

State or local government having jurisdiction over the operation of the facility.

“(B) INCLUSION.—The term ‘State agency’ includes a State transportation department.”

Subsec. (f)(6). Pub. L. 114–94, §1411(b)(6)(D), redesignated par. (4) as (6).

Subsec. (g). Pub. L. 114–94, §1411(b)(7), added subsec. (g).

2012—Subsec. (b)(5)(A), (B). Pub. L. 112–141, §1514(1)(A), (B), substituted “2017” for “2009”.

Subsec. (b)(5)(C). Pub. L. 112–141, §1514(1)(C), substituted “this paragraph” for “subparagraph (B)” and inserted “or equal to” after “less than”.

Subsec. (c)(3). Pub. L. 112–141, §1514(2), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “If a State agency makes a certification under section 129(a)(3) with respect to toll revenues collected under paragraphs (4) and (5) of subsection (b), the State, in the use of toll revenues under that sentence, shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety.”

Subsec. (d)(1). Pub. L. 112–141, §1514(3)(A), in introductory provisions, substituted “shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify” for “in a fiscal year shall certify” and struck out “in the fiscal year” before the colon.

Subsec. (d)(1)(A). Pub. L. 112–141, §1514(3)(B), inserted “and submitting to the Secretary annual reports of those impacts” before period at end.

Subsec. (d)(1)(C). Pub. L. 112–141, §1514(3)(C), substituted “whenever the operation of the facility is degraded” for “if the presence of the vehicles has degraded the operation of the facility”.

Subsec. (d)(1)(D), (E). Pub. L. 112–141, §1514(3)(D), added subpars. (D) and (E).

2008—Subsec. (b)(5)(C). Pub. L. 110–244 substituted “paragraph (4)” for “paragraph (3)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

##### 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 OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 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.

### § 167. National highway freight program

(a) IN GENERAL.—

(1) POLICY.—It is the policy of the United States to improve the condition and performance of the National Highway Freight Network established under this section to ensure that the Network provides the foundation for the United States to compete in the global economy and achieve the goals described in subsection (b).

(2) ESTABLISHMENT.—In support of the goals described in subsection (b), the Administrator of the Federal Highway Administration shall establish a national highway freight program in accordance with this section to improve the

efficient movement of freight on the National Highway Freight Network.

(b) GOALS.—The goals of the national highway freight program are—

(1) to invest in infrastructure improvements and to implement operational improvements on the highways of the United States that—

(A) strengthen the contribution of the National Highway Freight Network to the economic competitiveness of the United States;

(B) reduce congestion and bottlenecks on the National Highway Freight Network;

(C) reduce the cost of freight transportation;

(D) improve the year-round reliability of freight transportation; and

(E) increase productivity, particularly for domestic industries and businesses that create high-value jobs;

(2) to improve the safety, security, efficiency, and resiliency of freight transportation in rural and urban areas;

(3) to improve the state of good repair of the National Highway Freight Network;

(4) to use innovation and advanced technology to improve the safety, efficiency, and reliability of the National Highway Freight Network;

(5) to improve the efficiency and productivity of the National Highway Freight Network;

(6) to improve the flexibility of States to support multi-State corridor planning and the creation of multi-State organizations to increase the ability of States to address highway freight connectivity; and

(7) to reduce the environmental impacts of freight movement on the National Highway Freight Network.

(c) ESTABLISHMENT OF NATIONAL HIGHWAY FREIGHT NETWORK.—

(1) IN GENERAL.—The Administrator shall establish a National Highway Freight Network in accordance with this section to strategically direct Federal resources and policies toward improved performance of the Network.

(2) NETWORK COMPONENTS.—The National Highway Freight Network shall consist of—

(A) the primary highway freight system, as designated under subsection (d);

(B) critical rural freight corridors established under subsection (e);

(C) critical urban freight corridors established under subsection (f); and

(D) the portions of the Interstate System not designated as part of the primary highway freight system.

(d) DESIGNATION AND REDESIGNATION OF THE PRIMARY HIGHWAY FREIGHT SYSTEM.—

(1) INITIAL DESIGNATION OF PRIMARY HIGHWAY FREIGHT SYSTEM.—The initial designation of the primary highway freight system shall be the 41,518-mile network identified during the designation process for the primary freight network under section 167(d) of this title, as in effect on the day before the date of enactment of the FAST Act.

(2) REDESIGNATION OF PRIMARY HIGHWAY FREIGHT SYSTEM.—

(A) IN GENERAL.—Beginning 5 years after the date of enactment of the FAST Act, and every 5 years thereafter, using the designation factors described in subparagraph (E), the Administrator shall redesignate the primary highway freight system.

(B) REDESIGNATION MILEAGE.—Each redesignation may increase the mileage on the primary highway freight system by not more than 3 percent of the total mileage of the system.

(C) USE OF MEASURABLE DATA.—In redesignating the primary highway freight system, to the maximum extent practicable, the Administrator shall use measurable data to assess the significance of goods movement, including consideration of points of origin, destinations, and linking components of the United States global and domestic supply chains.

(D) INPUT.—In redesignating the primary highway freight system, the Administrator shall provide an opportunity for State freight advisory committees, as applicable, to submit additional miles for consideration.

(E) FACTORS FOR REDESIGNATION.—In redesignating the primary highway freight system, the Administrator shall consider—

(i) changes in the origins and destinations of freight movement in, to, and from the United States;

(ii) changes in the percentage of annual daily truck traffic in the annual average daily traffic on principal arterials;

(iii) changes in the location of key facilities;

(iv) land and water ports of entry;

(v) access to energy exploration, development, installation, or production areas;

(vi) access to other freight intermodal facilities, including rail, air, water, and pipelines facilities;

(vii) the total freight tonnage and value moved via highways;

(viii) significant freight bottlenecks, as identified by the Administrator;

(ix) the significance of goods movement on principal arterials, including consideration of global and domestic supply chains;

(x) critical emerging freight corridors and critical commerce corridors; and

(xi) network connectivity.

(e) CRITICAL RURAL FREIGHT CORRIDORS.—

(1) IN GENERAL.—A State may designate a public road within the borders of the State as a critical rural freight corridor if the public road is not in an urbanized area and—

(A) is a rural principal arterial roadway and has a minimum of 25 percent of the annual average daily traffic of the road measured in passenger vehicle equivalent units from trucks (Federal Highway Administration vehicle class 8 to 13);

(B) provides access to energy exploration, development, installation, or production areas;

(C) connects the primary highway freight system, a roadway described in subparagraph (A) or (B), or the Interstate System to facilities that handle more than—

(i) 50,000 20-foot equivalent units per year; or

(ii) 500,000 tons per year of bulk commodities;

(D) provides access to—

(i) a grain elevator;

(ii) an agricultural facility;

(iii) a mining facility;

(iv) a forestry facility; or

(v) an intermodal facility;

(E) connects to an international port of entry;

(F) provides access to significant air, rail, water, or other freight facilities in the State; or

(G) is, in the determination of the State, vital to improving the efficient movement of freight of importance to the economy of the State.

(2) LIMITATION.—A State may designate as critical rural freight corridors a maximum of 300 miles of highway or 20 percent of the primary highway freight system mileage in the State, whichever is greater.

(3) RURAL STATES.—Notwithstanding paragraph (2), a State with a population per square mile of area that is less than the national average, based on the 2010 census, may designate as critical rural freight corridors a maximum of 600 miles of highway or 25 percent of the primary highway freight system mileage in the State, whichever is greater.

(f) CRITICAL URBAN FREIGHT CORRIDORS.—

(1) URBANIZED AREA WITH POPULATION OF 500,000 OR MORE.—In an urbanized area with a population of 500,000 or more individuals, the representative metropolitan planning organization, in consultation with the State, may designate a public road within the borders of that area of the State as a critical urban freight corridor.

(2) URBANIZED AREA WITH A POPULATION LESS THAN 500,000.—In an urbanized area with a population of less than 500,000 individuals, the State, in consultation with the representative metropolitan planning organization, may designate a public road within the borders of that area of the State as a critical urban freight corridor.

(3) REQUIREMENTS FOR DESIGNATION.—A designation may be made under paragraph (1) or (2) if the public road—

(A) is in an urbanized area, regardless of population; and

(B)(i) connects an intermodal facility to—

(I) the primary highway freight system;

(II) the Interstate System; or

(III) an intermodal freight facility;

(ii) is located within a corridor of a route on the primary highway freight system and provides an alternative highway option important to goods movement;

(iii) serves a major freight generator, logistic center, or manufacturing and warehouse industrial land; or

(iv) is important to the movement of freight within the region, as determined by the metropolitan planning organization or the State.

(4) **LIMITATION.**—For each State, a maximum of 150 miles of highway or 10 percent of the primary highway freight system mileage in the State, whichever is greater, may be designated as a critical urban freight corridor under paragraphs (1) and (2).

(g) **DESIGNATION AND CERTIFICATION.**—

(1) **DESIGNATION.**—States and metropolitan planning organizations may designate corridors under subsections (e) and (f) and submit the designated corridors to the Administrator on a rolling basis.

(2) **CERTIFICATION.**—Each State or metropolitan planning organization that designates a corridor under subsection (e) or (f) shall certify to the Administrator that the designated corridor meets the requirements of the applicable subsection.

(h) **USE OF APPORTIONED FUNDS.**—

(1) **IN GENERAL.**—A State shall obligate funds apportioned to the State under section 104(b)(5) to improve the movement of freight on the National Highway Freight Network.

(2) **FORMULA.**—The Administrator shall calculate for each State the proportion that—

(A) the total mileage in the State designated as part of the primary highway freight system; bears to

(B) the total mileage of the primary highway freight system in all States.

(3) **USE OF FUNDS.**—

(A) **STATES WITH HIGH PRIMARY HIGHWAY FREIGHT SYSTEM MILEAGE.**—If the proportion of a State under paragraph (2) is greater than or equal to 2 percent, the State may obligate funds apportioned to the State under section 104(b)(5) for projects on—

- (i) the primary highway freight system;
- (ii) critical rural freight corridors; and
- (iii) critical urban freight corridors.

(B) **STATES WITH LOW PRIMARY HIGHWAY FREIGHT SYSTEM MILEAGE.**—If the proportion of a State under paragraph (2) is less than 2 percent, the State may obligate funds apportioned to the State under section 104(b)(5) for projects on any component of the National Highway Freight Network.

(4) **FREIGHT PLANNING.**—Notwithstanding any other provision of law, effective beginning 2 years after the date of enactment of the FAST Act, a State may not obligate funds apportioned to the State under section 104(b)(5) unless the State has developed a freight plan in accordance with section 70202 of title 49, except that the multimodal component of the plan may be incomplete before an obligation may be made under this section.

(5) **ELIGIBILITY.**—

(A) **IN GENERAL.**—Except as provided in this subsection, for a project to be eligible for funding under this section the project shall—

- (i) contribute to the efficient movement of freight on the National Highway Freight Network; and
- (ii) be identified in a freight investment plan included in a freight plan of the State that is in effect.

(B) **OTHER PROJECTS.**—For each fiscal year, a State may obligate not more than 30 per-

cent of the total apportionment of the State under section 104(b)(5) for freight intermodal or freight rail projects, including projects—

(i) within the boundaries of public or private freight rail or water facilities (including ports);

(ii) that provide surface transportation infrastructure necessary to facilitate direct intermodal interchange, transfer, and access into or out of the facility;

(iii) for the modernization or rehabilitation of a lock and dam, if the Secretary determines that the project—

(I) is functionally connected to the National Highway Freight Network; and

(II) is likely to reduce on-road mobile source emissions; and

(iv) on a marine highway corridor, connector, or crossing designated by the Secretary under section 55601(c) of title 46 (including an inland waterway corridor, connector, or crossing), if the Secretary determines that the project—

(I) is functionally connected to the National Highway Freight Network; and

(II) is likely to reduce on-road mobile source emissions.

(C) **ELIGIBLE PROJECTS.**—Funds apportioned to the State under section 104(b)(5) for the national highway freight program may be obligated to carry out 1 or more of the following:

(i) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities.

(ii) Construction, reconstruction, rehabilitation, acquisition of real property (including land relating to the project and improvements to land), construction contingencies, acquisition of equipment, and operational improvements directly relating to improving system performance.

(iii) Intelligent transportation systems and other technology to improve the flow of freight, including intelligent freight transportation systems.

(iv) Efforts to reduce the environmental impacts of freight movement.

(v) Environmental and community mitigation for freight movement.

(vi) Railway-highway grade separation.

(vii) Geometric improvements to interchanges and ramps.

(viii) Truck-only lanes.

(ix) Climbing and runaway truck lanes.

(x) Adding or widening of shoulders.

(xi) Truck parking facilities eligible for funding under section 1401 of MAP-21 (23 U.S.C. 137 note).

(xii) Real-time traffic, truck parking, roadway condition, and multimodal transportation information systems.

(xiii) Electronic screening and credentialing systems for vehicles, including weigh-in-motion truck inspection technologies.

(xiv) Traffic signal optimization, including synchronized and adaptive signals.

(xv) Work zone management and information systems.

(xvi) Highway ramp metering.

(xvii) Electronic cargo and border security technologies that improve truck freight movement.

(xviii) Intelligent transportation systems that would increase truck freight efficiencies inside the boundaries of intermodal facilities.

(xix) Additional road capacity to address highway freight bottlenecks.

(xx) Physical separation of passenger vehicles from commercial motor freight.

(xxi) Enhancement of the resiliency of critical highway infrastructure, including highway infrastructure that supports national energy security, to improve the flow of freight.

(xxii) A highway or bridge project, other than a project described in clauses (i) through (xxi), to improve the flow of freight on the National Highway Freight Network.

(xxiii) Any other surface transportation project to improve the flow of freight into and out of a facility described in subparagraph (B).

(6) OTHER ELIGIBLE COSTS.—In addition to the eligible projects identified in paragraph (5), a State may use funds apportioned under section 104(b)(5) for—

(A) carrying out diesel retrofit or alternative fuel projects under section 149 for class 8 vehicles; and

(B) the necessary costs of—

(i) conducting analyses and data collection related to the national highway freight program;

(ii) developing and updating performance targets to carry out this section; and

(iii) reporting to the Administrator to comply with the freight performance target under section 150.

(7) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135.

(i) STATE PERFORMANCE TARGETS.—If the Administrator determines that a State has not met or made significant progress toward meeting the performance targets related to freight movement of the State established under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets, the State shall include in the next report submitted under section 150(e) a description of the actions the State will undertake to achieve the targets, including—

(1) an identification of significant freight system trends, needs, and issues within the State;

(2) a description of the freight policies and strategies that will guide the freight-related transportation investments of the State;

(3) an inventory of freight bottlenecks within the State and a description of the ways in which the State is allocating national highway freight program funds to improve those bottlenecks; and

(4) a description of the actions the State will undertake to meet the performance targets of the State.

(j) INTELLIGENT FREIGHT TRANSPORTATION SYSTEM.—

(1) DEFINITION OF INTELLIGENT FREIGHT TRANSPORTATION SYSTEM.—In this section, the term “intelligent freight transportation system” means—

(A) innovative or intelligent technological transportation systems, infrastructure, or facilities, including elevated freight transportation facilities—

(i) in proximity to, or within, an existing right of way on a Federal-aid highway; or

(ii) that connect land ports of entry<sup>1</sup> to existing Federal-aid highways; or

(B) communications or information processing systems that improve the efficiency, security, or safety of freight movements on the Federal-aid highway system, including to improve the conveyance of freight on dedicated intelligent freight lanes.

(2) OPERATING STANDARDS.—The Administrator shall determine whether there is a need for establishing operating standards for intelligent freight transportation systems.

(k) TREATMENT OF FREIGHT PROJECTS.—Notwithstanding any other provision of law, a freight project carried out under this section shall be treated as if the project were on a Federal-aid highway.

(Added Pub. L. 112–141, div. A, title I, §1115(a), July 6, 2012, 126 Stat. 468; amended Pub. L. 114–94, div. A, title I, §1116(a), Dec. 4, 2015, 129 Stat. 1349; Pub. L. 117–58, div. A, title I, §11114, title III, §13006(f), Nov. 15, 2021, 135 Stat. 479, 639.)

## Editorial Notes

### REFERENCES IN TEXT

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

### AMENDMENTS

2021—Subsec. (e)(2). Pub. L. 117–58, §11114(1)(A), substituted “300 miles” for “150 miles”.

Subsec. (e)(3). Pub. L. 117–58, §11114(1)(B), added par. (3).

Subsec. (f)(4). Pub. L. 117–58, §11114(2), substituted “150 miles” for “75 miles”.

Subsecs. (h), (i). Pub. L. 117–58, §13006(f), redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out former subsec. (h). Prior to amendment, text of subsec. (h) read as follows: “Not later than 2 years after the date of enactment of the FAST Act, and biennially thereafter, the Administrator shall prepare and submit to Congress a report that describes the conditions and performance of the National Highway Freight Network in the United States.”

Subsec. (i)(5)(B). Pub. L. 117–58, §11114(3)(A), substituted “30 percent” for “10 percent” in introductory provisions.

Subsec. (i)(5)(B)(iii), (iv). Pub. L. 117–58, §11114(3)(B)–(D), added cls. (iii) and (iv).

Subsecs. (j) to (l). Pub. L. 117–58, §13006(f)(2), redesignated subsecs. (j) to (l) as (i) to (k), respectively.

<sup>1</sup> So in original.

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117-58, set out as a note under section 101 of this title.

##### 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 statement, 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, including regional ecosystem and water resources; and