

## 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, provided that:

## “SEC. 1116. PRIORITIZATION OF PROJECTS TO IMPROVE FREIGHT MOVEMENT.

“(a) IN GENERAL.—Notwithstanding section 120 of title 23, United States Code, the Secretary may increase the Federal share payable for any project to 95 percent for projects on the Interstate System and 90 percent for any other project if the Secretary certifies that the project meets the requirements of this section.

“(b) INCREASED FUNDING.—To be eligible for the increased Federal funding share under this section, a project shall—

“(1) demonstrate the improvement made by the project to the efficient movement of freight, including making progress towards meeting performance targets for freight movement established under section 150(d) of title 23, United States Code; and

“(2) be identified in a State freight plan developed pursuant to section 1118.

“(c) ELIGIBLE PROJECTS.—Eligible projects to improve the movement of freight under this section may include, but are not limited to—

“(1) construction, reconstruction, rehabilitation, and operational improvements directly relating to improving freight movement;

“(2) intelligent transportation systems and other technology to improve the flow of freight;

“(3) efforts to reduce the environmental impacts of freight movement on the primary freight network;

“(4) railway-highway grade separation;

“(5) geometric improvements to interchanges and ramps. [sic]

“(6) truck-only lanes;

“(7) climbing and runaway truck lanes;

“(8) truck parking facilities eligible for funding under section 1401;

“(9) real-time traffic, truck parking, roadway condition, and multimodal transportation information systems;

“(10) improvements to freight intermodal connectors; and

“(11) improvements to truck bottlenecks.

## “SEC. 1117. STATE FREIGHT ADVISORY COMMITTEES.

“(a) IN GENERAL.—The Secretary shall encourage each State to establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders, including representatives of ports, shippers, carriers, freight-related associations, the freight industry workforce, the transportation department of the State, and local governments.

“(b) ROLE OF COMMITTEE.—A freight advisory committee of a State described in subsection (a) shall—

“(1) advise the State on freight-related priorities, issues, projects, and funding needs;

“(2) serve as a forum for discussion for State transportation decisions affecting freight mobility;

“(3) communicate and coordinate regional priorities with other organizations;

“(4) promote the sharing of information between the private and public sectors on freight issues; and

“(5) participate in the development of the freight plan of the State described in section 1118.

## “SEC. 1118. STATE FREIGHT PLANS.

“(a) IN GENERAL.—The Secretary shall encourage each State to develop a freight plan that provides a comprehensive plan for the immediate and long-range

planning activities and investments of the State with respect to freight.

“(b) PLAN CONTENTS.—A freight plan described in subsection (a) shall include, at a minimum—

“(1) an identification of significant freight system trends, needs, and issues with respect to the State;

“(2) a description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;

“(3) a description of how the plan will improve the ability of the State to meet the national freight goals established under section 167 of title 23, United States Code;

“(4) evidence of consideration of innovative technologies and operational strategies, including intelligent transportation systems, that improve the safety and efficiency of freight movement;

“(5) in the case of routes on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of roadways, a description of improvements that may be required to reduce or impede the deterioration; and

“(6) an inventory of facilities with freight mobility issues, such as truck bottlenecks, within the State, and a description of the strategies the State is employing to address those freight mobility issues.

“(c) RELATIONSHIP TO LONG-RANGE PLAN.—A freight plan described in subsection (a) may be developed separate from or incorporated into the statewide strategic long-range transportation plan required by section 135 of title 23, United States Code.”

**§ 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” means the process for preparing for a project 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.).

(2) PLANNING PRODUCT.—The term “planning product” means a detailed and timely decision, analysis, study, or other documented information that—

(A) is the result of an evaluation or decisionmaking process carried out during transportation planning, including a detailed corridor plan or a transportation plan developed under section 134 that fully analyzes impacts on mobility, adjacent communities, and the environment;

(B) is intended to be carried into the transportation project development process; and

(C) has been approved by the State, all local and tribal governments where the project is located, and by any relevant metropolitan planning organization.

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

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

(b) ADOPTION OF PLANNING PRODUCTS FOR USE IN NEPA PROCEEDINGS.—

(1) IN GENERAL.—Subject to the conditions set forth in subsection (d), the Federal lead agency for a project may adopt and use a plan-

ning product in proceedings relating to any class of action in the environmental review process of the project.

(2) IDENTIFICATION.—When the Federal lead agency makes a determination to adopt and use a planning product, the Federal lead agency shall identify those agencies that participated in the development of the planning products.

(3) PARTIAL ADOPTION OF PLANNING PRODUCTS.—The Federal lead agency may adopt a planning product under paragraph (1) in its entirety or may select portions for adoption.

(4) TIMING.—A determination under paragraph (1) with respect to the adoption of a planning product may be made at the time the lead agencies decide the appropriate scope of environmental review for the project but may also occur later in the environmental review process, as appropriate.

(c) APPLICABILITY.—

(1) PLANNING DECISIONS.—Planning decisions that may be adopted pursuant to this section include—

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

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

(C) a basic description of the environmental setting;

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

(E) an identification of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including—

(i) system-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and

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

(2) PLANNING ANALYSES.—Planning analyses that may be adopted pursuant to this section include studies with respect to—

(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 cumulative effects on those resources, identified as a result of a statewide or regional cumulative effects assessment; and

(H) mitigation needs for a proposed action, or for programmatic level mitigation, for po-

tential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

(d) CONDITIONS.—Adoption and use of a planning product under this section is subject to a determination by the Federal lead agency, with the concurrence of other participating agencies with relevant expertise and project sponsors as appropriate, and with an opportunity for public notice and comment and consideration of those comments by the Federal lead 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 by engaging in active 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) During the planning process, notice was provided through publication or other means to Federal, State, local, and tribal governments that might have an interest in the proposed project, and to members of the general public, of the planning products that the planning process might produce and that might be relied on during any subsequent environmental review process, and such entities have been provided an appropriate opportunity to participate in the planning process leading to such planning product.

(5) After initiation of the environmental review process, but prior to determining whether to rely on and use the planning product, the lead Federal agency has made documentation relating to the planning product available to Federal, State, local, and tribal governments that may have an interest in the proposed action, and to members of the general public, and has 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 current 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 and use in the environmental review process for the project.

(10) The planning product was approved not later than 5 years prior to date on which the information is adopted pursuant to this section.

(e) EFFECT OF ADOPTION.—Any planning product adopted by the Federal lead agency in accordance with this section may be incorporated directly into an environmental review process document or other environmental document and

may be relied upon and used by other Federal agencies in carrying out reviews of the project.

(f) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—This section shall not be construed to 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 shall not be construed to affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or to 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.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), 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.

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 may use 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.).

(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.)

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.

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