

4.0 Government and Policy Issues

■ 4.1 Introduction and Background

Transportation policy in the United States has been dominated by the highway mode for much of the last century. The development of aviation services since the 1950's has also been a major focus for U.S. policy makers. The passenger rail mode had been relegated to an historical anachronism by many in both government and industry.

As noted in Chapter 1, public demand has refocused attention on the potential of rail passenger services to not only augment other modes, but to function as an integral element of a multi-modal transportation system to serve metropolitan areas, multi-state regions, and a national network serving to stitch together the fabric of the nation.

The U.S. Secretary of Transportation has recently outlined the Administration's goals with respect to national passenger rail services. Essentially, the emerging policy suggests that a national system should be regionally based, shaped by market forces, and receive support of state government to meet operating costs that exceed revenue income. Planning for passenger rail must be integrated into the state transportation planning process, and not be done in isolation. The federal role may provide for capital and overall structure of the services, but the expectation is that states will take a pro-active role in service planning, delivery and performance. The Administration expects that good investment decisions will be made when costs are shared among the several stakeholders.

Thus, the multi-state and international structure of the BMHSR Corridor is reflective of the emerging policy as it is a multi-state initiative focused on regional connectivity.

Implementation of high-speed rail service in the BMHSR Corridor will require compliance with a multitude of laws, regulations and other institutional procedures. The following sections identify the federal and state laws that are applicable to the proposed BMHSR service. Local regulatory issues should be addressed in future phases of the BMHSR Corridor Study. Environmental considerations, followed by more specific regulatory and permit issues, and U.S. and Canada customs and immigration regulations for border crossings are assessed.

■ 4.2 National Environmental Laws and Regulations

National Environmental Policy Act (NEPA)-United States

The National Environmental Policy Act (NEPA) establishes a process whereby federal agencies, as well as those individuals or agencies undertaking projects with federal funding or occurring on federal lands, are required to evaluate and avoid, to the extent practicable, environmental impacts. The NEPA process is intended to assist public officials in decision-making that is based on an understanding of environmental consequences, and to guide them to take actions that protect, restore and enhance the environment.

Projects which have been authorized to proceed to the design and permitting level, which have an identifiable “purpose and need,” are reviewed to determine if potential environmental consequences rise to the level of a formal NEPA filing. If this is not the case, the project is classified as a Categorical Exclusion (CE), and no further NEPA review is required. In the event those potential environmental consequences meet or exceed certain thresholds, or their significance is uncertain, an Environmental Assessment or more detailed Environmental Impact Statement is prepared and made available for public comment.

Clean Water Act

The Clean Water Act (CWA) of 1972 was designed to assist in restoring and maintaining the chemical, physical, and biological integrity of the nation’s waters. The CWA covers discharge of pollutants into navigable waters, wastewater treatment management, and protection of relevant fish, shellfish, and wildlife. Section 404 of the CWA requires a permit from the U.S. Army Corps of Engineers (Corps) for the discharge of dredged or fill material into wetlands or other waters of the United States. Section 401 of the CWA requires states to issue water quality certificates before the Corps can issue a Section 404 permit. Any future impacts from the construction of a rail structure into the nation’s waters or any fill material placed into wetlands would require adherence to the Sections 401 and 404 of the CWA.

Rivers and Harbors Act of 1899

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Corps for the construction of any structure in or over any navigable water of the United States, the excavation from or disposition of material in such waters, or any obstruction or alteration in a “navigable water of the United States.” This Act applies to all structures including piers, as well as dredging and disposal activities. Any future construction of a rail structure in or over a navigable water of the United States would require a Department of the Army permit pursuant to Section 10.

The portion of the Merrimack River located between the Massachusetts–New Hampshire State line and Concord, NH falls under the Federal Rivers and Harbors Act. In addition, within the State of Vermont, Lake Champlain falls under the protection of the Rivers and Harbors Act of 1899.

National Historic Preservation Act

The National Historic Preservation Act (NHPA), 16 USC Part 470a, was passed in 1966 to provide for the protection, enhancement, and preservation of any property that possesses significant architectural, archeological, historical, or cultural characteristics. Executive Order 11593 of 1974 further defined the obligations of federal agencies concerning the NHPA. Under Section 106 of the NHPA, if it is determined that the undertaking will potentially affect historic properties, the federal agency undertaking the study must coordinate with the State Historic Preservation Office to preserve and protect the resource. If the federal agency determines that it has no undertaking, or that its undertaking has no potential to affect historic properties, the federal agency has no further Section 106 obligations.

The NHPA requires site-specific information in order to prepare the documents and obtain approvals. A clear and complete understanding of all project elements, obtained through railroad engineering and planning, is needed to complete these documents.

For example, the BMHSR Corridor passes through the Lowell National Historic Park. However, in the current effort to extend commuter rail service to Nashua, NHDOT has examined the implications related to the BMHSR Corridor and the historic resources. Working with the state historic preservation officer the determination has been made that the commuter rail service extension will not impact the historic (cultural) resources.

In addition to the U.S. Federal environmental laws and regulations, there are a number of Canadian environmental laws and regulations that need to be adhered to. The following is a brief summary of the applicable regulations for this type of project.

Canadian Environmental Assessment Act

The Canadian Environmental Assessment Act was established to provide an effective means of integrating environmental factors into planning and decision-making processes. Projects that would require a Canadian Environmental Assessment include those where a federal authority is the proponent of the project, and projects that commit the federal authority to fully or partially carrying out the project. Future planning and implementation for the BMHSR Corridor would include an assessment of land ownership. Any part of the BMHSR Corridor on federal lands would trigger the need for a federal environmental assessment.

Canadian Environmental Protection Act

The Canadian Environmental Protection Act (CEPA) was established to preserve the quality of the environment in Canada. The CEPA contains environmental quality guidelines aimed at pollution prevention, waste control, conservation of natural resources, and maintaining sustainable development. The primary purpose of the CEPA is to contribute to sustainable development through pollution prevention. Any action undertaken to establish a high-speed passenger rail line within Canada would have to abide by the rules and regulations established within the CEPA.

Canada Water Act

The Canada Water Act (CWA) was established to provide management of water resources of Canada, including the administration of present and future demands of the water resources, and to manage provisions for water pollution prevention. Water resources that pass through the international boundary between the United States and Canada would have to be addressed under the CWA. Any action that discharges, degrades or alters the quality of waters within Canada or those waters that flow through the international boundary would be regulated by the CWA.

Canadian Federal Policy on Wetland Conservation

Wetland conservation is a shared federal, provincial, and territorial responsibility. The Canadian federal government is responsible for managing the impacts of over 900 of its policies and programs in Canada. The federal government views its role in wetland conservation as a partner with other governments and the private sector, reflecting the national interest. By virtue of their ownership of natural resources that lie within their boundaries, provinces retain authority over their wetlands. Any impact to wetlands within Canada would have to abide by the Federal Wetlands Policy. A key commitment of the policy is that no net loss of wetland functions on federal lands and waters occur, through mitigation of all impacts of development related to these wetlands. Another commitment focuses on continued enhancement and rehabilitation of wetlands in areas where the continuing loss or degradation of wetlands has reached critical levels.

All of these acts and policies require site-specific information in order to prepare the documents and obtain approvals. A clear and complete understanding of all project elements, obtained by thorough railroad engineering and planning, is needed to complete these documents, and meet federal regulations and approvals.

■ 4.3 State and Quebec Laws and Regulations

The BMHSR Corridor passes through Vermont, New Hampshire, Massachusetts and the Province of Quebec. Each jurisdiction has its own set of established laws and regulations governing how proposed projects would impact the environment and the transportation system. Below are the laws and regulations that would have to be adhered to within each state or province to design, construct and operate BMHSR service.

Vermont Laws/Regulations

Vermont Wetland Rules

It is the policy of the State of Vermont to identify and protect significant wetlands and the values and functions that they serve in such a manner that the goal of no net loss of such wetlands and their functions is achieved. These rules are pursuant to Title 10 V.S.A. Chapter 37, Section 905 (7-9). This statute limits the applicability of these rules to those wetlands that are so significant that they merit protection in this program. Wetlands not designated as significant under these rules should be assumed to have public value, and therefore may merit protection under other statutory or regulatory authority. Any wetlands that are found within the high-speed rail study area that are considered significant under these rules would be protected under this statute. For example, any significant wetlands identified within the right-of-way of the railroad track in Saint Albans would be protected under these rules.

Vermont Water Quality Certification

Under Section 401(a)(1) of the Clean Water Act, states have the authority to review and approve, condition, waive, or deny water quality certification for any activity that is subject to a Federal permit or license and may result in a discharge to waters of the United States. In Vermont, Section 401 Water Quality Certification applications are reviewed to determine if the activity will comply with the Vermont Water Quality Standards adopted by the Vermont Water Resources Board and any other requirements of state law. If the Vermont Water Resources Board denies the 401 Water Quality certification, the federal license or permit may not be granted.

Vermont Historic Preservation Act

The Vermont Historic Preservation Act (22 VSA 14) gives the state the authority to protect historic resources. The Vermont Division for Historic Preservation coordinates preservation activities on behalf of the state. The Division reviews any projects that may impact historic buildings, structures, historic districts, historic landscapes and settings, and known or potential archeological resources. Compliance with the statutes of the Vermont Historic Preservation Act together with Section 106 of the National Historic Preservation

Act would need to be adhered to when the high-speed rail study enters into an engineering and design phase.

Title 5 Aeronautics and Surface Transportation

Title 5, Aeronautics and Surface Transportation of the Vermont Statutes, details the rules and regulations pertaining to the railroad operations within the state. The following chapters from this statute pertain to the Study.

Chapter 56, Intercity Rail Passenger Service, outlines Agency of Transportation responsibilities, including operating, using, and managing land and buildings and charging fees to use the land and buildings and other facilities acquired for the intercity rail line. Chapter 58, State Acquisition of Railroads, outlines a policy aimed at preserving and modernizing railroad service, or in some cases, preserving established railroad rights-of-way for future reactivation. Chapter 60, General Provisions, details the general contracts, rights and liabilities for railways operating within Vermont. Chapter 62 details the powers and duties of the Board relating to Railroads within the State of Vermont. Chapter 70 details grade crossing regulations for any alteration, repair or taking of land for a grade crossing.

New Hampshire Laws/Regulations

New Hampshire Wetland Program Rule

New Hampshire protects its tidal and non-tidal wetlands and surface waters from “unregulated despoliation” under state law RSA 482-A. RSA 482-A authorizes the Department of Environmental Services (DES) to protect the state’s wetlands and surface waters by requiring a permit for dredge and fill or construction of structures in wetlands or other waters of the state. Permitting and enforcement is centralized at the state level. Municipal Conservation Commissions have a statutory intervention status and can place a hold on any permit application they wish to investigate. Almost all federal permitting is conducted through the New Hampshire State Programmatic Permit process. The purpose of the New Hampshire State Programmatic Permit process is to minimize duplication between New Hampshire’s Regulatory Program governing work within coastal and inland waters and wetlands and U.S. Corps of Engineers regulatory program under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, while maintaining the environmental protections guaranteed by those Acts.

Any potential impacts to wetlands or water bodies within New Hampshire would have to be analyzed through the New Hampshire State Permitting process. Any wetlands that occur within the right-of-way of the railroad would require adherence to this rule.

Surface Water Quality Regulations

The New Hampshire surface water regulations are intended to protect public health and welfare, enhance the quality of water and serve the purposes of the federal Clean Water Act. These standards provide for the protection and propagation of fish, shellfish, and wildlife, and provide for such uses as recreational activities in and on the surface waters, public water supplies, agricultural and industrial uses, and navigation. Any potential impacts to surface waters within New Hampshire must comply with the New Hampshire surface water quality regulations.

The Merrimack and Connecticut Rivers are protected under the New Hampshire Rivers Management and Protection Program (NHRMPP), which was established in 1988 to recognize and designate rivers to be protected for their outstanding natural and cultural resources. After a river has been designated for protection, a management plan is developed. In the area of the BMHSR Corridor, the segment of the Merrimack River that is protected under this program begins at the Merrimack-Bedford town line and flows approximately 15 miles through the communities of Merrimack, Litchfield, Hudson, and Nashua before entering Massachusetts. In addition, the upper Merrimack River is protected under this program, which includes the confluence of the Winnepesaukee and Pemigewasset Rivers to Franklin and Garvins Falls in Bow. The segment of the Connecticut River that is protected under the NHRMPP begins at the outlet of the Fourth Connecticut Lake to the New Hampshire/Massachusetts State Line.

New Hampshire Passenger Rail Operations

New Hampshire revised Statute Title XXXIV Public Utilities, Chapter 377 outlines the general operating procedures for passenger rail carriers operating within the State of New Hampshire. In addition, Chapter 367 outlines railroad safety and inspection program. These statutes would have to be adhered to when the high-speed rail is operational.

This passenger rail statute may be pre-empted by Federal Railway statutes, however, this will be determined at the final design and permitting phase.

Massachusetts Laws/Regulations

Massachusetts Wetlands Protection Act

The Massachusetts Wetlands Protection Act (MWPA), Massachusetts General Laws Chapter 131, Section 40, protects wetlands and the public interests they serve. Any activity that will fill, dredge, or alter a wetland would have to comply with the MWPA. The Conservation Commissions of each town/city have a vested interest in preserving wetlands within their borders, and are actively involved in their management and preservation. Any wetlands impacted by the high-speed rail would subject to provisions outlined in the MWPA, including those located along the Merrimack River in Lowell.

Massachusetts Surface Water Quality Standards

The Surface Water Quality Standards were established to protect the public health and enhance the quality and value of water resources within Massachusetts. The Surface Water Quality Standards designate the most sensitive uses for which the various waters in Massachusetts shall be enhanced, maintained and protected. Any future construction or alteration to the surface waters as a result of the implementation of the high-speed rail line within Massachusetts would have to abide by these standards.

Massachusetts Environmental Policy Act

The Massachusetts Environmental Policy Act (MEPA) requires that Commonwealth agencies or project proponents study the environmental consequences of their actions, including permitting and financial assistance. A requirement of MEPA is to study all alternatives to the proposed project, and to develop enforceable mitigation commitments, which would become permit conditions for the project if and when it is permitted. The MEPA also requires evaluation all feasible measures to avoid, minimize, and mitigate damage to the environment.

MEPA applies to projects above a certain size that involve some Commonwealth action. That is, they are either proposed by a state agency or are proposed by a municipal, non-profit, or private party and require a permit, financial assistance, or land transfer from Commonwealth agencies. If it is determined that any one of these three conditions are met by the HSR study, a MEPA document would have to be prepared.

Quebec Provincial Laws/Regulations

Environmental Quality Act, 2000 (RSQ c.Q-2) -Environmental Impact Assessment and Review

Division II, Section 2 (h) requires that projects that propose the establishment of a marshalling yard, railway station, or the construction of more than 2 kilometers of railway conduct an Environmental Impact Assessment. If it is determined that this project will require any of these facilities, then an Environmental Impact Assessment and Review will be required.

Act Respecting the Conservation and Development of Wildlife – Regulation Respecting Wildlife Habitats

Wetlands are protected in the province of Quebec through habitat protection legislation. The central statute for wetland protection is the Act Respecting the Conservation and Development of Wildlife-Regulation Respecting Wildlife Habitats. Under this regulation wetland habitat for specific wildlife species on public lands is protected. The focus of the legislation is on the wetlands along the St. Lawrence River where the greatest wetland loss has occurred. The legislation does not include wetlands on private lands. There is

currently an initiative to work with municipalities to protect wetlands under their jurisdiction. This regulation would apply to all public wetlands impacted by the BMSHR service.

The manner in which these acts and regulations would be followed would be determined primarily in the preliminary engineering phase of the study. With the support of federal and local agencies, the federal and provincial environmental assessment documentation would commence. Once the project has successfully completed the environmental assessment phase, and if no significant impacts are recorded, the project would have to meet the requirements of the various permits outlined above. The BMHSR project would be required meet the all the regulations to proceed to the construction phase.

Ecological Reserves Act

Lands within the Province of Quebec may be established as an ecological reserve by the Government of Quebec where the government considers it appropriate for any of the following purposes: to conserve the lands in their natural state; to reserve the lands for scientific research, and where applicable, for education; and to protect threatened or vulnerable plant and animal species.

The following activities are prohibited in ecological reserves: hunting, trapping, fishing, any activity relating to mining, gas or petroleum exploration and development, any underground reservoir exploration activity, prospecting, digging and boring, forest management activities, earthwork and construction activities, agricultural, industrial or commercial activities, and, generally, any activity likely to alter the state or nature of ecosystems.

The BMHSR Corridor would be located along already established rail routes in Quebec. Therefore, it is unlikely that any part of the existing BMHSR Corridor is located within an already established ecological reserve. Earthwork and construction activities are prohibited in ecological reserves, therefore any future construction plans for the BMHSR route would not be allowed within the ecological reserve. Therefore, any BMHSR alignment modifications would need to be evaluated to determine any impacts on the ecological reserve lands.

An Act Respecting the Conservation and Development of Wildlife

The Act Respecting the Conservation and Development of Wildlife outlines the responsibilities of the wildlife protection officers in ensuring that wildlife conservation measures are carried out by ensuring that the hunting, fishing or trapping of wildlife is carried out in a responsible manner.

Tree Protection Act

The Tree Protection Act was established to ensure that any person within Quebec does not destroy or damage, wholly or partially, a tree, sapling or shrub, or any underwood, anywhere other than in a forest under the management of the Minister of Natural Resources, without having obtained the authorization of the Minister of the Environment. A tree

may be removed if consent has been previously given by the owner of such tree, sapling or shrub. This regulation does not apply in cases of such trees or shrubs accidentally come in contact with wires or apparatus of a public utility in a manner to endanger life or property or to interrupt service.

Any trees that may be in the BMHSR Corridor within the Province of Quebec would fall under this regulation and permission for removal would require approval of the Minister of the Environment.

An Act Respecting Threatened or Vulnerable Species

The Act Respecting Threatened or Vulnerable Species applies to threatened and vulnerable species that are found in Quebec or are imported into Quebec. The act states that no person in the habitat of a threatened or vulnerable plant species, carry on an activity that may alter the existing ecosystem, the biological diversity, or the physical or chemical components peculiar to that habitat. During the permitting and design phase of the BMHSR Corridor, the locations of any threatened or vulnerable plant species would be researched and provisions would be put in place to avoid or minimize potential impacts to them.

Cultural Property Act

The Cultural Property Act (CPA) was established to regulate, protect, and conserve cultural resources found within the Province of Quebec. Under the CPA, no person may alter, restore, repair, change in any manner or demolish in all or part any recognized cultural property, and in the case of immovable objects, move it or use it as a backing for construction without notifying the Minister of Culture and Communications. The Government of Quebec may also declare a territory to be a historic district because of its concentration of monuments or historic sites found there. An area may also be declared a territory because of its aesthetic qualities or because of its scenic interest of its natural setting. Permission to construct, alter or change the arrangement of a territory must be given by the Minister of Culture and Communications. If it is found that any part of the BMHSR Corridor that passes through Quebec runs through a property that has been identified as a cultural resource, permission to alter it would have to be granted from the Minister of Culture and Communications.

An Act Respecting Municipal Contribution to Railway Crossing Protection

The council of any local municipality may pass a by-law providing for the contribution of the expense of safeguarding, whether by the erection and maintenance of gates or the construction of tunnels, overhead bridges or other like devices, the approaches to a railway which crosses on the level any public road which the municipality is interested in protecting within its territory or within a distance of 8 km (5 mi). The municipality may borrow money and issue bonds for such construction. Any municipality located along the high speed rail route within Quebec may elect to construct some type of safety device in the interest of protecting its citizens.

■ 4.4 U.S./Canadian Customs and Immigration Issues

Customs and Immigration (U.S. and Canadian)

The U.S./Canadian border is the longest non-militarized border in the world. Trade between these two neighbors approaches \$500 billion each year. A 30 point plan is being developed and implemented to create a “smart border” that will eliminate delays for both trade and travelers thereby enabling the continued growth of this unique situation . The following discussion places in context the issues related to border crossing for future high-speed rail passengers. U.S. and Canadian Customs and Immigration officials expressed optimism that new technology and new agreements would help to provide for safe and effective border crossing for train passengers.

Contained within this section are discussions of typical procedures for handling of customs and immigration issue for travel by train. The following section provides an more detailed description of recent and current procedures utilized for specific trains that transit over the U.S./Canadian border.

U.S. Customs

The role of U.S. Customs is to act as guardians of the nation’s borders, to enforce the laws of the United States, and to foster lawful international trade and travel. The goals of U.S. Customs are to stop the flow of illegal drugs and other contraband that enter into the country, verify that import duty have been paid, and to ensure that only those individuals that are lawfully eligible to enter into the United States are permitted to do so.

Whether visitors are traveling by car, plane, or train, U.S. Customs officials are the first officers to greet them in the United States. As a standard procedure for travel by train , a U.S. Customs declaration form is distributed to each passenger on board the train prior to reaching the U.S./Canadian border. The purpose of the form is to assist the traveler in declaring any and all goods purchased outside of the United States that may be subject to duties. Once the train crosses into the United States from Canada, the train will stop shortly after the border. U.S. Customs officers will board the train once it is in the United States to conduct a preliminary inspection to determine each passenger’s eligibility to enter into the United States.

U.S. Customs officials greet passengers with a series of questions, first of which would be to determine their citizenship. The passenger then produces a passport, birth certificate, or other photo identification for inspection. In addition, the U.S. Customs officer will ask if the purpose of the trip is business or personal, the final destination of the trip, the length of stay.

The U.S. Customs officer will ask what items are being brought into the country other than personal items, including gifts and souvenirs and if there are any items that the

passenger wishes to declare. Passengers are to have filled out the U.S. Customs forms on route to the U.S., and the passenger would have documented any and all items to declare on the U.S. Customs declaration form. To declare an item is to inform the U.S. Customs officer about the value of item(s) purchased outside of the United States that were not with the passenger when they originally left the United States. Duty limitations depend upon the length of the visit and the types of items purchased. The U.S. Customs official may also request that the passenger produce their baggage for inspection. The length of time it takes to complete this preliminary inspection depends upon the number of passengers on board the train. On average, an inspection takes twenty minutes to one hour.

Once the preliminary inspection is completed, passengers with improper identification or illegal items are removed from the train by the U.S. Immigration and Naturalization Service. The U.S. Customs officers then disembark the train and allow it to proceed onto its next scheduled station stop.

U.S. Immigration and Naturalization Service

The U.S. Immigration and Naturalization Service (INS) is responsible for admitting individuals into the United States for various purposes, including permanent settlement, study, temporary work, and short-term visits. The documentation needed to enter the United States from other countries will depend upon the traveler's country of origin. Travelers who are either Canadian or U.S. citizens must have a valid passport, or a birth certificate, citizenship certificate or naturalization certificate as proof of citizenship. Non-U.S. citizens permanently or temporarily residing in the U.S. must have an Alien Registration Card. Citizens of other countries must have a passport, or in some cases they may also be required to have a visa, or a U.S. Employment Authorization Card.

U.S. Customs and INS officials cooperate in admitting lawfully eligible people into the United States. The U.S. Customs officer conducts the preliminary inspection of train passengers to determine which passengers do not have the proper identification to lawfully enter the United States. The U.S. Customs officer removes the passenger from the train and transfers him or her over to an INS official.

Future Policies and Regulations (U.S.)

Future travel between the United States and Canada would involve a greater role in the use of technology for both U.S. Customs and INS officials. Discussions with U.S. Customs officials revealed that future high-speed rail service between Boston and Montreal would involve three possible alternatives to adhere to the rules and regulations of U.S. Customs, as follows:

1. Stop a southbound train at the closest stop near the U.S./Canadian border (St. Albans, VT) and allow the U.S. Customs officers to board the train to conduct inspections; once the inspections are complete and all passengers are cleared, the train would proceed to its next designated stop.

2. Place U.S. Customs officers on the train in Montreal to ride the train from Montreal to the U.S./Canadian border. The U.S. Customs officers would conduct their inspection while riding the train and then they would disembark the train once it crossed the border. The U.S. Customs officers would then get a ride back (through the use of a passenger van or other means) to Montreal after they crossed the border.
3. Create a U.S. Customs inspection station in Montreal at the Central Station, where passengers would be pre-screened. Once the passengers have cleared U.S. Customs, they would be allowed to board the train. The train would leave Montreal and proceed directly to its first stop within the United States, in St. Albans, VT. The train would not pick up any passengers until its first stop in the United States.

Future policies and procedures that U.S. Immigration and Naturalization officials would adhere to could include the following scenarios:

1. Place a camera at the boarding area of the train, and monitor boarding passengers remotely.
2. Have U.S. Immigration officers board the train in Montreal and ride the train from Montreal to St. Albans, VT, where they would then conduct their inspection.
3. Have a pre-screening system similar to Dorval and Toronto airports; U.S. Immigration would screen people within a designated area; and then clear them for admission into the United States. Once all the passengers are cleared the train is considered “sealed”; there would not be any passengers allowed between Montreal and the first stop after crossing the U.S./Canadian border.

As noted above, the joint U.S./Canadian “Smart Border” plan seeks to reduce delays at border crossings. A demonstration photo-identification card system is underway between Washington and British Columbia. The Amtrak Cascades service also provides a potential model for efficient border crossing in the future, and its operating procedures are described in the section below.

Canada Customs and Revenue Service

The role of the Canada Customs and Revenue Service (CCRS) is similar to that of the U.S. Customs, which is to act as guardians of the nation’s borders, to enforce the laws of Canada, and to foster lawful international trade and travel. The goals of the CCRS are to stop the flow of illegal drugs and other contraband that enter into the country, verify that import duty have been paid, and to ensure that only those individuals that are lawfully eligible to enter into Canada are permitted to do so.

Current policy for passenger train service from the United States into Canada is to stop the train once it has crossed the border onto Canadian soil. CCRS officials will then board the train and conduct interviews on behalf of Citizenship and Immigration Canada (CIC). As required by law, each passenger would be required to complete a CIC Declaration Card. The card must be filled out to declare every item that the passenger is bringing into

Canada, and it serves to answer questions about the passenger's stay in Canada. The CCRS officer will ask passengers for their proof of citizenship, the nature of their trip, how long they plan to stay in Canada, and what items they wish to declare. In addition, the passengers' baggage would be subject to inspection. All luggage has to have a tag with the passenger's name. Luggage that is not tagged will be removed if it is not matched with an on-board passenger.

Once the CCRS officer completes the preliminary inspection, he or she will disembark the train and allow it to proceed. Those passengers who are refused entry into Canada are removed from the train and are then dealt with by CIC officials for processing or, in some cases, detainment. In some cases, the passenger would be required to leave Canada and return to either the United States, or, in some extreme cases, the country of their origin (if other than the United States).

Although it is not a standard policy of CCRS or CIC, Amtrak may forward a list of all confirmed passengers in advance of the train arriving there. The passenger listing would then be pre-screened before the train arrives at the border, which helps facilitate which passengers would be subject to further security screening.

Citizen and Immigration Canada

Existing Conditions (Canada)

Citizen and Immigration Canada (CIC) is responsible for admitting individuals into the country for various purposes, including to permanently settle, study, temporarily work, and to visit. When traveling by train into Canada, visitors must meet certain criteria established by CIC in order to gain lawful entry into Canada. Conditions for entry into Canada differ depending upon the visitor's country of origin. The majority of Canadian and U.S. citizens may cross the U.S./Canadian border provided that they are carrying proof of citizenship with them. Proof of citizenship consists of a birth certificate or certificate of naturalization. In addition, a passport is also an acknowledged form of citizenship. Persons under 18 years old who are not accompanied by an adult must bring a letter from a parent or guardian giving them permission to enter Canada. Evidence of the reason for travel into Canada may also be required. For those traveling as tourists, an explanation of where they will travel, and the length of travel will be required. A business visitor would need to state the nature of his/her business, where he/she will go, what companies will be visited, and in some cases, produce letters from prior contacts with those companies for inspection.

Future Policies and Regulations (Canada)

Future policies and regulations established for CIC include a five-part security strategy in response to the events of September 11, 2001. Included in the security strategy is to hire additional staff to enforce upgraded security at all Ports of Entry. Additional staffing and resources were committed to key enforcement activities, including examination and security screening at ports of entry. CIC also plans to continue to work closely on security

and intelligence issues with CCRS, as well as with the U.S. and international counterparts in order to fight terrorism.

Discussions with CCRS officials indicated that the potential future rail facilities in Montreal would need to adhere to Section 6 of the Canada Customs Act, which states that the operator of the rail service would be responsible for constructing an examination facility within the train station. This examination facility could be designed to accommodate both U.S. and Canada Customs and Immigration operations, as does the Cascades High Speed Rail Line in Vancouver, BC. Another option would be to construct a facility at Lacolle, Quebec, which would provide Canada Customs and Immigration with an area in which to conduct their screening. The train would stop at this facility, and CCRS and CIC officers would process the passengers immediately after crossing the border into Canada. In order to ensure that this facility is properly staffed, the established ratio of inspectors to rail passengers is one CCRS inspector for every 50 passengers, and one CIC inspector for every 50 passengers.

At present, CCRS and CIC do not have pre-clearance facilities within any airport or railroad station within the United States. To help expedite the clearance process, the train operator provides CCRS and CIC with a listing of passenger names prior to the train's departure. Once at the border, the train stops to allow CCRS and CIC officials to board the train and conduct their preliminary inspection.

CCRS and CIC currently use a program called CANPASS-Dedicated Commuter Lanes program, designed for frequent travelers to Canada from the U.S. The CANPASS program is one of the results of the United States of America Accord on Our Shared Border. This is a program designed to simplify border crossings for low-risk travelers. Citizens or permanent residents of Canada, citizens or resident aliens of the U.S. that meet visitor requirements, or citizens or resident aliens of the U.S. entering Canada to work or study who meet all immigration requirements are eligible for this program. This program involves a dedicated lane for frequent travelers between Canada and the U.S., and a photo permit that identifies travelers each time they cross the border.

A similar system has been implemented in the United States for air travel. The INS Passenger Accelerated Service System (INSPASS) is an automated system currently implemented in airports that can significantly reduce immigration inspection processing time for authorized travelers. At the port-of-entry, the traveler proceeds to an INSPASS inspection queue. There, the traveler inserts an INS issued card to an INSPASS kiosk. The automated inspection kiosks are not staffed, and INSPASS is only available at airports. Citizens of the United States, Canada and Bermuda are eligible to enroll in this program. There are currently no plans to implement the INSPASS for rail travel, but this may be an option once an increase in rail travel between Canada and the U.S. occurs.

■ 4.5 Existing Amtrak Services

Amtrak Cascades Train

Formerly known as Amtrak's Mt. Baker International Service, the Amtrak Cascades Train runs between Portland, Oregon, and Vancouver, British Columbia, Canada. The procedures implemented by both the U.S. and Canadian customs and immigration departments have set the precedent for high-speed train travel between the United States and Canada. Currently, the train route offers one scheduled daily service from Portland, Oregon to Vancouver, British Columbia.

Currently, U.S. Customs agents are not allowed to conduct inspections within train stations. Prior to September 11, 2001, U.S. Customs officials would perform a "rolling inspection" whereby they would board the train and the train would proceed on its route. The train would be considered "sealed", and no passengers would be allowed to board or exit the train after it left the station in Vancouver, BC and it entered U.S. territory. The agents would collect information and search luggage once they were on the train. On board inspections resulted in no additional trip time for this train route.

However, since September 11, 2001, U.S. Customs inspections have been conducted differently. After departing Pacific Central Station, the first train stop within the U.S. is in Blaine, Washington. This is a dedicated train stop for U.S. Customs officers only, and not a regular train stop for ticketed passengers. No passengers are allowed either on or off the train at this stop. The train remains parked at the Blaine stop until the U.S. Customs inspections are completed. Once the U.S. Customs officers have completed their inspection, they disembark the train. The train then proceeds to its first scheduled passenger stop, in Bellingham, Washington, located south of Blaine. As a result of this change in inspection procedure, the inspection time for southbound trains to the U.S. requires approximately one hour.

For northbound trains to Canada, CIC cards are handed out to every passenger by the train crew at the last stop in the United States. The train then proceeds, crosses the border, and continues directly to the Pacific Central Station in Vancouver.

Upon arriving at the Pacific Central Station in Vancouver, the train enters a segregated area of the train station. Passengers are required to take their luggage and proceed to the CIC inspection area located within the station. CIC staff will then screen all arriving passengers within the train station. The train will remain parked within the secure area until its next daily scheduled departure to Portland.

For trains returning to the United States, INS staff performs pre-clearance on all ticketed passengers at Pacific Central Station. The INS staff is located within the facility occupied by CIC. Passengers that have met the U.S. immigration requirements then board the train.

Amtrak Adirondack Train

Amtrak's Adirondack train route operates between New York City and Montreal. Currently, the Adirondack offers one scheduled daily service from New York City to Montreal. CIC cards are handed out to every passenger at Rouses Point, New York, the last stop in the United States. The train then proceeds across the U.S./Canadian border, and stops at Cantic, Quebec. CIC officials board the train at this stop, and conduct their inspections of each passenger. The train remains parked until the inspection is complete. The average length of time for inspections is 45 minutes to 2 hours. In light of heightened security procedures since September 11, 2001, the delays at the border for passenger rail service along this line have been unpredictable, partly due to staffing limitations, resulting in fluctuation in lengths of delay at the border. Reportedly, Canadian officials plan to alter this procedure in the near future, conducting inspections at the border (Rouses Point) instead of Cantic. Recent issues related to refugees have created concern, and this change may result in further delays for this service.

Passengers heading southbound from Montreal into New York State are given a U.S. Customs Declaration Card to fill out. Once at the U.S./Canadian border, the train proceeds to Rouses Point, New York, the U.S. Customs and INS stop for southbound trains. This stop operates mostly as a rail maintenance facility; however, there are plans to upgrade this stop to improve administration and security facilities.

Amtrak Maple Leaf Train

Amtrak's Maple Leaf route runs from New York City to Toronto. This route operates mainly in New York State, and crosses the U.S./Canadian border at Niagara Falls. The train offers one scheduled daily service from New York to Toronto. Upon purchasing tickets on this train route, passengers are required to provide their date-of-birth and country of origin information. The U.S. Customs and INS officials are provided this information in advance of the train arriving at the border. Upon its approach to the U.S./Canadian border, the train stops at Niagara Falls, New York, where U.S. Customs and INS officials board the train and conduct an exit inspection. This inspection is conducted to confirm the names and citizenship of all ticketed passengers with those physically on the train. The exit inspection takes between 20 minutes to 30 minutes.

Upon crossing the border into Canada, the train stops in Niagara Falls, Ontario, where CIC officials conduct their inspection. The CIC officials board the train and conduct their inspection. The average length of time of the inspection is from 45 minutes to one hour.

Passengers heading southbound from Toronto are given a U.S. Customs declaration card to complete upon crossing the border into the United States. The train stops at Niagara Falls, New York, and the U.S. Customs and Immigration officials board the train to conduct their inspection. Customers purchasing tickets on the Canadian side of the border are not required to provide evidence of their country of citizenship, due to Canadian privacy laws. The average length of time of the inspection is from 45 minutes to one hour.

■ 4.6 Railroad Laws and Regulations

The United States and Canada both have developed their own unique railroad laws and regulations, aimed at improving rail facilities and operations to the greatest extent possible. A summary is provided below.

U.S. Railroad Regulations

Federal Railroad Administration

The Federal Railroad Administration (FRA) of the U.S. Department of Transportation was created in 1966 to ensure, promote and enforce safety throughout America's railroad system. The FRA implements railroad safety laws by developing regulations and applying them to the railroads. The FRA regulates a number of operations, including track safety operations, signal and train control operations, motive power and equipment, operating practices, hazardous materials, and highway-rail grade crossing safety. By law, the FRA is responsible for promoting railroad safety nationwide and enforcing safety standards through these operations.

The FRA also develops and implements legislation pertaining to railroad operations. Under the United States Code, Chapter 49, passenger transportation laws pertaining to Amtrak, the Amtrak Route System, and the Northeast Corridor Improvement Program have been established to develop the potential of modern rail transportation to meet intercity and commuter rail passenger transportation needs. The establishment of a high speed rail system would have to adhere to the rules and regulations outlined within Title 49 of the United States Code, and the legislation established by the Federal Railroad Administration.

United States Code, Title 49-Rail Transportation

Several chapters found within the United States Code, Title 49, Rail Transportation, pertain to passenger rail operations. In particular, Chapter 241 outlines several passenger rail goals, including providing passenger convenience, providing modern and efficient commuter rail transportation, providing cooperation between intercity and commuter rail passenger transportation, developing rail corridors, and marketing rail transit. Chapter 243 deals exclusively with the operation of Amtrak. Chapter 249 deals with the Northeast Corridor Improvement Program, which is aimed at improving high-speed rail transportation between Boston and Washington. This statute states that the rail operator is authorized to acquire, build, improve, and install passenger stations, communications, electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities to provide high-speed rail passenger transportation over the corridor.

In addition, Chapter 261 provides guidelines pertaining to HSR corridor planning, including technology and safety regulations. All of these regulations would need to be followed to develop plans for the high-speed rail line. Operational rules and regulations would apply following construction.

Canadian Railroad Regulations

Canadian Federal Laws

Railway Safety Act, R.S. 2001

The objectives of the Railway Safety Act are to:

- Promote and provide for the safety of the public and personnel and the protection of property and the environment, in the operation of railways,
- To encourage the collaboration and participation of interested parties in improving railway safety,
- Recognize the responsibility of railway companies in ensuring the safety of their operations, and;
- Facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety.

Any construction or alteration of railways within Canada would need to adhere to Part I of the Railway Safety Act. Part I gives a general overview of the standards that need to be adhered to and the types of ministerial approval that must be gained to construct or alter any segment of railway in Canada. In addition, Part II outlines regulations that pertain to the operation and maintenance of rail lines.

Canada Transportation Act

The Canada Transportation Act provides rules and regulations that pertain to developing a safe, efficient, and adequate network of viable and effective transportation services accessible to all. The Canada Transportation Act provides regulatory powers over economic matters and issues of public convenience and necessity. Part III of the act deals with railway transportation, which outline the rules and regulations pertaining to the construction and operation of railways and rail lines. This act must be followed in conjunction with the Railway Safety Act.

Under the Canada Transportation Act, the Canadian Transportation Agency, a quasi-judicial body, is responsible for certain provisions of the Railway Safety Act. When deciding whether the location of the proposed railway line is reasonable, the Agency will consider the requirements for railway operations and services, the interests of any localities that the line will affect and the impact on the environment.

Railway Relocation and Crossing Act

This act was established to facilitate the relocation of railway lines or the rerouting of railway traffic in urban areas, and to provide financial assistance for work done for the protection, safety and convenience of the public at railway crossings. This act states that any changes made to a railway line must be submitted to the Canadian Transportation Agency. In addition, a financial plan outlining how the costs are to be shared by the province, the municipalities concerned, the railways, and any other interests that may be affected must also be submitted to the Canadian Transportation Agency when any work is done to a railway line.

■ **4.7 Security Considerations**

Since the events of September 11, 2001, various branches of the U.S. federal government have developed reports and analysis focused on security and travel. The following is a brief summary.

Report to Congress on Enhanced Security Measures by the Transportation Security Administration (TSA)

The Report to Congress on Enhanced Security Measures by the Transportation Security Administration (TSA) advocates requirements to implement passenger programs and use available technologies to expedite the security screening of passengers. The implementation of these programs is intended to expedite the screening process and allow security screening personnel to focus on those passengers who would be subject to more extensive screening.

The Transportation Security Administration is pursuing multiple actions to minimize the “hassle factor” for the traveling public. Evaluation of a traveler or a pre-screened and registered passenger program is among the priorities.

To implement a passenger screening program, TSA would need a simple, fast, affordable and nationally distributed technology to provide effective background clearances for a very large number of individuals. TSA is working with the Office of Personnel Management and private vendors to put in place a process that would be based on an efficient method of validation at a terminal of a pre-screened and registered passenger.

Enhanced Border Security and Visa Entry Reform Act

The Enhanced Border Security and Visa Entry Reform Act strengthens the requirement that all commercial passenger ships and airplanes entering the United States provide a list of passengers and crew before arrival. This allows border authorities to research the

passenger names in advance to aid with preventing someone from entering the country if he or she poses a threat to U.S. citizens. The submittal of passenger lists for train travel could also be used to research the names of train passengers in advance.

Secure and Smart Border Action Plan

The Secure and Smart Border Action Plan recommends that clearance of visitors and tourists be made away from the border, prior to any individual crossing the border. Its approach is to develop an integrated method to improve security and facilitate trade through away-from-the-border processing for rail, including inland pre-clearance/post-clearance, international zones, and pre-processing centers at the border.

Common Borders, Shared Destinies: Canada, the United States and Deepening Integration Report

The Common Borders, Shared Destinies: Canada, the United States and Deepening Integration Report states that virtually all travel across the border involves properly documented and eligible individuals pursuing legitimate objectives, from business to tourism. Much of the activity of immigration officers, therefore, is routine and makes a marginal contribution to safety and security. This initiative is aimed at identifying how these routine requirements can either be eliminated, be performed away from the border, or be satisfied by relying on more modern technologies. In the future, the U.S. and Canadian governments are expected to have resources targeted toward pre-clearance programs for people and goods.

■ **4.8 Funding Issues for U.S./Canadian Joint Projects**

The international nature of the BMHSR Corridor presents both challenges and opportunities. Participant stakeholders in Phase I of the Study have included: Transport Canada; City of Montreal; Province of Quebec, and the Communauté Métropolitaine de Montréal (regional planning agency for greater Montreal). Response and interest in the project has been positive, and both staff and officials have provided data input, analysis and commentary throughout the process.

Future study phases will require considerably more effort, and the U.S. participants will investigate the idea of cost sharing with the Canadian stakeholders. However, there are existing restrictions on the acceptance and use of “foreign” funds for projects receiving US federal funding. FRA has advised the Study Team that funds expended for in-kind services provided by Canadian agencies will be considered as eligible matching for future BMHSR Study phase grants. However, this funding restriction may have an impact on the available means to fund construction and operation of any HSR service. Therefore, the specific funding mechanisms and costs sharing plans for implementation of any BMHSR service will need to be evaluated in greater detail in subsequent phases of the Study.

■ 4.9 Summary of Government and Policy Issues

As with any major transportation infrastructure development project, the implementation of high-speed passenger rail service in the BMHSR Corridor will require compliance with a myriad of laws, regulations and permitting requirements. It should not be inferred that such rules are hurdles to be crossed, or objections to be overcome, but rather are safeguards to protect the public interest in safety, health and environmental quality. It is well recognized that passenger rail service provides a safe, environmentally positive means of moving people. These laws and regulations will assure that the construction and development of the project does nothing to detract from the objective of protecting the public interest in safety, health and environmental quality.

The U.S. Secretary of Transportation has recently outlined the Administration's goals with respect to national intercity passenger rail services. Essentially, the emerging policy suggests that a national system should be regionally based, be shaped by market forces, and receive support of state government to meet operating costs that exceed revenue.

Thus, the multi-state and international structure of the BMHSR Corridor is reflective of this emerging policy as it is a state-led initiative, focused on regional connectivity. The response of the Quebec government that indicates support for the continuation of the Study to determine if the BMHSR service is feasible underscores the appropriateness of evaluating the BMHSR Corridor. Chapter 4 of this study identifies the federal and state laws that are applicable to the proposed BMHSR service. Environmental considerations, followed by more specific regulatory and permit issues, and U.S. and Canadian customs and immigration regulations for border crossings, are assessed. Both U.S. and Canadian Customs and Immigration officials expressed optimism that new technology and new agreements would help to provide for safe, effective and efficient border crossing for train passengers. Therefore, the Study assumes that methods will be developed that will eliminate the need for stopping the BMHSR train at the border.

In future Study phases, site-specific issues related to environmental permitting, historic and archeological resources, will need to be addressed. International issues must also be considered in terms of both opportunity and challenge. However, the BMHSR Corridor has long served as a transportation corridor, and this current level of analysis indicates that all legal and regulatory requirements can be met.