

FAST Act Guide for Freight Plans and Freight Planning

Summary of the Freight Provisions in the New Federal Transportation Legislation

Updated June 1, 2016

OVERVIEW: Freight Emphasis and Dedicated Funding

On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation (FAST) Act that authorizes Federal highway, highway safety, transit, and rail programs for five years from Federal fiscal years (FY) 2016 through 2020. The FAST Act authorizes \$305 billion from both the Highway Trust Fund and the General Fund (GF) of the United States Treasury. It provides \$225 billion in Highway Trust Fund (HTF) contract authority over five years for the Federal-aid Highway Program, increasing funding from \$41 billion in 2015 to \$47 billion in 2020.

The bill places **major emphasis on freight investments** to be supported by the HTF by creating a new National Highway Freight Program (NHFP) funded at an average of \$1.2 billion per year and distributed to the States by formula. In addition, a new discretionary program entitled the Nationally Significant Freight and Highway Projects is established, funded at an average of \$900 million per year.¹

This document is a summary of the freight, freight funding and freight planning provisions in FAST. Details on the FAST Act can be found on:

- The AASHTO website <http://fast.transportation.org/Pages/default.aspx>.
- Official documents related to the bill can be found on the Congressional website <http://transportation.house.gov/fast-act/>
- FHWA freight provisions: <https://www.transportation.gov/fastact/freight-factsheet>
- NHFP Fact sheet: <https://www.fhwa.dot.gov/fastact/factsheets/nhfpfs.pdf>
- NHFP Guidance: http://www.ops.fhwa.dot.gov/freight/pol_plng_finance/policy/fastact/s1116nhfpguidance/
- National Highway Freight Network (NHFN) Information: <http://ops.fhwa.dot.gov/freight/infrastructure/nfn/index.htm>
- FHWA Fastlane Grant information: <https://www.transportation.gov/fastlanegrants/frequently-asked-questions>

¹ AASHTO Summary published December 16, 2015

NOTE: The Surface Transportation Program (STP) is renamed the Surface Transportation Block Grant Program (STBGP).

- Fast Act Freight Questions & Answers:
http://www.ops.fhwa.dot.gov/freight/pol_plng_finance/policy/fastact/s1116nhfpqa/s1116nhfpqa.pdf

SUMMARY: Freight and Freight Funding Provisions in FAST

- Creates a National Multimodal Freight Network (NMFN)
 - Includes a National Highway Freight Network (NHFN) consisting of four subsystems, the Primary Highway Freight System (PHFS), Other Interstate Highways not in the PHFS, Critical Rural Freight Corridors (CRFC), and Critical Urban Freight Corridors (CUFC).
- Requires USDOT to create a National Multimodal Freight Policy, to be administered by the USDOT Undersecretary for Policy, to improve the condition and performance of the NMFN.
 - USDOT must complete a National Strategic Freight Plan every five years that will include processes for multi-State project delivery, and financial and regulatory barriers to freight movement, among other things.
- **Funds Freight:** Establishes a new National Highway Freight Program (NHFP) as part of the core Federal-aid Highway Program structure. The NHFP will direct Federal resources and policies to NHFN improvement.
 - This formula program is authorized at \$6.2 billion over five years, and each State's share of the NHFP will be based on the State's overall share of highway program apportionments
 - Flexibility of NHFP dollars within a State will be related to its share of miles on the Primary Highway Freight System.
- Repeals the increased (90-95 %) Federal match (in MAP-21) for freight projects on interstates and highways. However, the Federal NHFP funding match for projects on the interstate system is 90% and generally 80% for other freight projects.
- Creates the Nationally Significant Freight and Highway Projects (NSFHP) discretionary grant program designed for major highway and freight projects funded at \$4.5 billion over five years.
- Though funded out of the HTF, certain non-highway projects are eligible to receive portions of the NHFP and NSFHP dollars (for example: Provides eligibility for truck parking and surface transportation infrastructure improvements in port terminals for direct intermodal interchange, transfer, and port access)

SUMMARY: State DOT Freight Planning and Performance Measures Requirements

- Mandates all States receiving NHFP formula funds to create a State Freight Plan (SFP) within two years of enactment.
 - Plans may be either standalone or be part of a State's long-range transportation plan

- State freight plans must be coordinated with the performance-based planning process
- Plans shall include a 5 year forecast period and must be updated not less than every 5 years
- Plans must include a freight investment plan, including a list of priority projects, and be financially constrained
- Encourages States to form State Freight Advisory Committees
- Adds language that the long-range transportation plan shall consider public ports and freight shippers (also clarifies what “private providers of transportation” include)
- Expands the scope of the planning process to include addressing resiliency and reliability of the transportation system
- The FAST Act provides a number of details of what is required in the multimodal State freight plan and the granularity of data and analysis may not be consistent with the manner in which State DOTs currently develop their LRTPs. (details provided in later section)
- Directs USDOT to develop freight analysis tools and data but provides no specific funding. This is separate from the performance management data support program.
- There is no requirement that the MPOs develop any type of separate freight component for their long-range plans. Note: MPOs are required to address freight issues in their LRTP.
- There are no significant changes to the performance-based planning process established in MAP-21, this includes no new national-level performance measures beyond what is currently being developed through the Federal rule-making process. However:
 - Performance Based Statewide Planning must include freight considerations and USDOT will assess if the State DOT has made significant progress towards the achievement of the freight targets established under 150(d). If the State DOT has not, then there are additional reporting requirements but no penalties associated with obligating the freight funds.
 - A Port Performance Statistics Program, requiring ports of certain thresholds to report annual throughput statistics. (An USDOT) advisory group will report to the Secretary annually on recommendations to improve port efficiency.
 - Changes existing language to a “shall” regarding the inclusion of description of performance measures and the system performance report in a State’s long-range transportation plan.
- States must also report periodically on their progress in relation to the performance targets. If a State DOT does not achieve or make significant progress toward achieving targets in any performance measurement area after one reporting cycle, State must submit a report describing the actions they will undertake to achieve their targets in the future.
 - The penalty for falling below the minimum condition levels for pavements on the Interstate system is imposed after the first reporting cycle.

SUMMARY FUNDING: State DOTs are to Use Funds to Improve Freight Movement²

The FAST Act requires States to obligate NHFP funds for projects to improve the movement of freight on the NHFN. A State's formula is calculated based upon the number of Primary Highway Freight System (PHFS) miles in that State relative to all PHFS miles.

For States whose formula proportion is greater than or equal to two percent, it may obligate funds to any of the NHFN network elements except for interstates not part of the PHFS. For States whose formula proportion is less than or equal to two percent, it may obligate funds to any segment of the NHFN, which would include all interstates. Program eligibilities and features include:

- Limiting States to the use of no more than ten percent of apportioned funds on certain non-highway projects, such as governmental costs associated with rail and intermodal connectors.
- Project development activities
- Construction, reconstruction rehabilitation, and land acquisition
- Intelligent Transportation Systems (ITS), including freight ITS
- Environmental mitigation related to freight impact
- Rail-highway grade separation
- Geometric design improvements
- Truck-only lanes
- Runaway and climbing truck lanes
- Shoulder widening
- Truck Parking Facilities
- Real-time information systems
- Electronic screening and credentialing
- Traffic signals
- Work Zone management
- Ramp metering
- ITS and other technologies for intermodal facilities and border crossings
- Additional road capacity for highway freight bottlenecks
- Any project that improves flow of freight to the NHFN
- Diesel retrofits
- Data collection and analysis
- Performance Target development

SUMMARY FUNDING: Nationally Significant Freight and Highway Projects³

The FAST Act creates the new Nationally Significant Freight and Highway Projects discretionary program to provide Federal financial assistance for projects of national or regional significance.

CDM Smith ² AASHTO Summary of FAST Act – 2015-12-16 FINAL
AASHTO Summary of FAST Act – 2015-12-16 FINAL

Grants must be at least \$25 million, and may only be made to State or local government agencies or groups of multiple agencies. Other features include:

- Highway freight projects must be on the NHFN or a highway or bridge project on the NHS, including adding interstate capacity.
- Other freight projects may also include rail, intermodal facilities, projects in scenic areas, and highway-rail grade separation, however non-highway projects are limited to \$500 million over five years, must improve freight on the NHFN, and must provide public benefits.
- Eligible projects and project costs must be equal to or exceed the lesser of \$100 million, 30 percent of a State's apportionment if the project is in one State, or 50 percent of the largest State's apportionment in a multi-State project.
- Ten percent of the program annually must be set aside for Small Projects (grants that are still a minimum \$5 million).
- 25 percent of annual eligible funding will be set aside for projects in rural areas (areas outside urbanized areas with populations over 200,000).
- Federal project share may not exceed 60 percent, or 80 percent if other Federal resources are used to satisfy the State share.
- Freight projects will be treated as if they occur on a Federal-aid Highway.
- Congress may disapprove funding for a project within 60 days of USDOT's selection.
- Other Freight Provisions
- Trucks carrying fluid milk products on the interstates are considered non-divisible loads.
- Interstate weight waivers are allowed for covered heavy-duty tow and recovery vehicles.
- Allows up to 86,000 pounds of gross vehicle weight on interstates for emergency vehicles.
- Allows for vehicle weight attributable to natural gas propulsion system to be exempt from total vehicle weight calculations.
- Provides specific Interstate Highway weight waivers certain States.
- Sets aside \$1.2 billion of HSIP funds over five years for the Section 130 highway-rail grade crossing program.
- Includes ferries/terminals, truck parking facilities, rail-grade crossings and intermodal transfers in ports as eligible projects in the new STBGP.
- Calls for a report on delays in goods movement.
- A working group is established to address expedition
- Creates a new port performance statistics program.
- Provides community safety grants for crude-by-rail.
- Creates a framework for emergency planning and response for crude-by-rail derailments.

FAST Requirements for State Freight Plans

Details on what is to be included in a state freight plan are describe in this section. The specific language in FAST and can be found in⁴:

TITLE VIII—MULTIMODAL FREIGHT TRANSPORTATION

SEC. 8001. MULTIMODAL FREIGHT TRANSPORTATION

(a) Subtitle IX of title 49, United States Code, is amended to read as follows:

Subtitle IX—Multimodal Freight Transportation

Chapter Sec. 701. Multimodal freight policy..... 70101

Chapter Sec. 702. Multimodal freight transportation planning and information
..... 70201

CHAPTER 701—MULTIMODAL FREIGHT POLICY

Sec. 70101. National multimodal freight policy.

Sec. 70102. National freight strategic plan.

Sec. 70103. National Multimodal Freight Network.

CHAPTER 702—MULTIMODAL FREIGHT TRANSPORTATION PLANNING AND INFORMATION

Sec. 70201. State freight advisory committees.

Sec. 70202. State freight plans.

Sec. 70203. Transportation investment data and planning tools.

Sec. 70204. Savings provision.

§ 70201. State Freight Advisory Committees (FAC)

Each state is encouraged to establish a freight advisory committee (FAC). The FAC should consist of representatives from a cross-section of public and private sector freight stakeholders, including:

- ports
- freight railroads
- shippers
- carriers
- freight-related associations
- third-party logistics providers
- the freight industry workforce

CDM Smith ⁴ http://transportation.house.gov/uploadedfiles/fastact_xml.pdf

- the transportation department of the State
- local governments

Role of State Freight Advisory Committee:

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 State freight plan

§ 70202. State Freight Plans

Each State that receives funding under Section 167 of Title 23 shall 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.

A state freight plan 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. When applicable, a listing of:
 - a. Multimodal critical rural freight facilities and corridors designated within the State under section 70103 of this title; and
 - b. Critical rural and urban freight corridors designated within the State under section 167 of title 23;
4. A description of how the plan will improve the ability of the State to meet the national multimodal freight policy goals described in section 70101(b) of this title and the national highway freight program goals described in section 167 of 12 title 23;
5. A description of how innovative technologies and operational strategies, including freight intelligent transportation systems, that improve the safety and efficiency of freight movement, were considered;
6. A description of improvements that may be required to reduce or impede the deterioration in the case of roadways on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate their condition;
7. An inventory of facilities with freight mobility issues, such as bottlenecks, within the State, and for those facilities that are State owned or operated, a description of the strategies the State is employing to address the freight mobility issues;
8. Consideration of any significant congestion or delay caused by freight movements and any strategies to mitigate that congestion or delay;

9. A freight investment plan that, subject to subsection (c)(2), includes a list of priority projects and describes how funds made available to carry out section 167 of title 23 would be invested and matched; and
10. Consultation with the State freight advisory committee, if applicable.

RELATIONSHIP TO LONG-RANGE PLAN

Incorporation

A State freight plan may be developed separately from or incorporated into the statewide strategic long-range transportation plan required by section 135 of title 23.

Fiscal Constraint

The freight investment plan component of a freight plan shall include a project, or an identified phase of a project, only if funding for completion of the project can reasonably be anticipated to be available for the project within the time period identified in the freight investment plan.

Planning Period

A State freight plan described in subsection (a) shall address a 5-year forecast period.

Updates

A State shall update a State freight plan described in subsection (a) not less frequently than once every 5 years.

Freight Investment Plan

A State may update a freight investment plan more frequently than is required. Must be a fiscally constrained plan which includes priority freight projects and supporting funds.

Relevant USDOT Freight Requirements under FAST

USDOT to Create a National Multimodal Freight Policy and Multimodal Freight Network

The FAST Act creates a National Multimodal Freight Policy, to be administered by the USDOT Undersecretary for Policy, to improve the condition and performance of the NMFN.

- USDOT must complete a National Strategic Freight Plan every five years that will include processes for multi-State project delivery, and financial and regulatory barriers to freight movement, among other things.
- USDOT must designate a new NMFN within one year of enactment, and an interim network within six months. The NMFN consists of:
 - National Highway Freight Network
 - Class I freight railroads
 - Ports with annual foreign and domestic trade of at least two million short tons
 - Inland and intracoastal waterways

- Great Lakes and St. Lawrence Seaway
- Maritime Administration marine highways
- 50 US airports with highest annual landed weight
- Other assets as identified by Undersecretary of Policy (i.e., short-line railroads)
- States may seek additional assets on the NMFN with the input of various freight stakeholders, including critical rural freight assets.

USDOT to Develop Transportation Investment Data and Planning Tools

Under § 70203 USDOT is to develop Transportation Investment Data and Planning Tools. Not later than 1 year after the date of enactment of this section, the USDOT Secretary of Transportation shall:

1. Begin development of new tools and improvement of existing tools to support an outcome oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including:
 - a. Methodologies for systematic analysis of benefits and costs on a national or regional basis;
 - b. Tools for ensuring that the evaluation of freight-related and other transportation projects could consider safety, economic competitiveness, urban and rural access, environmental sustainability, and system condition in the project selection process;
 - c. Improved methods for data collection and trend analysis;
 - d. Encouragement of public-private collaboration to carry out data sharing activities while maintaining the confidentiality of all proprietary data; and
 - e. Other tools to assist in effective transportation planning;
2. Identify transportation-related model data elements to support a broad range of evaluation methods and techniques to assist in making transportation investment decisions; and
3. At a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

The Secretary shall consult with Federal, State, and other stakeholders to develop, improve, and implement the tools and collect the data described in subsection (a).