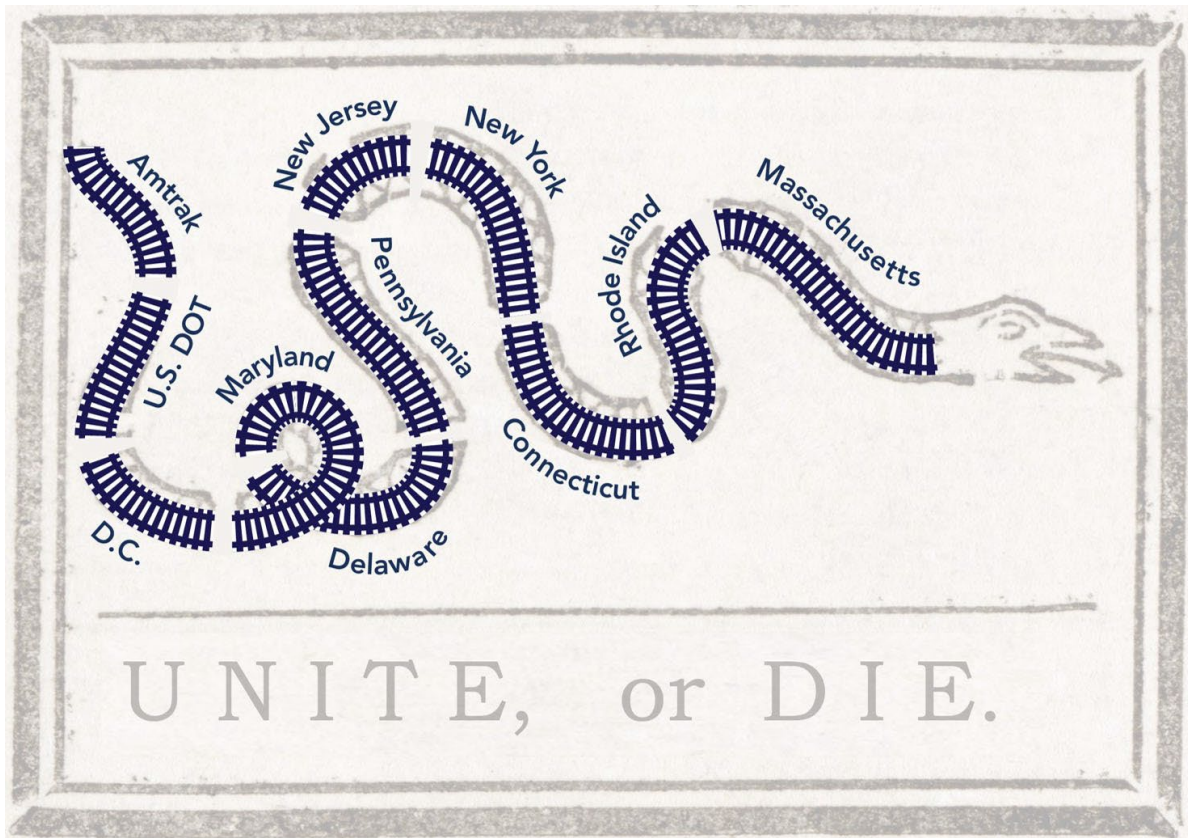




Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy



Originally approved September 17, 2015.
As amended June 26, 2024.

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Northeast Corridor Commission

Policy Document Changelog

Action Date (Effective ¹)	Amendment #	Resulting Version	Section/Topic Affected	Action
2014-12-17	2014-A-01 2014-A-02 2014-A-04 2014-A-08 2014-A-10 2014-A-11 2015-A-15a	v01.00	<i>Consolidated Policy Amendment:</i> <ul style="list-style-type: none"> • Project Delivery • Annual Performance Review • Electric Traction Propulsion Power • Liability • NEC Federal Investment Program • Labor Provisions 	<ul style="list-style-type: none"> • Revise § 4.2.2 • Add § 2.2.1 • Revise § 5.3.4 • Revise § 4.4 • Revise § 3.1.2 • Revise § 3.2.3 <p>Interim Policy adopted</p>
2015-06-17	2015-A-21 2015-A-23	v02.00	<i>Consolidated Policy Amendment:</i> <ul style="list-style-type: none"> • Environmental Remediation • Process and Schedule for Allocation and Review • Dispute Resolution 	<ul style="list-style-type: none"> • Revise § 5.8 • Revise A² 1.4.2 • Revise § 2.7
2015-09-17	2015-A-27 2015-A-28 2015-A-29	v03.00	<i>Consolidated Policy Amendment:</i> <ul style="list-style-type: none"> • Annual Performance Review • Schedule for Early Action Provisions • Other Capital Projects • Capital Payments • NEC Five-Year Capital Plan • Treatment of Capacity • One Year Spend Plan 	<ul style="list-style-type: none"> • Revise § 2.2.1 • Revise § 2.5 • Revise § 5.5.3 • Revise § 6.3 • Revise § 4.2.1.2 • Revise § 4.3.1 • Revise § 4.2.1.3 <p>Final Policy adopted</p>
2015-12-07	2015-A-33 2015-A-34	v04.00	<ul style="list-style-type: none"> • Calculation of Monthly Operating Charges • Unanticipated Service Changes • Process and Schedule for Allocation and Review • Financial Obligation Adjustments • Reconciliation Schedule Options • Master Schedule 	<ul style="list-style-type: none"> • Revise § 6.1 • Add § 6.4 • Revise A 1.4.2 • Add A 1.4.3 • Add A 1.4.4 • Add A 1.8
2016-06-15	2016-A-35 2016-A-36 2016-A-37 2016-A-38	v05.00	<ul style="list-style-type: none"> • Station Operating Plans • Other Capital Projects • Treatment of Freight • Process and Schedule for Allocation and Review • Master Schedule 	<ul style="list-style-type: none"> • Revise § 5.4.2 • Revise § 5.5.3 • Revise § 5.9 • Revise A 1.4.2 • Revise A 1.8
2017-10-13	2017-A-39	v06.00	<ul style="list-style-type: none"> • Capital Payments • Definitions 	<ul style="list-style-type: none"> • Revise § 6.3 • Revise A 1.1
2018-03-18	2018-A-40	v07.00	<ul style="list-style-type: none"> • Other Capital Projects • Master Schedule 	<ul style="list-style-type: none"> • Revise § 5.5.3 • Revise A 1.8
2019-03-05	2017-A-41	v08.00	<ul style="list-style-type: none"> • Other Capital Projects • Master Schedule 	<ul style="list-style-type: none"> • Revise § 5.5.3 • Revise A 1.8
2019-06-17 (2019-10-01)	2019-A-42	v09.00	<ul style="list-style-type: none"> • Prioritization of Baseline Capital Charges • Other Capital Projects (updated to "Project-based Cost Allocation Method") 	<ul style="list-style-type: none"> • Revise § 5.5.2.1 • Revise § 5.5.3
2020-10-08 (2020-10-01)	2020-A-43	v10.00	All	<ul style="list-style-type: none"> • Amendment in the nature of a substitute to replace Policy text <p>Start of 2nd Policy term</p>

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Action Date (Effective ¹)	Amendment #	Resulting Version	Section/Topic Affected	Action
2022-06-29	2022-A-44 2022-A-45	v11.00	<ul style="list-style-type: none"> • Asset Assessment and Stations BCCs • Technical Corrections 	<ul style="list-style-type: none"> • Revise § 3.4.2 • Revise § 3.5.2 • Revise § 4 • Revise A 1.1 • Revise A 1.5 • Revise A 1.6 • Revise A 1.7
2023-06-21	2023-A-46	v12.00	<ul style="list-style-type: none"> • Operation-Specific Cost Differentiation 	<ul style="list-style-type: none"> • Remove § 2.6.3.4
2024-06-26	2024-A-47	v13.00	<ul style="list-style-type: none"> • Allocation Process (Inflation) 	<ul style="list-style-type: none"> • Revise § 3.4.1.3 • Revise § 3.4.3.4.1

Table Note 1: Added when Effective Date is different than Action Date.

Table Note 2: Appendix

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1.0 Introduction

The Northeast Corridor Commission was established by Section 212 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), codified at 49 U.S.C. § 24905¹ (Section 24905), to facilitate collaborative planning and decision-making for the Northeast Corridor (NEC, or the corridor). The NEC rail network includes the main line from Washington, D.C., to Boston, Massachusetts, and branch lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York. In addition to Amtrak’s intercity service on the corridor, eight Commuter Authorities and six freight operators travel on the NEC.

PRIIA directed the Commission to develop a standardized cost-sharing formula for NEC infrastructure used by commuter and intercity rail services. The Commission fulfilled this directive through the development of the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy (the Policy). The Policy was initially approved by the Commission in September 2015 and went into effect on October 1, 2015. In October 2020, the Commission approved the Policy for a new five-year term effective October 1, 2020, through September 30, 2025.

The Policy establishes the required cost-sharing approach and partnership framework needed among state, local, and federal stakeholders to promote accountability and collaboration and maintain transparency. It represents unprecedented collaboration among NEC partners and is essential to ensuring the corridor continues to serve as the backbone of the region’s transportation system and as a catalyst for economic growth.

1.1 Section 24905 Cost-Sharing

As a result of the FAST Act,² Section 24905 now requires the Commission to “develop a standardized *policy* for determining and allocating costs, revenues, and compensation” that ensures each NEC intercity and commuter rail service is responsible for the costs associated with its use of Sole-Benefit NEC Infrastructure and a proportional share of costs resulting from its use of Common-Benefit NEC Infrastructure. In addition, the statute mandates “no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation.”

Prior to the Policy’s implementation, Operators individually negotiated the cost-sharing terms and provisions of their access and services agreements with Owners. This resulted in disparate arrangements, policies, and business practices, which often served short-term, parochial interests over the corridor’s longer-term, regional interests. In contrast, the Policy requires consistency, transparency, and accountability that incentivizes parties to act in the NEC’s long-term interest and a standardized approach to cost-sharing that streamlines business practices. A fundamental assumption in reaching agreement and implementing the

¹ See Appendix 1.2 for the complete text of Section 24905.

² Fixing America’s Surface Transportation Act, Pub. L. No. 114-94. § 11305, 129 Stat. 1312, 1656 (2015).

Policy is that Operators' increased financial contributions should leverage higher levels of federal, state, local, and private investment.

1.2 NEC Cost Allocation Policy Partnership Framework

Early negotiations to develop the statutory cost allocation formula made clear a formula alone would not unite stakeholders and transform the corridor. As a result, the Commission developed a partnership framework that consists of three pillars:

- 1) Operator Cost-Sharing;
- 2) Transparency, Collaboration, and Accountability; and
- 3) Federal Partnership.

Together, these pillars position NEC stakeholders to better overcome long-standing issues that have resulted in suboptimal asset condition and utilization. Rather than each Operator viewing its service independently, the partnership framework calls on stakeholders to treat the corridor as a unified system and work together for its success.

1.2.1 Pillar 1: Operator Cost-Sharing

Operator Cost-Sharing is the first pillar of the Commission's partnership framework. Chapter 3 describes the cost-sharing approaches the Commission developed in response to its statutory mandate. The approaches include cost-sharing via the NEC Cost Allocation Model, which produces annual financial obligations (operating and capital) paid by Operators, and cost-sharing via the Project-Based Cost Allocation Method, which applies to common-benefit capital investments not funded by the annual capital obligations. Pillar 1 ensures each Operator covers costs associated with its NEC passenger rail service and supports reliable and predictable funding streams for basic maintenance and renewal of NEC infrastructure. Reliable and predictable funding has eluded the corridor for many decades and is necessary for service quality and reliability and effective capital planning and project delivery.

1.2.2 Pillar 2: Transparency, Collaboration, and Accountability

Transparency, Collaboration, and Accountability is the second pillar. As described in Chapter 4, the Commission collaborates annually to develop a five-year NEC Capital Investment Plan and prepare reports that monitor and analyze train performance, operating costs, and capital program delivery. In addition, during the second Policy term, the Commission will undertake the development of the first ever 15-year capital investment plan for the corridor—the CONNECT NEC 2035 plan. Pillar 2 ensures NEC stakeholders are sharing data and information with one another and the public that were not routinely shared prior to this Policy.

1.2.3 Pillar 3: Federal Partnership

The third and final pillar of the Commission's partnership framework is Federal Partnership. Chapter 5 describes—from the perspective of Amtrak, NEC States, and Commuter Authorities—long-standing investment and regulatory challenges that have hampered the NEC and potential policy recommendations for overcoming these challenges, including new or modified federal programs to address the state-of-good-repair (SOGR) backlog. In recognition of the

initial Cost Allocation Policy, Congress created the Federal-State Partnership for State of Good Repair program³ in the FAST Act to reduce the corridor's SOGR backlog through increased federal investment.

1.3 Northeast Corridor Background⁴

No other railroad corridor in North America rivals NEC's density of traffic and complexity of ownership and operations. Each day, the NEC's 457-mile main line between Boston, Massachusetts, and Washington, D.C., carries approximately 775,000 commuter rail passengers and 45,000 Amtrak passengers on over 2,100 trains.⁵ It supports the transportation needs of a regional workforce that contributes \$50 billion annually to the United States gross domestic product. It provides reliable access to core employment centers that contain one of every three jobs in the larger NEC region—a region that, if it were its own country, would have the fifth largest economy in the world. The NEC also plays an important role in supporting the broader transportation system—a one-day loss of the NEC could cost the nation \$100 million in additional highway congestion, productivity losses, and other transportation impacts.⁶

The NEC is a shared asset with a complex history and ownership structure (see Appendix 1.11 for more information). The corridor consists of four Right-of-Way Owners and multiple station owners and service providers. Amtrak is the only service provider that operates from end-to-end, though eight Commuter Authorities and six freight carriers also use the NEC rail network. The following commuter rail services operate on the NEC (as shown in Figure 1):

- 1) Massachusetts Bay Transportation Authority (MBTA)—MBTA also operates service south of Providence under contract for the Rhode Island Department of Transportation (RIDOT).
- 2) *CTrail*—The Connecticut Department of Transportation (CTDOT) contracts with TransitAmerica Services and Alternate Concepts (TASI/ACI) to operate the Hartford Line and Amtrak to operate Shore Line East.
- 3) Metro-North Railroad (MNR)
- 4) Long Island Rail Road (LIRR)
- 5) New Jersey Transit (NJT)
- 6) Southeastern Pennsylvania Transportation Authority (SEPTA)—SEPTA also operates service under contract for Delaware Transit Corporation (DTC) in Delaware.
- 7) Maryland Area Regional Commuter (MARC)—Amtrak operates MARC service under contract to the Maryland Transit Administration.
- 8) Virginia Railway Express (VRE)

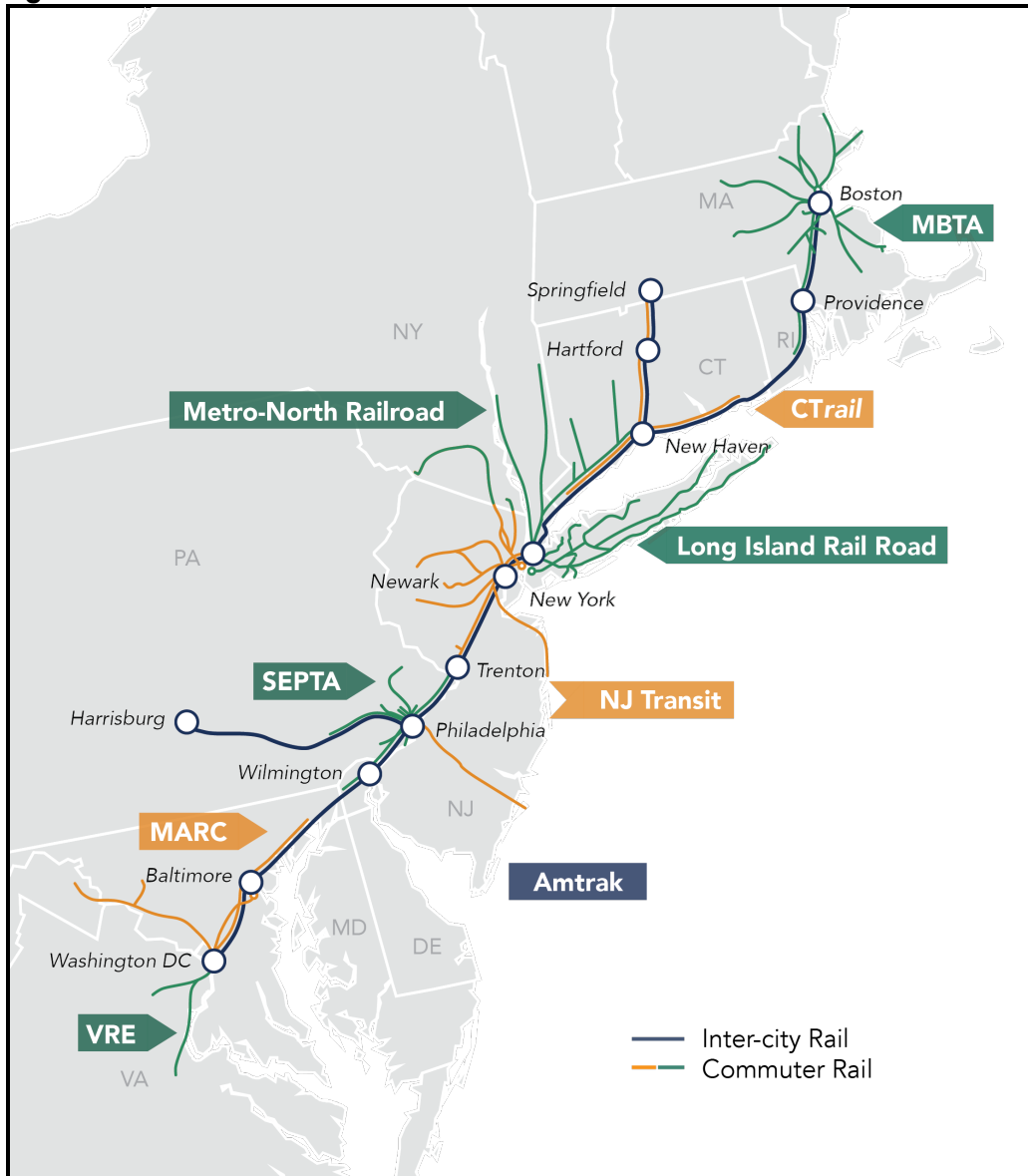
³ 49 U.S.C. 24911 (2018).

⁴ NEC facts referenced in the Policy reflect market conditions prior to the COVID-19 pandemic, which began affecting passenger rail operations in March 2020.

⁵ *FY2019 Northeast Corridor Annual Report: Operations and Infrastructure*, available at <http://nec-commission.com/app/uploads/2020/04/NEC-Annual-Report-FY19.pdf>.

⁶ *The Northeast Corridor and the American Economy* (Northeast Corridor Infrastructure and Operations Advisory Commission, 2014), available at <http://nec-commission.com/app/uploads/2018/04/NEC-American-Economy-Final.pdf>.

Figure 1: The NEC Rail Network



Amtrak owns the right of way between Washington, D.C., and New Rochelle, New York, and between New Haven, Connecticut, and the Rhode Island–Massachusetts border. The New York Metropolitan Transportation Authority (NYMTA) and CTDOT own the New Haven Line in their states, which is operated and controlled by MNR. The MBTA owns the right of way from the Massachusetts–Rhode Island border to Boston South Station, known locally as the Attleboro Line. Amtrak dispatches and maintains the right of way in Massachusetts under an agreement with the MBTA. A map illustrating corridor ownership is shown in Figure 2. Station ownership varies and includes Amtrak, Commuter Authorities, states, local governments, and other entities.

Figure 2: Ownership of the NEC Rail Network



Though the NEC continues to post historically high ridership levels, its success belies the fact that NEC stakeholders have been contending with significant financial and regulatory challenges for several decades, including insufficient levels of capital investment, unpredictable and inconsistent funding streams, and fragmented federal funding and oversight. While these challenges (described further in Chapter 5) have contributed to the corridor’s state-of-good-repair backlog and the deterioration of major NEC assets—such as the Baltimore and Potomac Tunnels built in 1873, the North River Tunnel built in 1910, and the Norwalk River Bridge built in 1896—they also highlighted the need for greater coordination and collaboration among NEC stakeholders to establish a more sustainable path forward.

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1.4 The Northeast Corridor Commission

Congress established the Commission to promote cooperation and planning and to advise Congress on corridor policy. The Commission is composed of one member from each of the NEC states (Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland) and the District of Columbia; four members from Amtrak; and five members from the U.S. Department of Transportation (USDOT). The Commission also includes non-voting representatives from freight railroads operating on the NEC, states with feeder corridors that connect to the NEC, and Commuter Authorities not directly represented by a Commission member.

The Commission conducts most of its work through committees. Committees oversee work activities and make recommendations for consideration by the Commission. Committees establish working groups to address individual tasks. Commission staff support committee work and manage all administrative matters.

1.4.1 Mission Statement

The Northeast Corridor Commission's mission is to bring the states, Commuter Authorities, Amtrak, and U.S. DOT together to modernize and improve the Northeast Corridor rail system through increased collaboration, transparency, and accountability. Through this partnership, the Commission's members can achieve more together than by working alone.

1.4.2 Commission Milestones

Since its formal establishment in 2010, the Commission has become a critical forum for developing strategies for collaboration, crafting policy, determining shared costs, planning capital investments, reporting performance, and conducting research.

Table 1: Commission Milestones

Date	Milestone
October 2008	Passenger Rail Investment and Improvement Act (PRIIA) creates the framework for establishing national and regional policy for the NEC through the creation of the NEC Commission, charged with establishing cost-sharing requirements for the corridor.
2010	Northeast Corridor Commission is stood up. Initially staffed by USDOT consultants, dedicated staff is hired starting in 2011.
April 2015	Commission approves the first ever five-year capital plan for the Northeast Corridor (the FY16-20 NEC Capital Investment Plan).
September 2015	Adoption of the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy The Commission approves the first set of annual financial obligations produced by the NEC Cost Allocation Model.
December 2015	Fixing America's Surface Transportation Act (FAST Act) is signed into law. The act incorporated many of the Policy's recommendations including a collaborative corridor-wide, five-year Capital Investment Plan and the Federal-State Partnership for State of Good Repair program.

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Date	Milestone
May 2018	Last of the bilateral agreements, revised to incorporate the Policy, signed between Owners and Operators
October 2018	Commission approves the FY19 One-Year Implementation Plan, which includes significant improvements from previous years. Owners provide more geographically specific scopes, schedules, and budgets for their projects and programs, allowing for better tracking of plans in quarterly capital program delivery reports. Commission approves BCC funding level increase to 90% normalized replacement for FY19.
June 2019	Commission approves project-based cost allocation method for capital cost-sharing above BCC levels.
October 2019	Commission approves the FY20 One-Year Implementation Plan, which includes enhanced scope, schedule, and budget detail for all projects and programs. Commission approves BCC funding level increase to 100% normalized replacement for FY20.

2.0 Policy Implementation

This section describes how Amtrak and Commuter Authorities will implement the Policy.

2.1 Policy Term

The Policy term is five years, beginning October 1, 2020, until September 30, 2025 (FY2021-FY2025). The Policy remains in effect until the Commission replaces or annuls it.

2.2 Staffing and Resources

Successful implementation of the Policy may require stakeholders to alter business practices within their organizations and invest in staffing and other resources (software, systems, etc.) to execute unique functions necessitated by the Commission partnership framework. Experience to date suggests that significant involvement and sustained cooperation is needed from agency staff responsible for the following types of functions: capital planning, engineering and project delivery, finance and accounting, operations, and legal. Agencies should closely monitor staffing and resources as they pertain to this policy framework and inform the Commission when risks to its successful implementation arise. In certain circumstances, Commission resources can be used to support executing work activities associated with Commission objectives.

2.3 Policy Implementation via Agreements

Amtrak and Commuter Authorities implement the Policy requirements via individual agreements, including any agreements for recapitalizing Common-Benefit Infrastructure. Parties will be responsible for promptly amending agreements to remain in compliance with the Policy. The agreements might cover periods different than the Policy term. Agreement terms should be consistent across the NEC to promote standard implementation of the Policy.

2.3.1 Compensation

Provided that compensation agreements do not impair the ability of Amtrak or Commuter Authorities to fulfill their obligations under the Policy, the parties may:

- 1) Implement compensation agreements for assets or services not addressed within the Policy, and
- 2) Agree to terms that exceed compensation due under the Policy. (Any agreement must not result in cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation.)

2.3.2 Sharing Agreements

No later than 60 business days after execution of each agreement or amendment that implements the Policy, Amtrak will provide the agreement or amendment to the Commission.

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Amtrak or a Commuter Authority may agree to redact the agreement or amendment but only to prevent disclosure of confidential or sensitive information that does not relate to the Policy.

2.4 Dispute Resolution

Consistent with the Policy's partnership framework, the Commission strongly prefers resolving disputes within the Commission's ordinary business practices.

To resolve disagreements related to the interpretation and application of the Policy, Operators may take these steps after notifying the Commission in writing:

- 1) Request that the Commission establish an ad-hoc committee composed of three members to interpret the Policy and make a recommendation to resolve the issue within 60 days. The ad-hoc committee will include, at minimum, one representative from USDOT. None of the committee members shall be party to the dispute.
- 2) If the recommendation from the ad-hoc committee does not resolve the issue, Operators may:
 - a) Request mediation from the Surface Transportation Board (STB), or any other means of alternative dispute resolution; or
 - b) Request that the STB resolve the dispute; or
 - c) Seek resolution through litigation in the federal courts.

For issues not related to the Policy, dispute resolution provisions within existing agreements will continue to apply. The processes described in this Policy do not supersede or replace any legal remedies available to the parties.

As appropriate, the Commission may amend the Policy to facilitate the uniform implementation of issues subject to dispute resolution.

2.5 Master Non-Disclosure Agreement

In November 2015, the Commission developed a Master Non-Disclosure Agreement (NDA).⁷ The NDA ensures that confidential information is available only to individuals authorized by the Commission and enables the Commission to share information provided by individual Operators with Commission members, other Operators, representatives, or their designees.

The NDA remains in effect for as long as a Policy is in place.

2.6 Policy Evaluation and Amendments

The Policy will be evaluated on a periodic basis and amended as needed, as described below.

⁷ The Commission has adopted one amendment to the NDA dated September 6, 2016.

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2.6.1 Policy Evaluation

The Commission will complete a Mid-Term Policy Performance Review (Term #2) no later than **March 31, 2023**. The review will document Commission members' views on the Policy's effectiveness and progress towards the implementation of key objectives, including (but not limited to) cost-sharing, collaborative planning and reporting, improved train performance, and federal funding to support the corridor. In addition, the review will identify any necessary changes to the Policy to incorporate new information.

The Commission will coordinate transmission of the Mid-Term Policy Performance Review, with supporting documentation, to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate committees on Commerce, Science, and Transportation and Banking, Housing, and Urban Affairs, the appropriations committees of each chamber, the Secretary of Transportation, and others as the Commission deems appropriate.

Before the end of a given fiscal year, a Commission member may request that the Commission undertake an annual policy performance review. The Commission shall vote on any such requests at the Commission meeting following the request.

2.6.2 Policy Amendments

A Commission member may propose to amend the Policy at any time. Any amendments must be accompanied by a schedule for implementation.

2.6.3 Ongoing Policy Development

During the term of this Policy, the Commission will pursue additional policy development for the topics and issues identified in this section. Amendments to the Policy will be considered, as appropriate, based on the findings and outcomes resulting from its efforts.

2.6.3.1 *Costs Associated with Freight Activity*

The NEC carries freight traffic in addition to intercity and commuter trains. Section 24905 requires that the Policy is to be implemented by "Amtrak and public authorities providing commuter rail transportation" only. However, the statute also prohibits cross-subsidization among intercity, commuter, and freight rail services.

Methods of accounting for, and charging, freight carriers for use of the NEC are not uniform. In general, Amtrak sets freight rates that approximate fully allocated operating costs. Other Right-of-Way Owners may establish access fees that support other policy goals, such as providing rail access for shippers at reasonable rates to prevent diversion of rail freight to trucks. In other instances, compensation from freight carriers is governed by trackage rights agreements. In FY2018, approximately 5% of total NEC operating costs were recovered through freight railroad payments. The Policy does not prevent Right-of-Way Owners from establishing their own policies and rates for freight carriers, as informed by each state's goods movement objectives and regulated by STB, but Right-of-Way Owners may not pass the costs of these subsidies to Non-Owner Operators.

In 2019, Commission staff used sample data from the Surface Transportation Board (STB) to perform a preliminary analysis of potential cross-subsidization between freight and

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passenger railroads. This analysis, which involved estimating NEC allocation statistics for freight rail operators for use in the Cost Allocation Model, indicated that some cross-subsidization likely exists. However, STB's confidentiality requirements prevent Commission staff from making the data available to all NEC RoW Owners and Operators for verification purposes. In addition, the Commission is unable to obtain NEC allocation statistics for freight rail operators from NEC Right-of-Way Owners because of at least one confidentiality agreement and will initiate a data collection effort to identify any other potential data availability limitations no later than **December 31, 2020**.

To allow the Commission to address any cross-subsidization of freight railroads within its Policy framework, Congress should enable the Commission to obtain data necessary to calculate NEC allocation statistics for freight rail operators.

Until or unless the Commission develops an alternative approach, Right-of-Way Owners' freight revenues will be accounted for in the Policy's cost-sharing framework as described in Section 3.4.1.1.6.

2.6.3.2 Capacity

In certain segments, the corridor has reached the practical limits of its capacity. This means that, without investment in infrastructure or changes in operating patterns, no more train trips can be added to serve additional customers. The corridor's capacity constraints also mean that routine—let alone major—construction often requires taking tracks out of service.

To accommodate service demands in the coming decades, projects and/or initiatives for NEC capital plans will be proposed to provide additional trains to serve the region's mobility needs.

A framework for the treatment of corridor capacity begins with the following understanding:

- 1) Adoption of the Policy does not alter pre-existing statutory, contractual, or property rights;
- 2) In some cases, increasing train-consist capacity and making scheduling and other operational changes may be more cost-effective than infrastructure investments; and
- 3) Within the framework of applicable rights, access should be priced on fair and reasonable terms.

During the first Policy term the Commission initiated documentation of the existing statutory, contractual, and property rights that pertain to the corridor to: (a) establish a baseline, (b) determine the extent to which the NEC is encumbered, (c) inform discussions on how best to define capacity as it pertains to the NEC, and (d) enable the Commission to make recommendations about future capacity requirements, pursuant to Section 24905. During the second Policy term, the Commission may continue deliberations and policy development related to items (b), (c), and (d).

2.6.3.3 Liability

The Commission establishes the following goals for liability provisions in existing and new agreements:

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- 1) Eliminate “but for” liability and indemnity provisions and adopt “no fault” liability provisions so that each party takes responsibility for costs associated with their own equipment, employees, and passengers. “No fault” arrangements are beneficial because they limit litigation.
- 2) Allocate liability associated with Common-Benefit Infrastructure and third-party claims.

The Commission will develop a new approach to liability provisions no later than **December 31, 2022**, that should be applied and implemented corridor-wide no later than the end of the Policy term. A new approach may require changes to federal and state law, which should be taken into consideration when considering alternatives and discussing a timeline for implementation.

Prior to implementation of a corridor-wide approach and to the extent permitted by state law, operators may amend existing liability arrangements through negotiated agreements consistent with the overall intent of the Policy.

3.0 Operator Cost-Sharing

This section describes the Commission's Operator cost-sharing framework, which includes cost-sharing via (1) the NEC Cost Allocation Model, and (2) the Project-based Cost Allocation Method. Key concepts underlying the cost-sharing framework include:

- 1) **Benefit.** Common-benefit costs, which are sharable under this Policy, are associated with Common-Benefit Infrastructure or NEC assets mutually agreed to provide benefit and utility to more than one Operator. Sole-benefit costs, which are not sharable under this Policy, are associated with Sole-Benefit Infrastructure or NEC infrastructure mutually agreed to provide benefit and utility to only one Operator.
- 2) **Relative use.** The cost-sharing framework is driven by allocation statistics that reflect proportional use of NEC infrastructure, such as gross ton miles and train movements. The statistics are based on timetables and train manifests, calculated periodically, and include revenue and non-revenue train operations.⁸ Table 2 displays these statistics.
- 3) **Segments.** To support the consistent allocation of costs, the NEC is divided into geographic segments. Each cost is assigned to a segment and the allocation statistics collected reflect train operations in each segment.
 - *Operating Segments.* Used in operating cost allocation and project-based cost allocation. These segments are listed in Appendix 1.7.3.
 - *Terminal Zones.* Used in operating cost allocation and project-based cost allocation. Some operating segments are considered terminal zones. These zones and their associated segments are defined in Appendix 1.7.4.
 - *Capital Segments.* Used in capital normalized replacement allocation. These segments are defined in Appendix 1.7.1.

⁸ Unscheduled special and test trains are not captured in the allocation statistics collected for Operator cost-sharing purposes. Compensation related to the operation of unscheduled special and test trains shall be agreed upon bilaterally by the affected parties.

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Table 2: NEC Allocation Statistics

Statistic	Description	Used to Allocate
Gross Ton Miles	The movement of a ton of transportation equipment and contents one mile	Costs associated with activities that are driven primarily by the weight of the vehicle traveling over the infrastructure, such as track and bridge maintenance in non-terminal zones
Train Miles	The total distance in miles traveled by a train (revenue and non-revenue)	Costs associated with activities that are driven primarily by the time and distance of train operations, such as dispatching in non-terminal zones
Unit Miles	The scheduled number of individual cars, locomotives, or multiple units (MUs) multiplied by the number of miles in an operating segment. A consist scheduled with 1 locomotive and 5 cars, travelling through a 10-mile segment, is counted as 60 unit miles.	Costs associated with activities that are primarily driven by the volume of train operations, such as right-of-way policing activities in non-terminal zones
Train Moves	The scheduled movement of a train as a singular unit through a designated geographic location	Costs associated with activities that are directly correlated to the frequency of train operations, such as maintenance and testing of communication and signal systems Costs incurred along the right of way <u>in terminal zones</u> (excluding electric traction infrastructure costs). Slower speeds and infrastructure complexity in these zones mean train frequencies more accurately reflect costs than weight or volume
Electric Unit Miles	Unit Miles for equipment powered by electric locomotives or multiple units	Costs associated with activities that are driven primarily by the volume of electrified train operations, such as catenary system maintenance in non-terminal zones
Electric Train Moves	Train Movements for equipment powered by electric locomotives or multiple units	Costs associated with activities that are directly correlated to the frequency of electrified train operations, such catenary system maintenance in terminal zones
50/50 Passengers & Train Stops	A single allocation statistic that combines annual ridership and annual train stops, such that half of common-benefit costs at a station are allocated proportionally by ridership and half of common-benefit costs are allocated proportionally by train stops	Costs associated with stations
Kilowatt-hour	Consumption of electricity in kilowatt-hours	Costs associated with electric traction propulsion power, as payments made to utility and electric generation companies that supply electricity for train operations are primarily based on a rate per kilowatt hour consumed

3.1 Cost Allocation Principles

3.1.1 Costs and Metrics

- (1) Costs subject to this Policy are linked to specific activities, based on sound data and verifiable statistics, where practicable.
- (2) Costs reflective of work physically occurring along the right of way should be assigned to the specific geography (e.g., operating segment) where the work took place.
- (3) Costs reflective of work that does not physically occur along the right of way and/or benefits multiple segments should be distributed to the relevant segments, as needed, using an appropriate cost driver.
- (4) It is recommended that wherever practicable within their accounting systems, Owners track costs eligible for allocation by service type (e.g., intercity, commuter, freight).

3.1.2 Primary Use

Determining whether costs are sole-benefit or common-benefit should reflect the Principle of Primary Use, under which costs for providing facilities or services are not allocable if the facilities and services meet all of the following criteria:

- (1) Provided by an Operator for the use of its own passengers or for other sole-benefit purpose;
- (2) Used primarily by the Operator's passengers or other sole-benefit purpose;
- (3) Used only incidentally by other Operators or their passengers; and
- (4) Does not result in significant additional cost to the Operator providing them, when other Operators or their passengers use them.

3.1.3 Cost Effectiveness of Data Precision

When modifications are needed to an agency's existing systems and practices to provide more precise data for cost allocation purposes, the agency must balance achieving the desired level of precision and the costs associated with improving precision.

3.2 Standard Cost Treatments

3.2.1 Treatment of Revenues

Provided that the costs associated with activities that generate revenue are borne exclusively by or allocated to the Operator responsible for the activity, revenues are excluded from allocation. However, if costs associated with activities that generate revenue are allocated—other than infrastructure costs related to train service allocated under this policy—the corresponding revenues must also be allocated.

3.2.2 Treatment of Section 209 Costs

PRIIA Section 209 required that a standardized methodology be developed and implemented to allocate the costs of state-supported Amtrak routes (not including the NEC main line)

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among the States and Amtrak.⁹ Under PRIIA Section 212, the costs allocated to Commuter Authorities may not include any portion of costs allocated to states for state-supported Amtrak routes under PRIIA Section 209.

The Commission will undertake a special study, to be completed no later than **December 31, 2021**, that examines key differences between the PRIIA Section 209 and Section 212 cost allocation methodologies. The purpose of the study is to determine whether any additional steps can be taken to ensure that the costs allocated to Commuter Authorities under PRIIA Section 212 do not include any portion of costs allocated to states under PRIIA Section 209.

3.2.3 Treatment of Liability and Insurance Costs

Existing agreements between Owners and Operators specify how liability, insurance, and other risk-related costs are allocated. These agreements have been negotiated over time and under differing legal environments, resulting in a patchwork of arrangements.

Until a long-term approach is implemented (per Section 2.6.3.3), there may be conflicts between costs allocated by the Policy and existing contractual liability arrangements. To reduce these conflicts, the following apply for liability and insurance costs:

- 1) Liability related costs will not be allocated to any party that has a contractual indemnification for such costs.
- 2) Payments made to third parties are not allocable, whether paid for out of a deductible or using insurance. This includes, for example, payments resulting from claims related to train incidents, capital projects or maintenance activities, or trespasser incidents.
- 3) In locations shared by more than two Operators, bilateral arrangements may affect the exposure of a third Operator that is not party to the bilateral arrangement. In such cases, the Owner shall advise the operator of the new arrangement and the potential impact on its exposure.
- 4) In some agreements, parties have agreed to pay risk fees in exchange for another party agreeing to take responsibility for certain liabilities. These arrangements are not modified by the Policy, and risk fees are not subject to cost allocation.
- 5) All Operators incur insurance costs. In many cases, agreements require the parties to purchase a certain level of insurance. Because these insurance arrangements are inextricably linked with the liability provisions, the cost of purchasing such insurance (e.g., insurance premiums) will not be allocated to other Operators (either directly, or as overhead) unless otherwise agreed to between the parties. Likewise, insurance payments resulting from an insured loss will not be shared with other Operators, unless otherwise agreed to between the parties.
- 6) This policy does not preclude parties from making bilateral arrangements to jointly purchase insurance and distribute claims payments (e.g., when undertaking a common-benefit capital project).

⁹ Pub. L. No. 110–432, div. B, title II, § 209(a), 122 Stat. 4848, 4917 (2008).

3.3 Exclusions

Unless otherwise specified, costs associated with the following infrastructure, equipment, services, and functions are not shareable under this policy:

- Maintenance and recapitalization of Sole-Benefit Infrastructure;
- On-board train services;
- Revenue rolling stock;
- Rolling stock equipment maintenance and storage, switching, and staging;
- Other services that may be provided upon request, such as equipment rental, ticketing and cross-honoring of tickets, training, course development, claims handling, and policing, engineering, and other professional services;
- Infrastructure access, property acquisition unrelated to allocable activities under this policy, and train slot sales and purchases;
- Fare revenues;
- Certain liability, insurance, and risk-related costs as described in Section 3.2.3;
- Any portion of costs of common-benefit capital projects paid for or recovered by federal disaster relief funds, in accordance with Section 3.5.4.
- Loading, unloading, and storage of baggage and parcels on trains or in stations;
- Selling, storing, receiving, and accounting for instruments used to collect Passenger Revenue on trains or in stations;
- Assisting passengers boarding and alighting trains, including interface with baggage handling, for trains;
- Unfunded liabilities related to GAAP and GASB valuation standards for Pension and OPEB long-term liabilities; and
- Depreciation of fixed assets.¹⁰

Appendix 1.4 “G&A Rate Exclusions” identifies costs that are not shareable under this Policy as part of G&A rate numerators. This appendix should also be used as a resource to identify exclusions not explicitly enumerated in this section.

3.4 Model-based Cost-Sharing

Model-based cost sharing refers to the calculation of agencies’ annual operating and capital financial obligations as implemented through the NEC Cost Allocation Model. This section describes the processes and procedures underlying the model and the Commission’s approach to model-based cost sharing. The model’s financial obligations represent each agency’s minimum annual contribution to NEC infrastructure and operations and are supplemented as necessary by project-based cost sharing described in Section 3.5.

¹⁰ Depreciation of common-benefit fixed assets is excluded except for depreciation/amortization associated with common-benefit capitalized leased assets. Depreciation of common-benefit movable assets (e.g., non-revenue maintenance of way equipment) is shareable under this policy as long as (1) the asset’s cost is appropriately split between operating and capital, and (2) the asset is not paid for by BCCs or through project-based cost sharing (Section 3.5).

3.4.1 Operating Obligations

Operating obligations calculated for a given fiscal year are based on: (1) actual operating costs incurred for the three most recent and available fiscal years and (2) allocation statistics reflective of the fiscal year for which the obligations are calculated. Table 3 below summarizes the operating costs eligible for allocation in the model and the standard allocation statistic applied to each in non-terminal and terminal zones.

3.4.1.1 Eligible Operating Costs

This section describes the types of operating costs eligible for allocation in the model. The descriptions are intended to capture direct costs (i.e., costs that can be completely attributed to the production of specific goods or services, such as material and labor). Operating cost submission requirements, including requirements for indirect costs and overhead rates, can be found in Appendix 1.3.

3.4.1.1.1 Maintenance-of-Way

Maintenance-of-Way (MoW) costs means those costs associated with the maintenance of the NEC right of way, including costs for inspection, testing, repair, and protection support. Eligible MoW costs include:

- **Track, Bridges, Structures, Facilities, and Support Activities:** Includes track and bridge maintenance and inspection, track geometry car inspection, ditching, grading, surfacing, brush cutting, grinding, welding, spot-tie replacement, protection support (i.e., watchman/flagging), and related structures maintenance. Support activities include information systems, roadway machinery, and vehicles.
- **Communication and Signals:** Includes the inspection and testing of signals, relays, switches, cable and wiring, moveable bridge components, road crossing components, track circuits, signal lines, solid state equipment, and control house equipment; the maintenance and repair of signal and communication equipment; and maintenance and inspection of cables, ducts, voice systems, radio systems, PBX (private branch exchange), and other communication network components.
- **Electric Traction Infrastructure:** Includes inspection, testing, maintenance and repair (including activities performed using catenary inspection vehicles and wire trains) of the catenary system, transmission system, catenary structure, third rail system, electrical substations, and railroad-owned frequency converters.

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Table 3: Allocation Statistics by Cost Area and Functional Activity

Cost Area	Functional Activity	Allocation Statistic	
		Non-Terminal Zone	Terminal Zone
Maintenance of Way	<ul style="list-style-type: none"> • Track • Bridges¹¹ • Facilities • Equipment • Freight Credit 	Gross Ton Miles	Train Moves
	<ul style="list-style-type: none"> • Communication systems • Signals & Interlockings 	Train Moves	Train Moves
	<ul style="list-style-type: none"> • Electric Traction System 	Electric Unit Miles	Electric Unit Moves
Dispatching	<ul style="list-style-type: none"> • Control & Dispatch • Blocks & Towers • Freight Credit 	Train Miles	Train Moves
Police	<ul style="list-style-type: none"> • Road • Yard • Freight Credit 	Unit Miles	Train Moves
	<ul style="list-style-type: none"> • Stations 		
Stations	<ul style="list-style-type: none"> • Maintenance • Operations • Stationmasters & Ushers • Utilities 	50% Passengers / 50% Train Stops	
Electric Traction Propulsion Power	<ul style="list-style-type: none"> • Electric Traction Power • Power Directors & Load Dispatchers 	Kilowatt-hours (kWh) / Special Studies ¹²	

3.4.1.1.2 Dispatching

Eligible costs include labor expenses associated with Centralized Traffic Control (CTC) and block tower operations.

3.4.1.1.3 Police

Eligible costs include labor and other costs incurred for police officers engaging in routine patrols and responding to incidents on the right of way and in yards. For stations, eligible costs include patrolling and protecting stations, platforms, and station facilities. Common-benefit policing costs associated with the agent of primary jurisdiction (i.e., RoW or station owner) are deemed eligible for allocation, together with any common-benefit policing costs incurred by other Operators' policing forces that have: (a) an agreement with the agent of primary jurisdiction for routine patrols of the RoW segment or station in question, and/or

¹¹ Bridges that support structures other than common-benefit railroad tracks must assign an appropriate portion of the costs to those structures.

¹² See Appendix 1.6.1.1 for more information about the allocation of electric traction propulsion power costs through use of special studies.

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(b) a permanent physical presence (e.g., office or booth) with minimum staffing levels at the station in question.

3.4.1.1.4 Stations

Train stations on the NEC always contain platforms and often a station building. Many of these station buildings are major public centers that contain features that are not uniquely transportation-related, such as retail shops and services, dining facilities, and office space. However, when people make decisions about modes of transport, the station experience is a factor. Therefore, it is in the interest of all NEC stakeholders to maintain stations in a manner that is pleasing to customers (clean, well-lit, and with certain amenities) and pursue transit-oriented development opportunities with the private sector to attract new customers and tap into the economic value generated by NEC stations.

Eligible stations costs include:

- **Station Operations:** Costs of station operations including cleaning, trash removal, rent, and station services.
- **Station Maintenance:** Costs of basic maintenance of stations, including labor for maintenance personnel, materials, and snow removal.
- **Utilities:** Costs of electric power, heating fuel, and/or steam used for station operation purposes.
- **Ushers:** Costs of announcing track assignments of arriving and departing trains and directing passengers to and from station platform entrance gates. In recognition that ushers may spend a portion of their time undertaking sole-benefit activities, Operators must use best available data to estimate the amount of time that ushers are available to patrons of all railroads. Times when ushers are unavailable to patrons of all railroads (e.g., boarding a train) will be considered sole-benefit. A special study will be completed no later than **December 31, 2021**, to aid in the interpretation of agencies' best available data and/or develop a standardized approach to determining sole- and common-benefit usher functions.

This policy is not intended to assign costs to service that is not subject to Section 24905. Operators are encouraged, however, to attract investment in stations from other parties to improve the customer experience.

3.4.1.1.5 Electric Traction Propulsion Power

Eligible costs include electricity for train operations (billed by utility companies and electric generation suppliers); operations and maintenance of frequency convertors and substations (owned by utility companies); labor costs for load dispatchers and power directors; professional energy consulting costs for provision of on-going analysis, procurement support, tariff assistance, and contractual assistance; and legal costs for other initiatives requiring external legal support.

3.4.1.1.6 Freight Revenues

Until more granular freight carrier data can be collected, the Policy treats Right-of-Way Owners' freight revenues as eligible costs (included as a negative monetary value in the model)

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that serve as an offset to only the total operating costs in each operating segment by cost area, with all remaining operating costs allocated among Operators. Total freight revenues for each Right-of-Way Owner are applied to each segment based on the relative share of freight traffic on that Right-of-Way Owner's segments (not to exceed the total operating cost of any segment).

3.4.1.2 Indirect Costs and Overhead Rates

Indirect costs eligible for allocation under this policy are those costs that cannot be assigned to a unique objective and whose benefits can be reasonably assignable to costs allocated under the Policy. Indirect costs related to sole-benefit activities are not allocable per this policy.

Federal guidelines, such as those appearing in Titles 2, 23, and 48 of the Code of Federal Regulations, allow the recovery of indirect costs associated with work performed under those regulations.

To distribute indirect costs to the cost objectives served via overhead rates, cost pools representing distinct areas of activity must be identified. These cost pools usually include indirect costs associated with a specific unit or corporate area. The cost pools (i.e., numerator costs) are then divided by a representative allocation cost base (i.e., denominator costs), such as total costs or direct labor, resulting in an overhead rate. The cost base chosen must allow for the equitable and reasonable distribution of the indirect costs to the cost objectives being supported.

Overhead rates calculated for General and Administrative (G&A) expenses¹³ will be consistently developed across agencies with a denominator (i.e., cost base) that consists of all operating and all capital costs less the numerator costs.

A list of exclusions from G&A overhead rates is included in Appendix 1.4.

3.4.1.3 Allocation Process

The process for calculating operating costs and allocating these costs among Amtrak and Commuter Authorities (excluding electric traction propulsion power, which is addressed in Appendix 1.6.1.1) is as follows:

- 1) Actual operating expenses, including overhead rates, for the three most recent available fiscal years will be collected.
- 2) Stations operating expenses will reflect spatial analysis¹⁴ percentages, as appropriate.

¹³ G&A expenses are those unrelated to a specific business unit or function, which may be incurred as a benefit to the company as a whole.

¹⁴ Spatial analysis refers to the process of determining the portion of square footage within a station (as a percent) that is sole- and common-benefit. Station costs pertaining to both sole- and common-benefit station areas will be apportioned using the percentages determined through spatial analysis. Stations maintenance, operations, and utilities costs are eligible for spatial analysis.

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- 3) All expenses from each fiscal year will be adjusted for inflation in three steps and reflect the revised AAR index values¹⁵ introduced during the FY25 model cycle:
 - **Step 1:** Revised AAR index values will be calculated for 2023 and beyond by multiplying the revised AAR index values—first calculated for the fourth quarter of 2022—by the actual quarter over quarter change from the AAR Index.
 - **Step 2:** The expenses will be adjusted based on the percentage change in the revised annual AAR Index for the fiscal year to the most recently available revised adjusted annual AAR Index.
 - **Step 3:** The Moody’s Analytic inflation rate will be applied to adjust costs to the mid-point of the prospective fiscal year.
- 4) The resulting value will be divided by three to determine the three-year inflated and averaged cost.
- 5) The expected prospective year’s allocation statistics (identified in Table 2 and Table 3 above) will be applied to these inflated and averaged costs, resulting in an annual operating obligation owed by each Operator.

Additional information regarding annual operating obligations, including the model schedule and payment procedures, is provided in Section 3.4.3 and Appendix 1.6.1 respectively.

3.4.2 Capital Obligations

Capital obligations, or Baseline Capital Charges (BCCs), calculated for a given fiscal year are based on: (1) the Normalized Replacement Amount for Right-of-Way Basic Infrastructure and Stations Basic Infrastructure assets, and (2) allocation statistics reflective of the fiscal year for which the obligations are calculated. Table 4 below summarizes the right-of-way and station asset categories for which normalized replacement amounts are calculated and the allocation statistic applied to each.

Table 4: Allocation Statistics by Right-of-Way and Stations Asset Category

Asset Category	Example Asset Type	Allocation Statistic
Track	<ul style="list-style-type: none"> • Rail • Ties, • Ballast (undercutting and surfacing) • Turnouts 	Gross Ton Miles
Structures	<ul style="list-style-type: none"> • Undergrade bridges • Tunnel and movable bridge maintenance • Bridge ties • Retaining walls and fences 	Gross Ton Miles
System	<ul style="list-style-type: none"> • Maintenance-of-way vehicle overhauls • Equipment • System design investments 	Gross Ton Miles

¹⁵ The AAR index for the fourth quarter of 2022 was adjusted to mitigate the large increase in that quarter. This was done by multiplying the AAR index from the fourth quarter of 2021 by the year-over-year change due to inflation in the approved FY24 operating obligations (10.5%) to produce a revised AAR FY22Q4 index for the fourth quarter of 2022.

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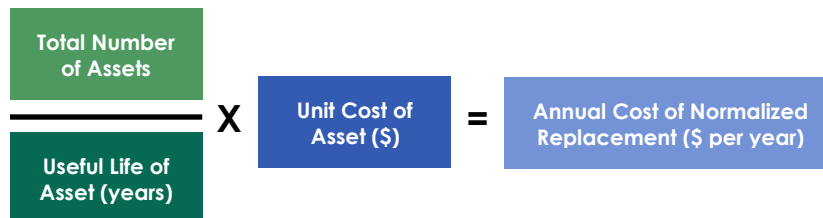
Asset Category	Example Asset Type	Allocation Statistic
Communication and Signals	<ul style="list-style-type: none"> • Signals • PTC • Switch machines 	Train Moves
Electric Traction	<ul style="list-style-type: none"> • Catenary structure • Catenary • Substations 	Electric Unit Miles
Electric Traction – Third Rail	<ul style="list-style-type: none"> • Third rail 	NYP Joint Fac ¹
Stations	<ul style="list-style-type: none"> • Platforms • Building systems 	50% Passengers / 50% Train Stops

Table note 1: This statistic is applied to Operating Segment 3199 only.

3.4.2.1 Normalized Replacement Amount Calculation

The Normalized Replacement Amount estimates the annual cost of sustaining basic infrastructure assets in a state of good repair and is based on (1) the population of each asset type, (2) the average useful life of each asset type, and (3) the unit cost for each asset type, as shown in Figure 3.

Figure 3: Normalized Replacement Amount Formula



Specifically, the Normalized Replacement Amount is calculated for each asset data source as follows:

- 1) For each asset type, the **asset population** is divided by the **average useful life** of the asset, resulting in an average number of assets to be replaced each year.
- 2) The average number of assets to be replaced each year is then multiplied by the **average unit replacement cost** of the asset, resulting in a normalized replacement amount for that asset type.
- 3) Steps 1 and 2 are repeated across all asset types for each of the relevant segments identified in Appendix 1.7.
- 4) Normalized replacement amounts for each asset type are then summed by asset category for each segment.
- 5) The sum of the normalized replacement amounts calculated for each asset category across all segments equals the (total) Normalized Replacement Amount for the corridor.
- 6) The Normalized Replacement Amount is adjusted annually for inflation using the method for inflating operating costs set forth in Section 3.4.1.3.

The concept of normalized replacement presumes that assets are maintained in a state of good repair, which is not the case across the NEC. However, this approach provides an objective, data-driven method for determining a required level of annual investment in maintenance and recapitalization of capital assets to establish a formula charge. The benefits of this approach are as follows:

- Assets can be monitored through field inspection, unit costs can be verified, and useful life estimates can be determined by technical experts;
- The components of the BCC provide a link between the assets and the required investment amount to sustain a state of good repair;
- Funding contributions correlate to actual use of the infrastructure; and

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- Administrative and transaction costs are minimized.

Additional details regarding normalized replacement calculations and the underlying data sources can be found in Appendix 1.5.

3.4.2.2 Baseline Capital Charges

Each Operator's BCC is determined as a percentage of the corridor's Normalized Replacement Amount by applying the prospective fiscal year's allocation statistics (identified in Table 4 above) to the normalized replacement amounts calculated for each asset category and Capital Segment combination. The sum of an Operator's allocated share of applicable normalized replacement amounts equals that Operator's BCC, or annual capital obligation.

Additional information regarding annual capital obligations/BCCs, including the model schedule and payment procedures, is provided in Section 3.4.3 and Appendix 1.6.2 respectively.

3.4.2.2.1 BCC Eligible Uses and Restrictions

BCCs may be used during the year they are provided to fund the capital renewal (i.e., routine repair or replacement) of Right-of-Way Basic Infrastructure, Stations Basic Infrastructure, and right-of-way safety mandates. In general, for each Operator, BCCs are used to fund eligible right-of-way investments within the Operator's service territory involving assets the Operator uses or benefits from. BCCs, however, may be used to fund other types of capital investments if certain criteria are met, including:

- *Environmental remediation investments.*
 - Standalone environmental projects. These projects can be funded with BCCs so long as Owners obtain written consent from any Non-Owner Operator whose BCCs are intended to be used.
 - Environmental work (i.e., investigative, removal, or remediation work within the footprint of a non-environmental project). No more than 5% of an operator's BCC can be applied to environmental work without the Operator's written consent.
 - Third-party claims. These claims will not be funded with an Operator's BCC without that Operator's written consent.
- *System-wide Investments:* Only Right-of-Way Owners may make System-wide Investments. Right-of-Way Owners will make every reasonable effort to first apply Non-Owner Operators' BCCs to eligible investments physically located and occurring within their service territories before applying BCCs to System-wide Investments¹⁶ that benefit their service territories. No more than 12% of a Non-Owner Operator's BCC Amount Paid can be applied to System-wide Investments, unless otherwise agreed to in a bilateral agreement. Further, BCCs must be assigned to System-wide Investments based on relative use using train miles (or electric unit miles for electric

¹⁶ System-wide Investments are investments that benefit one or more BCC segments beyond the immediate segment in which they are located (e.g., substations), or are located off the right of way and therefore do not incur territory specific costs (e.g., asset management software).

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traction-related investments) as the default allocation statistic if no other statistic is more relevant.

All use restrictions, including thresholds and percent caps, apply on a fiscal year basis.

3.4.2.2.2 BCC Variances

Owners and Operators may agree, subject to Commission approval, to use BCCs to fund common-benefit investments not otherwise eligible for BCCs per Section 3.4.2.2.1 above. For BCC variance requests, the following will apply:

- Owners and Operators will prepare a variance analysis showing the effects of expending BCCs for the proposed use. This will include:
 - The benefits of the proposed use;
 - The opportunity costs of diverting the funds;
 - The project's financial plan, as applicable; and
 - Any additional relevant factors.
- Variance requests and supporting analyses will be shared with the Commission and highlighted during the capital planning process described in Section 4.1.2.
- Investment components that are eligible for BCCs per Section 3.4.2.2.1 do not require a variance and costs associated with such components should not be included in the BCC variance request.
- The Commission's approval of BCC variance requests will not be unreasonably withheld.
- The Commission may approve the variance outright, or it may approve the variance as a cash flow management measure to assist an Operator with an allocated cost share for a project that is at risk (e.g., of not being fully funded, falling behind schedule, or losing funding).
- If the Commission approves a variance to assist with cash flow, it may include terms that the Operator will have an increased BCC in future years equivalent to the amount of the variance, with an appropriate interest charge.

3.4.2.3 Asset Data Updates

Aside from technical corrections, which can be addressed during the Model Issues process referenced in Section 3.4.3, updates to the asset data and assessments used to derive normalized replacement amounts require the Commission's approval and must include a timetable for implementing any adjustments to BCCs. Such adjustments to BCCs must be applied to all Owners and Operators. Appendix 1.5 describes the asset data sources used in the calculation of the Normalized Replacement Amount until the Commission approves an asset data update. At minimum, the Commission will evaluate the need for an asset data update as part of the Mid-term Policy Performance Review (see Section 2.6.1).

3.4.3 Model Governance

Operators must provide their cost submissions, including all data supporting documentation, and allocation statistics for the upcoming fiscal year to the Commission by **January 31**. Each Operator's financial obligations will be calculated for the upcoming fiscal year by **March 15** in Model-v1. Operators will have the opportunity to document any issues or concerns with

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the calculations in Model-v1 until **April 15** through the Commission's Model Issues process. Model Issues will be prioritized based on whether the issue involves potential Policy violations, the magnitude of cost impacts, and the ease of addressing the issue. All issues and concerns must be addressed by **May 15** to be reflected in Model-v2.

The Commission will adopt the financial obligations calculated in Model-v2 by **June 30**. As necessary, the resolution to adopt the financial obligations will include an addendum of unresolved Model Issues that may result in modifications to the approved financial obligations, if subsequently resolved. Any issue raised during the execution of the Cost Allocation Model may be addressed per the dispute resolution process in Section 2.4. The schedule for developing financial obligations each year is set forth in Table 5.

3.4.3.1 Inclusion of New Costs After Model-v1

Between Model-v1 and Model-v2, agencies may not introduce new costs, including those accidentally or mistakenly omitted, or change the designation of a cost from sole- to common-benefit unless all of the following conditions are met:

- 1) The new costs pertain to a Model Issue involving the agency's costs;
- 2) The agency identified the costs while researching or developing its response to the Model Issue;
- 3) The new costs are provided to the Commission through the Model Issues process by May 1; and
- 4) Affected Operators agree to the change for inclusion in Model-v2.

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Table 5: Cost Allocation Model Schedule (Illustrative Years FY2022 and FY2023)

Milestone	FY22 Model	FY23 Model	Deadline
Draft Model Implementation Assessment complete	X		December 31, 2021
Model data submissions due (costs and allocation statistics)		X	January 31, 2022
Commission comments on Draft Model Implementation Assessment due	X		March 1, 2022
Model-v1 financial obligations released		X	March 15, 2022
Final Model Implementation Assessment distributed	X		April 1, 2022
Model Issues due		X	April 15, 2022
Initial responses to Model Issues due, including identification of new costs		X	
Mid-year revisions to allocation statistics due (if needed)	X		May 1, 2022
Final allocation statistics due		X	
Deadline to resolve Issues for inclusion in Model-v2		X	May 15, 2022
Model-v3 financial obligations released (if needed)	X		June 1, 2022
Model-v2 financial obligations released		X	June 15, 2022
Model-v2 financial obligations adopted by Commission		X	
Model-v3 financial obligations adopted by Commission (if needed)	X		June 30, 2022
Deadline to confirm Agreed-upon Procedures Review scope (if needed)		X	
Draft Model Implementation Assessment complete		X	December 31, 2022

3.4.3.2 Anticipated Service Changes

To be incorporated into Model-v1, Owners and Operators must identify and submit anticipated service changes for the upcoming fiscal year on or before January 31. To be incorporated into Model-v2, service changes must be submitted by May 1 prior to the start of the fiscal year.

If an Operator anticipates proposing a service change after May 1, it will notify the Owner and the Commission as soon as possible (if the Operator is also an Owner, it will notify Operators using its territory and the Commission). Operators may submit service changes that were not identified prior to the May 1 deadline at any time. However, to be incorporated in Model-v3, service changes must be submitted by May 1 of the current fiscal year and meet the criteria outlined in Section 3.4.4.1 below.

An Operator may request guidance on the financial impacts of an anticipated or proposed service change at any time.

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3.4.3.3 Inflation Adjustments

If, in a given year, the application of the NEC inflation protocol (described in Section 3.4.1.3) produces a 5% year-over-year increase or decrease in the operating and/or capital obligations as compared to the application of the NEC inflation protocol in the prior year's model, notification will be provided to the Commission no later than March 15 and a decision regarding any adjustments related to inflation will be made by the Commission no later than June 30.

3.4.3.4 Model Evaluation

The Cost Allocation Model will be subject to two forms of evaluation, including an:

- 1) Implementation Assessment (conducted annually); and
- 2) Agreed-upon Procedures Review (conducted annually or periodically as determined by the Commission).

This Policy and these evaluations do not waive any agencies' contractual right to independently audit.

3.4.3.4.1 Model Implementation Assessment

The Commission will contract with a qualified firm for a Model Implementation Assessment to ensure the accuracy of the Cost Allocation Model from a data-processing and calculation standpoint and verify that the Policy's key cost allocation provisions (e.g., the assignment of costs to segments and the application of relative use statistics) have been adhered to.

Assuming full cooperation from all Operators that have submitted costs, the draft assessment will be completed each year by **December 31**, responses will be due by **March 1**, and a revised assessment incorporating responses will be completed by **April 1**. To meet the deadlines established herein, the scope of the assessment must presume that all cost submissions and statistics submitted by Operators are accurate and complete.

The Commission will determine the most appropriate manner to address each finding, including whether any adjustments to the financial obligations are warranted.

If the Model Implementation Assessment is not performed within the time frame required by the Policy, then the last year for which financial obligations were calculated according to the Policy (the "Previous Allocated Cost") will be used as the basis for calculating the current-year costs for all costs except electric traction propulsion power. The Previous Allocated Cost will be adjusted for inflation using the then-current revised annual AAR inflation index rate. Also, adjustments to the Previous Allocated Costs that are needed in order to remain consistent with the Policy may be requested by any Operator. The other Operators must be reasonable in considering such request, and reasonable requests will be incorporated into a formal amendment, resulting in a "Modified Current Year Allocated Cost." For electric traction propulsion power, the reimbursement process will continue as described in Appendix 1.6.1.1. This method will be followed for succeeding years, with the Modified Current Allocated Cost becoming the Previous Allocated Cost for the following year, until the Commission resumes its functions relating to cost allocation or a change in law or agreement among the Commission members prescribes a new method.

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3.4.3.4.2 Agreed-upon Procedures Review

To supplement the annual Model Implementation Assessment, the Commission may also contract with a qualified firm for an Agreed-upon Procedures Review to (1) review a specific set of issues or concerns identified by the Commission regarding one or more Operator's cost submissions, and (2) identify improvements, as appropriate, that can be implemented to improve the accuracy and/or completeness of future submissions. Any improvements to cost submissions and/or agencies' underlying systems or practices identified through this review process are not intended to be implemented retroactively.

Beginning in **FY21**, the Commission will determine no later than **June 30** whether an agreed-upon procedures review is needed and if so, what issues or concerns shall compose its scope. The scope of the audit shall be developed to allow for the review to be completed within two years from the date it is determined by the Commission.

The Commission may determine that there is a need to undertake an agreed-upon procedures review each year; however, no more than one such review shall be underway at one time.

3.4.4 Mid-year Revisions to Financial Obligations

Unless the Commission decides to make an exception, financial obligations will only be re-approved mid-year due to:

- 1) Resolved Model Issue(s) that were listed in the financial obligation resolution addendum as described in Section 3.4.3;
- 2) Identified findings from the Model Implementation Assessment required under Section 3.4.3.4.1; and/or
- 3) Unanticipated service changes meeting the criteria established in Section 3.4.4.1.

3.4.4.1 Unanticipated Service Changes

Operating obligations can be revised mid-year to reflect unanticipated service increases experienced during ordinary corridor operations for the duration(s) the service change(s) are in effect, if one of the following thresholds is met:

- 1) An Operator's allocated costs, calculated on a cumulative basis for the portion(s) of the year in which the change(s) are in effect, increases by \$500,000 or more; or
- 2) An Operator's total annual scheduled gross ton miles, calculated on a cumulative basis for the year in which the change(s) are in effect, increases by 5% or more.

Any mid-year revisions to operating obligations will not include adjustments for unanticipated service increases that do not meet the above thresholds.

Operating obligations will not be revised mid-year due to:

- Seasonal, or ad-hoc schedule adjustments; and/or
- Unanticipated service reductions experienced during ordinary corridor operations.

However, unanticipated service changes (increases or reductions) due to extraordinary events may be considered separately by the Commission on a case-by-case basis.

The Commission will consider developing procedures for revising capital obligations (BCCs) due to unanticipated service changes.

3.5 Project-Based Cost-Sharing

Effective **October 1, 2019**, the project-based cost allocation method described in this section applies to all common-benefit capital projects within PRIIA Section 212 territory that are not funded entirely by Baseline Capital Charges (BCCs) determined through the NECC Cost Allocation Model.

Common-benefit capital projects are defined as projects involving Common-Benefit Infrastructure that have a definitive start and end date and adhere to an agreed-upon set of objectives (i.e., scope, schedule, and budget) and expected outcomes.

Capital projects can include stations projects, right-of-way projects, mandated projects, capital renewal/normalized replacement projects for which BCCs are not available, major backlog and improvement projects as defined by the Commission, and any combination thereof.

As detailed in Chapter 5 of the Policy, federal-state funding partnerships will remain an essential component of critical NEC projects. Additionally, the Commission affirms its commitment to identifying opportunities to establish public-private partnerships and obtain financing from third-party private entities and federal programs—such as the Railroad Rehabilitation and Improvement Financing program—particularly for transit-oriented development and station improvement projects. It also encourages Project Sponsors/Owners to provide competitive opportunities for private firms that are qualified to perform maintenance and construction projects on the NEC.

3.5.1 Project-based Cost Allocation Method Steps

The project-based allocation method should be applied to common-benefit capital projects jointly by affected agencies (i.e., those presumed to benefit from a project) using the best available information and updated as needed as project plans and cost estimates are refined. When this method is applied to ongoing projects, agencies should consider past spending/costs incurred for all phases of the project. When this method is applied to individual project phases instead of an entire project, the resultant agency cost shares can be unique to each phase.

The method includes the following steps, which may be completed in the order shown below, or in a different order as appropriate:

- 1) Identify the project's component parts such that:
 - a) Sole-benefit components are separated from common-benefit components.

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- b) Each common-benefit project component can be assigned to a primary cost area¹⁷ (e.g., MoW-Track, or Station); and
 - c) Each common-benefit project component can be identified as either:
 - i. Replacement: which includes the installation of upgraded or modernized assets that generally serve the same purpose, provide the same basic functionality, and/or reside within the same footprint as the existing assets; or
 - ii. Improvement: which includes the replacement of existing assets with markedly superior ones or the introduction of new assets above and beyond existing NEC infrastructure, facilities, and equipment to improve reliability, increase capacity, reduce travel time, or improve the customer experience.
- 2) Assign an allocation statistic to each common-benefit project component based on the designation agreed to in step 1b.
 - a) Table 3 identifies the standard allocation statistics for RoW/MoW project components.
 - b) The blended statistic of train stops (50%) and passenger ons/offers (50%) is the standard allocation statistic for stations-related project components.
 - 3) Determine whether the allocation statistic(s) should reflect current service levels, future service levels, or some combination thereof.
 - 4) Determine whether any additional adjustments to the allocation statistic(s) are necessary to ensure a fair and reasonable allocation of costs and benefits, including adjustments related to freight operations.
 - 5) Allocate costs based on the agreed-upon statistic(s).

3.5.2 Project Identification, Planning, and Development

Agencies should share information about potential new projects with one another on an ongoing basis. At minimum, these projects should be included as part of agencies' submissions to the NECC's Capital Investment Plan, as applicable, for review and comment by other affected agencies. Including a project in an approved NECC plan does not represent a non-sponsoring agency's intention or commitment to fund a project absent a project-specific agreement.

Project planning and development should be undertaken jointly by all affected agencies. Expectations for joint project planning and development conducted in good faith include, but are not limited to, the following:

- The Project Sponsor/Owner must engage project partners/affected agencies—through an exchange of information—during all project phases, including:
 - Initial scope, schedule, budget, and service plan development;
 - Federal, state, and local environmental review and regulatory and statutory compliance activities;
 - Preliminary engineering;
 - Final engineering, design, and permitting processes; and
 - Construction and project implementation.

¹⁷ Table 3 identifies the standard cost areas for RoW/MoW project components.

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- At the outset of each phase, all agencies should document their objectives regarding the project's scope, schedule, budget, and service outcomes, along with anticipated resource needs and other support requests.
- Early in the project planning process, agencies are encouraged to reach agreement and document:
 - The anticipated funding sources as well as all regulatory requirements of the funding sources;
 - How cost and schedule risk will be shared among parties; and
 - Need for staffing resources and plan for hiring and training.
- Agencies are encouraged to respond to one another in a timely and clear manner regarding agreement on and/or discrepancies over documented objectives and anticipated resource needs.
- Agencies should aim to agree to the parameters (e.g., scope, schedule, budget) and costs shares of one project phase before moving to the next phase.
- Project Sponsors/Owners should engage with all affected agencies before making significant changes to the agreed-upon scope, schedule, or budget for a project or project phase.
- For projects that create additional service capacity, the agencies will determine how to allocate the usage of additional capacity, considering how best to maximize utilization of the corridor by commuter and intercity passenger rail service, consistent with the existing agreements between Owners and Operators, while working toward a state of good repair (see also Section 2.6.3.2). Factors to consider include, but are not limited to capital cost share, useful life of assets in question, and future service plans.

3.5.3 Payment/Repayment Options

Payment/repayment terms will be determined on a bilateral or multilateral basis and are not limited to the types of options outlined below; however, in general, payments will be made to the Project Sponsor/Owner through one or more of the following options:

- Direct, lump sum payment;
- Direct payment over pre-determined time period;
- In-kind contribution (e.g., paying for the capital costs associated with another common-benefit project); and/or
- Capital user fee (i.e., ongoing payments based on use of the asset).

Payments will be provided to the agency undertaking the project or project phase consistent with the cost allocation resulting from the method's application and the funding requirements associated with the project's schedule. Payment/repayment terms will take into account regulations of the funding sources being used for payment/repayment.

3.5.4 Treatment of Third-party Funding

Third-party funding contributions are not determined by the project-based allocation method described in this section. Affected agencies are strongly encouraged to pursue additional sources of funding and financing for common-benefit capital projects, including funding provided by private entities, federal grant and financing programs, local and other government entities, additional transportation providers, and other third parties who may benefit from a project.

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The treatment of any third-party funding and financing secured for a project will be determined by affected agencies on a project-by-project basis, with the exception of federal disaster relief funds.¹⁸ For example, in some cases, a federal discretionary grant may offset the total project cost, with the remaining costs shared among the affected agencies; in other cases, a discretionary grant may be treated as the contribution of a single agency or directed at specific project components or phases.

3.5.5 Form of Agreement

Capital projects requiring project-based cost allocation will be planned for and executed through bilateral or multilateral agency agreements. Agencies should endeavor to develop a letter agreement to guide the agreement development and approval process. This should be followed by a Master Project Agreement (MPA), or mutually agreed equivalent, to guide and document the project's development and completion.

To ensure transparency regarding the implementation of this Policy, for each common-benefit capital project subject to this method, agencies must share information with the Commission from the project agreement—including the initial agreement and any subsequent updates—that identifies, at minimum:

- The roles and responsibilities of the agencies in carrying out the project;
- How the project-based cost allocation method was applied/implemented;
- The resultant cost-shares for affected agencies;
- The payment/repayment terms and conditions; and
- Any project funding provided by federal grant and financing programs, including FTA/FRA ongoing funding sources, private entities, or other third parties.

3.5.6 Agency Non-participation

If an agency expected to benefit from a common-benefit capital project is unwilling to engage in joint project planning and development and/or the application of the cost-sharing method described in this section, the Project Sponsor/Owner could seek recourse through one or more of the following means:

- Engaging in executive-level bilateral or multilateral agency discussions;
- Requesting the Commission initiate its dispute resolution procedures outlined in Section 2.4;
- Petitioning the Surface Transportation Board; and/or
- Utilizing other legal or contractual means at its disposal.

These means of recourse may also be available to affected agencies who can demonstrate that the principles and methods contained within this section are/were not being applied appropriately or in good faith by the Project Sponsor/Owner.

¹⁸ To the extent federal disaster relief funds are made available for Common-Benefit Infrastructure on the NEC, these will be applied against total project costs, rather than as a credit to any one agency's allocated share. As a consequence, any costs of common-benefit capital projects covered by federal disaster relief funds are not allocable.

4.0 Transparency, Collaboration, and Accountability

The following section describes planning and reporting practices to support greater accountability by all parties to one another. Over time, these practices are expected to improve operational performance as well as capital program implementation and delivery for all NEC services and activities.

All transparency, collaboration, and accountability practices are meant to establish a uniform understanding of network activities and are not meant to replace, or duplicate, existing regulatory obligations or oversight responsibility.

4.1 NEC Planning

This Policy sets forth a process to enhance coordination on establishing near- and long-term capital investment and service goals and identifying the means to achieve them. Unless superseded by federal legislation or federal grant guidance describing an alternative process, the Commission will follow the approach described in this chapter and develop the necessary procedures for implementation.

The Policy recognizes that Owners and Operators must comply with federal, state, and local processes and requirements in formulating, budgeting, and adopting capital plans and programs. The Policy reinforces the need for coordination to carry out such processes and requirements.

4.1.1 CONNECT NEC 2035 Plan

The CONNECT NEC 2035 plan will present the business case for sustained investment in the NEC by identifying long-term service objectives and the capital investments required to achieve those objectives over a 15-year period. The plan will be prepared through a collaborative and consensus-driven process and updated, at minimum, every five years following the completion of the first plan on or before **December 31, 2021**. Updates to the plan will account for service and infrastructure initiatives that have become operational, those that remain pending, and other changes in policy and conditions.

Key aspects of the CONNECT NEC 2035 plan include the provision of:

- 1) A delivery constrained strategy that identifies capital investment phasing, an evaluation of workforce needs, and strategies for managing resources and mitigating construction impacts on operations; and
- 2) A financially unconstrained analysis which, in addition to an economic impact analysis, identifies funding needs as well as a combination of traditional, new, and innovative sources that could feasibly fund the totality of the proposed program.

4.1.2 Capital Investment Plan

The NEC Capital Investment Plan¹⁹ (CIP) integrates the NEC infrastructure investments planned by each agency over a five-year period—including sole-benefit, common-benefit, and third-party projects—into a single planning document to develop a complete picture of corridor activities. The CIP will demonstrate how the Commission plans to advance the objectives outlined in the CONNECT NEC 2035 plan, once available, and include refinements to the capital strategy for the five-year period, as necessary. Each plan will be developed using an iterative and collaborative data gathering and review process that includes a formal process for identifying and resolving issues with the plan’s data and/or contents.

The core of the CIP is anticipated investments based on available funding.²⁰ The CIP will also identify needed and desired capital investments that could occur with additional funding in years two through five. The plan should be resource-constrained such that both funded and unfunded investments are only included in the CIP if they are feasible within the constraints of available workforce, track outages, and the project development process (planning, engineering, permitting, construction, etc.). For each capital investment, the plan will identify a scope of work, cost and budget information, schedule and timeline for major milestones, funding and financing sources, and, as applicable, the status of project-based cost allocation agreements.²¹

The CIP will also serve as a tool for anticipating BCC expenditures and potential investment shortfalls. To this end, Right-of-Way and Station Owners should develop capital renewal plans for the first two years of the CIP with sufficient geographic specificity and scope, schedule, and budget detail²² to demonstrate whether each Operator’s BCC will be expended in its territory. Right-of-Way and Station Owners can develop capital renewal plans according to programmatic category for years three, four, and five of the CIP. Where practical, however, geographic specificity and scope, schedule, and budget detail should be provided.

4.1.2.1 CIP Year One (Implementation Plan)

Information gathered for the first year of the five-year period (Year One) will serve as an implementation plan for NEC stakeholders that reflects their collective fiscal- and resource-constraints. As such, **all agencies** with capital investments planned during Year One should:

Data submission requirements

- Provide investment details (i.e., scope, schedule, and budget details) that are specific to that year; and

¹⁹ The Capital Investment Plan is required by 49 U.S.C. §24904(a).

²⁰ Available funding may include state or Commuter Authority capital budgets, special federal grants, federal formula grants, third-party agreements, and BCCs.

²¹ Project-based cost allocation (described in Section 3.5) applies to all common-benefit capital projects within PRIIA Section 212 territory that are not funded entirely by BCCs.

²² See Appendix 1.9 for guidance regarding scope, schedule, and budget detail expected for capital renewal investments included in the first two years of the Plan.

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- Make best efforts to produce a resource-loaded schedule, identify any long-lead procurement items, and describe any service impacts that may result from delivering the plan.
- Provide geographic specificity and scope, schedule, and budget detail specific to Year One for all planned capital renewal investments.
- Indicate whether each planned capital renewal investment is BCC-eligible, either in whole or in part..
- For each BCC-eligible investment or investment component:
 - a) Identify which agency's (or agencies') BCCs are eligible to potentially fund the investment;
 - b) Identify whether the investment is a candidate for project-based cost allocation; and
 - c) Provide sufficient detail to demonstrate that the investment does not include improvement components, as defined by the Policy.

Additionally, **Right-of-Way Owners** should adhere to the following when developing and sharing Year One information:

Coordination requirements

- 1) Submit preliminary capital renewal plans and preliminary track outage plans to the Commission that identify potential impacts on Operators by **May 1** for Amtrak and MBTA and **August 1** for MNR and CTDOT.
- 2) Seek input from Operators and use collaborative processes to exchange information about Owners' and Operators' respective priorities for their territories around three months prior to the delivery of preliminary capital renewal plans and preliminary track outage plans.
- 3) Hold bilateral discussions with each Operator within one month of sharing preliminary plans, in coordination with Commission staff.
- 4) Engage in a collaborative plan development process with Operators as needed through plan finalization and make best efforts to identify significant changes between plan versions.
- 5) Submit final capital renewal plans to the Commission no later than **September 1**.

These coordination requirements are also summarized in Appendix 1.10.

No later than **November 1** of each year, the Commission will transmit the NEC Capital Investment Plan to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committees on Commerce, Science, and Transportation and Banking, Housing, and Urban Affairs, the appropriations committees of each chamber, the Secretary of Transportation, and others, as appropriate. If a CIP is not approved by the Commission for a given year, the Commission will transmit a letter instead, explaining why it was not.

4.2 NEC Reporting

The Commission's transparency, collaboration, and accountability framework includes three reporting processes undertaken on a quarterly basis as well as an annual report to Congress

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that summarizes train performance and capital investment on the NEC during the prior federal fiscal year.

4.2.1 Quarterly Reports

On a quarterly basis, the Commission will collect, standardize, analyze, and distribute information on capital program delivery, train operations and performance, and operating costs.

4.2.1.1 Capital Program Delivery Reporting

The Capital Program Delivery Reports (capital reports) monitor the implementation of the first year of the Capital Investment Plan (Year One) as approved by the Commission. The reports serve two key purposes: (1) document how planned capital investments are progressing with respect to their approved scope, schedules, and budgets; and (2) document any plan adjustments (i.e., changes to approved scopes, schedules, and budgets and new, cancelled, or indefinitely delayed investments) which stakeholders recognize may occur given the dynamic and complex nature of the corridor.

For capital reporting submissions, the following will apply:

- 1) Reporting information should:
 - a) Be submitted no later than 60 days after the quarter's end;
 - b) Reflect, at minimum, the same level of detail as provided for Year One; and
 - c) Clearly identify any scope, schedule, and/or budget adjustments.
- 2) For each NEC region shown in Table 6, Right-of-Way Owners will provide narratives that summarize, as applicable:
 - Progress and accomplishments during the previous quarter;
 - General trends in spending against plan;
 - Significant plan adjustments; and
 - Favorable/unfavorable trends or conditions (e.g., weather, workforce, equipment, or other resource issues).
- 3) When reporting a new capital investment (i.e., an investment with a unique scope, schedule, and budget not previously identified in Year One or a prior quarter's report):
 - a) All agencies should indicate whether the investment (either in whole or in part) is a candidate for project-based cost allocation.
 - b) Right-of-Way and Station Owners should indicate whether the investment is BCC-eligible (either in whole or in part) and if so, for which agency's BCCs.
 - c) Agencies may request additional information and/or contest the BCC-eligibility of new capital investments identified by Right-of-Way and Station Owners in the capital reports, if this request is made within 30 days of receiving the report.

As capital reports provide a mechanism for documenting and understanding plan adjustments in lieu of a routine plan amendment process, the Commission should implement an approach for explaining plan adjustments in a standardized way across all agencies no later than **October 1, 2022**. The approach should ensure that the explanatory information provided for each adjustment is commensurate with the magnitude of the change.

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Table 6: NEC Regions for Capital Reporting Narratives

Region Description ¹	Right-of-Way Owner(s)
New England (Boston, MA to New Haven, CT; Springfield, MA to New Haven, CT; BCC Segments 1-5, 25)	Amtrak, MBTA
Connecticut-Westchester (New Haven Line) (New Haven, CT to New Rochelle, NY; BCC Segments 6-7)	CTDOT, MNR
New York City Metro (New Rochelle, NY to Morrisville, PA; New York, NY to Spuyten Duyvil, NY; BCC Segments 8-13, 27)	Amtrak
Mid-Atlantic North (Morrisville, PA to Bacon Interlocking in North East, MD; Harrisburg, PA to Philadelphia, PA; BCC Segments 14-20, 28-30)	Amtrak
Mid-Atlantic South (Bacon Interlocking in North East, MD to Washington, DC; BCC Segments 21-24)	Amtrak
Amtrak System-wide (All Amtrak-owned territory; BCC Segment 31)	Amtrak

Table Note 1: The specific geographic boundaries of the NEC regions for which narratives should be provided are subject to modification at the discretion of the Right-of-Way Owners.

4.2.1.2 Train Operations and Performance Reporting

The NEC Train Performance Reports support the Commission’s statutory requirement to monitor the operations and performance of intercity, commuter, and freight rail service and recommend improvements, as necessary. The reports summarize train performance on the corridor, provide a record of the incidents that affected rail performance, and serve as a mechanism for investigating train performance issues.²³ These reports are assembled from individual train and delay records supplied to the Commission by NEC Operators. Each quarter, Operators are expected to supply to the Commission no less than the data elements set forth in Table 7.

Table 7: Train Performance Reporting Data Elements

Data Elements	Target Date
<p>For each train operated in the previous quarter, the following data elements will be provided:</p> <ol style="list-style-type: none"> 1) Endpoint train performance of all late trains, including: <ol style="list-style-type: none"> a) Train Symbol b) Date c) Status (Late, annulled, terminated, cancelled, etc.) d) Minutes late at endpoint 2) Descriptive information about each train delay as reported in the agency’s data systems, including: <ol style="list-style-type: none"> a) Train Symbol b) Date c) Delay cause code d) Delay location (if available) e) Minutes of delay f) Descriptive information about delay as contained in agency’s data systems 3) General Transit Feed Specification (GTFS) schedule data if not provided through public sources 	<p>15 days after the end of the quarter</p>
Daily reports of train operation at the division or agency level that are produced and used by that agency that describe the conditions affecting the prior day’s performance	<p>Daily</p>

²³ Freight data are not currently included in these reports.

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4.2.1.3 Operating Cost Reporting

The Operating Cost Reports represent a consolidated record of the operating costs incurred by NEC Owners. The reports monitor trends in operating costs and provide a mechanism for the early identification of significant changes to operating costs before they appear in the NEC Cost Allocation Model. Each quarter, Operators are expected to supply to the Commission no less than the data elements set forth in Table 8.

Table 8: Operating Cost Reporting Data Elements

Data Elements	Target Date
For each month in the previous quarter, the following data elements will be provided either as posted in agencies' general ledgers or aggregated for reporting purposes:	
1) Amount of cost	15 days after the end of the quarter
2) Month the cost was incurred	
3) Type of cost incurred (e.g., labor, fringes, & overheads, materials, contractual services, fuel)	
4) Organizational unit incurring cost (e.g., Track, Structures, C&S, Electric Traction, Train Dispatching, Station Maintenance, Electric Traction Propulsion Power)	

4.2.2 Annual Report

The NEC Annual Report summarizes activity on the corridor during the prior fiscal year, including:

- Train operations and performance;
- Ridership trends and service;
- Capital program delivery; and
- Progress in assessing and eliminating the NEC SOGR backlog.

The report may include recommendations on these subjects, as appropriate. The Commission's statutory deadline for submitting the NEC Annual Report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives is March 31 of each year.

Information provided through the quarterly reporting processes described in Sections 4.2.1.1 and 4.2.1.2 will form the basis for the NEC Annual Report with the following additional information collected from each agency, as applicable:

- 1) Right-of-Way and Station Owners will identify the specific capital renewal investments to which each Operator's BCCs were applied.
- 2) All agencies will identify fiscal year accomplishments and deviations from plan, as applicable, for capital investments included in CIP Year One and any new investments identified in the Quarterly Capital Program Delivery Reports.
- 3) As required by the FAST Act, Amtrak will provide an accounting of how its NEC operating surplus was expended.²⁴

²⁴ Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, § 11201, 129 Stat. 1312, 1625 (2015) (codified at 49 U.S.C. § 24317(c)(1)(C)).

5.0 Federal Partnership

Through the Policy, Operators have raised the level of funding available for the capital renewal of NEC infrastructure above historic amounts to a level estimated to be sufficient to keep the NEC in a state of good repair—if it were already in a state of good repair. This funding stream is essential to the corridor’s success; however, significantly higher and sustained capital investment levels are needed to eliminate the state-of-good-repair backlog before infrastructure conditions create an even greater negative impact on service and train performance.

It is the long-standing position of Amtrak, NEC states, and Commuter Authorities that the federal government has primary responsibility for restoring NEC infrastructure to a state of good repair. This chapter describes—from the perspective of these stakeholders—challenges that have hampered the NEC from a federal funding and regulatory perspective and provides recommendations for overcoming these challenges, including potential congressional and executive branch actions.²⁵ The members of the Commission representing USDOT acknowledge, but express no opinion about, these stakeholder views.

5.1 Federal Funding and Investment Challenges

Despite the significant progress achieved during the Policy’s first term, the future success of the corridor hinges on NEC stakeholders’ ability to overcome two long-standing challenges related to federal funding and investment: decades of insufficient capital investment and a lack of predictable and consistent federal funding.

5.1.1 Decades of Insufficient Capital Investment

The NEC had already experienced decades of underinvestment when it was conveyed from the private sector to various government entities in the 1970s after the Penn Central Transportation Company bankruptcy. As the railroad industry declined following the Second World War, railroads had limited capital to reinvest to maintain the condition of their infrastructure as they struggled to remain profitable.

Since the 1970s, the NEC has continued to suffer from a lack of sustained investment in renewing and replacing its aging infrastructure. However, there were two notable but brief eras of significant reinvestment by the federal government: the Northeast Corridor Improvement Project (NECIP), which was funded during the late 1970s and early 80s, and the electrification of the NEC’s north end during the 1990s in preparation for Amtrak’s new Acela service. In addition, CTDOT began an aggressive capital campaign for its portion of the New Haven Line in the 2000s but still has a significant backlog.

²⁵ USDOT generally supports the partnership framework summarized in Chapter 1 of this Cost Allocation Policy and fulfills its role in that partnership by providing funding appropriated by Congress for its discretionary grants to the NEC on a competitive basis and the annual NEC grant to Amtrak. USDOT does not endorse, and did not participate in the development of, either the historical narratives or the aspirational policy positions and funding proposals presented in this chapter.

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Outside these targeted programs, Amtrak’s annual federal appropriation and past contributions from Commuter Authorities only generated enough capital for only limited investments. As a result, many assets (e.g., expansive signal and electric power systems, over a dozen major bridges and tunnels, hundreds of smaller road and river bridges) have continued to age up to or beyond their useful life. While parties have delayed making investments to maintain a state of good repair, NEC service has grown to where the corridor lacks sufficient capacity in many areas to make reinvestments as quickly or efficiently as may be desired without disrupting existing service.

5.1.2 Lack of Predictable and Consistent Funding

Efficient capital investment requires predictable, multi-year funding streams from which planners and engineers can systematically advance individual projects through various stages of development. Amtrak, in particular, relies primarily on annual federal appropriations from Congress which have fluctuated over the decades. Uncertainty in Amtrak’s year-to-year funding has contributed to annual capital investment plans that largely consist of reactive capital maintenance activities and “life support” investments for critical major capital assets. As a result, Amtrak has struggled to develop and follow a clearly articulated multi-year capital plan.

In addition, while Operators greatly appreciate the Federal-State Partnership for State of Good Repair program as an additional potential funding source, competitive discretionary grants are not suitable for making large-scale investments. In railroad environments, some level of flexibility to select and sequence work creates opportunities to maximize utilization of crews and minimize track outages and other service impacts.

5.2 NEC Principles for Federal Funding Partnership

The Commission is advancing work on a 15-year plan (CONNECT NEC 2035) for the corridor that will provide a comprehensive capital plan and include detailed funding proposals. The plan’s proposal for federal funding will be guided by the following principles, which the Commission endorsed during its initial Policy term.

5.2.1 80-20 Federal-State Funding Ratio

Amtrak, NEC states, and Commuter Authorities recommend that the federal-state partnership for the NEC be guided by an 80-20 federal-state funding split similar to the federal highway and transit funding programs. New funds for the NEC should be additive to existing funding levels for federal transportation programs. The Policy’s focus on improved capital planning and increased accountability means NEC stakeholders are better positioned than ever to put new federal funding to good use and to ensure the corridor offers quality service to passengers.

5.2.2 Predictable and Consistent Funding

While funding from all levels of government is subject to some uncertainty, any efforts to make the federal government’s commitment to the NEC more predictable would be beneficial, in particular for advancing the replacement of the major bridges and tunnels at risk of failure. Federal funds for the NEC should be authorized for multiple years, as are federal

investments for highway and transit projects, and utilize contract authority mechanisms to provide program predictability. These two features—multi-year authorizations and the ability to commit against future year funds—would bring needed stability to build the workforce and other resources necessary to efficiently execute capital programs. These attributes will especially benefit the largest projects.

In addition, annual discretionary grant programs without strong full funding grant agreement protocols cannot support the NEC's largest, most critical, multi-year bridge and tunnel replacement projects. One step towards providing a reliable source of funding would be to replace existing discretionary grant programs with a formula program.

The COVID-19 pandemic, which began impacting passenger rail operations in March 2020, underscores the need for a strong and consistent federal funding partnership. NEC stakeholders recognize that only the federal government has the resources to replace revenues lost due to the historic drop in NEC ridership experienced in the wake of the pandemic. To help ensure that critical SOGR investments can continue while there are more track outage opportunities due to reduced service levels, Congress should support the corridor by providing Amtrak the supplemental funds it requested. These funds will ensure capital renewal and other infrastructure investments continue by covering 100% of the Baseline Capital Charges owed by Commuter Authorities to Amtrak in FY21.

5.2.3 Fund a Capital Plan

Federal funds should be directed to eligible NEC recipients as a contribution towards a comprehensive capital plan as agreed to by the Commission, rather than as grants to individual projects, recognizing that local financial grant management systems in many cases must allocate federal funding to projects, not programs. Respecting the plan's integrity and sequencing analysis is one key element of funding a comprehensive capital plan. Capital projects undertaken in one location have implications for projects undertaken elsewhere, due to factors such as required outages and workforce availability. Once available, the Commission's CONNECT NEC 2035 plan will provide the necessary project sequencing and detailed recommendations to fund and finance the plan.

5.3 Federal Oversight and Regulatory Challenges

Federal policy does not treat NEC commuter and intercity passenger rail as a unified system. Even though both services operate over the same tracks, often stopping at the same stations, they are legislated, regulated, and funded differently by the federal government. Separate congressional committees write legislation for intercity and commuter rail policy and programs. Commuter rail service is considered public transit and primarily regulated and funded by the Federal Transit Administration (FTA); Amtrak is regulated and funded by the Federal Railroad Administration (FRA). Only safety oversight, which resides with FRA, is consistently applied to both service types.

This fragmentation sometimes creates challenges in operating coordinated multimodal services and implementing capital projects and programs. Stakeholders struggle with inconsistent federal oversight of NEC planning and multiple sets of rules when applying both FTA and FRA funding to a project. Efforts to address these challenges require both administrative and statutory changes. If harmonization of federal laws and regulations pertaining to

intercity and commuter rail takes place, Commission members could focus energy on ensuring state-level laws and regulations conform with federal provisions to the greatest extent possible.

The different treatment of commuter and intercity rail under federal law means there is no single set of rules or point of contact at the federal level when NEC projects involving multiple participants are proposed. Action to harmonize the requirements that come with the use of federal dollars from different federal programs is necessary. NEC stakeholders—specifically, Amtrak, NEC states, and Commuter Authorities—propose the following set of actions to address harmonization issues.

5.4 NEC Proposal for Harmonization of Federal Requirements

Since the Cost Allocation Policy was adopted in 2015, USDOT has made efforts to streamline the application of rules and procedures of its various modes for NEC projects. USDOT should continue to bring together staff and resources of the FTA, FRA, FHWA, and other relevant federal entities to harmonize standards, requirements, and administer an NEC-related federal program. This work should specifically include streamlining the application of USDOT rules and procedures, including flow-down provisions, for NEC projects so that a single set applies, when appropriate, to each project sponsor. In addition, USDOT should work to establish one set of oversight procedures and grant administration rules for the expenditure of federal funds. NEC projects that receive both FRA and FTA funds should not be subject to different oversight processes or grant administration rules run by two separate USDOT modal administrations.

However, it is clear that USDOT alone cannot harmonize all issues affecting NEC projects and that changes need to be made in legislation to fully harmonize requirements. To address this, Congress should adopt efficient procurement language which ensures that if a federal funding recipient provides those funds to another entity, the funds are administered as if they had been provided to that second entity.

5.4.1 Buy America

Use of FRA, FTA, or FHWA grant funds and other financial assistance are subject to statutory Buy America requirements that generally require that iron, steel, and manufactured products procured with federal funds be made in America. In addition, Amtrak must comply with its own Buy America statute.

Although the wording of the provisions that apply to FRA and FTA are similar, key differences exist. Also, the FTA and FRA implement the requirement differently. This means that, in practice, different procurement standards apply to rail materials based on whether such materials are purchased with FRA grant funds or FTA grant funds. Congress should enact legislation that provides for relief by stating that all USDOT Buy America requirements are satisfied when USDOT funds are provided to Amtrak and Amtrak satisfies FRA requirements. This legislation must also otherwise ensure that multiple and conflicting Buy America standards are not applied to projects. NEC projects regularly experience time delays and increased costs due to these conflicting regulations, and it is essential that Congress act on the issue.

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5.4.2 Disadvantaged Business Enterprises

FTA requires the application of compliant programs to enhance the participation of Disadvantaged Business Enterprises (DBEs) in these projects. Conversely, FRA strongly encourages but does not require such programs. Nevertheless, all Commission members share the goal of enhancing the participation of DBEs and similar entities.

5.4.3 National Environmental Policy Act

Although the National Environmental Policy Act (NEPA) is a single federal statute covering all federal funds, in the past FRA and FTA have issued separate regulations and/or guidance applying the law to the projects they each fund. Because these regulations differ, a Finding of No Significant Impact or a Record of Decision granting NEPA approval prepared by the FRA is not always valid for expending FTA funds, and vice versa. In an effort to streamline this process, FRA joined FHWA and FTA's NEPA procedures in a Final Rule effective November 28, 2018, to amend 23 C.F.R. Parts 771 and 774, 49 C.F.R. Part 264, and 49 C.F.R. Part 622. Once fully implemented, the final rule will allow FRA and FTA funds to be used on any NEC project without special intervention. In addition, each modal administration recognizes that any rail project that qualifies as a Categorical Exclusion is automatically recognized across USDOT. Finally, the final rule will allow a project sponsor to request the Secretary of Transportation to designate the lead Federal agency when project elements fall within the expertise of multiple U.S. DOT agencies.

NEC projects that were already undergoing NEPA before November 28, 2018, are still covered by the old rule. All reviews initiated after the date will follow the updated procedures which harmonize NEPA implementation for the modal agencies and create a common set of procedures for multi-modal projects. The final rule is intended to address inconsistent requirements that have delayed projects and increased costs and administrative burdens unnecessarily. Until project sponsors are able to move projects through the new process and report back on the rule's effectiveness, it is not clear if the new rule is effective in removing regulatory hurdles. The Commission may update or remove this section of the Policy once project sponsors learn more.

5.4.4 Labor Provisions

Consistent with current law, USDOT should streamline the application of federal rules to NEC projects, whereby transit labor provisions under Section 13(c) (49 U.S.C. § 5333(b)) might not be applied to Amtrak, which is already subject to the Railway Labor Act (45 U.S.C. § 65 et seq.), when Amtrak uses FTA funds to carry out NEC operations or investments benefiting both intercity and commuter rail services. Similarly, Commuter Authorities might not be newly subject to the provisions of the Railway Labor Act if Amtrak or FRA funding is provided for an investment or operation carried out by a Commuter Authority that benefits both intercity and commuter rail services.

5.4.5 Disaster Relief Funds

NEC infrastructure is vulnerable to natural disasters and other disruptions. In the case of Hurricane Sandy, federal disaster relief funds were provided to Amtrak and Commuter Authorities by a special act of Congress, but this was an anomaly. Under the Stafford Act (the

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federal government's underlying disaster relief statute (42 U.S.C. § 5121 et seq.)), Amtrak is not eligible to receive federal disaster relief.

The Commission recommends amending the Stafford Act so that federal disaster relief funds provided by the Federal Emergency Management Agency (FEMA) can be used to repair NEC infrastructure, facilities, and equipment.

5.4.6 Surface Transportation Board

The Commission recommends that the federal government provide the STB with the necessary resources to carry out the Board's duties set forth in this policy.

1.0 Appendix

1.1 Definitions

AAR Index: Refers to Table C: Quarterly Index of Chargeout Prices and Wage Rates, EAST (1997=100): Materials prices, wage rates and supplements combined (excluding fuel).

Backlog: Northeast Corridor infrastructure assets that are no longer functioning as designed and/or are in service beyond their expected useful life. The NEC backlog is composed of both basic infrastructure assets and major backlog as defined by this Policy.

Baseline Capital Charge (BCC): The capital charge assigned to each Operator determined as a percentage of the corridor's Normalized Replacement Amount by applying the prospective fiscal year's allocation statistics to the normalized replacement amounts calculated for each asset category and segment combination. The sum of an Operator's allocated share of applicable normalized replacement amounts equals that Operator's BCC, or annual capital obligation.

Capital Renewal: the routine repair or replacement of existing basic infrastructure assets.

Commission: Means the body of the Commission, composed of voting members—1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in Section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; members representing the Department of Transportation; members representing Amtrak; and any non-voting representatives.

Common-Benefit Infrastructure: NEC assets mutually agreed to provide benefit and utility to more than one Operator. Common-Benefit Infrastructure may also be referred to as Shared-Benefit or Joint-Benefit Infrastructure.

Commuter Authority: Means the same as the term defined in 49 U.S.C. § 24102(2) (“a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation”). Commuter Authorities on the Northeast Corridor must implement the Policy and include the Massachusetts Bay Transportation Authority, the Rhode Island Department of Transportation, the Connecticut Department of Transportation, the New York Metropolitan Transportation Authority, Metro-North Railroad, Long Island Railroad, New Jersey Transit Corporation, the Southeastern Pennsylvania Transportation Authority, the Delaware Department of Transportation, the Maryland Department of Transportation, Maryland Transit Administration, Virginia Railway Express, any successor agencies, and any entity created to operate, or to contract for the operation of, commuter or intercity passenger rail service.

Fiscal Year: Refers to the federal fiscal year, beginning on October 1 and ending September 30.

Improvement: The replacement of existing assets with markedly superior ones or the introduction of new assets above and beyond existing NEC infrastructure, facilities, and

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equipment to improve reliability, increase capacity, reduce travel time, or improve the customer experience.

Incremental/Avoidable Cost: Method to assign costs that presumes a dominant user and assigns to minority user(s) only the costs that could be directly avoided, but for the existence of the minority user.

Major Backlog: projects necessary for achieving a state of good repair, but are not undertaken on a routine basis, such as rehabilitation or replacement of major bridges and tunnels. Major Backlog projects on the NEC are:

1. Baltimore and Potomac Tunnel Replacement
2. Bush River Bridge Replacement
3. Connecticut River Bridge Replacement
4. East River Tunnel Rehabilitation
5. Gunpowder River Bridge Replacement
6. Pelham Bay Bridge Replacement
7. Susquehanna River Bridge Replacement
8. Cos Cob Bridge Replacement
9. Devon Bridge Replacement
10. Saugatuck River Bridge Replacement
11. Walk Bridge Program
12. Hudson Tunnel Project (part of Gateway Program)
13. Sawtooth Bridge (part of Gateway Program)
14. Portal North Bridge (part of Gateway Program)
15. Highline Renewal and State of Good Repair (part of Gateway Program)

These projects include capital renewal components and may include improvement components where replacement as defined by the Policy is impossible or undesirable. When replacing a major structure, it makes sense to scope all contemplated work into a single project to save both time and money.

Mandated: Capital projects required by law or regulation or to protect public health. These include environmental remediation, right-of-way fencing, infrastructure and station resiliency and security systems, Positive Train Control (PTC), and station access improvements.

New Haven Line: The Metro-North Railroad operated and dispatched Northeast Corridor service territory between New Rochelle, NY and New Haven, CT, owned by the New York Metropolitan Transportation Authority for the segment within the State of New York and owned by the Connecticut Department of Transportation within the State of Connecticut.

Normalized Replacement Amount: A concept used in the calculation of Baseline Capital Charges that estimates the annual cost of sustaining basic infrastructure assets in a state of good repair and is based on (1) the population of each asset type, (2) the average useful life of each asset type, and (3) the unit cost for each asset type.

Northeast Corridor: The segment of the continuous railroad line between Boston, Massachusetts, and Washington, District of Columbia, which is part of the national rail transportation system, as defined in 49 U.S.C. § 24102(5)(A) and the branch lines: New Haven, CT to

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Springfield, MA; New York – Penn Station to New York – Spuyten Duyvil; and Philadelphia, PA to Harrisburg, PA.

Non-Owner Operator: Means an entity responsible for, or established to provide, commuter or intercity passenger rail transportation subject to the Policy, but in the context used is not the right-of-way, station, or infrastructure owner.

Operating Segment: Set forth in Appendix 1.7.3.

Operator: Means an entity responsible for, or established to provide, commuter or intercity passenger rail transportation subject to the Policy. This includes Amtrak, the New York Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Delaware Department of Transportation, the Maryland Department of Transportation, the Rhode Island Department of Transportation, the Southeastern Pennsylvania Transportation Authority, New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, Virginia Railway Express, any successor agencies, and any entity created to operate, or contract for the operation of, commuter or intercity passenger rail service.

Owner: Means an entity required to implement the Policy that owns NEC right of way, an NEC station, or other NEC infrastructure. See also Right-of-Way Owner and Station Owner.

Pre-Existing: Unless the context indicates otherwise, means prior to the date the Policy was adopted (i.e., September 17, 2015).

Project Sponsor: Means an entity required to implement the Policy responsible for the delivery of a capital project or program. A Project Sponsor may or may not be the same as the Owner and is not necessarily the same as the FTA or FRA project sponsor.

Repair: Fixing or mending a damaged or aged existing asset which remains in place.

Replacement: The installation of upgraded or modernized assets that generally serve the same purpose, provide the same basic functionality, and/or reside within the same footprint as the existing assets.

Right-of-Way Basic Infrastructure: Means the infrastructure components that require annual renewal to keep the NEC's structures and systems functioning properly and in a state of good repair for safe train operations. It includes rails, ties, ballast, communication systems, electric traction power systems, under-grade bridges and other similar items.

Right-of-Way Owner (RoW Owner): Means an entity required to implement the Policy that owns NEC right of way. NEC Right-of-Way Owners include the Massachusetts Bay Transportation Authority, the Connecticut Department of Transportation, the New York Metropolitan Transportation Authority, and Amtrak.

Sole-Benefit Infrastructure: NEC assets mutually agreed to provide benefit and utility only to one Operator.

State of Good Repair (SOGR): The conditions in which existing physical assets, individually and as a system, a) are functioning as designed within their expected useful lives; and b) are sustained through regular maintenance and normalized replacement programs.

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Station Owner: Means an entity required to implement the Policy that owns or has maintenance responsibility for station assets included in an NEC intercity station. NEC station owners include Amtrak, the Massachusetts Bay Transportation Authority, the Rhode Island Department of Transportation, the Connecticut Department of Transportation, the New York Metropolitan Transportation Authority, New Jersey Transit Corporation, the Southeastern Pennsylvania Transportation Authority, the Delaware Department of Transportation, and the Maryland Department of Transportation.

Stations Basic Infrastructure: Means the infrastructure components that require annual renewal to keep NEC stations functioning properly and in a state of good repair for passenger comfort and safety and safe train operations. It includes platform structures; escalators, elevators, and corridors required for access to trains; lighting and signage; Passenger Information Display systems; restrooms; CCTV and security communication systems; fire and life safety equipment/systems; and building systems and structures that support these assets, such as electrical and HVAC systems.

System-wide Investments: Investments that benefit one or more BCC segments beyond the immediate segment in which they are located (e.g., substations), or are located off the right of way and therefore do not incur territory specific costs (e.g., asset management software).

Terminal Zones: Those operating segments defined in Appendix 1.7.4 whose segment length and train speeds are sufficiently low as to suggest that costs are best allocated among the parties by train moves as opposed to other allocation statistics such as gross ton miles.

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1.2 Statute

49 U.S.C.

United States Code, 2018 Edition

Title 49 - TRANSPORTATION

SUBTITLE V - RAIL PROGRAMS

PART C - PASSENGER TRANSPORTATION

CHAPTER 249 - NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

§24905. Northeast Corridor Commission; Safety Committee

(a) Northeast Corridor Commission.—

(1) Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Secretary of Transportation shall establish a Northeast Corridor Commission (referred to in this section as the "Commission") to promote mutual cooperation and planning pertaining to the rail operations, infrastructure investments, and related activities of the Northeast Corridor. The Commission shall be made up of—

(A) members representing Amtrak;

(B) members representing the Department of Transportation, including the Office of the Secretary, the Federal Railroad Administration, and the Federal Transit Administration;

(C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and

(D) non-voting representatives of freight and commuter railroad carriers using the Northeast Corridor selected by the Secretary.

(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under paragraph (1) shall not constitute a majority of the Commission's memberships.

(3) The Commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the Commission shall develop rules and procedures to govern the Commission's proceedings.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(6) The members of the Commission shall elect co-chairs consisting of 1 member described in paragraph (1)(B) and 1 member described in paragraph (1)(C).

(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

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(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(10) The Commission shall consult with other entities as appropriate.

(b) Statement of Goals and Recommendations.—

(1) Statement of goals.—The Commission shall develop and periodically update a statement of goals concerning the future of Northeast Corridor rail infrastructure and operations based on achieving expanded and improved intercity, commuter, and freight rail services operating with greater safety and reliability, reduced travel times, increased frequencies and enhanced intermodal connections designed to address airport and highway congestion, reduce transportation energy consumption, improve air quality, and increase economic development of the Northeast Corridor region.

(2) Recommendations.—The Commission shall develop recommendations based on the statement developed under this section addressing, as appropriate—

(A) short-term and long-term capital investment needs;

(B) future funding requirements for capital improvements and maintenance;

(C) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

(D) opportunities for additional non-rail uses of the Northeast Corridor;

(E) scheduling and dispatching;

(F) safety and security enhancements;

(G) equipment design;

(H) marketing of rail services;

(I) future capacity requirements; and

(J) potential funding and financing mechanisms for projects of corridor-wide significance.

(3) Submission of statement of goals, recommendations, and performance reports.—The Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

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(A) any updates made to the statement of goals developed under paragraph (1) not later than 60 days after such updates are made; and

(B) annual performance reports and recommendations for improvements, as appropriate, issued not later than March 31 of each year, for the prior fiscal year, which summarize—

(i) the operations and performance of commuter, intercity, and freight rail transportation along the Northeast Corridor; and

(ii) the delivery of the capital investment plan described in section 24904.

(c) Allocation of Costs.—

(1) Development of policy.—The Commission shall—

(A) develop a standardized policy for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, on the Northeast Corridor main line between Boston, Massachusetts, and Washington, District of Columbia, and the Northeast Corridor branch lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York, that use Amtrak facilities or services or that provide such facilities or services to Amtrak that ensures that—

(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation;

(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service; and

(iii) all financial contributions made by an operator of a service that benefit an infrastructure owner other than the operator are considered, including but not limited to, any capital infrastructure investments and in-kind services;

(B) develop a proposed timetable for implementing the Policy;

(C) submit the Policy and the timetable developed under subparagraph (B) to the Surface Transportation Board, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives;

(D) not later than October 1, 2015, adopt and implement the Policy in accordance with the timetable; and

(E) with the consent of a majority of its members, petition the Surface Transportation Board to appoint a mediator to assist the Commission members through nonbinding mediation to reach an agreement under this section.

(2) Implementation.—Amtrak and public authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of

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facilities or services based on the Policy developed under paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with paragraph (1)(D) or fail to comply with the Policy thereafter, the Surface Transportation Board shall determine the appropriate compensation for such usage in accordance with the procedures and procedural schedule applicable to a proceeding under section 24903(c), after taking into consideration the Policy developed under paragraph (1)(A), as applicable. The Surface Transportation Board shall enforce its determination on the party or parties involved.

(3) Revisions.—The Commission may make necessary revisions to the Policy developed under paragraph (1), including revisions based on Amtrak's financial accounting system developed pursuant to section 203 of the Passenger Rail Investment and Improvement Act of 2008.

(4) Request for dispute resolution.—If a dispute arises with the implementation of, or compliance with, the Policy developed under paragraph (1), the Commission, Amtrak, or public authorities providing commuter rail passenger transportation on the Northeast Corridor may request that the Surface Transportation Board conduct dispute resolution. The Surface Transportation Board shall establish procedures for resolution of disputes brought before it under this paragraph, which may include the provision of professional mediation services.

(d) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary for the use of the Commission and the Northeast Corridor Safety Committee such sums as may be necessary to carry out this section during fiscal years 2016 through 2020, in addition to any amounts withheld under section 11101(g) of the Passenger Rail Reform and Investment Act of 2015.

(e) Northeast Corridor Safety Committee.—

(1) In general.—The Secretary shall establish a Northeast Corridor Safety Committee composed of members appointed by the Secretary. The members shall be representatives of—

(A) the Department of Transportation, including the Federal Railroad Administration;

(B) Amtrak;

(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;

(D) commuter rail agencies;

(E) rail passengers;

(F) rail labor; and

(G) other individuals and organizations the Secretary decides have a significant interest in rail safety or security.

(2) Sunset.—The Committee established under this subsection ceases to exist on the date that the Secretary determines positive train control, as required by section 20157, is fully implemented along the Northeast Corridor.

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(Pub. L. No. 103–272, § 1(e), July 5, 1994, 108 Stat. 935; Pub. L. No. 110–432, div. B, title II, § 212(a), Oct. 16, 2008, 122 Stat. 4921; Pub. L. No. 114–94, div. A, title XI, § 11305(a)–(d)(1), Dec. 4, 2015, 129 Stat. 1656, 1657; Pub. L. No. 115–420, §§ 4(a), 6(a), Jan. 3, 2019, 132 Stat. 5444, 5445.)

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1.3 Operating Cost Submission Requirements

Any Operator submitting operating costs for allocation and reimbursement must adhere to the requirements described in this section and provide all applicable data and information to the Commission.

Operators should submit their allocable operating costs and supporting documentation within four months of the close of their most recent available fiscal year, but must submit them no later than **January 31**. For agencies on a calendar year fiscal year, costs should be submitted by January 31 of the next year. (For example, an Operator with a fiscal year ending December 31 must submit costs incurred between January 1, 2020 – December 31, 2020, by January 31, 2022, but should endeavor to submit its costs by April 30, 2021.) Expense data must be submitted in a prescribed format.

1.3.1 General Requirements

- (1) Provide a Chart of Accounts that identifies and describes each of the management centers and/or accounts relevant to the submission.
- (2) Submit general ledger line item detail, or the most detailed documentation available that can be audited. If general ledger line-item detail is not available, the Operator submitting costs for allocation will provide a written explanation regarding why general ledger data is not available and how the applicable costs were determined. All Operators to be allocated costs must concur that the alternative detailed documentation is acceptable prior to being allocated such costs.
- (3) Submit only those costs for which an Audited Consolidated Financial Statement has been completed and issued by the agency's independent auditor. If this is not possible, the agency must notify the Commission, and upon completion of the audit, identify any findings that are material to the cost submission. Additionally, Owners should submit only those costs for which they can reasonably assure that payments have been made to the applicable parties at the time of submission, other than the non-cash accruals described below.
- (4) Provide the cost submission in a format that allows reviewers to trace all costs from the general ledger to the format prescribed by the Commission. At minimum, this includes showing how costs were: (1) assigned to Operating Segments, (2) assigned to functional activities, and (3) identified as sole- or common-benefit. The Commission may impose more detailed format standards, as necessary, to ensure that cost submissions can be reviewed effectively and in a timely manner by all Operators.
- (5) Identify costs that represent long term, non-cash accruals, together with a rationale for why these accruals are being included for cost allocation purposes.
- (6) Provide a summary of any changes made to the two years of costs that were included in the Operator's cost submission from the previous model year. For example, any changes to an agency's FY17 and FY18 costs between the FY20 model cycle and the FY21 model cycle must be identified as part of the agency's FY21 cost submission.

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Changes may be necessitated by the resolution of model issues, new business practices, audit findings, general ledger corrections/adjustments, and other circumstances.

1.3.2 Requirements for Indirect Costs and Overhead Rates

Operators submitting direct costs for allocation and reimbursement are not required to submit indirect costs via overhead rates; however, Operators submitting costs for allocation that also wish to include their indirect costs via overhead rates as part of the allocation process are required to share the following with the Commission:

- (1) A list and general description of the overhead rates applied.
- (2) For each identified overhead rate, provide a calculation specific to each of the three years that compose the cost submission.
- (3) For each rate calculation, submit supporting general ledger line item detail and documentation that identifies:
 - The direct costs that the rate has been applied to;
 - The allocation base (i.e., denominator costs) chosen in the rate's calculation;
 - The cost pools (i.e., numerator costs) chosen in the rate's calculation;
 - What costs have been excluded from the cost pool(s) with special attention paid to costs that can be clearly linked to the core passenger train operation function or other sole-benefit activities (e.g., marketing, information systems supporting ticket sales, etc.); and
 - The applicable regulation that has been followed in calculating the overhead rates prior to any modifications made to ensure compliance with Commission exclusions.

1.4 G&A Rate Exclusions

In general, indirect costs that should be excluded from a G&A rate numerator are related to:

- Activities or functions that directly support generation of revenue;
- Activities of functions that directly support operation of trains;
- Activities or functions that are separately funded elsewhere; and,
- All other activities or functions that are sole-benefit to the agency submitting costs.

Section 3.3 “Exclusions” identifies costs that are not shareable under this Policy. These costs should also be excluded from G&A rate numerators. Other examples of costs that should be excluded from G&A rate numerators include:

- Sales and sales support
 - Ticketing-related costs
 - Credit card fees
 - Armored car fee
 - Bank deposit supplies fees
 - Telephone/data allocation cost related to reservation system
 - Passenger inconvenience expenses
- Advertising/marketing
 - Included IT-related costs
 - Advertising
 - Market research
- Lobbying
- Customer service
 - Customer quality evaluation
- Operations
 - Passenger revenue operations
 - Tariffs & timetables
 - Bus & transfer services
 - Subsidiaries operating activities
- Financial
 - Bad debts
 - Fines, penalties and other financial services expense
 - Interest costs of borrowed capital or governmental unit’s own funds
 - Interest attributed to a fully depreciated asset
 - Depreciation & amortization²⁶
 - Fund raising and investment management costs
 - Pension liability (unfunded)
 - Contributions or donations rendered
 - Capital expenditures
- Liability

²⁶ Depreciation & amortization is excluded from the G&A rate except for depreciation/amortization associated with common-benefit capitalized leased assets.

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- Injury claims
- Damage claims to property-other
- Claims handling service fee
- Expense recovery medical
- Insurance recovery
- Purchased insurance
- Real estate
 - Real estate administration
 - Garage operating expense
 - Land/air rights Acquisitions
 - Lease termination fees
- Miscellaneous
 - Gain/loss-equip disposal
 - Recovery of overhead cost
 - Equipment recovery
 - Exp Recovery-Other Railroad (Freight)
 - OPEB liability (unfunded)
 - Cost of idle facilities
 - Patent costs
 - Alcoholic beverages and other commissary Supplies
 - Entertainment costs

1.5 Additional Details Regarding the Calculation of Normalized Replacement

The following information regarding the calculation of the Normalized Replacement Amount will pertain to calculations in the Cost Allocation Model as outlined in Section 3.4.2. Asset data related to the structural replacement of major overhead bridges and tunnels is not included. Until an asset data source is removed, the Commission will determine the proper proportion of asset data sources in its annual capital financial obligations.

1.5.1 Original Right of Way Basic Infrastructure Asset Data Sources

MTA's Twenty-Year Needs Assessment. This assessment was used by MNR to calculate estimated NR amounts (in 2012 dollars) for the New York-owned portion of the NEC spine/ New Haven Line. NR amounts were provided to the Commission for five broad asset categories, including (1) Track, (2) Electric Traction, (3) Structures, (4) Communication and Signals, and (5) System costs.

Amtrak's 2011 State-of-Good-Repair Assessment. The asset data from Amtrak's 2011 SOGR Assessment is used to calculate normalized replacement amounts for the following portions of the PRIIA Section 212 territory:

- **Amtrak-owned NEC spine** (from Washington, D.C. to New Rochelle, NY and from New Haven, CT to the RI/MA State Line);
- **Amtrak-owned connecting corridors** (Harrisburg Line, Empire Connection, and Springfield Line);
- **Connecticut-owned portion of the NEC spine/ New Haven Line** (from the NY/CT State Line to New Haven, CT)
- **Massachusetts-owned portion of the NEC spine** (from the RI/MA State Line to Boston, MA); and

In addition, for normalized replacement amounts based on Amtrak's 2011 SOGR Assessment, the following will apply:

- An amount of \$28M is added to the data to account for the cost of capital investments that support the entire program (e.g. maintenance of way vehicle overhauls, system design investments, etc.). This amount was determined based on a review of Amtrak's actual costs for these projects over a five-year period, ending with FY2013.
- Amtrak's most recent and available G&A rate as calculated in accordance with this Policy will be applied to its data. Except for G&A, all overheads are already embedded in these data.

1.5.1.1 Connecticut-owned Territory NR Calculation

For the Connecticut-owned portion of the New Haven Line (NHL-CT), normalized replacement amounts for each discipline are calculated based on Amtrak's asset data for the NEC Spine. The total normalized replacement amounts for the NEC Spine for each discipline (Track, ET, Structures, C&S, and Systemwide) are divided by the total track miles on the NEC Spine, resulting in a normalized replacement amount per track-mile for each discipline.

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The normalized replacement amount per track-mile is then multiplied by the total track miles of the NHL-CT to generate a normalized replacement amount for each discipline for the NHL-CT. Because third rail is not used on the NHL-CT, a normalized replacement amount of \$0 is shown for the discipline Electric Traction – 3rd Rail.

1.5.1.2 Massachusetts-owned Territory NR Calculation

Normalized replacement amounts for all assets on the NEC Spine Capital Segment are distributed to two sub-segments—"NEC-Amtrak" and "NEC-MA"—using the prospective fiscal year's allocation statistics. Based on agreement from Amtrak and MBTA, normalized replacement amounts for electric traction assets are assigned 100% to NEC-Amtrak since the electric traction infrastructure in Massachusetts is used solely by Amtrak.

1.5.2 Asset Assessment Right of Way Basic Infrastructure Asset Data Sources

Asset Assessment Right of Way Basic Infrastructure asset data sources fulfill a prior Policy requirement to provide greater consistency and specificity for the calculation of BCCs.

Agency-specific asset counts, unit cost, and useful life assumptions were provided by Amtrak (for Amtrak and MBTA owned portions of the NEC), CTDOT (for the Connecticut owned portion of the New Haven Line), and MNR (for the NYMTA owned portion of the New Haven Line). Asset counts were collected by the more geographically specific BCC Segments as defined in Appendix 1.7. Unit costs were generally calculated using actual costs. Within each agency's submission, ROW owners presumed constant unit cost and useful life assumptions across BCC segments.

The data was collected for the assets within the disciplines outlined in Table 4 of Section 3.4.2. In addition, the following will apply:

- An amount of \$28M is added to Amtrak's data to account for the cost of capital investments that support the entire program. These systemwide costs are spread proportionally across all Amtrak owned segments based on the total NR amount of the other disciplines for each BCC segment.
- Each RoW Owner's most recent and available G&A rate as calculated in accordance with this Policy will be applied to their asset assessment data. Except for G&A, all overheads are already embedded in these data. For the purposes of the asset assessment data sources, MBTA utilizes Amtrak's G&A rate and CTDOT utilizes Metro-North's G&A rate. No G&A rate is applied to NYMTA data.
- A gross-ton mile cost index is applied to normalized replacement amounts for the track asset category to account for greater density of use in certain areas. The index adjusts the base normalized replacement amounts by BCC segment based on the normalized gross ton miles per track mile in the segment. Segments with greater density of use see an increase in the normalized replacement amounts for allocation while those with lower density see a decrease.

1.5.3 Stations Basic Infrastructure Asset Data Sources

Stations Basic Infrastructure asset data sources fulfill a prior Policy requirement for data collection, review, and calculation of station normalized amounts. Asset data for stations

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basic infrastructure were compiled from various public and agency sources. Unit cost and useful life information was generally drawn from publicly available sources including transit asset management plans, industry standard guides, and from Stations Basic Infrastructure projects. Asset counts were generally drawn from agency sources, existing Commission Operator Cost Sharing sources, and publicly available information.

1.6 Payment Procedures

The following payment provisions will apply unless an Owner and Operator agree on an alternative arrangement:

- (1) Each Operator with allocable costs will issue an invoice to other Operators. In an instance where two Owners are invoicing each other, the parties may agree to credit the smaller payment against the larger payment resulting in fewer invoices, provided that all gross transaction amounts are included on the invoices and in their respective general ledgers for record keeping purposes. Invoicing provisions will be in accordance with individual contracts, unless otherwise specified in this policy.
- (2) Payments are due on or prior to the 15th day of each service month.
- (3) Interest may be charged on late payments, in accordance with individual contracts.

1.6.1 Operating Obligation Payments

Each agency's annual operating obligation is divided by twelve, resulting in a flat Monthly Operating Charge paid by each Operator. After the prospective year has ended, actual costs from the prospective year will be rolled forward into the calculation for the next three years of Monthly Operating Charges, constituting the reconciliation of actual costs.

1.6.1.1 *Electric Traction Propulsion Power*

For electric traction propulsion power, each Right-of-Way Owner will provide estimated costs for the prospective fiscal year. Percentages from the most recent power studies will be applied to these estimates to determine estimated monthly payments by each Operator. On a monthly basis, estimated costs will be compared to actual costs, and the difference will be reflected in a credit or an added charge in the next monthly estimated payment.

Any Operator that will no longer require electric traction propulsion power or plans to require it in the future will provide notice to the Commission six months in advance. The allocation among Owners and Operators will be recomputed to represent the change effective on the date that the Operator will no longer use electric traction propulsion power.

Special studies for electric traction propulsion power will be performed no less than every three years. The calculation of kWh usage for each Operator will be based on service plans and statistics agreed to by the affected parties as part of the special study. Because the study is not necessarily updated every year, the service plans and related statistics may be based on a different time period from those used for the allocation of other cost categories. Amtrak or a Commuter Authority may request an interim update to the study, in which case the results will supersede the results of the prior study at the beginning of the next fiscal quarter. The Operator requesting the interim update will be responsible for paying the full cost of the interim update to the study.

1.6.2 Capital Obligation Payments

For capital obligation payments (i.e., BCC payments), the following procedures will be followed unless the Operators agree on an alternative payment schedule that is transparent and adheres to the Policy's intent.

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1.6.2.1 General Procedures

- (1) Owners will identify the expected expenses that are eligible for each Operator's BCC during the upcoming fiscal year as described in Section 4.1.2.
 - a) Each Non-Owner Operator's payment will be the lesser of the Non-Owner Operator's BCC (as calculated in the cost allocation model and approved by the Commission for that fiscal year) or the Owner's expected expenses that are eligible for the Non-Owner Operator's BCC during the upcoming fiscal year. The resulting payment is called the **BCC Amount Paid**.
 - b) In every year where a Non-Owner Operator's BCC Amount Paid is less than its BCC, an obligation of the Non-Owner Operator to the Owner of the amount of the difference shall carry over for three years as long as the Policy is in effect. Operators will use the capital planning process described in Section 4.1.2 to program the carryover obligation within the required timeframe.
 - c) The requirement for Owners to spend their BCCs on BCC eligible activities does not expire. After completing the steps in Appendix 1.6.2.2 End-of-Year Procedures, Station Owners who are not Right-of-Way Owners may notify the Commission that unspent BCCs will be expired.
- (2) Payments will be made to Owners monthly at one-twelfth of the BCC Amount Paid.
- (3) If an Operator pays its BCC Amount Paid using a funding source that must be associated with a discrete set of capital projects, such as a bond, Owners and Operators will cooperate to comply with all legal obligations associated with the funding source.
- (4) In any year, Owners may program and/or spend up to 10% more than their BCC obligation in their operating territory and apply any overage against their BCC obligations in the subsequent three years, unless the Commission selects a higher threshold.
- (5) Consistent with Section 24905, Owners and Non-Owner Operators may, with Commission approval, agree that an Operator may fund all or part of its BCC with an in-kind capital contribution, provided the contribution is linked to an approved NEC Capital Investment Plan. If an in-kind capital contribution is proposed, the method for its valuation will be included in the agreement between the Owner and Non-Owner Operator.

1.6.2.2 End-of-Year Procedures

After the close of each fiscal year, each Non-Owner Operator's BCC Amount Paid will be compared to the actual amount expended in or assigned to its territory and the following will apply:

- (1) Any expenses in the Non-Owner Operator's territory exceeding the BCC Amount Paid, up to the amount of any unpaid capital obligation/BCC, will be added to the following year's BCC Amount Paid in equal monthly payments.
- (2) When determining whether any portion of a Non-Owner Operator's BCC Amount Paid remains unspent after the close of the fiscal year, the Owner must first ensure that, for each common set of segments, its own BCCs and other Non-Owner Operators' (combined) BCCs derived from the segment have been applied proportionally to the common segments, unless an Owner and Non-Owner Operator have mutually agreed otherwise or the Owner's share is greater. Common set of segments is defined as all segments with allocation statistics for both the Owner (operating as Owner) and Non-Owner Operator as defined in the relevant capital asset data source.

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- (3) Any BCC Amount Paid by a Non-Owner Operator but not spent in or assigned to the Non-Owner Operator's territory will be handled as follows:
 - a) If the Owner has demonstrated in the most recent Capital Investment Plan that the difference between the BCC Amount Paid and the actual amount expended can be spent during the current fiscal year in addition to that year's capital obligations, no credit will be given.
 - b) If the Owner has not demonstrated in the most recent Capital Investment Plan that the difference can be spent during the current fiscal year in addition to that year's capital obligations, the Non-Owner Operator will be credited the difference between the BCC Amount Paid and the actual amount expended on the next monthly invoice.

1.6.3 Payment Reconciliation Options

Mid-year reconciliations for operating obligation payments will be made according to, at the payer's option, schedules (1) or (2), unless the parties mutually agree to (3):

- (1) Settle Immediately. No later than the fiscal year's end, pay or credit the difference.
- (2) Settle During the Following Fiscal Year. At the fiscal year's close, add or credit the inflation-adjusted difference (divided by 12) to the Monthly Operating Charges for the following year.
- (3) Settle Over a Longer Period. Repay over a longer period by adding or crediting the difference divided by the number of years in the repayment period to each year's financial obligation calculation, adjusted for inflation, as necessary.

If Operators make budget requests before financial obligations are approved by the Commission, the most recently available financial obligation estimates may be used to inform these requests. Operators will inform the Commission and Owners of requested budget amounts. If budgeted payments represent an over- or under-payment, Operators will agree to a reconciliation schedule.

1.6.4 Failure to Meet Payment Obligations

Payments obligated under this policy are subject to funds being available. If a party fails to meet its required financial commitment under the Policy, some Operators could bear more than their proportionate share of costs. This will be addressed specifically within individual agreements and may include remedies such as:

- Financial penalties, including appropriate interest charges for late payments.
- Reimbursement of costs and fees associated with the termination or restoration of service.
- Other arrangements consistent with the Policy's overall intent.

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1.7 NEC Geographic Segments

1.7.1 Capital Segments

Table 9: Capital Segments

Segment Name	Segment Description	Owner	Operators
NEC Spine – MA	Boston, MA – MA/RI State Line	MBTA	Amtrak, MBTA
NEC Spine – Amtrak	MA/RI State Line – New Haven, CT; and New Rochelle, NY – Washington, DC	Amtrak	Amtrak, RIDOT, CTrail, LIRR, NJT, SEPTA, DelDOT, MARC, VRE
Springfield Line	Springfield, MA – New Haven, CT	Amtrak	Amtrak, CTrail
Empire Connection	Spuyten Duyvil, NY – New York Penn Station, NY	Amtrak	Amtrak
Harrisburg Line	Harrisburg, PA – Philadelphia, PA	Amtrak	Amtrak, SEPTA
New Haven Line – CT	New Haven, CT – CT/NY State Line	MNR	Amtrak, MNR
New Haven Line – NY	CT/NY State Line – New Rochelle, NY	CTDOT	Amtrak, MNR (CTDOT)

1.7.2 Baseline Capital Charge Segments

Table 10: Baseline Capital Charge Segments

Capital Segment	Seg ID	BCC Segment Description	Owner	Operators
NEC Spine – MA	1	Boston South Station to MA/RI State Line	MBTA	Amtrak, MBTA
NEC Spine – Amtrak	2	MA/RI State Line to Providence	Amtrak	Amtrak, MBTA
NEC Spine – Amtrak	3	Providence to Wickford Junction	Amtrak	Amtrak, MBTA (RIDOT)
NEC Spine – Amtrak	4	Wickford Junction to New London	Amtrak	Amtrak
NEC Spine – Amtrak	5	New London to New Haven	Amtrak	Amtrak, CTrail Shore Line East
New Haven Line – CT	6	New Haven to CT/NY State Line	CTDOT	Amtrak, MNR (CTDOT)
New Haven Line – NY	7	CT/NY State Line to New Rochelle	MNR	Amtrak, MNR
NEC Spine – Amtrak	8	New Rochelle to Harold	Amtrak	Amtrak
NEC Spine – Amtrak	9	Harold to F Interlocking	Amtrak	Amtrak, LIRR
NEC Spine – Amtrak	10	F Interlocking to Penn Station New York	Amtrak	Amtrak, LIRR, NJT
NEC Spine – Amtrak	11	Penn Terminal	Amtrak	Amtrak, LIRR, NJT
NEC Spine – Amtrak	12	Penn Station New York to Trenton	Amtrak	Amtrak, NJT
NEC Spine – Amtrak	13	Trenton to Morris	Amtrak	Amtrak, NJT, SEPTA
NEC Spine – Amtrak	14	Morris to Holmes	Amtrak	Amtrak, SEPTA
NEC Spine – Amtrak	15	Holmes to Shore	Amtrak	Amtrak, SEPTA
NEC Spine – Amtrak	16	Shore to Girard	Amtrak	Amtrak, NJT, SEPTA
NEC Spine – Amtrak	17	Girard to Philadelphia 30th Street	Amtrak	Amtrak, NJT
NEC Spine – Amtrak	18	Philadelphia 30th Street to Arsenal	Amtrak	Amtrak
NEC Spine – Amtrak	19	Arsenal to Marcus Hook	Amtrak	Amtrak, SEPTA
NEC Spine – Amtrak	20	Marcus Hook to Bacon	Amtrak	Amtrak, SEPTA (DelDOT)
NEC Spine – Amtrak	21	Bacon to Perryville	Amtrak	Amtrak
NEC Spine – Amtrak	22	Perryville to WAS	Amtrak	Amtrak, MARC
NEC Spine – Amtrak	23	Washington Union Terminal	Amtrak	Amtrak, MARC, VRE
NEC Spine – Amtrak	24	WAS to CP Virginia	Amtrak	Amtrak, VRE
Springfield Line	25	Springfield to New Haven	Amtrak	Amtrak, CTrail Hartford Line
Albany Line	26	Poughkeepsie - Spuyten Duyvil ¹	MNR	Amtrak, MNR
Albany Line	27	Spuyten Duyvil to Penn Station New York	Amtrak	Amtrak
Harrisburg Line	28	Penn to 36th Street	Amtrak	Amtrak
Harrisburg Line	29	36th Street to Thorndale	Amtrak	Amtrak, SEPTA
Harrisburg Line	30	Thorndale to Harrisburg	Amtrak	Amtrak
n/a	31	Amtrak System-wide	Amtrak	Amtrak

Table note 1: Exempt from plan

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1.7.3 Operating Segments

Table 11: Operating Segments (and Corresponding BCC Segments)

Capital Segment	Seg ID	Segment Description	Miles	MP	MP	State	BCC Seg
NEC Spine - MA	1	South Station - Tower 1	0.2	228.7	228.5	MA	1
NEC Spine - MA	2	Tower 1 - Cove	0.5	228.5	228	MA	
NEC Spine - MA	3	Cove - Plains	3.7	228	224.3	MA	
NEC Spine - MA	4	Plains - Read	4.7	224.3	219.6	MA	
NEC Spine - MA	5	Read - Transfer	1.1	219.6	218.5	MA	
NEC Spine - MA	6	Transfer - Canton Junction	4.6	218.5	213.9	MA	
NEC Spine - MA	7	Canton Junction - Mansfield	9.9	213.9	204	MA	
NEC Spine - MA	8	Mansfield - Attleboro	7.1	204	196.9	MA	
NEC Spine - MA	9	Attleboro - MA/RI State Line	6.1	196.9	190.8	MA	
NEC Spine - Amtrak	10	MA/RI State Line - Orms	5.2	190.8	185.6	RI	2
NEC Spine - Amtrak	11	Orms - Providence	0.5	185.6	185.1	RI	
NEC Spine - Amtrak	12	Providence - Wickford	19.4	185.1	165.7	RI	3
NEC Spine - Amtrak	13	Wickford - RI/CT State Line	24.6	165.7	141.1	RI	4
NEC Spine - Amtrak	14	RI/CT State Line - New London	18.2	141.1	122.9	CT	
NEC Spine - Amtrak	15	New London - Old Saybrook	17.8	122.9	105.1	CT	5
NEC Spine - Amtrak	16	Old Saybrook - Mill River Jct	31.5	105.1	73.6	CT	
Springfield Line	701	Springfield - MA/CT State Line	6.2	62	55.8	MA	25
Springfield Line	702	MA/CT State Line - Hartford	19.2	55.8	36.6	CT	
Springfield Line	71	Hartford - Mill River Jct	35.1	36.6	1.5	CT	
NEC Spine - Amtrak	17	Mill River Jct - Metro North Div Post	0.7	73.6	72.9	CT	5
New Haven Line - CT	18	Metro North Div Post - State Street	0.2	72.9	72.7	CT	6
New Haven Line - CT	19	State Street - New Haven	0.4	72.7	72.3	CT	
New Haven Line - CT	20	New Haven - CP 261 (Devon)	11.6	72.3	60.7	CT	
New Haven Line - CT	21	CP 261 (Devon) - CP 257 (Central)	3.9	60.7	56.8	CT	
New Haven Line - CT	22	CP 257 (Central) - CP 255 (Port)	1.5	56.8	55.3	CT	
New Haven Line - CT	23	CP 255 (Port) - CP 241 (Walk)	14	55.3	41.3	CT	
New Haven Line - CT	24	CP 241 (Walk) - CP 234	8	41.3	33.3	CT	
New Haven Line - CT	25	CP 234 - NY/CT State Line	7.2	33.3	26.1	CT	
New Haven Line - NY	26	NY/CT State Line - CP 223	2.6	26.1	23.5	NY	7
New Haven Line - NY	27	CP 223 - CP 216 (Shell)	7.2	23.5	16.3	NY	
NEC Spine - Amtrak	28	CP 216 (Shell) - Harold (Hell Gate Line)	15.2	18.9	3.7	NY	8
NEC Spine - Amtrak	29	Harold - F	0.7	3.7	3	NY	9
NEC Spine - Amtrak	30	F - JO/C	2.9	3	0.1	NY	10
Albany Line	72	Empire Connection - NYP-CP12 (Spuyten Duyvil)	10.8		10.8	NY	27
NEC Spine - Amtrak	31	Penn Station New York	0.3	0.1	0.2	NY	11
NEC Spine - Amtrak	32	A - NY/NJ State Line	1	0.2	1.2	NY	12
NEC Spine - Amtrak	33	NY/NJ State Line - Swift	6	1.2	7.2	NJ	
NEC Spine - Amtrak	34	Swift - Hudson	1.1	7.2	8.3	NJ	
NEC Spine - Amtrak	35	Hudson - Dock	1.3	7.2	8.5	NJ	
NEC Spine - Amtrak	36	Penn Station Newark	0.3	8.5	8.8	NJ	
NEC Spine - Amtrak	37	Dock - Hunter	1.7	8.8	10.5	NJ	
NEC Spine - Amtrak	38	Hunter - Union	9.2	10.5	19.7	NJ	
NEC Spine - Amtrak	39	Union - County	13.1	19.7	32.8	NJ	
NEC Spine - Amtrak	40	County - Trenton	23.9	32.8	56.7	NJ	
NEC Spine - Amtrak	41	Trenton - NJ/PA State Line	1	56.7	57.7	NJ	
NEC Spine - Amtrak	42	NJ/PA State Line - Morris	0.6	57.7	58.3	PA	
NEC Spine - Amtrak	431	Morris - Holmes	18.9	58.3	77.2	PA	14
NEC Spine - Amtrak	432	Holmes - Shore	4.9	77.2	82.1	PA	15
NEC Spine - Amtrak	44	Shore - Lehigh	3	82.1	85.1	PA	16
NEC Spine - Amtrak	45	Lehigh - Girard	2.6	85.1	87.7	PA	
NEC Spine - Amtrak	94	Girard - ZOO 34th/Mt.Ver	0.3	87.7	88	PA	
NEC Spine - Amtrak	46	Girard - No. Penn	1.1	87.7	0.8	PA	17
NEC Spine - Amtrak	47	30th Street Lower Level	0.6	0.8	1.4	PA	
Harrisburg Line	81	Penn - D1 (36th St. Branch)	0.9	0.9		PA	28
Harrisburg Line	462	ZOO 34th/Mt.Ver - 36th St.	0.9	0	0.9	PA	29
Harrisburg Line	82	D1 / JO - Valley	2.1	1.9	4	PA	

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Capital Segment	Seg ID	Segment Description	Miles	MP	MP	State	BCC Seg
Harrisburg Line	83	Valley - Bryn Mawr	6.1	4	10.1	PA	29
Harrisburg Line	84	Bryn Mawr - Paoli	9.8	10.1	19.9	PA	
Harrisburg Line	85	Paoli - Frazer	4	19.9	23.9	PA	
Harrisburg Line	86	Frazer - Glen	1.4	23.9	25.3	PA	
Harrisburg Line	87	Glen - Thorn	9.7	25.3	35	PA	
Harrisburg Line	88	Thorn - Thorndale	0.3	35	35.3	PA	
Harrisburg Line	89	Thorndale - Park	8.6	35.3	43.9	PA	30
Harrisburg Line	90	Park - Cork	24.2	43.9	68.1	PA	
Harrisburg Line	91	Cork - Roy	26.2	68.1	94.3	PA	
Harrisburg Line	92	Roy - State	10.3	94.3	104.6	PA	
Harrisburg Line	93	State - Division Post	0.6	104.6	105.2	PA	
NEC Spine - Amtrak	48	South Penn - Arsenal	1.3	1.4	2.7	PA	18
NEC Spine - Amtrak	49	Arsenal - Phil (Sig 18S)	0.9	2.7	3.6	PA	19
NEC Spine - Amtrak	50	Phil (Sig 18S) - Chester	9.8	3.6	13.4	PA	
NEC Spine - Amtrak	51	Chester - Marcus Hook	3.7	13.4	17.1	PA	
NEC Spine - Amtrak	52	Marcus Hook - PA/DE State Line	1.1	17.1	18.2	PA	20
NEC Spine - Amtrak	53	PA/DE State Line - Wilmington	8.6	18.2	26.8	DE	
NEC Spine - Amtrak	54	Wilmington - Newark	12.1	26.8	38.9	DE	
NEC Spine - Amtrak	55	Newark - DE/MD State Line	2.5	38.9	41.4	DE	
NEC Spine - Amtrak	56	DE/MD State Line - Bacon	9.6	41.4	51	MD	
NEC Spine - Amtrak	57	Bacon - Perryville	8.4	51	59.4	MD	21
NEC Spine - Amtrak	58	Perryville - Baltimore	36.3	59.4	95.7	MD	22
NEC Spine - Amtrak	59	Baltimore - MD/DC State Line	35.9	95.7	131.6	MD	
NEC Spine - Amtrak	60	MD/DC State Line - C Interlocking	3.4	131.6	135	DC	
NEC Spine - Amtrak	61	C Interlocking - Union Station	1	135	136	DC	23
NEC Spine - Amtrak	62	Union Station - CSX Div Post (CP Virginia)	1.1	136	137.1	DC	24
NEC Spine - Amtrak	3111	Penn Station New York - Zone 1A				NY	11
NEC Spine - Amtrak	3112	Penn Station New York - Zone 1B				NY	
NEC Spine - Amtrak	3121	Penn Station New York - Zone 2A				NY	
NEC Spine - Amtrak	3122	Penn Station New York - Zone 2B				NY	
NEC Spine - Amtrak	3123	Penn Station New York - Zone 2B (LIRR only)				NY	
NEC Spine - Amtrak	3124	Penn Station New York - Zone 2C				NY	
NEC Spine - Amtrak	3130	Penn Station New York - Zone 3				NY	9,10
NEC Spine - Amtrak	3140	Penn Station New York - Zone 4				NY	
NEC Spine - Amtrak	3141	Penn Station New York - Zone 4 (LIRR only)				NY	
NEC Spine - Amtrak	3099	Sunnyside Yard				NY	
NEC Spine - Amtrak	3199	Penn Station New York - 3rd Rail				NY	9,10,11,27

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1.7.4 Terminal Zones

Table 12: Terminal Zones

Terminal Zone	Capital Segment	Seg ID	Segment Description
Boston South Station	NEC Spine - MA	1	South Station - Tower 1
New York Penn Station ¹	NEC Spine - Amtrak	30	F - JO/C
		31	Penn Station New York ¹
		32	A Interlocking - NY/NJ State Line
		3111	Penn Station New York - Zone 1A
		3112	Penn Station New York - Zone 1B
		3121	Penn Station New York - Zone 2A
		3122	Penn Station New York - Zone 2B
		3123	Penn Station New York - Zone 2B (LIRR only)
		3124	Penn Station New York - Zone 2C
		3130	Penn Station New York - Zone 3
		3140	Penn Station New York - Zone 4
		3141	Penn Station New York - Zone 4 (LIRR only)
		3099	Sunnyside Yard
		3199	Penn Station New York - 3rd Rail
Washington Union Station	NEC Spine - Amtrak	61	C Interlocking - Union Station

Table Note 1: The terminal zone statistics shown in Table 3 apply to Segments 30, 31, and 32 only. Due to the complexity of operations at New York Penn Station, alternate statistics may be used for Segments 3111, 3112, 3121, 3122, 3123, 3124, 3130, 3140, 3141, 3099, and 3199 as agreed to by affected Operators.

1.7.5 Stations

Train stations may be considered an NEC Geographic Segment.

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1.8 Data Collection Timeline for Stations Basic Infrastructure Assets

Table 13: Data Collection Timeline for Stations Basic Infrastructure Assets

Task	Target Completion Date
Commission staff complete preliminary data collection for all NEC stations	July 31, 2020
Review preliminary data with station owners; determine if consultant support needed	September 30, 2020
Complete data collection	December 31, 2020
Review data and prepare preliminary stations normalized replacement (NR) amount	January–February 2021
Commission review of preliminary data and stations NR amount	March 2021
Develop Policy provisions pertaining to stations NR amount/ Stations BCCs	March – June 2021
Commission approve Policy provisions	June 2021
Implement agreed-upon provisions (FY23 Model)	October 1, 2021

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1.9 Scope, Schedule, and Budget Expectations for Capital Renewal Investments

Table 14 provides guidance regarding the provision of scope, schedule, and budget details for capital renewal investments planned for the first two years of the five-year Capital Investment Plan as required by Section 4.1.2. In recognition that these details may vary depending on the nature of the work (planned vs. reactive) and how the investment is managed (as a stand-alone project vs. program), the table provides separate guidance for capital renewal projects, capital renewal programs comprised of planned activities, and capital renewal programs comprised of largely reactive/unplanned activities.

Table 14: Scope, Schedule, and Budget Expectations for Capital Renewal Investments

Project/ Program	Year(s)	Scope	Schedule	Budget
Capital Renewal Project	General	Include a general project scope that describes the project's overall objectives and justification.	Include a schedule for major project phases over the life of the project (Planning, Design, Construction, etc.)	Include an estimate of the total project cost and a breakdown of costs by phase, if available.
	Fiscal Year Specific (Yrs. 1 & 2)	Describe the planned scope of work specific to the upcoming fiscal year and subsequent fiscal year, as applicable.	Include a schedule for fiscal year milestones. These milestones will likely be more project-specific than the major project phases provided as part of the general schedule information. In general, the date ranges are expected to be more specific than the entire fiscal year.	Include a budget for the fiscal year scopes provided. Budget detail can be broken down by fiscal year milestones, if available.
Capital Renewal Program - Planned	General	Include a general program description that explains the program's objectives and the types of activities or investments it includes.	Identify the duration of the program, as applicable. Most programs are expected to be "ongoing" without a set duration.	For programs with a set duration, identify total program cost. For ongoing programs, include the budget for the entire program for the upcoming fiscal year and subsequent fiscal year, as applicable.
	Fiscal Year Specific (Yrs. 1 & 2)	Identify the specific assets or geographic locations (e.g., mile post ranges) where work is planned for the upcoming fiscal year and subsequent fiscal year, as applicable. In general, locations are expected to be more specific than entire BCC segments.	For each specific asset and/or geographic location identified in the fiscal year scopes, identify a date range for the planned work. In general, the date ranges are expected to be more specific than the entire fiscal year.	Include a budget for each specific asset or geographic location identified in the fiscal year scopes, as available.
Capital Renewal Program - Reactive	General	Include a general program description that explains the program's objectives and the types of activities or investments it includes.	Identify the duration of the program, as applicable. Most programs are expected to be "ongoing" without a set duration.	For programs with a set duration, identify total program cost. For ongoing programs, include the budget for the entire program for the upcoming fiscal year and subsequent fiscal year, as applicable.

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Project/ Program	Year(s)	Scope	Schedule	Budget
	<p align="center">Fiscal Year Specific (Yrs. 1 & 2)</p>	<p>Include as much detail as available regarding the likely or potential assets or geographic locations where work will take place under the program during the upcoming fiscal year and subsequent fiscal year, as applicable. If necessary, locations can be identified at the BCC segment level.</p>	<p>For each specific asset and/or geographic location identified in the fiscal year scopes, identify a date range during which the work might occur. If necessary, the schedule can be identified as the entire fiscal year.</p>	<p>Include a budget for each specific asset or geographic location identified in the fiscal year scopes, as available.</p>

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1.10 Coordination Requirements for Capital Renewal and Track Outage Plans

Table 15 below includes the requirements for Right-of-Way Owners regarding coordination on capital renewal and track outage plans developed for inclusion in the NEC Capital Investment Plan. These requirements pertain to Year One information as described in Section 4.1.2.1.

Table 15: Coordination Requirements for Capital Renewal Plans

Coordination Step	Amtrak & MBTA	CTDOT & MNR
<p>Seek early input on priorities:</p> <ul style="list-style-type: none"> Starting around 3 months prior to when preliminary capital renewal and track outage plans are due, Right-of-Way Owners seek input from Operators and use collaborative processes to exchange information about Right-of-Way Owners' and Operators' respective priorities for their territories. 	Begin Feb. 1	Begin May 1
<p>Submit preliminary capital renewal and track outage plans:</p> <ul style="list-style-type: none"> Right-of-Way Owners will submit preliminary capital renewal plans and preliminary track outage plans to the Commission that identify potential impacts on Operators. To the extent possible, plans should be readable for Operators to understand proposed plans. 	Due May 1	Due Aug. 1
<p>Hold bilateral discussions for review and potential revisions:</p> <ul style="list-style-type: none"> Right-of-Way Owners will hold bilateral discussions with each Operator within one month of sharing preliminary plans, in coordination with Commission staff. Through plan finalization, Right-of-Way Owners will continue to engage in a collaborative plan development process with Operators as needed and make best efforts to identify significant changes between plan versions. 	Due May 30 (est.)	Due Aug. 30 (est.)
<p>Submit final capital renewal plans:</p> <ul style="list-style-type: none"> Right-of-Way Owners will submit final capital renewal plans to the Commission. 	Due no later than Sept. 1	Due no later than Sept. 1

1.11 Northeast Corridor History

The NEC's ownership and operations stem from the failure of the Penn Central Transportation Company (Penn Central) in 1970. Penn Central was formed through the merger of the Pennsylvania Railroad, the New York Central Railroad, and the New York, New Haven and Hartford Railroad in 1968-69, which brought together under one entity the previously separately operated rail lines that today compose the NEC.²⁷

Penn Central and the majority of the country's other privately-owned railroads found providing passenger service unprofitable by the 1960s. Though decades of poor business decisions played a considerable role in the company's failure, the railroad industry was also burdened by excessive regulation and taxation. Freight competition from the federally subsidized Interstate Highway System decreased the railroads' market share, and the diminished profits caused railroads to defer maintenance of capital assets. By the time Penn Central declared bankruptcy, the NEC and much of the territory served today by Commuter Authorities had been starved of capital investment for years.

1.11.1 Amtrak Establishment and Transfer of NEC Ownership

Penn Central's bankruptcy triggered legislative and regulatory actions to consolidate and reform an industry near collapse. To preserve intercity passenger service, Congress created the National Railroad Passenger Corporation (Amtrak) in the Rail Passenger Service Act of 1970.²⁸

“The Congress finds that modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system; that the public convenience and necessity require the continuance and improvement of such service to provide fast and comfortable transportation between crowded urban areas and in other areas of the country; that rail passenger service can help to end the congestion on our highways and the overcrowding of airways and airports; that the traveler in America should to the maximum extent feasible have freedom to choose the mode of travel most convenient to his needs; that to achieve these goals requires the designation of a basic national rail passenger system and the establishment of a rail passenger corporation for the purpose of providing modern, efficient, intercity rail passenger service; that Federal financial assistance as well as investment capital from the private sector of the economy is needed for this purpose...”

Amtrak assumed responsibility for intercity passenger service from private railroads and in return received priority access rights to tracks at incremental cost.²⁹ Four private railroads

²⁷ Concurrent with Amtrak's formation, the NYMTA and CTDOT arranged to acquire the New Haven Line. In 1973, the MBTA purchased the NEC infrastructure in Massachusetts. See Baer, Christopher. *A General Chronology of the Pennsylvania Railroad Company Its Predecessors and Successors and Its Historical Context: 1973*, available at http://www.prrths.com/new-prr_files/Hagley/PRR1973.pdf.

²⁸ Pub. L. No. 91-518, 84 Stat. 1327

²⁹ See 49 U.S.C. § 24308(a)(2)(B).

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contributed facilities, equipment, and capital in exchange for Amtrak common stock, which remain held by successor companies.³⁰ The federal government continues to be Amtrak's majority stakeholder. The USDOT holds a non-interest-bearing mortgage note³¹ equal to the cost of acquisition for this property, plus amounts invested by the federal government. No payments on the note are due until its maturity date on December 31, 2975. Amtrak began operations in 1971.

Other federal action was required to stabilize the industry. The Regional Rail Reorganization Act of 1973 (3R Act) recognized the federal interest in preserving and investing in rail service, particularly in the Northeast.³² It established another government-funded private company, the Consolidated Rail Company (Conrail), to take over the potentially profitable lines of bankrupt rail carriers and made Conrail responsible for the commuter rail operations of its predecessor railroads.³³ Congress also provided funding to improve the degraded infrastructure and equipment.

(a) FINDINGS.—The Congress finds and declares that—

(2) This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

(3) The public convenience and necessity require adequate and efficient rail service in this region and throughout the Nation to meet the needs of commerce, the national defense, the environment, and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers.

(4) Continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system.

(6) These needs cannot be met without substantial action by the Federal Government.

(b) PURPOSES.—It is therefore declared to be the purpose of Congress in this Act to provide for— ...

(6) necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

Three years later, the Railroad Revitalization and Regulatory Reform Act of 1976³⁴ (4R Act) and the Amtrak Improvement Act of 1976 provided funding for Amtrak to purchase, among

³⁰ *Intercity Passenger Rail: Issues Associated with a Potential Amtrak Liquidation*, GAO-RECD-98-60 (U.S. Gen. Accounting Office, 1998), available at <http://www.gao.gov/products/RCED-98-60>.

³¹ 49 U.S.C. § 24907

³² Section 101(a) of the 3R Act (87 Stat. 985)

³³ Section 301 of the 3R Act (87 Stat. 985)

³⁴ Pub. L. No. 94-210, 90 Stat. 119 (1976)

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other assets, NEC territory and facilities that had not already been acquired.³⁵ These acquisitions meant Amtrak was responsible for maintaining and improving a rail line already in disrepair and the company was depending on the federal government to help fund the NEC's capital renewal and replacement needs. Today, many of these assets are now Major Backlog projects and require replacement or rehabilitation, including Portal Bridge, the North River Tunnel, East River Tunnel, the Susquehanna River Bridge and the Baltimore and Potomac Tunnels—all assets that are over one hundred years old.

1.11.2 Northeast Corridor Improvement Project

A Northeast Corridor Program Office was created within FRA to expend \$1.75 billion over five years through the Northeast Corridor Improvement Project (NECIP) established as part of the 1976 4R Act. NECIP funded enough basic work to allow the corridor to continue moving passengers. A 1978 report on NECIP released by the Department of Transportation stated, “[NECIP’s] massive Federal investments are justified not only by the high-population density and ridership levels—both present and projected—along the NEC, but also by the rail network’s important economic benefits to the northeastern region of the country”.³⁶ After a few years of robust funding under NECIP, capital funding virtually disappeared for the rest of the 1980s. Modest NECIP dollars returned in the 1990s to assist with electrification on the north end but the NECIP program was never sufficient to enable the corridor to come close to reaching a state of good repair much less achieve the performance goals set forth in the 4R Act.

NECIP initially had two deadlines—one for the corridor’s north end and one for the corridor’s south end. Though the north end goal was not met, NECIP made enough progress in 1983 for Amtrak to offer service between Washington, D.C. and New York City in 2 hours and 40 minutes.³⁷ Federal funds were also used toward electrification of the north end in the late 1990s to support high-speed rail service. This improvement reduced the trip time between Boston and New York City from 4 hours and 30 minutes to 3 hours and 40 minutes. A 2007 report from the Mineta Transportation Institute notes, “without the public funding provided for the corridor by the federal government, even the successes that have been realized would not have occurred.”³⁸

1.11.3 Interstate Commerce

The NEC, like the Interstate Highway System (IHS), spans multiple states and facilitates interstate commerce. Under the Federal Aid Highway Act of 1956 that created the IHS, the federal government provided 90% of system construction costs. The full name of the IHS, the

³⁵ See, e.g., Pub. L. No. 94-210, § 701(b), 90 Stat. 121.

³⁶ “*Two-Year Report on the Northeast Corridor*.” U.S. Department of Transportation. February 1978, available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/2766/1978a.pdf.

³⁷ Amtrak was able to achieve this goal with a one-stop train but did not maintain the service. Current Acela service between Washington, D.C. and New York City has an average trip time of 2 hours and 53 minutes. A once-daily non-stop Acela started in 2019 is 2 hours and 33 minutes.

³⁸ Allison de Cerreno and Shishir Mathur. *High-Speed Rail Projects in the United States: Identifying the Elements of Success Part 2*. Faculty Publications, Urban and Regional Planning (2007), available at https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1015&context=urban_plan_pub.

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Dwight D. Eisenhower National System of Interstate and Defense Highways, underscored the system as a critical national priority. When signing the law, President Eisenhower said that the IHS would eliminate unsafe roads, inefficient routes, traffic jams and other things that got in the way of “speedy, safe transcontinental travel.”

Like the IHS, the NEC eliminates obstacles to speedy, safe interstate travel and is a major contributor to interstate commerce. The NEC transports hundreds of thousands of commuter passengers every day across state lines to access jobs and thousands of intercity passengers to other states for business purposes. The NEC also plays an important role in the national freight rail network, connecting manufacturers throughout the Midwest and Great Plains to international markets via East Coast ports. Not long after the establishment of the IHS, a 1961 report prepared for the Senate Committee on Interstate and Foreign Commerce declared, “The well-being of the metropolitan areas—chief sources of our national wealth and tax production—and the free flow of interstate commerce to and through these centers is a major Federal concern. The federal government, therefore, has a certain responsibility to work cooperatively with local public organizations for preserving and operating rail services.”³⁹

A modern and reliable corridor becomes even more important when rail serves as a relief valve for the Northeast’s congested highways and airports. The average NEC automobile commuter loses 74 hours per year to traffic as opposed to 54 nationally, with a congestion cost per auto commuter of \$1,436 versus a national congestion cost of \$1,080.⁴⁰ Furthermore, rail offers environmental benefits over driving or flying. Amtrak uses 27% less fuel than domestic flights⁴¹ and intercity trains achieve the highest per-passenger fuel economy when compared to other travel modes.⁴²

³⁹ Report from the Study Group on Transportation Policies in the United States (pursuant to S. Res. 29, 151, and 244 of the 86th Congress) for the Committee on Interstate and Foreign Commerce, United States Senate (1961).

⁴⁰ Texas Transportation Institute, 2019. 2019 Urban Mobility Report, available at <https://static.tti.tamu.edu/tti.tamu.edu/documents/mobility-report-2019.pdf>.

⁴¹ <https://www.bts.gov/content/energy-intensity-passenger-modes>.

⁴² <https://afdc.energy.gov/data/10311>.

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1.12 Master Schedule of New Deadlines

Table 16: Master Schedule of New Deadlines

Policy Reference	Task	Completion Date
Sec. 2.6.3.1	Identify any other potential limitations associated with Right-of-Way Owners' freight activity data	December 31, 2020
Sec. 3.4.2.3	Complete the asset data update for normalized replacement amount calculations, develop any associated Policy provisions, and determine the appropriate phase-in of agencies' new capital obligations/BCCs for FY2022 through FY2025.	March 31, 2021
Appx. 1.8	Implement Policy provisions related to Stations Basic Infrastructure Assets / Stations Normalized Replacement Amount	October 1, 2021
Sec. 3.2.2	Conduct a Special Study to examine key differences between PRIIA Section 209 and Section 212 cost allocation methodologies	
Sec. 4.1.1	Complete CONNECT NEC 2035 plan	December 31, 2021
Sec. 3.4.1.1.4	Conduct a Special Study to examine usher sole- and common-benefit functions	
Sec. 4.2.1.1	Implement a standardized approach for explaining plan adjustments across all agencies	October 1, 2022
Sec. 2.6.3.3	Develop a new approach to liability provisions	December 31, 2022
Sec. 2.6.1	Prepare Mid-Term Policy Performance Review	March 31, 2023
Sec. 2.1	Current Policy term ends; update Policy (as needed) for subsequent term	September 30, 2025

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