

Session #9

Addressing Concerns About the [Major Investment Study Requirements](#)

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ABSTRACT

One of the new requirements of the Intermodal Surface Transportation Efficiency Act of 1991 is the requirement that State Departments of Transportation, Metropolitan Planning Organizations, and transit operators conduct a major investment study ([MIS](#)) in metropolitan areas where (1) a major investment is proposed, and (2) federal funds are potentially involved. On October 28, 1993, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) issued the [Statewide and Metropolitan Planning Rule](#) which sets out the criteria for where and when an MIS is required, what agencies should be involved, factors to be considered, relationship to the environmental process, and funding options for developing studies.

Although the FHWA and FTA crafted the Metropolitan Planning Rule with the intent of providing the MIS requirements in a way that emphasized flexibility and local decision-making, the federal agencies were soon faced with concerns from local and state transportation agencies about the MIS requirements.

On January 5, 1996, the FHWA and FTA authorized the FHWA and FTA Region Nine Offices (Region Nine encompasses the States of Arizona, California, Hawaii and Nevada, and the Pacific Islands) to conduct a pilot program to look at the concerns about the MIS requirements, and to make recommendations on addressing these concerns, including alternative simplified procedures for meeting the MIS requirements.

In January, 1998, the FHWA and FTA Region Nine Offices submitted to their respective Headquarters Offices, the FHWA/FTA Region Nine Major Investment Study Pilot Program Evaluation Report. The two-year MIS Pilot Program included an evaluation of seventeen areas of concern with the MIS requirements, a review of three MIS efforts that successfully used innovative approaches, and the evaluation report presents findings and recommendations to address concerns about the MIS requirements.

Addressing Concerns About the Major Investment Study Requirements

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is considered by many transportation professionals as a new way of doing business in the surface transportation world.

ISTEA introduced new approaches to solving transportation problems, and stressed the need for flexibility and consideration of multi-modal and intermodal solutions.

One of the new approaches contained in the planning requirements of ISTEA is the requirement for major investment studies (MIS). The MIS is derived from Section 3012 of the ISTEA, which states "(n)ot later than 6 months after the date of enactment of this section, the Secretary shall initiate a rulemaking proceeding to conform review requirements for transit projects under the National Environmental Policy Act (NEPA) of 1969 to comparable requirements under such Act applicable to highway projects. Nothing in this section shall be construed to affect the applicability of such Act to transit or highway projects."

Although both the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) operate under the same regulation pertaining to NEPA (23 CFR Part 771), in practice each administration carried out the environmental process in a different way. Before the ISTEA, project sponsors would often decide whether they would pursue funding from the FTA or the FHWA, and then conduct the environmental process to suit the requirements of that particular agency.

With the ISTEA stressing the flexibility of funds to meet multi-modal and intermodal needs, the FTA and the FHWA realized that it was important to influence the planning activities prior to the NEPA process in order to accomplish the requirement of Section 3012 of the ISTEA.

The MIS requirements are therefore contained in the FTA and FHWA Statewide and Metropolitan Planning Rule (23 CFR Part 450; 49 CFR Part 613). Section 450.318 of the Planning Rule sets out the criteria for where and when an MIS is required, what agencies should be involved, factors to be considered, relationship to the environmental process, and funding options for developing studies.

The development of the MIS in the planning process is meant not only to enhance the planning process, but it also allows the early consideration of the principles of NEPA to streamline the environmental/project development process.

BACKGROUND ON THE FTA/FHWA REGION NINE MIS PILOT PROGRAM

In response to concerns about the MIS requirements, on January 5, 1996, FTA and FHWA authorized the FTA and FHWA Region Nine Offices to conduct a pilot program with the State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs), and transit operators to test and evaluate alternative simplified procedures to meet the principles of the MIS requirements.

The four objectives of the MIS Pilot Program are as follows:

- (1) to test a variety of alternative ways to address MIS principles in the metropolitan transportation planning process;
- (2) to evaluate these alternatives in comparison with the approach outlined in 23 CFR 450.318;
- (3) to share the results of this evaluation with the States, MPOs, transit operators, and other participants in the metropolitan planning process; and
- (4) to use the results of this evaluation, as appropriate, as the basis for future MIS guidance, technical assistance, and possible regulatory revisions.

The outcome expected of the MIS Pilot Program is to demonstrate approaches which reduce the burden (real or otherwise) which has been attributed to the MIS requirements while satisfying the statutory requirements and principles.

MIS PILOT PROGRAM STEERING COMMITTEE

FTA and FHWA Region Nine determined that the best approach for conducting the MIS Pilot Program was to establish a true “bottoms up” approach, where local, state and other federal agencies would direct the MIS Pilot Program with FTA and FHWA facilitation. To accomplish this, FTA and FHWA recruited a 21-member MIS Pilot Program Steering Committee made up of the U.S. Environmental Protection Agency, the U.S. Corps of Engineers, State DOTs, MPOs, transit operators, congestion management agencies, and regional transportation agencies in Region Nine.

The MIS Pilot Program Steering Committee determined their role in the MIS Pilot Program to be (1) to assist the FTA and FHWA in the evaluation of the MIS Pilot Program; and (2) to establish criteria for any MIS test cases that would be evaluated as part of the MIS Pilot Program. During the two-year effort, the MIS Pilot Program Steering Committee contributed much more however, especially in providing insights on the concerns about the MIS requirements, and needed improvements as expressed in the findings and recommendations.

CONCERNS RELATED TO THE MIS REQUIREMENTS

ISTEA requires a collaborative, multi-modal [metropolitan transportation planning process](#) leading to transportation plans containing projects specific as to design concept and scope (components of the project). NEPA involves the consideration of alternative courses of action in solving transportation problems. Although the MIS is established in the metropolitan transportation planning process, it provides the linkage between the metropolitan transportation planning process and the environmental process carried out under NEPA.

This linkage is needed because in the past, the results of the metropolitan transportation process were not always used for the environmental/project development process. Although this linkage is

needed, it brings with it new institutional relationships, new partners, new technical methods, and new decision-making processes. These types of changes, especially related to a new federal requirement, have led to concerns about the MIS requirements.

The approach taken by the MIS Pilot Program Steering Committee was to list the major observed concerns about the MIS requirements, and to summarize the pros and cons of these observed concerns. The following are the seventeen concerns addressed by the MIS Pilot Program:

1. MIS is an added requirement

Pros

MIS formalizes good planning practice and assists project delivery

Cons

MIS is a new federal mandate

2. Preparation cost

Pros

MIS potentially saves cost by preventing delays later

Cons

MIS uses limited project funds

3. Role of the FHWA and FTA

Pros

FHWA/FTA do not approve the MIS (local flexibility)

Cons

FHWA/FTA do not approve the MIS (potential for federal second-guessing)

4. What is a major investment?

Pros

The flexibility to define what a major investment is as part of the collaborative process

Cons

No regulatory support for conducting or not conducting the MIS

5. "Pipeline" projects

Pros

A reexamination of projects ensured the MIS objectives were considered

Cons

Applying MIS to decisions already made on projects created delays

6. Collaboration/Interagency Coordination

Pros

The MIS requirements have brought together new or conflicting interests to address various interests

Cons

The collaborative process leads to delay and conflicts

7. Training/technical assistance

Pros

The NTI Course on MIS was used to introduce the MIS requirements needed

Cons

More training related to the technical approaches that should be used in the MIS is

8. Political decision-making

Pros

MIS provides the information to assist elected officials make or reconsider decisions

Cons

MIS is perceived to be not needed when elected officials already have made decisions

9. Modal bias

Pros

The MIS has increased the consideration of multi-modal solutions

Cons

Agencies are coming into the MIS collaborative process with modal biases

10. Relationship to other local/state feasibility/planning activities

Pros

MIS expands the scope of previous planning efforts

Cons

Prior corridor and project planning was already being done

11. Relationship with NEPA

Pros

MIS is an effective tool to address NEPA principles

Cons

NEPA does not recognize decisions made in the MIS

12. Participation by state/federal resource agencies

Pros

MIS offers resource and permitting agencies the opportunity to address environmental concerns early

Cons

Lack of participation by the resource and permitting agencies leave MIS decisions open to second guessing

13. Level of detail in an MIS

Pros

The level of detail should be determined by the MIS collaborative process

Cons

Without a prescribed level of detail, decisions will be questioned

14. Reasonable alternatives

Pros

The MIS allows for the opportunity to consider an appropriate level of information to determine what is reasonable

Cons

Agencies are mandated to look at alternatives that are not reasonable

15. Option 1 versus an Option 2 MIS

Pros

Option 1 and 2 provide the flexibility to address MIS requirements

Cons

Option 1 may not suit the NEPA requirements; Option 2 may result in supplemental NEPA documents

16. Role of modeling

Pros

Modeling allows for an analytical process that provides critical information for decision-makers

Cons

Modeling can be expensive, and the results can be questionable

17. Who makes the decision once the MIS is complete?

Pros

The results of the MIS may be incorporated into the Regional Transportation Plan by the MPO

Cons

The lack of clear approval authority can lead to questioning of decisions

The MIS Pilot Program Evaluation Report also includes observations made by the MIS Pilot Program Steering Committee about each of the concerns.

THREE TEST CASES

On May 14, 1996, the FHWA and FTA Region Nine Offices sent a letter to State DOTs, MPOs, transit operators, local transportation agencies, and federal resource and permitting agencies requesting expressions of interest in submitting an MIS to be evaluated as part of the MIS Pilot Program. The FHWA and FTA received expressions of interest to evaluate the following studies: (1) The Transportation Strategy for Metropolitan Bakersfield; (2) The North San Francisco Bay Corridor Study; and (3) The Las Vegas Resort Corridor Major Investment Study.

The purpose of evaluating the three test cases was to look at how transportation agencies had approached the development of an MIS in an innovative or unique way that demonstrates addressing some of the concerns related to the MIS requirements. For instance, the Las Vegas Resort Corridor MIS demonstrated that a number of modal options could be evaluated sufficiently in the transportation planning process to allow the consideration of one preferred alternative and a no-build alternative in the NEPA process. This demonstrates the ability of the MIS to address NEPA principles early, and allow for a more streamlined environmental and project development process later.

FINDINGS AND RECOMMENDATIONS

After a two-year effort of discussion of the major concerns with the MIS requirements and review of the three test cases, the MIS Pilot Program Steering Committee had reached some findings about the MIS requirements. The following are the findings:

1. An alternative approach for meeting the MIS requirements and addressing the concerns related to the MIS requirements is not needed. The current MIS requirements, with some revisions, provides adequate flexibility and discretion to address the concerns raised about the MIS requirements.
2. The three test cases reviewed as part of the MIS Pilot Program are examples of how concerns about the MIS requirements can be addressed. The Steering Committee believes other MIS efforts would also serve as examples of how concerns about the MIS requirements have been addressed.

3. How the MIS addresses NEPA principles, to avoid later “second guessing” of decisions made, is viewed as the most significant issue. The lack of participation for most MIS collaborative efforts by the state/federal resource and permitting agencies, as well as FHWA and FTA at times, compound the problem of addressing NEPA and other environmental requirements.

In addition, not updating the federal environmental regulation (23 CFR Part 771) to reflect the MIS requirements, or other ISTEA requirements, has also left open the connection and legal basis for connecting MIS decisions with NEPA decisions.

4. Public participation and transportation modeling are typically the higher cost components of the MIS. Although concerns have been raised about the costs related to public participation and transportation modeling, there has been acknowledgement that the success of implementing major investments can hinge on the public acceptance and analytical credibility. A positive finding is that the MIS requirements are perceived to be flexible enough to allow each metropolitan area to tailor its own public participation and analytical process.
5. The federal resource and permitting agencies still maintain a project perspective in their reviews, and have not fully accepted the MIS as a planning document that attempts to address environmental issues early. FHWA and FTA have not developed a formal agreement with the federal resource and permitting agencies to establish a role for them in the MIS process.

The FHWA and FTA wanted the MIS Pilot Program Steering Committee to make recommendations on improving the MIS requirements. The following recommendations were developed with the understanding that they did not necessarily reflect a consensus of the Steering Committee, nor the agency position of the members of the Steering Committee. The recommendations are categorized as legislative, regulatory, and guidance or training.

LEGISLATIVE RECOMMENDATIONS

1. Add language to Title 23 and the Federal Transit Act, which were amended by ISTEA, that explicitly recognizes the MIS by requiring the long range transportation plan identify major corridor investments only after conducting a major investment study, undertaken in a cooperative manner, that considers a reasonable range of alternatives against investment criteria. Placeholders would continue to be allowed in the long range transportation plan until the MIS is completed.
2. Eliminate the reference to “alternatives analysis” in Section 3 of the Federal Transit Act, and substitute the words “major investment study”.

REGULATORY RECOMMENDATIONS

1. Amend 23 CFR Part 771, Environmental Impact and Related Procedures, to add the definition of a major metropolitan transportation investment by cross referencing the new planning requirement which requires the MPO in a collaborative process to establish guidelines, including a definition of an MIS, for its area and coordination of the guidelines with adjacent metropolitan areas.
2. Amend 23 CFR 771 to allow the use of an Option 1 or Option 2 MIS (as an approach for addressing NEPA principles) and provide the criteria and process for the options necessary to support legal sufficiency.
3. Amend 23 CFR 771 to require that the FHWA and FTA request comments from the federal resource and permitting agencies at the point when an MIS will narrow down the range of alternatives and that the FHWA and FTA will advise these agencies that failure to comment at this time may foreclose consideration of alternatives at a later date.
4. Amend 23 CFR 771 to require that when there is a significant time delay between completion of an Option 1 MIS and preparation of a NEPA document, the lead agency will initiate the collaborative process as part of the scoping process under NEPA to ensure the results of the MIS are still valid.
5. Amend 23 CFR Part 450 and 49 CFR Part 613, Statewide Planning / Metropolitan Planning to require the MPO in collaboration with the State DOT, transit operators, and other appropriate agencies to establish guidelines, that at a minimum define criteria on what constitutes a major metropolitan transportation investment, identifies the participants in the collaborative process, addresses a scope adequate to meet metropolitan planning/NEPA requirements, and defines when an MIS is complete.

GUIDANCE OR TRAINING RECOMMENDATIONS

FHWA and FTA with the involvement of representatives from State DOTs, MPOs, transit operators, and other appropriate agencies should provide the following guidance/training/technical assistance:

1. Examples on the World-Wide Web of MIS case studies conducted throughout the nation.
2. Efforts that link the NEPA/Section 404 memorandum of agreement or some other similar agreement (possibly broader than NEPA/Section 404) with the collaborative effort required for each MIS.
3. In a technical advisory format, the information or level of detail appropriate in an MIS to establish a level of confidence that environmental requirements are being met. This would recognize that the MIS is less detailed than a NEPA document, but allows the MIS to contain decisions that meet the intent of NEPA.

4. Provide an MIS Help Desk, i.e., a national contact for MIS practitioners to contact with technical questions.
5. Guidance and training on techniques and criteria for analyzing and evaluating multi-modal alternatives.
6. Establish a National MIS Advisory Committee, made up of various agencies and interests throughout the country. The Committee could serve as a review group for any MIS guidance, and serve as a “sounding board” for MIS practitioners.

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REFERENCE

1. *Major Investment Study Pilot Program Evaluation Report*, Federal Transit Administration and the Federal Highway Administration Region Nine, 1998.