



# 1

## NEPA Tiering Process

Tiering is a staged approach to the National Environmental Policy Act of 1969 (NEPA) described in the Council on Environmental Quality's (CEQ's) *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (40 CFR 1500–1508) and in the Federal Highway Administration's (FHWA's) *Environmental Impact and Related Procedures* (23 CFR 771). Tiering addresses broad programs and issues in initial (Tier 1) or systems level analyses, and analyzes site-specific proposals and impacts in subsequent tier studies. The tiered process supports decision-making on issues that are ripe for decision and provides a means to preserve those decisions. This Tier 1 Final Environmental Impact Statement (FEIS) is the vehicle for fact-based analyses that supports informed decision-making on corridor-length issues associated with Interstate 81 (I-81) in Virginia, such as consideration of the use of tolls as a funding source for improvements and consideration of opportunities for separation of trucks and passenger vehicles.

The *Process Streamlining Agreement Between the Virginia Department of Transportation and the Federal Highway Administration on the Interstate 81 Corridor National Environmental Policy Act Process* (see Appendix A) defines the decisions to be made and the approvals to be granted at specific milestones of the tiered environmental process and defines the study approach, process, and elements to be included in each stage of the tiered analysis. The process consists of a Tier 1 DEIS, a Tier 1 FEIS, and a Tier 1 Record of Decision (ROD) to conclude Tier 1. Upon completion of the Tier 1 study, decisions will be made on:

- The improvement concepts to be advanced;
- Advancing I-81 as a toll pilot facility under Section 1216(b) of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21);
- Projects with independent utility and logical termini to be studied in Tier 2;
- The types of Tier 2 NEPA document(s);
- The location of the corridor for studying alignments in Tier 2; and
- Possible purchase of certain right-of-way parcels on a case-by-case basis<sup>1</sup>.

<sup>1</sup> While this Tier 1 FEIS does not include any proposed decisions to purchase specific right-of-way parcels, it provides information to support decisions to be made on hardship acquisitions or protective purchases in the future on a case-by-case basis.



In addition to these decisions, the Tier 1 FEIS documents existing and future needs along the corridor.

It is important to note that, for the Tier 1 study, a decision is not being made on a toll rate, but on the improvement concepts to be advanced regardless of toll structure. Different toll rates were studied in conjunction with the “Build” concepts in order to examine the potential diversions from I-81 that may occur if tolls were implemented. The impact of tolls on the number of lanes along I-81 was also evaluated. The effects of the range of toll scenarios support informed decision-making on the concepts to be advanced.

It is also important to note that current state law allows tolls to be imposed only on trucks. Specifically, the law states that tolls can be imposed on vehicles “other than passenger cars, pickup or panel trucks, and motorcycles, as such terms are defined in §46.2-200 [of the Code of Virginia].” This study considers the effects of tolling cars and trucks. Evaluating the impacts of tolls on cars and trucks represents a worst-case scenario with regard to traffic diversion.

This Tier 1 FEIS identifies transportation conditions along the interstate, identifies a wide range of opportunities for improvements, and evaluates the range of potential effects of conceptual-level improvements on the social, economic, and environmental setting along the entire I-81 corridor in Virginia. Information presented in this Tier 1 FEIS was based primarily on available Geographic Information System (GIS) data; other available databases; interviews with local, state, and Federal officials; and limited field surveys. This level of analysis is commensurate with the decisions being made and is at an appropriate level of detail to allow a comparison of the relative differences in the range of costs and potential impacts of the improvement concepts. Concepts will be analyzed in more detail in subsequent Tier 2 NEPA documents.

This Tier 1 FEIS is also the basis for the identification of individual, independent projects. Subsequent Tier 2 NEPA documents prepared for these individual projects will address site-specific details before specific design and/or location decisions are made. For example, roadway configuration will be determined during Tier 2, based on updated traffic projections or other factors, when detailed site-specific information is developed. If a toll option is advanced for a particular SIU, the effects of various toll rates will again be studied during Tier 2. Compliance with all applicable environmental laws and regulations will occur for each project during Tier 2. The Tier 1 decisions do not preclude future avoidance and minimization measures as part of Tier 2, and construction of individual projects will not occur until the completion of the subsequent Tier 2 NEPA documents.

The decisions that would be made upon the completion of the Tier 2 studies are:

- Approval of design features for improvements (*e.g.*, the typical section) for components identified in Tier 1;



- Authority to use Federal funds on final design of the improvements;
- Authority to acquire right-of-way;
- Eligibility for Federal funding of construction; and
- Approval to modify access to I-81.

There is a strong public interest in studying rail improvements to divert freight (*i.e.*, trucks) off of I-81 in Virginia. This interest was widely known before the initiation of the NEPA process, and many such comments were provided as part of the NEPA scoping process. With this as background, FHWA and the Virginia Department of Transportation (VDOT) committed in the Process Streamlining Agreement to study rail concepts as potential solutions for improved future travel on I-81 within the Commonwealth of Virginia. As discussed in a letter dated January 28, 2004 from FHWA to VDOT, toll revenues collected on I-81 cannot be used to implement rail improvements.

On May 4, 2004, FHWA prepared a memorandum (Appendix B) that concluded that analyzing out-of-state rail concepts was not reasonable. This conclusion has been reaffirmed (see Chapter 6, *Tier 1 Decisions*). However, the influence of multi-state rail and highway traffic and committed rail improvements in other states were included in the analysis of future conditions along I-81 in Virginia.

The study of rail concepts provides extensive information on freight diversion should Norfolk Southern wish to make rail improvements in Virginia. Included in this analysis are the existing Piedmont and Shenandoah rail lines that generally parallel I-81 in Virginia. The states along the I-81 corridor received a copy of the Tier 1 DEIS for their information, review, and comment as a continuation of the coordination efforts initiated by Virginia among the I-81 corridor states. Norfolk Southern, who was consulted during the study, also received a copy of the Tier 1 DEIS for their review and comment. Subsequent to the Tier 1 DEIS, the Virginia Department of Rail and Public Transportation (DRPT), whose responsibilities include working with the railroad companies to improve freight operations, has initiated a multi-state rail study in cooperation with Norfolk Southern.