

Comments of the Transportation Departments of
Idaho, Montana, North Dakota, South Dakota, and Wyoming
to the
Office of the Secretary
United States Department of Transportation
in
Docket No. OST-2016-0053
Establishment of Interim National Multimodal Freight Network
August 31, 2016

The transportation departments of Idaho, Montana, North Dakota, South Dakota and Wyoming (“we” or “our”) respectfully submit these joint comments in response to the notice published by the United States Department of Transportation (USDOT) in the above-referenced docket on June 6, 2016, 81 Federal Register 36381 *et seq.* In this docket USDOT has set forth an Interim National Multimodal Freight Network and requested comments on whether and, if so, how that Interim (draft) network should be modified in the final National Multimodal Freight Network (NMFN) that USDOT will designate in this docket.

Each of our five departments is a member of the American Association of State Highway and Transportation Officials (AASHTO). We were actively involved in the development of AASHTO’s comments in this docket. Like AASHTO, we find that the highway mileage on the draft NMFN is “insufficient, inadequate and poorly connected.” This is particularly true in many rural western parts of the country. To help address those inadequacies, our States have worked together as a coalition and with other neighboring States in identifying routes in our region that are important to freight movement, not included in the Interim NMFN, and should be included in the to be designated final NMFN. Those routes will be identified in individual filings in this docket by each of the five departments.

Highway Mileage on the NMFN Can and Should Be Significantly Increased

Like AASHTO, our principal concern in this docket is that the final NMFN must include significantly greater highway mileage than is included in the Interim NMFN. USDOT correctly believes it has authority to increase the highway miles that are part of the Interim NMFN, as it asks whether the approximately 51,000 highway miles in the Interim (draft) NMFN should be increased to 65,000 highway miles. See 81 Federal Register at 36384.

In response to USDOT’s question, we strongly recommend that the final designated NMFN include far more than 65,000 highway miles. The precise amount of additional highway mileage will depend upon suggestions from the States and others, but USDOT should not hesitate to greatly increase the highway component of the draft NMFN so that, in response to State and other requests, the final NMFN includes highway mileage approaching the mileage of the NHS.

Certainly there should be no subtractions from a State's Interim NMFN except upon the request of the State.

More specifically, the draft NMFN does not provide a sufficiently connected or resilient system and the highway miles on the draft NMFN fail to capture a great deal of freight moving by highway. This is disappointing, as the draft NMFN does capture an extremely high percentage of freight moving by the modes other than highway that are part of the NMFN.

This disparity in the draft NMFN between the treatment of the highway mode and other modes is well illuminated by USDOT's own work. In its draft National Freight Strategic Plan (published for comment in October 2015), USDOT reported that trucking (which utilizes the highway system), was the predominant freight transportation mode, accounting for 70 percent of freight shipments by tonnage and 64 percent by value. Moreover, trucking was reported as expected to grow more rapidly than the other modes. See draft National Freight Strategic Plan (DNFSP) at pages 19-24.¹

Yet the draft NMFN includes relatively few highway miles, approximately 51,000 miles, only marginally more than the Interstate System's mileage and barely more than one percent of the nation's 4.1 million miles of public roads.

Other modes are treated very differently. The Interim NMFN for the non-highway modes captures 90 percent of freight movement by those modes.

For example, in October 2015 the DNFSP proposed to include in a national multimodal freight network 49,900 rail miles representing 35 percent of the nation's rail system and 60 percent of the nation's freight rail tonnage. See DNFSP at page 140. Now, the draft NMFN in this docket includes over 104,000 rail miles representing roughly 75 percent of all rail miles (including 100% of Class I owned rail miles) and an unspecified but likely very high percentage of all freight rail traffic (perhaps 90 percent or more), even though the DNFSP finds that rail carries only 9 percent of the nation's freight by tonnage and 3 percent by value.

Similarly, USDOT stated in the Federal Register notice in this docket (81 Federal Register at 36382) that ports included in the Interim NMFN handle more than 95 percent of U.S. domestic and foreign cargo routed through ports. The Interim NMFN's airports handle 90 percent of the landed weight of all air cargo at U.S. airports. See DNFSP at pages 96 and 143. For waterways, the entire marine highway system is included as well as the full list of certain inland waterways specified by Congress.

¹ The draft National Freight Strategic Plan, unlike the draft NMFN in this docket, includes the pipeline mode and assigns some freight to "multimodal." Thus, trucking would represent an even higher portion of a study limited to the modes in the NMFN.

In considering USDOT's approach to the components of the Interim NMFN as set forth in this docket, we see the portion of overall highway mileage included is much less than the portion included for the systems of other modes.

However, to correct the discrepancy we do not suggest that the final NMFN include fewer rail miles or ports or airports or waterways than does the Interim NMFN. Indeed, we think USDOT should be open to adding to those components and should add to them upon requests from the States.

The principal change that is required, however, is for USDOT to include in the final NMFN a very substantial increase in highway mileage compared to the Interim NMFN.

This change is clearly warranted. Unlike the proposals regarding the extent of the systems included in the draft NMFN for the other modes, the draft NMFN's highway component does not even approach 90 percent of freight traffic moved on highways; nor does it represent a significant portion of the highway network. Highways should, however, receive at least comparable treatment. Not only do they carry much more freight, they provide much of the connectivity, resilience and flexibility for the entire NMFN. Highways contribute greatly to the success of the other modes and their less extensive overall networks. Highways connect ports and railroads, for example, to wider collection and distribution systems.

Consider the following. USDOT's Freight Facts and Figures 2009, table 3-5, reported that 49 percent of truck VMT is on the Interstate System and an additional 26 percent of truck VMT is on other NHS miles. It is further reported there that 75 percent of VMT of freight hauling trucks serving places at least 50 miles apart is on the Interstate System and an additional 20 percent of such truck traffic VMT is on other NHS routes.

As USDOT has noted that 64-70 percent of freight is moved by truck (depending on whether value or tonnage is considered), if truck freight is, for purposes of discussion, limited to those carrying cargo at least 50 miles as in the above-referenced USDOT data, 20 percent of non-Interstate NHS traffic represents 13-14 percent of the nation's freight, in itself a much higher share of the freight than the share for each of the rail, air, and water modes. Yet those non-Interstate NHS miles are almost entirely excluded from the draft NMFN, in strong contrast to the very substantial inclusion in the draft NMFN of the other modes' overall systems.

Highway Statistics 2014 includes data further confirming the considerable extent to which highway mileage is underrepresented on the Interim NMFN. In table VM-1 it is reported that roughly 88 billion of 170 billion VMT of combination trucks are on the Interstate, a 52% share. So, if the highway component of the draft NMFN, which is little more than the Interstate System, is not greatly increased, the NMFN will leave out a great deal of freight movement. And this

omission is conspicuous and unjustifiable when by contrast the draft NMFN's components for the other modes capture at least 90 percent of freight moved by those modes.

Further, Congress has very recently confirmed the importance of the entire NHS to freight movement. In the recently enacted FAST Act, in authorizing what USDOT has named the FASTLANE program, 23 U.S.C. 117, the entire NHS system is eligible for funding – approximately 227,000 center line miles. Moreover, at least in some States, Longer Combination Vehicle (LCV) network miles, many of which are NHS miles, clearly are important to freight movement. Inclusion of a route on a State's LCV network or NHS system helps demonstrate that a route is important to freight movement. USDOT should grant, or at least substantially grant requests by a State to add NHS or LCV routes to the routes in the State on the draft NMFN.²

Moreover, increased mileage is needed to ensure a connected system, particularly west of the Mississippi River. With vast distances between highways in the west that are on the Interim NMFN, USDOT must add highway miles to the Interim NMFN to improve the inadequate connectivity of the Interim NMFN. For example, on the Interim NMFN between where I-29 meets the Canadian border in eastern North Dakota and where I-5 meets the Canadian border in western Washington -- a distance of roughly 1,500 miles -- there is only one North-South transnational route, I-15. Clearly, additional highway system mileage must be added to the draft NMFN for there to be anything approaching a connected system -- one of the specified goals for the NMFN. See 49 U.S.C. 70103(c).

The vast gap between routes on the Interim NMFN in our States is illustrated by the map that is included in these comments as an attachment at the end. The map reveals that there are large States located east of the Mississippi River that contain extensive networks on the Interim NMFN that can fit in the gaps between highway miles on the Interim NMFN in rural western States.

Additional mileage is also essential to achieving other freight policy goals set forth in 49 U.S.C. 70101(b), which are referenced in 49 U.S.C. 70103, particularly system resiliency and improving the short and long distance movement of goods between population centers across rural areas or between rural areas and population centers.

Additional highway mileage on the NMFN also will help provide access to agricultural production areas and energy producing areas, factors specified in 49 U.S.C. 70103(c). Also, agriculture is the only one of the Census Bureau's major categories of trade in goods that is not in a significant negative trade balance. So, ensuring that the transportation network is well suited

² USDOT also should grant, or at least substantially grant, requests by a State to add mileage on congressionally designated high priority corridors to the routes in the State on the draft NMFN.

to serve agriculture helps improve the nation's trade balance. Similarly, an expanded highway network on the NMFN will improve access to energy producing areas, helping hold down any energy-related trade deficit.

Given the high proportion of the nation's freight carried by truck on highway, the more inclusive approach to mileage and facilities of other modes on the draft NMFN, and the considerable number of policies that would be advanced by greatly increasing highway mileage on the NMFN compared to the Interim NMFN, it is clear that USDOT must greatly increase the highway miles on the NMFN compared to the draft NMFN.

A first step, but not the only step USDOT should take to add needed highway mileage to the Interim NMFN is to provide, in designating the final NMFN, that any critical rural or urban freight corridors designated pursuant to 23 USC 167 are automatically added to the NMFN, even if they are designated pursuant to 23 USC 167 after USDOT publishes a map of routes and facilities on the final NMFN. This is consistent with the statutory scheme, as under 49 USC 70103(b) the entire National Highway Freight Network (NHFN) is part of the Interim NMFN and critical rural and urban freight corridors designated pursuant to 23 USC 167 are part of the NHFN. Yet, to date, many States (or where applicable, MPOs) have not yet made those critical corridor designations – in part because only limited mileage is available to be designated and care is needed before choosing how to apply limited miles to a multitude of potential designated critical corridors.

However, as stated above, providing for automatic addition of 23 USC 167 State and MPO designated critical corridors to the NMFN is only a first step in adding needed highway mileage to the NMFN – because the law limits those critical corridor additions in most States to 150 rural miles and 75 urban miles. Gaps in highway mileage as vast as the gaps in the Interim NMFN cannot be closed merely by adding to the draft NMFN critical corridors recommended by States (or, as applicable, MPOs). Further, mileage caps may well result in adding only partial routes, resulting in an unconnected system. A mileage limit would have the effect of putting a terminus on a route before it completes a needed connection.

In short, highway mileage on the Interim (draft) NMFN is seriously inadequate and does not provide for a connected and resilient NMFN. For at least the above reasons, in finalizing the NMFN, USDOT **must** grant requests by States to add highway mileage, so that the highway component of the final NMFN totals far more miles than the 51,000 miles included in the draft NMFN -- and far more highway mileage than the 65,000 highway miles outlined by USDOT in October 2015. Assuming that States make requests for considerable added highway mileage, the highway portion of the final NMFN should approach the size of the NHS (including its full Interstate System).

Before closing, we turn from discussing the merits of adding highway mileage to the NMFN to making clear that USDOT has the authority to add considerable highway and other mileage to the Interim NMFN before designating it, whether the additional mileage is requested by States or others. More specifically, as to language in 49 USC 70103(c)(4) that some may argue limits additions to the Interim NMFN by States, we disagree. USDOT can and should recognize that any such restrictions apply only to the NMFN that is “designated” by the Under Secretary pursuant to 49 USC 701013(c). At this stage of the implementation of the FAST Act, the NMFN has not been “designated” by USDOT. The Interim NMFN is “established” under 49 USC 70103(b) and consists virtually entirely of elements specified by Congress in 49 USC 70103(b)(2)(A)-(F).³ So, the public is now, in this docket, commenting for the first time on how it would change that established Interim NMFN before USDOT designates it. Therefore, we see that USDOT can greatly add highway (or other) miles at this stage of the process and USDOT should find that the percentage limitation on miles States can propose to add under 49 USC 70103(c)(4) does not apply until **after** the system is “designated” by USDOT after receiving comment on the Interim NMFN.

Again, since USDOT has not yet “designated” the NMFN, it is not appropriate for USDOT to apply to the Interim (“established”) NMFN the language in 49 USC 70103(c)(4)(C), suggesting that a State may propose additions of not more than 20 percent of the amount of mileage “designated” by USDOT. At this stage of the process the public is not limited in what it can propose. And USDOT advised during the August 17 webinar on this docket that there is no mileage cap on the NMFN. So, USDOT should not construe the statute so as to single out States as being limited in what they can propose to add to the Interim NMFN.

This interpretation pulls together various portions of the statute in a way that makes sense. The Interim NMFN is a draft essentially dictated by the statute and it is now subject to comment for the first time. USDOT considers the comments, which are not artificially restricted as to mileage additions or restrictions, for highways or other modes. USDOT considers the comments and then designates the NMFN – **subject to additions from the States.** Thus, the reference to additions designated by a State provides States an opportunity beyond that provided to other commenters on the scope of the NMFN, as opposed to less.

Also before closing, we note that the process of finalizing the NMFN would be improved if, beyond providing notice and an opportunity to comment, senior USDOT officials would sit

³ Under 49 USC 70103(b)(2)(G) USDOT “designated” a few “other assets”, not described by 49 USC 70103(B)(2)(A)-(F); but that did not prevent Congress from specifying that the overall Interim NMFN in 49 USC 70103(b) was “established” not “designated.”

down with each State DOT to cooperatively review designation of the NMFN in the State before final decisions are made.⁴

Conclusion

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming strongly support mileage additions to the Interim NMFN, particularly additions of highway mileage. A first step in that process is to provide, in designating the final NMFN, that any critical rural or urban freight corridors designated pursuant to 23 USC 167 are automatically added to the NMFN, even if they are designated pursuant to 23 USC 167 after USDOT publishes a map or list of routes and facilities on the final NMFN. Beyond that, USDOT must grant, or at least substantially grant requests by States for addition of mileage, particularly highway mileage, to the NMFN.

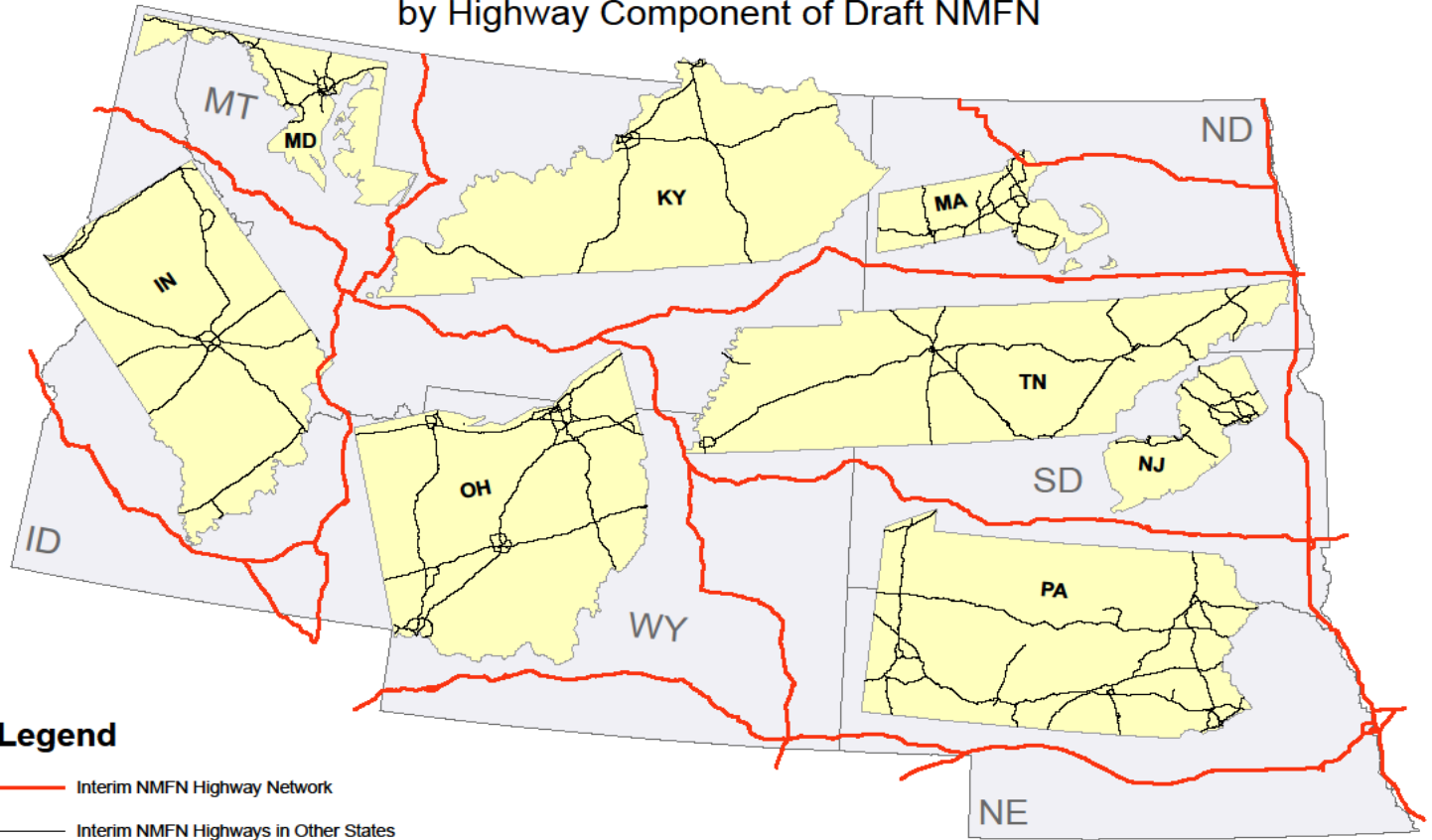
Consistent with these comments, each of our five States will also file separate comments in this docket with specific requests for additions to the draft NMFN within the borders of the requesting State. Those comments will reflect cooperative, coalition work among the 5 states and other neighbors in identifying routes important to freight that should be added to the Interim NMFN as the final NMFN is designated. USDOT should readily grant those requests in whole or at least in substantial part.

We thank USDOT for its consideration and urge that the final NMFN designated in this docket be in accord with these comments and the separate comments of each of the 5 States.

Map Attached

⁴ If, contrary to our very strong recommendation, USDOT chooses to limit additions to the Interim NMFN to less than the mileage additions proposed by States, USDOT should then reach out and work closely with each affected State to address specifics of designation in the State before making a final designation.

Large Areas at Risk of Being Underserved by Highway Component of Draft NMFN



Legend

- Interim NMFN Highway Network
- Interim NMFN Highways in Other States