

114-94, div. A, title I, §1116(a), Dec. 4, 2015, 129 Stat. 1349.)

#### REFERENCES IN TEXT

The date of enactment of the FAST Act, referred to in subsecs. (d)(1), (2)(A), (h), and (i)(4), is the date of enactment of Pub. L. 114-94, which was approved Dec. 4, 2015.

#### AMENDMENTS

2015—Pub. L. 114-94 amended section generally. Prior to amendment, section related to national freight policy.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### FREIGHT MOVEMENT PROJECTS, ADVISORY COMMITTEES, AND PLANS

Pub. L. 112-141, div. A, title I, §§1116-1118, July 6, 2012, 126 Stat. 472, 473, which related to prioritization of projects to improve freight movement, State freight advisory committees, and State freight plans, was repealed by Pub. L. 114-94, div. A, title I, §1116(c), Dec. 4, 2015, 129 Stat. 1356.

### § 168. Integration of planning and environmental review

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ENVIRONMENTAL REVIEW PROCESS.—The term “environmental review process” has the meaning given the term in section 139(a).

(2) LEAD AGENCY.—The term “lead agency” has the meaning given the term in section 139(a).

(3) PLANNING PRODUCT.—The term “planning product” means a decision, analysis, study, or other documented information that is the result of an evaluation or decisionmaking process carried out by a metropolitan planning organization or a State, as appropriate, during metropolitan or statewide transportation planning under section 134 or 135, respectively.

(4) PROJECT.—The term “project” has the meaning given the term in section 139(a).

(5) PROJECT SPONSOR.—The term “project sponsor” has the meaning given the term in section 139(a).

(6) RELEVANT AGENCY.—The term “relevant agency” means the agency with authority under subparagraph (A) or (B) of subsection (b)(1).

(b) ADOPTION OR INCORPORATION BY REFERENCE OF PLANNING PRODUCTS FOR USE IN NEPA PROCEEDINGS.—

(1) IN GENERAL.—Subject to subsection (d) and to the maximum extent practicable and appropriate, the following agencies may adopt or incorporate by reference and use a planning product in proceedings relating to any class of action in the environmental review process of the project:

(A) The lead agency for a project, with respect to an environmental impact state-

ment, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) The cooperating agency with responsibility under Federal law, with respect to the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if consistent with that law.

(2) IDENTIFICATION.—If the relevant agency makes a determination to adopt or incorporate by reference and use a planning product, the relevant agency shall identify the agencies that participated in the development of the planning products.

(3) ADOPTION OR INCORPORATION BY REFERENCE OF PLANNING PRODUCTS.—The relevant agency may—

(A) adopt or incorporate by reference an entire planning product under paragraph (1); or

(B) select portions of a planning project under paragraph (1) for adoption or incorporation by reference.

(4) TIMING.—A determination under paragraph (1) with respect to the adoption or incorporation by reference of a planning product may—

(A) be made at the time the relevant agencies decide the appropriate scope of environmental review for the project; or

(B) occur later in the environmental review process, as appropriate.

(c) APPLICABILITY.—

(1) PLANNING DECISIONS.—The relevant agency in the environmental review process may adopt or incorporate by reference decisions from a planning product, including—

(A) whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

(B) a decision with respect to general travel corridor or modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

(C) the purpose and the need for the proposed action;

(D) preliminary screening of alternatives and elimination of unreasonable alternatives;

(E) a basic description of the environmental setting;

(F) a decision with respect to methodologies for analysis; and

(G) an identification of programmatic level mitigation for potential impacts of a project, including a programmatic mitigation plan developed in accordance with section 169, that the relevant agency determines are more effectively addressed on a national or regional scale, including—

(i) measures to avoid, minimize, and mitigate impacts at a national or regional scale of proposed transportation investments on environmental resources, includ-

ing regional ecosystem and water resources; and

(ii) potential mitigation activities, locations, and investments.

(2) **PLANNING ANALYSES.**—The relevant agency in the environmental review process may adopt or incorporate by reference analyses from a planning product, including—

(A) travel demands;

(B) regional development and growth;

(C) local land use, growth management, and development;

(D) population and employment;

(E) natural and built environmental conditions;

(F) environmental resources and environmentally sensitive areas;

(G) potential environmental effects, including the identification of resources of concern and potential direct, indirect, and cumulative effects on those resources; and

(H) mitigation needs for a proposed project, or for programmatic level mitigation, for potential effects that the lead agency determines are most effectively addressed at a regional or national program level.

(d) **CONDITIONS.**—The relevant agency in the environmental review process may adopt or incorporate by reference a planning product under this section if the relevant agency determines, with the concurrence of the lead agency and, if the planning product is necessary for a cooperating agency to issue a permit, review, or approval for the project, with the concurrence of the cooperating agency, that the following conditions have been met:

(1) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

(2) The planning product was developed in consultation with appropriate Federal and State resource agencies and Indian tribes.

(3) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

(4) The planning process included public notice that the planning products produced in the planning process may be adopted during a subsequent environmental review process in accordance with this section.

(5) During the environmental review process, the relevant agency has—

(A) made the planning documents available for public review and comment by members of the general public and Federal, State, local, and tribal governments that may have an interest in the proposed project;

(B) provided notice of the intention of the relevant agency to adopt or incorporate by reference the planning product; and

(C) considered any resulting comments.

(6) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

(7) The planning product has a rational basis and is based on reliable and reasonably cur-

rent data and reasonable and scientifically acceptable methodologies.

(8) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.

(9) The planning product is appropriate for adoption or incorporation by reference and use in the environmental review process for the project and is incorporated in accordance with, and is sufficient to meet the requirements of, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 1502.21 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the FAST Act).

(10) The planning product was approved within the 5-year period ending on the date on which the information is adopted or incorporated by reference.

(e) **EFFECT OF ADOPTION OR INCORPORATION BY REFERENCE.**—Any planning product adopted or incorporated by reference by the relevant agency in accordance with this section may be—

(1) incorporated directly into an environmental review process document or other environmental document; and

(2) relied on and used by other Federal agencies in carrying out reviews of the project.

(f) **RULES OF CONSTRUCTION.**—

(1) **IN GENERAL.**—This section does not make the environmental review process applicable to the transportation planning process conducted under this title and chapter 53 of title 49.

(2) **TRANSPORTATION PLANNING ACTIVITIES.**—Initiation of the environmental review process as a part of, or concurrently with, transportation planning activities does not subject transportation plans and programs to the environmental review process.

(3) **PLANNING PRODUCTS.**—This section does not affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or restrict the initiation of the environmental review process during planning.

(Added Pub. L. 112–141, div. A, title I, §1310(a), July 6, 2012, 126 Stat. 540; amended Pub. L. 114–94, div. A, title I, §1305, Dec. 4, 2015, 129 Stat. 1386.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b)(1) and (d)(9), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of the FAST Act, referred to in subsec. (d)(9), is the date of enactment of Pub. L. 114–94, which was approved Dec. 4, 2015.

#### AMENDMENTS

2015—Pub. L. 114–94 amended section generally. Prior to amendment, section related to integration of planning and environmental review.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note

under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

**§ 169. Development of programmatic mitigation plans**

(a) **IN GENERAL.**—As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop 1 or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

(b) **SCOPE.**—

(1) **SCALE.**—A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

(2) **RESOURCES.**—The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat.

(3) **PROJECT IMPACTS.**—The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project.

(4) **CONSULTATION.**—The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

(c) **CONTENTS.**—A programmatic mitigation plan may include—

(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

(3) standard measures for mitigating certain types of impacts;

(4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;

(5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and

(6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(d) **PROCESS.**—Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall—

(1) consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;

(3) consider any comments received from such agencies and the public on the draft plan; and

(4) address such comments in the final plan.

(e) **INTEGRATION WITH OTHER PLANS.**—A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

(f) **CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.**—If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in a programmatic mitigation plan when carrying out the responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other Federal environmental law.

(g) **PRESERVATION OF EXISTING AUTHORITIES.**—Nothing in this section limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Added Pub. L. 112-141, div. A, title I, §1311(a), July 6, 2012, 126 Stat. 543; amended Pub. L. 114-94, div. A, title I, §1306, Dec. 4, 2015, 129 Stat. 1389.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (f) and (g), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (f). Pub. L. 114-94 substituted “shall give substantial weight to” for “may use” and inserted “or other Federal environmental law” before period at end.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

**§ 170. Funding flexibility for transportation emergencies**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, a State may use up to 100 percent of any covered funds of the State to repair or replace a transportation facility that has suffered serious damage as a result of a natural disaster or catastrophic failure from an external cause.

(b) **DECLARATION OF EMERGENCY.**—Funds may be used under this section only for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).