

Council on Environmental Quality National Environmental Policy Act Pilot Project

U.S. Department of Transportation, Federal Railroad Administration: NEC FUTURE – Tier 1 Environmental Impact Statement

Best Practices Memo

I. Introduction

The Northeast Corridor (NEC), the rail transportation spine of the Northeast region, is a key component of the region's transportation system and vital to its sustained economic growth. The 457-mile NEC—anchored by Boston's South Station in the north, New York's Pennsylvania Station in the center, and Washington, D.C.'s Union Station in the south—is one of the most heavily traveled rail corridors in the world. The NEC is shared by intercity, commuter and freight operations and moves more than 259 million passengers and several million car-miles of freight per year. There are more than 720,000 people riding over 2,200 passenger trains daily on the NEC. The NEC serves an area of the country that produces twenty percent of the United States' gross domestic product despite occupying less than two percent of the country's land mass.

The Federal Railroad Administration (FRA), part of the United States Department of Transportation (USDOT), has embarked on a comprehensive planning effort to develop an integrated passenger rail transportation solution for the Northeast, which will define, evaluate and prioritize future investment alternatives for the NEC through 2040, including evaluating high-speed rail service for the NEC. This planning effort, known as NEC FUTURE, includes the preparation of a Passenger Rail Corridor Investment Plan (PRCIP) which is composed of (1) a Service Development Plan (SDP) focused on passenger rail service planning and (2) a Tier 1 Environmental Impact Statement (EIS). In support of this process, the FRA will collaborate with various stakeholder groups to identify alternatives to grow the region's intercity, commuter and freight rail services, and to conduct an environmental evaluation of proposed transportation alternatives consistent with **National Environmental Policy Act (NEPA)** requirements, as well as with the consultation and evaluation requirements of Section 106 of the National Historic Preservation Act.

On January 13, 2012, CEQ and the USDOT/FRA announced the selection of the NEPA pilot project for the Tier 1 EIS associated with the NEC FUTURE program, which implements an innovative, efficient NEPA review process to develop an integrated passenger rail transportation solution that will define, evaluate and prioritize future investment alternatives for the NEC through 2040, including evaluating high-speed rail service for the NEC. The FRA proposed an approach based on early engagement with federal resource and regulatory agencies, including land management agencies. CEQ and FRA committed to engaging environmental resource and regulatory agencies and the public in the environmental review and assessment process early to set benchmarks that maintain rigorous environmental protections and save time and costs by avoiding conflicts and delays often found in complex multi-state transportation projects.

This memo documents and describes the following best practices that have emerged from this NEPA pilot:

- Outreach to all federal and state resource and regulatory agencies, both headquarters and regional offices, early and regularly throughout the NEPA process.
- Development of a Statement of Principles to guide communication and consultation with environmental resource and regulatory agencies.
- Collection of resource data and agency input along a large, multi-state project via a unique and informed approach.
- Increasing agency participation using on-line meetings and web-based techniques.
- Building interagency trust through enhanced agency input, coordination, and communication.

II. Early Outreach: FRA's approach to coordination with resource and regulatory agencies

In February 2012, well in advance of FRA's June 2012 filing of a Notice of Intent (NOI) to prepare an EIS, CEQ and FRA embarked on an innovative approach of meeting with federal and state environmental and transportation agencies. Government-to-government consultation was initiated with Indian tribes in early June, 2012, to engage the tribes as part of the early coordination process prior to scoping for the Tier 1 EIS. In order to overcome the challenge of inter-agency variance in decision-making structures, formal points of contact were established for each of the federal and state resource and regulatory agencies at the headquarters level and, if appropriate, subsequently at the field office level. An added benefit of the identification of a designated representative is that it has assisted in agencies responding to the FRA with "one voice." State transportation and economic development representatives were also identified to participate in the Pilot to foster communication and integrate the transportation planning and environmental assessment processes.

The following meetings with designated points of contact (and additional staff as appropriate) took place throughout the NEC:

- January and February 2012, CEQ and FRA travelled the NEC and met with the environmental resource and regulatory field offices. At the same time, coordination through the existing Transportation Rapid Response Team (TRRT)¹ at the headquarters level of the federal agencies facilitated a consistent message and information amongst all involved.
- In April 2012, the first set of regional agency meetings among the resource and regulatory agencies, CEQ, and FRA took place. To provide greater opportunity for involvement, FRA broke

¹ The TRRT was created in 2011 to expedite reviews of surface transportation projects. The TRRT is co-chaired by the Council on Environmental Quality and the U.S. Department of Transportation and has representatives from various resource and permitting federal agencies in the team.

the meetings out by three regions, grouping together those states in close proximity². FRA also provided opportunities for teleconference and webinars to each meeting. At these meetings, FRA provided the field offices with a program overview that included details of the NEC FUTURE planning and environmental processes as well as the schedule for completion of the NEPA Tier 1 EIS.

- In May 2012, FRA hosted a webinar to engage in a discussion with the state and federal resource and regulatory agencies on the project's goals and preliminary purpose and need components.
- In June 2012, regional agency meetings took place that focused on roundtable discussions regarding the project study area and how best to coordinate with the agencies.
- In October 2012, regional agency meetings took place that focused on sharing the feedback from the scoping process, providing data collection results, and obtaining input on how to document the coordination between the agencies.
- Meetings and/or webinars took place in January 2013, and are planned to take place again in late winter 2013 with the purpose of continuing to inform agencies about the project's status, involving agencies in the alternatives development process, and engaging agencies in topic-specific impact assessment discussions. Although outside the official period of the CEQ pilot, these meetings are the first step in a continuation of the engagement that began with the pilot.

This approach of engaging resource and regulatory agencies early in the planning process and involving them as collaborative partners not only in the implementation of several aspects of the NEPA process (e.g., development of purpose and need, formulation of alternatives, and development of impact assessment methodology), but also in the structuring of the agency-coordination effort (e.g., development of the Statement of Principles) is a new and innovative approach for FRA. The effort was well-received by all parties involved, and led to more effective coordination with the resource and regulatory agencies. For example, as FRA conducted agency scoping meetings in August 2012, the state and federal resource and regulatory agencies were already familiar with the project and could provide more focused and substantive comments. Similarly, as alternatives and screening criteria are developed and shared, the agencies are allowed to have a level of input at a point in the process where that input can be utilized in a practical way by the technical team developing alternatives and helping to identify and shape the reasonable alternatives.

Developing this team approach is expected to continue to garner benefits as this process moves forward. In later stages of the project, as agencies receive the NEC FUTURE program's Tier 1 EIS documentation for review, expectations will have been established regarding the overall approach to the Tier 1 EIS, level of detail, impact assessment methodologies, and alternatives considered. This should aid in the agencies' review of the documents, but will also likely contribute to more concise and succinct documents for future stages of project development.

² The "South" region consisted of the District of Columbia, Maryland, Delaware and Pennsylvania; the "Central" region consisted of New Jersey, and New York; and the "North" region consisted of Connecticut, Rhode Island, and Massachusetts.

The Tier 1 Draft EIS is expected to be available in the summer of 2014 and a Tier 1 Final EIS is anticipated in the spring of 2015. FRA anticipates filing a Record of Decision (ROD) in the summer of 2015.

Throughout the NEPA compliance process, FRA intends to continue this engagement with the state and federal resource and regulatory agencies to maintain the dialogue and input into the project process. Each of the participating federal and state environmental agencies now has a degree of confidence in FRA's open and inclusive process. Ongoing involvement and support by CEQ provides credibility and encourages continued agency support. While each participating agency has expressed concerns with the many demands on their time, they have also been appreciative of the opportunity to contribute to the overall approach to this corridor-wide study. In some cases, agencies have already established a protocol for providing the FRA with a single response that reflects the headquarters as well as regional perspectives. This protocol saves a substantial amount of time by relieving FRA of the time-consuming effort of negotiating the same level of agreement in each of the three regions. Continued agency participation is also encouraged by providing regular opportunities for resource and regulatory agencies to contribute to guidance for assessing corridor-wide environmental factors such as Greenhouse Gas Emissions. Providing a meaningful role for each agency in this collaborative process has and continues to be an incentive for continued participation.

In summary, the result of this early, regular, and focused agency engagement is a well-informed process where: (a) multiple in-person meetings began the process of building consensus and trust between the FRA project team and pertinent resource and regulatory agencies; (b) project information and methodologies are being shared with agencies such that they are kept interested and involved; and (c) FRA, by being clear about exactly the kind of feedback it is seeking, receives timely, useful, and focused input on the environmental process and technical approaches to preparing a Tier 1 EIS.

III. Statement of Principles: Establishment of communication protocols

As an effort to solidify the early engagement and coordination, provide greater transparency, and expedite the development of a framework that would reinforce the parties' collaborative efforts, CEQ and FRA worked with the federal and state resource and regulatory agencies to develop an alternative to entering into a Memorandum of Understanding (MOU), in order to define roles and responsibilities in the NEPA process. After discussing the MOU process with the resource/regulatory agencies, it was apparent that the creation of a MOU can be a time-intensive and often lengthy activity that results in legal requirements that may prove to be difficult to enforce. A more collaborative and efficient approach was desired by the resource and regulatory agencies that would still effectively document the coordination efforts and points of consensus.

CEQ reviewed and analyzed over 50 MOUs and concluded that many of the agreements consisted of a statement of principles (addressing issues such as means of communication and resolution of disagreements), a description of the way the agencies were going to collaborate in the development of the NEPA process and on the review of documents, and a coordination schedule of the tasks to be completed. CEQ proposed simplifying the MOU process by instead creating a brief document containing a statement of principles and called it just that. This Statement of Principles was developed by FRA, CEQ, and the resource and regulatory agencies during the regional agency meetings that took place in

2012. The Statement of Principles was finalized in January, 2013. This method of agreeing on and documenting a collaboration approach and schedule was uniformly met with very positive feedback from FRA and the state and federal resource and regulatory agencies.

Agreement with the Statement of Principles was reflected by each federal resource and regulatory agency granting permission to FRA to place their agency seal on the Statement. As FRA has also committed to promoting transparency surrounding the completion of the Tier 1 EIS, FRA is posting the Statement of Principles on the Federal Infrastructure Projects Dashboard, along with the seals of the agencies who endorse the Statement of Principles. In May of 2012, FRA posted and tracked the NEC FUTURE Tier 1 EIS project timelines and progress for the CEQ NEPA pilot on the Federal Infrastructure Projects Dashboard³. Based on the positive reaction to using this approach, FRA is considering expanding the Statement of Principles to include state agencies or, alternatively, developing a similar separate agreement with the state agencies.

IV. Data Collection: Resource Data and Agency Input along a Large, Multi-State Project

One of the major challenges of implementing a project such as the NEC FUTURE program is the fact that various types of social, environmental, resource, transportation, and economic data need to be collected for a vast area encompassing multiple local and state jurisdictions, transportation authorities, and watersheds. As part of the Tier 1 EIS process, FRA has the task of not only gathering that data but also using it to examine environmental impacts to resources within the large study area. Just as FRA is challenged by the volume of the data, the resource and regulatory agencies are faced with the challenge of providing timely and meaningful input, and subsequent review, of the data and analysis. As part of the CEQ Pilot, the agencies worked together to identify potential data sources for FRA to use in developing the Tier 1 EIS.

As an early step in the NEC FUTURE program, the FRA established a Data Collection Plan. This Data Collection Plan included protocols for requesting data and established a data management system for cataloguing publically available GIS and non-GIS data. This overall process was presented to resource and regulatory agencies participating in the CEQ Pilot. Their review helped to both identify data sources and inform the process for data collection and data management.

To facilitate the use of this extensive data base at a uniform scale across the region, the NEC FUTURE team developed a project-specific web-based tool, referred to as the Data Viewer. The NEC FUTURE Data Viewer utilizes GIS and other programs to map and examine impacts to existing resources within the study area. As noted above, this Data Viewer was built using readily available information collected from various federal, state, and regional agencies. The Data Viewer was introduced to resource and regulatory agencies during the October 2012 meetings in each of the three regions – in addition to describing and showcasing the tool, participants were given an overview of how the Data Viewer could be used for their review of data accuracy as it applies to depicted resources as well as how to

³ The website launched in November, 2011, to publicly track high impact, job-creating infrastructure projects for expedited review and now also tracking nationally and regionally significant projects. *Available at* www.permits.performance.gov.

communicate their comments, if any, to FRA. In this way, once the EIS development is underway, agencies will be able to see how the resources of interest to them are being identified and analyzed. Inviting agencies to be a part of the actual process of resource identification and impact assessment will ensure appropriate analyses as well as facilitate consultation efforts conducted as part of the environmental compliance processes at both the Tier 1 and Tier 2 levels⁴.

The initial focus of the overall data collection effort has been on publically available planning and environmental data. In addition, planning, infrastructure and operations data has been collected from each of the railroads operating along the NEC. Data collection to date has focused at the State and county level of detail. Section 106 archaeological and historic resource data collection was recently initiated and will be similarly catalogued and incorporated in to the overall NEC FUTURE data management system. These data will be compiled in close coordination with each of the nine State Historic Preservation Offices along the NEC. Nationally available resources, such as the National Parks Service (NPS) data base, will also be referenced in support of the Section 106 assessment. The working relationships established with NPS through the CEQ Pilot have already facilitated the exchange of this NPS data.

Through the dialogue started in the regional pilot meetings, EPA and FRA have identified opportunities to share tools and information to create efficiencies in both the collection and analysis of data. Additionally, this early involvement in resource identification highlights data gaps or other issues either within an environmental resource area or across different geographies. Such knowledge will provide agencies with an opportunity to address data issues prior to the more detailed resource identification and impact assessment conducted during the Tier 2 environmental processes. Earlier and fulsome discussion of such issues is expected to expedite the Tier 2 process.

V. Using internet tools: Increasing agency participation via on-line meetings and web-based techniques

Given the current fiscal environment in the federal government, travel restrictions exist for many agencies and offices. To facilitate increased participation of federal and state resource and regulatory agencies and help relieve some of the travel burden, FRA has held regional agency meetings all along the NEC. Even so, attendance at these meetings may require moderate travel for some attendees, and such travel may be difficult to accommodate for various reasons. In order to minimize the travel burden and maximize agency participation, FRA has made all meetings accessible via a combination of teleconference and webinar. In this way, resource and regulatory agency representatives who are unable to participate in person were still able to see, in real time, the same materials as those in attendance at the meeting. These web-based techniques were particularly beneficial for finalizing the language for the Statement of Principles. The attendance of agency representatives via teleconference

⁴ During this same time period, the Environmental Protection Agency (EPA) was enhancing NEPAAssist, an internal GIS-based tool, and making it accessible to those outside the agency. The development of NEPAAssist informed the NEC FUTURE-focused Data Viewer. NEPAAssist is available at <http://www.epa.gov/compliance/nepa/nepassist-mapping.html>.

and/or webinar also enabled those who could not attend in person to interact with, and hear the views of all their colleagues along the entire corridor, in real-time.

As previously mentioned, FRA has successfully utilized webinars to expand the reach of agency involvement, and in May 2012, FRA hosted a webinar with the resource and regulatory agencies to gain input used to develop the NEC FUTURE's purpose and need statement. These webinars also provide a unique opportunity for agency participants along the entire corridor to gain a better understanding about the ideas, issues, and concerns raised by their counterparts in other areas of the region. The success of these online meeting tools has encouraged FRA to continue using webinars for interagency meetings as well as for public workshops (in December of 2012, FRA hosted two webinars to complement three public workshop events held along the NEC).

By being flexible and open about the nature of agency participation, FRA has employed this best practice to increase agency participation in the project.

VI. Building trust: Establishing good working relationships and communication protocols

A common factor of any best practice discussed in this paper is that the relationship between the FRA and the resource/regulatory agency is one built on trust, and that trust is established in large part through an open dialogue. This aspect of building trust and collaboration was pointed out in the 2002 CEQ NEPA Task Force report entitled *Modernizing NEPA Implementation*⁵.

The need for inter- and intra-agency trust was also pointed out in CEQ's 2007 guide on *Collaboration in NEPA – A Handbook for NEPA Practitioners*⁶. The Handbook was developed by an interagency group headed by the Institute for Environmental Conflict Resolution and serves to introduce interested parties to collaborative principles, and includes suggestions for successful collaborative efforts.

As previously discussed, early outreach to agencies began the process of building consensus and trust between the FRA project team and the resource and regulatory agencies. The front-end time invested in meeting with each of the agencies in headquarters and the respective field offices proved invaluable. Subsequent meetings on a regular basis have resulted in agency representatives and the FRA project team becoming familiar with each other as well as kept the agencies engaged and interested. Resource and regulatory agencies have expressed appreciation for FRA's transparency and commitment to communicate, especially at this early stage in the project where project alternatives are still being developed as compared to 'post-decisional' consultation.

⁵ The NEPA Task Force Report to the Council on Environmental Quality, "Modernizing NEPA Implementation" (September 2003), *available at*: http://ceq.hss.doe.gov/publications/modernizing_nepa_implementation.html (chapter two discusses the role of trust in federal and intergovernmental collaboration concluding that "Lead agencies must consider how to develop and maintain trust when establishing collaborative relationships...Collaboration is hindered when there is a lack of trust, understanding, leadership, and willingness to share resources and information.").

⁶ Council on Environmental Quality "Collaboration in NEPA – A Handbook for NEPA Practitioners" (October 2007), *available at* http://ceq.hss.doe.gov/publications/collaboration_handbook.html.

The Statement of Principles, developed collaboratively by the FRA, CEQ, and participating resource and regulatory agencies, also helped lay the foundation for trust and strong working relationships by distinguishing between informal and formal communications. By removing the common consultation-mindset of being legally bound to statements in formal communications, the encouragement of informal communication provides a collegial and collaborative work space where the agency representatives may freely express their professional opinions.

As mentioned, FRA has met with field offices of resource and regulatory agencies all along the NEC. However, the Statement of Principles is agreed to at the agency-level rather than the regional or district-office level. The establishment of the Statement of Principles thus required various field offices of the same agency to work together as one agency when submitting formal comments. The consistency of an agency's communications with FRA and other agencies is key to a productive working relationship. It is a benefit to the overall mission of the resource/regulatory agency as a whole as well as a benefit to FRA when comments that are presented to the FRA on behalf of an entire agency have already been consolidated and vetted internally before being submitted. Such consistent communication along the entire NEC benefits the NEC FUTURE program during the Tier 1 EIS effort, during which broad corridor-wide impacts are being assessed, and lays the foundation for the Tier 2 working relationships.

In summary, the careful attention to establishing good working relationships and communication protocols with resource and regulatory agencies has helped the FRA gain high quality information and built the foundation for continued focused and timely agency involvement throughout the NEC FUTURE Tier 1 EIS and the future Tier 2 projects and their NEPA reviews.

VII. Best Practices Moving Forward: Expected efficiencies when performing Tier 2 Project-level NEPA analyses

Federal guidance on environmental compliance has consistently recommended early integration of NEPA into the planning process⁷, citing one of the benefits of such early coordination is that it can help avoid delays later in the process. The best practices established during the CEQ NEPA Pilot Project as well as described in this memo, are expected to continue throughout the Tier 1 NEPA compliance process and result in time and cost savings to overall project delivery.

- Involvement of agencies during purpose and need development and alternatives development leads to resource agencies providing more substantive input and keeps the agencies engaged and interested.
- Establishment of communication protocols and trust allows agencies to communicate more effectively and honestly with FRA.

⁷ Council on Environmental Quality Memorandum on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (March 6, 2012), *available at* http://ceq.hss.doe.gov/current_developments/docs/Improving_NEPA_Efficiencies_06Mar2012.pdf; Executive Order on Improving Performance of Federal Permitting and Review of Infrastructure Projects (March 22, 2012), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2012-03-28/pdf/2012-7636.pdf>.

- Early identification of potential resource issues and data gaps via an interactive data management tool will result in better alternative development and impact assessment, as well as fewer surprises during later environmental analyses.
- Development of web-based practices increase flexibility in how consultations and meetings are conducted and attended, thereby enhancing level of agency and public participation.

FRA will continue to engage resource and regulatory agencies throughout the development of the Tier 1 EIS for the NEC FUTURE program in order to further examine the results of the early, focused, and continued outreach efforts. Thus far, the early focus on establishing expectations, increasing agency involvement, building trust, identifying data needs and gaps, and encouraging early input into the overall NEPA process at the Tier 1 EIS level have strengthened and improved Tier 1 performance. FRA will periodically report to CEQ on these ongoing efforts and the progress being made.