projects on urban streets. The FHWA

previously issued guidance at www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/ to encourage the use of this and other publications to develop bicycle and pedestrian facilities. Additionally, FHWA recently revised a policy that reduced the number of controlling criteria from 13 to 10 for Interstate highways, other freeways, and roadways with design speed \geq 50 miles per hours (mph), and from 13 to 2 criteria on low speed roadways (non-freeways with design speed $<$ 50 mph). The policy also clarified when design exceptions are needed and the documentation that is expected to support such requests. These changes will give local jurisdictions who own low-speed NHS roadways additional flexibility to design projects that improve communities while meeting transportation needs. More information on the controlling criteria changes is available at www.fhwa.dot.gov/programadmin/standards.cfm. More information on design exceptions is available at www.fhwa.dot.gov/design/standards/qa.cfm.

The *HSM* presents a variety of methods for quantitatively estimating crash frequency or severity at various locations. It is not a design standard. Ongoing research continues to improve the state of the practice regarding safety prediction tools, and will influence future editions of the *HSM*. The AASHTO and others rely on research to update their design publications, and researchers utilize the *HSM* as a key safety reference. This ongoing research will result in continual improvement of the *HSM* and the incorporation of those improvements into other design criteria adopted by FHWA.

The FAST Act did not amend 23 U.S.C. 109(o); therefore, States are still permitted to adopt their own design standards for projects not on the NHS. The FHWA approval of State design standards for non-NHS projects is not required.

Section 1404(a) also requires designs for projects on the NHS to now consider all factors enumerated in 23 U.S.C. 109(c)(1)—which were optional prior to the FAST Act—including the cost savings that can be attained by utilizing flexibility that exists in current design guidance and regulations. Therefore, FHWA staff should work with their partners to ensure that as agencies develop projects on the NHS, they consider the following factors:

- cost savings attained by utilizing design flexibility that exists in current design guidance and regulations;
- the constructed and natural environment of the area;
- the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and
- access for other modes of transportation.

Section 1404(b)

Section 1404(b) of the FAST Act creates an exception to current FHWA regulations at 23 CFR 625 governing the design standards for all NHS highways, providing local jurisdictions with additional flexibility in the choice of design standards for specific projects. Under section 1404(b), a State may allow a local jurisdiction to design the project using a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction resides if the following requirements are met:

- 1) the local jurisdiction is a direct recipient of Federal funds for the project;
- 2) the design publication must be adopted by the local jurisdiction and recognized by FHWA;

- 3) the design(s) must comply with all applicable Federal laws and regulations (FAST Act § 1404(b)(2)-(3)); and
- 4) projects applying the design publication must be on a roadway owned by the local jurisdiction and not be on the Interstate System.

An example of a “direct recipient” would be a recipient of a Transportation Investment Generating Economic Recovery (TIGER) grant.

For the purpose of implementing section 1404(b), the design publications that FHWA currently recognizes are those listed in either the FHWA Memorandum dated August 20, 2013, regarding Bicycle and Pedestrian Facility Design Flexibility (available at www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility.cfm) or the related Questions and Answers (Qs&As) (available at www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility_qa.cfm).

The local FHWA Division Office may review and approve additional road design publications other than those listed in the FHWA Memorandum or Qs&As and will communicate any such approvals with their respective State partner. The FHWA Division Offices should encourage their State partners to allow local agencies to adopt roadway design publications that are different than the State publications and should work with State partners to ensure the Division Offices are notified if and when the State makes these allowances. If a publication is not compliant with all applicable Federal laws and regulations, including the Americans with Disabilities Act and other accessibility laws, the local jurisdiction is responsible for ensuring that the final project design is fully compliant.

Questions and Answers regarding the provisions contained in section 1404 of the FAST Act will be posted on FHWA’s design website at www.fhwa.dot.gov/programadmin/standards.cfm and on FHWA’s FAST Act website at www.fhwa.dot.gov/fastact/guidance.cfm.

If you have any questions, please contact Robert Mooney in the Office of Infrastructure at (202) 366-2221 or Robert Black in the Office of Chief Counsel at (202) 366-1373.

Attachments:

Section 1404 of the FAST Act

23 U.S.C. 109, as amended by the FAST Act