



SURFACE TRANSPORTATION BOARD

49 CFR Parts 1011 and 1105

[Docket No. EP 779]

Permitting Reform—Environmental Review Process

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Surface Transportation Board (Board) proposes to clarify, update, and streamline its existing environmental regulations implementing the National Environmental Policy Act (NEPA) and to add delegations of authority related to environmental review. The Board is taking this action to conform its regulations to current practices and changes in the law and to support government-wide consistency in the NEPA process to the extent practicable and in accordance with Board authorities. Among those changes are the Council on Environmental Quality's (CEQ) rescission of its NEPA implementing regulations, the 2023 and 2025 amendments to NEPA, changes to other relevant statutes, executive orders, and case law relating to the implementation of NEPA, including recent U.S. Supreme Court precedent. These revisions will also ensure the development and continuance of a sound rail transportation system and reduce regulatory barriers to entry into and exit from the rail industry. The Board asks for comments on the proposed changes.

DATES: Comments on the proposed regulations are due by April 24, 2026.

ADDRESSES: All filings must be submitted to the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. Filings will be posted to the Board's website and need not be served on other commenters or any other party to the proceeding.

FOR FURTHER INFORMATION CONTACT: Danielle Gosselin, Director of the

Office of Environmental Analysis, (202) 245-0300. For accommodations under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190, 83 Stat. 852 (1970),¹ the Board considers the reasonably foreseeable environmental effects of the major federal actions it takes, such as the authorization of a rail construction project, before making a final decision on the action. The Board’s environmental regulations at 49 CFR part 1105 enable the agency to meet its responsibilities under NEPA and related environmental laws, including, but not limited to, the National Historic Preservation Act (NHPA), the Coastal Zone Management Act (CZMA), and the Endangered Species Act (ESA).² Since the last major revision of the Board’s environmental regulations in 1991,³ substantial changes to the Board’s statutory authority have occurred, most notably with the ICC Termination Act of 1995 (ICCTA), Pub. L. 104-88, 109 Stat. 803, making many references in the Board’s current regulations outdated. Additionally, the interpretation and application of NEPA requirements have evolved, technologies have advanced, the requirements of federal statutes have changed, changes to other regulations have occurred, and the Board’s practices have changed.

First, on February 25, 2025, CEQ issued an interim final rule in response to Executive Order (E.O.) 14154, Unleashing American Energy. See Removal of Nat’l Env’t Pol’y Act Implementing Reguls., 90 FR 10610 (Feb. 25, 2025). CEQ’s interim

¹ 42 U.S.C. §§ 4321–4370m-11.

² The NHPA, 54 U.S.C. 300101–307108, requires the Board to consider the effects of its actions upon historic properties. Under the CZMA, 16 U.S.C. 1451–1458, applicants seeking a license or permit for a project that would affect land or water use in a coastal zone are required to certify compliance with the coastal zone management program of affected states. The ESA, 16 U.S.C. 1531–1544, requires agencies to consider possible impacts to federally-listed threatened and endangered species and their habitats.

³ Implementation of Env’t L., 7 I.C.C.2d 807 (1991).

final rule rescinded its NEPA implementing regulations at 40 CFR parts 1500 through 1508. The effective date of CEQ's interim final rule was April 11, 2025. Updates to the Board's current regulations are therefore necessary, as they refer to the now-rescinded CEQ regulations. See 49 CFR 1105.4, 1105.5(a).

Second, Congress amended NEPA in the Fiscal Responsibility Act of 2023 (FRA), Public Law 118-5, 137 Stat. 10, signed on June 3, 2023, in which Congress added detail and direction in Title I of NEPA regarding procedural issues that CEQ and individual acting agencies had previously addressed in their own procedures. As amended by the FRA, NEPA provides additional requirements to facilitate timely and coordinated federal reviews, including provisions clarifying lead, joint lead, and cooperating agency designations; directing agencies to develop procedures for proposal sponsors to prepare Environmental Assessments (EAs) and Environmental Impact Statements (EISs); and prescribing page limits and deadlines. NEPA § 107, 42 U.S.C. 4336a. Congress again amended NEPA in 2025 through section 60026 of the One Big Beautiful Bill Act, Public Law 119-21, 139 Stat. 157, signed on July 4, 2025, adding section 112 of NEPA, entitled, "Project Sponsor Opt-in Fees for Environmental Reviews." This provision allows project sponsors to pay a fee to obtain shortened NEPA review deadlines. The Board recognizes the need to update its regulations considering these substantial legislative changes.

Third, the U.S. Supreme Court recently issued a landmark decision in Seven County Infrastructure Coalition v. Eagle County, Colo., 605 U.S. 168 (2025), which affirmed that agencies have broad discretion when conducting NEPA reviews, including with regard to the scope of the analysis in those reviews and the usefulness of those analyses to the decisionmaker in light of the agency's authority. The Board has incorporated this case's holdings into this proposed rule, which would govern the Board's future NEPA reviews and consideration of environmental impacts.

In addition, pursuant to EO 14154, CEQ issued NEPA implementation guidance to federal agencies.⁴ The CEQ guidance includes a template for agency procedures to implement NEPA, which CEQ states is “intended to provide clarity as to NEPA’s requirements and promote consistency as to NEPA’s implementation.” To support such consistency, the Board has followed the agency procedures template to the extent practicable and in accordance with the Board’s governing authorities and where doing so would not hinder the rail transportation policy to ensure the development and continuance of a sound rail transportation system. 49 U.S.C. 10101(4).

Accordingly, the Board is proposing to revise its environmental regulations to reflect current practices, recent court decisions, and the intervening statutory and regulatory changes.⁵ The Board finds that the proposed changes will improve the efficiency and quality of the Board’s environmental reviews and make it easier for applicants to comply with the Board’s environmental regulations. These revisions will also ensure the development and continuance of a sound rail transportation system and reduce regulatory barriers to entry into and exit from the rail industry in accord with 49 U.S.C. 10101.

PRIMARY PROPOSED UPDATES AND REVISIONS

The proposed regulations, which would govern the environmental review process in Board proceedings, are set forth below. The key updates and proposed revisions include:

⁴ Memorandum for Heads of Federal Departments and Agencies: Implementation of the National Environmental Policy Act (Sept. 29, 2025) (available at <https://nepa.gov>). See 90 FR 47734 (Oct. 2, 2025).

⁵ Other parts of the Board’s regulations include references to the Board’s environmental regulations. See, e.g., 49 CFR 1106.4(b), 1150.1(b), 1150.7, 1150.36, 1152.20(c), 1152.21(c), 1152.22, 1152.50(d)(2), 1155.20(c), 1155.23(b), 1155.24, Appendix A to Part 1155. The Board intends to issue technical revisions to those regulations as necessary to make them consistent with any revisions to its environmental regulations when it finalizes this rulemaking.

- Moving the delegation of authority from the Board to the Director of the Office of Environmental Analysis (OEA) for consistency with other Board regulations and revising those delegations to improve and streamline environmental reviews and the decision making process;
- Updating and clarifying the list of actions that do not require environmental review under NEPA;
- Clarifying the Board's process for determining the appropriate level of NEPA review;
- Proposing new "categorical exclusions," or categories of actions that the Board has determined normally would not significantly affect the quality of the environment and, therefore, do not require the preparation of an EA or EIS, including categorically excluding abandonments and discontinuances from further environmental review where they would not involve salvage or substantial traffic diversions;
- Clarifying the Board's process for establishing, revising, adopting, removing, and applying categorical exclusions;
- Updating the process for preparing EAs and EISs to conform to current agency practice and to reflect statutory changes to NEPA, including providing a more detailed description of the scoping and NOI process, clarifying when OEA may publish draft or preliminary documents, implementing deadlines and page limits, and updating the list of agencies and entities that OEA consults with during the environmental review process for abandonments and discontinuances;
- Adding processes for designating and coordinating among lead, cooperating, and participating agencies, consistent with NEPA;
- Limiting the use of applicant-prepared environmental reports to abandonments and discontinuances, modifying the information required for environmental

reports to facilitate and expedite review, and requiring applicants who file environmental reports to begin agency consultations earlier to reduce unnecessary delays;

- Creating procedures for applicant-prepared EAs and EISs;
- Creating procedures for environmental review in emergency situations; and
- Incorporating procedures for environmental reviews related to the issuance of land-use-exemption permits for solid waste rail transfer facilities under the Clean Railroads Act (CRA), 49 U.S.C. 10501(c)(2)(B) and 10908–10910.

A section-by-section discussion of the proposed changes is detailed below. There are numerous minor changes to the regulations that are meant to clarify the process and make it easier to navigate for stakeholders and other interested entities but are not substantial enough to warrant discussion.

Part 1011 – Board Organization and Delegations of Authority

§ 1011.2 – The Board; § 1011.7 – Delegations of authority by the Board to specific offices of the Board.

The Board proposes to update existing delegations and delegate additional authority to the Director of the OEA (Director) to streamline environmental and historic reviews and the Board’s decision-making process in such matters. The Board also proposes to move the existing delegations to the Director in 49 CFR 1105.2 to the Board’s general delegations in 49 CFR part 1011. Moving the delegations provides consistency with other agency delegations. The move also clarifies the appeal process applicable to Director decisions.

Some of the proposed delegations merely clarify the Director’s existing authority under the current regulations (e.g., to direct the Board’s implementation of NEPA and NHPA, to prepare documents under these regulations and provide interpretation of the Board’s NEPA and NHPA processes, to reject applicant-prepared environmental reports

not prepared in compliance with the environmental regulations, and to sign binding agreements pursuant to Section 106 of the NHPA). Consistent with the new proposed regulation regarding applicant-prepared EAs and EISs, the Director's delegated authority to reject applicant-prepared materials will include the authority to reject EAs and EISs as well. Two responsibilities that are currently delegated to the Chief Counsel are proposed to be re-delegated to the Director: to determine whether to impose, modify, or remove environmental and historic conditions and, in abandonment notice of exemption proceedings, to issue a Finding of No Significant Impact (FONSI).⁶ Under the current process, the Chief Counsel's decisions simply implement OEA's recommendations. Therefore, these re-delegations will cut out an unnecessary step in the decision-making process and expedite the processing of these proceedings.

Additionally, with regard to historic reviews, the Board proposes to delegate authority to the Director to act as the agency official for purposes of the NHPA in determining whether a proposed federal action is an undertaking and, if so, whether it is a type of activity that has the potential to cause effects on historic properties; and to determine the applicability of section 110(k) of the NHPA.

Part 1105 – Procedures for Implementation of Environmental Laws

§ 1105.1 – Purpose; § 1105.2 – Responsibility for Administration of These Rules;

§ 1105.3 – Information and Assistance

The Board proposes minor changes to these sections that do not warrant discussion.

§ 1105.4 – Definitions

The Board proposes to add, update, and remove definitions to reflect current statutes (such as the Clean Air Act, NEPA, and the CRA), regulations, and judicial

⁶ Accordingly, the Board also proposes to amend 49 CFR 1011.7(a)(2) to remove these delegations.

precedent, and to align with the proposed procedures outlined in the proposed regulations.

§ 1105.5 – Determining When NEPA Applies

The primary proposed revisions to this section identify categories of actions that are not subject to NEPA review. References to the NHPA have been removed from this section because it only addresses when NEPA applies.

In paragraph (a), the Board proposes to delete obsolete references to the rescinded CEQ regulations and to clarify when NEPA does not apply to a proposed Board action.

In paragraph (b), the Board proposes to provide a non-exhaustive list of Board actions that are not subject to NEPA because they do not meet the definition of a “major federal action.” To conform with changes in the law and promote efficiency, this list removes some of the actions not subject to NEPA from the current regulation and adds others.⁷

With some clarifying edits, the Board retains two types of actions that are not subject to NEPA under the current regulations, a determination that a proposal or action is not within the Board’s jurisdiction is retained (proposed 49 CFR 1105.5(b)(1)), as well as railbanking/interim trail use arrangements under the National Trails System Act, 16 U.S.C. 1247(d) (proposed 49 CFR 1105.5(b)(3)).

The Board has received inquiries in the past regarding whether environmental review is required for certain types of actions that do not require approval from the Board, such as construction of ancillary track excepted from Board licensing under 49 U.S.C. 10906; rail line improvements, routine maintenance, operational changes; haulage arrangements; improvements or traffic changes to existing rail lines; construction of

⁷ See, e.g., *Padgett v. STB*, 804 F.3d 103, 110 (1st Cir. 2015) (holding that the Board “did not provide federal funds, approve or license the [proposed action], or otherwise manifest ‘indicia of control’ over [the applicant] that would be sufficient to establish a ‘major Federal action’”).

multiple tracks on an existing line; and track relocations. To clear any confusion, the Board proposes to add a new paragraph (proposed 49 CFR 1105.5(b)(2)) to describe types of activities that are not subject to the Board's licensing authority and, therefore, are also not subject to environmental review. The Board also proposes to add orders that are purely procedural to those actions that are not major federal actions (proposed 49 CFR 1105.5(b)(7)).

The Board has further determined that certain actions that are categorically excluded from further environmental review under our current regulations are more appropriately categorized as not major federal actions and proposes to move those under these regulations. The Board proposes to move declaratory orders and interpretations or clarifications of operating authority from categorical exclusions (current 49 CFR 1105.6(c)(1)(iii)) to actions that are not major federal actions (proposed 49 CFR 1105.5(b)(5)), pursuant to the holding and reasoning in Padgett. Based on the reasoning in Padgett and other relevant caselaw, the Board also proposes to move substitution of applicant and name changes from categorical exclusions (current 49 CFR 1105.6(c)(1)(iii)) to actions that are not major federal actions (proposed 49 CFR 1105.5(b)(6)).

Further, the Board proposes moving termination of freight service under modified certificates from categorical exclusions (current 49 CFR 1105.6(c)(4)) and adding initiation of freight service under modified certificates to those actions that are not major federal actions (proposed 49 CFR 1105.5(b)(8)) because the Board's action in these proceedings is essentially ministerial. See 49 CFR 1150.23, 1150.24 (permitting operations to "commence immediately upon the filing" of a notice for a certificate of public convenience and necessity and to cease service 'upon 60 days' notice of "intent to terminate the service"). Finally, the proposed regulation removes "NERSA" abandonments (current 49 CFR 1105.5(c)(1)), as these are no longer being processed by

the Board,⁸ and moves financial assistance arrangements under 49 U.S.C. 10904 (current 49 CFR 1105.5(c)(3)) to the categorical exclusion category (proposed 49 CFR 1105.7(a)(6)), based on changes in Board regulations, which have given the Board discretion to reject offers of financial assistance.⁹

§ 1105.6 – Determining the Appropriate Level of NEPA Review

Promoting government-wide consistency, the Board proposes to add this new section detailing OEA’s process for determining the appropriate level of NEPA review for each proposed action. The Board proposes to move the lists of proposed actions that are categorically excluded from further environmental review, or for which an EA or EIS will normally be prepared, from the current 49 CFR 1105.6, “Classification of actions,” to specific new sections addressing categorical exclusions, EAs, and EISs, as explained further below.

The proposed regulations also delegate authority to the Director of OEA to reclassify or modify the environmental review requirements for any proceeding. This provides the needed flexibility to address the different environmental effects implicated in a particular proceeding, and it allows the Director, when appropriate, to facilitate environmental reviews for construction projects and eliminate unnecessary delays while meeting the requirements of NEPA.

§ 1105.7 – Categorical Exclusions

This proposed new section updates the Board’s list of categorical exclusions and, promoting government-wide consistency, establishes the process that the Board will use in establishing, revising, adopting, removing, and applying categorical exclusions, as well as relying on other agencies’ categorical exclusion determinations.

⁸ The Northeast Rail Services Act of 1981 provided a window (ending in 1985) during which Consolidated Rail Corporation could qualify for streamlined abandonment procedures for its lines.

⁹ See Offers of Fin. Assistance, EP 729 (STB served June 29, 2017).

Types of Actions. The Board proposes to update and add several categories to its existing categorical exclusions (See “Substantiation Record of Proposed New and Revised Categorical Exclusions under NEPA,” publicly available at <https://www.stb.gov/resources/environmental>).¹⁰ These proposed changes would establish five new categorical exclusions, modify six existing categorical exclusions, and remove three current categorical exclusions.

These regulations propose to add one new categorical exclusion for an action that has been added to the Board’s jurisdiction since the passage of the 1991 regulations: proceedings related to use of rail carriers’ facilities and services by the National Railroad Passenger Corporation (Amtrak) under 49 U.S.C. 24308.¹¹ The Board finds that this action is unlikely to have significant environmental effects unless it results in changes in operations that exceed the Board’s environmental thresholds.

The Board also proposes to revise the existing categorical exclusion at current 49 CFR 1105.6(c)(2) to include adjudications regarding “practices and service.” (See proposed 49 CFR 1105.7(a)(2)). Adjudications regarding practices include claims relating to unfair and discriminatory practices. These actions do not normally have a substantial impact on future traffic volumes, and therefore do not normally result in significant environmental impacts. As to adjudications regarding service, rail operators on the lines within the interstate rail system have a common carrier obligation under 49 U.S.C. 11101, which means that rail carriers providing rail service subject to the Board’s jurisdiction must provide service upon reasonable request. Adjudications involving

¹⁰ A copy of the “Substantiation Record of Proposed New and Revised Categorical Exclusions under NEPA” will also be attached as Appendix B to the version of this decision that will be posted on the Board’s website at www.stb.gov.

¹¹ Section 24308 provides that, if a freight carrier and Amtrak cannot agree to terms for sharing facilities or providing services to Amtrak, the Board may, when appropriate, resolve the dispute and set terms and compensation for use and services. It further provides that the Board may order the freight carrier to provide or allow for the operation of additional Amtrak trains over such facilities.

service can involve a determination of whether a carrier holds the obligation or whether a carrier has met that obligation. These actions often involve economic damages for past actions and do not normally have a substantial impact on future traffic volumes.

Therefore, the Board finds that these actions do not normally cause environmental impacts requiring NEPA review.

In proposed 49 CFR 1105.7(a)(7), the Board proposes a new categorical exclusion to exclude reciprocal switching agreements from further environmental review. Prescription of agreements under those regulations are not expected to result in environmental effects and have previously been found “closely analogous” to the common use of rail terminals, which is categorically excluded under our current regulations.¹²

Additionally, the Board proposes new categorical exclusions for some proposals that would typically require an EA under our current regulations: the construction of connecting track and certain types of abandonments and discontinuances. First, the Board proposes to categorically exclude from further environmental review construction of connecting track within an existing right-of-way or on land owned by the connecting railroads or the applicant. In the Board’s experience, such projects rarely have environmental impacts due to their locations on already disturbed, existing rights-of-way or in pre-existing industrial areas.

Second, the Board proposes to expand the current categorical exclusions regarding discontinuances and to add certain abandonments. The Board’s proposed regulations maintain the current categorical exclusion for discontinuances of trackage rights where the affected line will continue to be operated and add, for clarity, the phrase “within Board jurisdiction.” (See current 49 CFR 1105.6(c)(5) and proposed 49 CFR

¹² Cape Cod & Hyannis R.R.—Exemption from 49 U.S.C. Subtitle IV, FD 31229, slip op. at 2 (ICC served Mar. 25, 1988).

1105.7(a)(4)).

The Board also proposes to add a new categorical exclusion at proposed 49 CFR 1105.7(a)(1)(ii) for abandonments and discontinuances without traffic diversions that exceed the Board's environmental thresholds and, in the case of abandonments, where salvage will not occur prior to the consummation of abandonment authority or entry into an interim trail use agreement. In the Board's experience, salvage and traffic diversions are the only potentially reasonably foreseeable activities caused by abandonments (or, in the case of traffic diversions, discontinuances) that have the potential to affect the environment.¹³

When the current environmental regulations were implemented in 1991, the abandonment of rail lines with existing traffic was more common. In contrast, most of the abandonments the Board authorizes now are on rail lines that qualify for the class exemption at 49 CFR 1152.50. Such lines have not been used to support local service (i.e., rail movements originating or terminating on the line) for two years, and often have not been used to support overhead traffic either, which means that substantial traffic diversions from abandonments are rare today. To account for the rare case in which an

¹³ The Board does not expressly authorize such diversions, nor does it expressly authorize salvage except when issuing a certificate or notice of interim trail use or abandonment pursuant to 49 CFR 1152.29. And the Board generally does not regulate a railroad's routing decisions or decisions it makes regarding disposition of rail property. See, e.g., Norfolk S. Ry.—Aban. Exemption—in the City of Greensboro, N.C., AB 290 (Sub-No. 404X), slip op. at 5 (STB served June 28, 2023) (“[R]ail carriers often sell, lease, or transfer parts of their rights-of-way under state law for other purposes, such as utility lines, and they are not required to seek Board authority to do so.”); Protect Sudbury Inc.—Pet. for Declaratory Ord., FD 36493, slip op. at 5 (STB served Feb. 2, 2022) (recognizing that a carrier may “even remove track on a line over which it has a common carrier obligation, as long as no shipper seeks service and the carrier is prepared to restore the track should it receive a reasonable request for service”). The Board considers potential environmental impacts from diversions (in the case of discontinuance and abandonment) and salvage (in the case of abandonment) because they may be reasonably foreseeable consequences of those agency decisions. See also Iowa S. R.R.—Exemption—Aban. in Pottawattamie, Mills, Fremont, & Page Cntys., Iowa, 5 I.C.C.2d 496, 501 (1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

abandonment may result in traffic diversions that could cause environmental effects, the categorical exclusion would not apply to abandonments or discontinuances when those diversions would exceed the Board's environmental thresholds.

With regard to salvage, the proposed regulations categorically exclude abandonments from further environmental review unless salvage would occur prior to consummation of the abandonment or entry into an interim trail use agreement. This limitation is proposed because rail property is privately owned, and the Board has regulatory authority over it only while it is part of the interstate rail system and subject to the Board's jurisdiction. Once a railroad consummates the abandonment, the Board has no jurisdiction over the rail line or any control over disposition of the rail property.¹⁴ See also Seven Cnty., 605 U.S. at 186-188 (holding that NEPA does not require that agencies evaluate potential environmental effects arising from "future" projects, "particularly" those over which the Board does not "exercise regulatory authority"). Moreover, it is not always the case that salvage occurs post-abandonment as the track, ties, and other rail property may be used to support non-jurisdictional rail activities, such as intrastate passenger excursion service and public transportation provided by a local government authority. See, e.g., 49 U.S.C. 10501(c)(2); Denver & Rio Grande Ry. Hist. Found.—Pet. for Declaratory Ord., FD 35496, slip op. 5 (STB served Mar. 24, 2015).

Further, as explained when promulgating the current version of the Board's environmental regulations, the Board "do[es] not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a

¹⁴ Preseault v. ICC, 494 U.S. 1, 5 n.3 (1990); Hayfield N. R.R. v. Chi. & N.W. Transp., 467 U.S. 622, 632 (1984) (explaining that when a rail line is abandoned for purposes of the STB's regulatory jurisdiction, the underlying right-of-way becomes "ordinary real property," and its disposition becomes subject to the application of state property law).

condition to obtaining abandonment or acquisition authority.”¹⁵ Without such authority, there is no reason for the Board to consider the potential effects arising from salvage that takes place post-abandonment.¹⁶ See Seven Cnty., 605 U.S. at 183 (“doubly underscor[ing]” that inherent in NEPA is a rule of reason that ensures that agencies determine the extent of environmental review “based on the usefulness of any new potential information to the decision making process”).

The limitation of environmental review when there is salvage prior to entry into an interim trail use agreement is also appropriate because once the rail carrier has entered into an interim trail use agreement, the Board has a largely ministerial role under the Nation Trails Systems Act (Trails Act) 16 U.S.C. 1247(d).¹⁷ For that reason, under current agency practice, the Board does not require compliance with environmental and historic conditions with “respect to any portion of a line covered by the interim trail use agreement for the duration of the agreement.” See, e.g., E. Idaho R.R.—Aban.

¹⁵ Implementation of Env’t Laws, 7 I.C.C.2d at 828-29; see also id. at 829 (“We lack the statutory power to require a railroad to sell a right-of-way for any purpose other than continued rail service under 49 U.S.C. [] 10905, 10910 or (in limited circumstances) 11343.”). The Board subsequently issued a non-binding policy statement that included a statement suggesting that the Board retained certain post-abandonment statutory authority. Consummation of Rail Line Abans. that are Subject to Historic Pres. & Other Env’t Conditions, EP 678, slip op. at 5 (STB served April 23, 2008) (stating that an environmental condition on salvage “remains in place as a condition that attaches to the property and applies to salvage activities whenever they occur” and that “any successor in interest [must] agree to the condition by referencing the condition in the purchase contract”). For the reasons stated above, the Board clarifies that such language in the 2008 policy statement is rescinded and confirms here that, because it lacks any authority over rail property that is no longer subject to Board jurisdiction, it cannot impose conditions that attach to the property following consummation.

¹⁶ In past proceedings, the Board has imposed conditions that were not limited to pre-consummation applicability, many of which related to consultation with third parties. See, e.g., Alcoa Energy Services, Inc.—Aban. Exemption—in Milam Cnty., Tex., AB 1291X (STB served March 9, 2020) (condition to notify the National Geodetic Survey 90 days prior to any salvage activities). In this rulemaking, the Board clarifies that it will be applying that limitation going forward and, above, explains the legal basis for this clarification.

¹⁷ See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001); Goos v. ICC, 911 F.2d at 1295.

Exemption—in Bonneville Cnty., Idaho, AB 1252 (Sub-No. 1X), slip op. at 5 n.3 (STB served June 5, 2020); Final Env't. Assessment, E. Idaho R.R.—Aban. Exemption—in Bonneville Cnty., Idaho, AB 1252 (Sub-No. 1X), slip op. at 3 (STB served June 2, 2020) (explaining that such compliance is not required because interim trail use under the Trails Act is not a “federal action that is subject to environmental review under NEPA”).

In most discontinuances, salvage is not reasonably foreseeable because the line remains within the Board’s jurisdiction and available for common carrier rail service.¹⁸ But there are some cases where discontinuance terminates the Board’s jurisdiction: for example where a railroad has received authority to operate over an already-abandoned line.¹⁹ But in those cases, the Board has no control over the rail property post-discontinuance, or authority to impose salvage-related environmental conditions, and thus environmental review is not required under NEPA.

As noted above, the Board proposes to move offers of financial assistance from the category of actions that are not a major federal action (current 49 CFR 1105.5(c)(3)) to the categorical exclusion category (proposed 49 CFR 1105.7(a)(6)), and to move declaratory orders, interpretations or clarifications of operating authority, substitution of an applicant or name changes, and termination of freight service under modified certificates from the categorical exclusion category (current 49 CFR 1105.6(c)(1)(iii), (c)(4)) to the category of actions that are not major federal actions (proposed 49 CFR 1105.5(b)(5), (6), (8)).

¹⁸ The Board notes that the current regulations require an EA for discontinuances, however, in discontinuances where the rail line has not been authorized for abandonment, the Board typically does not prepare an EA, because any such environmental review would occur when abandonment authority is sought.

¹⁹ Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 6, 2020) (citing Wisc. Cent. Ltd. v. STB, 112 F.3d 881, 890 (7th Cir. 1997)); see also Midcoast Rail Serv. Inc.—Discontinuance of Serv. Exemption—in Cumberland, Knox, Lincoln, Sagadahoc Cntys., Me., AB 1341X, slip op. at 4-5 (STB served Dec. 3, 2024).

The proposed regulations also remove the categorical exclusion for determinations of the fact of competition (which applied to water carriers) because that type of determination is no longer within the Board's jurisdiction. See ICCTA, Pub. L. 104-88 (1995) (removing reference to "determinations of the fact of competition" from Board's authorizing legislation).

1105.8 - Environmental Assessments

The Board proposes to add a new section outlining the EA process. This section adds the statutory standard for preparing an EA, lists the types of actions for which an EA will typically be prepared, incorporates amendments to NEPA, and outlines the different processes for issuing EAs in abandonments or discontinuances, and all other cases. This reflects the Board's current practice in which OEA typically prepares the EA in abandonment and/or discontinuance cases, while in other cases, the EA is typically prepared by a third-party contractor under OEA's direction.

Types of Actions. The current regulations list actions that will require an EA if the thresholds in current 49 CFR 1105.16(d) and (e) are exceeded.²⁰ The Board proposes adding an explicit reference to "feeder line sales" (which were already included in the provision under 49 U.S.C. 10907) to the list of actions in 49 CFR 1105.8(b)(1) requiring an EA when the action would exceed the thresholds or would be part of an action that would require environmental documentation (such as a new rail construction). The current regulations provide for preparation of an EA in all abandonment and discontinuances under 49 U.S.C. 10903, and the proposed regulations would limit

²⁰ The Board's environmental regulations use traffic thresholds to determine whether operational changes related to certain types of actions that require Board authorization have the potential to result in significant environmental effects. The general thresholds for assessing environmental effects from increased traffic are an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains per day. The Board's thresholds for assessing environmental impacts from increased rail traffic have been moved but remain unchanged from the current regulations.

preparation of an EA only to those resulting in diversion of traffic to other rail lines that would exceed the thresholds, that are not part of another action that would require environmental documentation, or, in the case of an abandonment, if salvage would occur prior to consummation or entry into an interim trail use agreement, as explained in more detail above. Additionally, the Board proposes to delete references to NERSA abandonments as they are no longer reviewed by the Board.²¹ Other actions that the Board proposes to remove from actions requiring an EA have been moved to categorical exclusions for the reasons explained above.

EA Process in Cases Other than Abandonments and Discontinuances. With respect to cases other than abandonments and discontinuances, the Board proposes to update the EA process to reflect updates to NEPA.²² The proposed EA process will be similar to that outlined in more detail below for an EIS, but an EA is shorter and subject to shorter deadlines. The section requires an applicant to provide written notice of its proposal 45 days prior to seeking authority from the Board to reduce waiver requests and make the EA and EIS processes consistent and proposes to add procedures for pre-filing notice and consultation with OEA in the event an applicant elects to proceed under section 112 of NEPA (42 U.S.C. 4336f) in a proceeding. It also explains that the Director of OEA will determine whether to prepare an EA and includes a description of the scoping process, as well as outlines agencies that OEA may consult during the process of preparing an EA.

The section also adds a new paragraph allowing for the issuance of a Notice of Intent (NOI) after OEA determines that preparation of an EA is appropriate. In contrast to the EIS process, which is described in more detail below, NEPA does not require the

²¹ Discontinuance of service over rail lines that were abandoned under NERSA will be treated as any other discontinuance under these rules.

²² See FRA, Pub. L. 118-5, 137 Stat. 10.

issuance of an NOI or a public comment period for EAs. Therefore, the Board proposes to issue an NOI where appropriate when preparing an EA. The section also outlines the content that an EA will generally contain and incorporates the deadlines and page limits from recent amendments to NEPA.

Under the proposed EA process, OEA will prepare, and the Board generally will publish, one EA document (instead of a draft followed by a final). Notably the Board's current regulations for EAs do not require a draft EA. In general, however, the Board's practice has been to prepare and issue a draft EA. The Board intends to modify its practice and issue a single EA consistent with the proposed EIS process and the language in NEPA, as described in more detail below in the EIS section. Nevertheless, the revisions reflect that during the process of preparing an EA, OEA may publish draft or preliminary documents when, in its judgment, doing so is needed to fulfill its responsibilities under NEPA and these regulations.

EA Process in Abandonments and Discontinuances. The proposed regulation outlines how OEA will prepare an EA in abandonment and/or discontinuance cases, in line with OEA's current process. The Board also proposes to update the list of agencies and entities that are consulted when preparing an abandonment or discontinuance EA. Under the current regulations, this list is contained in 49 CFR 1105.7(b). As described below in detailing the proposed revisions to the Board's environmental reports regulation, consultation with these agencies and entities is necessary for OEA to meet the short regulatory deadlines for environmental reviews in abandonment and discontinuance cases. The Board proposes to add the National Marine Fisheries Service, the U.S. Coast Guard, and state departments of transportation, and to remove state clearinghouses as obsolete.

§ 1105.9 – Environmental Impact Statements

The Board proposes to add a new section outlining the EIS process. The new

section primarily codifies existing Board practices and incorporates the amendments to NEPA, as well as lists the types of actions for which the Board typically prepares an EIS.

Types of Actions. The Board will continue to require preparation of an EIS for new rail line construction proposals but will more clearly limit it to those that are not categorically excluded or have not been reclassified pursuant to a determination by the Director. In addition, the Board proposes to require preparation of an EIS for a solid waste rail transfer facility land-use-exemption under the CRA. The CRA limited the Board's authority with regard to solid waste rail transfer facilities to the issuance of land-use-exemption permits, a license that preempts a facility from compliance with state laws, regulations, orders, and other requirements affecting the siting of the facility.²³ Because solid waste rail transfer facilities have the potential for significant environmental impacts, the Board has concluded that an EIS should normally be prepared for each land-use-exemption-permit application.²⁴

EIS Process. In actions that require or contemplate the preparation of an EIS, the Board proposes to reduce the six-month prefiling notice requirement in current 49 CFR 1105.10(a)(1) to 45 days. Because applicants in these cases often have not finalized the details of their proposals six months in advance, OEA receives a large number of requests for waiver of the prefiling notice, and the Board believes shortening this notice requirement to 45 days is reasonable and would streamline the existing EIS process by reducing the number of waiver requests.²⁵ The Board also proposes to add procedures for

²³ The Board, however, has the authority to require, as a condition of the land-use exemption permit, compliance with state laws, regulations, orders, and other requirements that affect the siting of a facility. 49 U.S.C. 10909(f).

²⁴ See Solid Waste Rail Transfer Facilities, EP 684 (STB served Mar. 24, 2011).

²⁵ While the proposed regulations do not specifically require it, the Board strongly encourages applicants to file their petition or application with the Board no later than 45 days after filing their prefiling notice with OEA to prevent unnecessary delay. OEA has found that it usually needs the detailed information concerning rail operations

prefiling notice and consultation with OEA in the event an applicant elects to proceed under section 112 of NEPA (42 U.S.C. 4336f) in a proceeding.

Additionally, the Board proposes to add the statutory standard for preparing an EIS, provide a more detailed description of the scoping process, outline the agencies that OEA is required to obtain comments from pursuant to section 102 of NEPA, provide that the Director will determine whether to prepare an EIS and notify the applicant in writing of the determination, outline the content that an EIS will generally contain, and incorporate the deadlines and page limits from amendments to NEPA.²⁶ The Board also proposes to add references to encourage e-filing of comments and to note that an EA or EIS is publicly available on the Board's website, and to delete as unnecessary the requirement in our current regulations that copies of environmental communications must be sent to the applicant.

The Board further proposes to amend its current EIS process to eliminate the preparation and publication of a draft EIS, which is not statutorily required by NEPA. Instead, OEA will prepare, and the Board generally will publish, one EIS document (instead of a draft followed by a final). Nevertheless, the revisions reflect that during the process of preparing an EIS, OEA may publish draft or preliminary documents when, in its judgment, doing so is needed to fulfill its responsibilities under NEPA and these regulations.

Consistent with NEPA, a public comment period will be provided after the Board issues the Notice of Intent (NOI) to prepare an EIS. The NOI will be more fulsome than under the current process and will include a preliminary description of the proposed action and alternatives, a summary of environmental effects, and other pertinent

in the petition or application to be able to move forward expeditiously with the environmental review process.

²⁶ See FRA, Pub. L. 118-5, 137 Stat. 10.

information. The NOI will serve as an opportunity for interested members of the public to provide substantive comments early in the environmental review, and the EIS will be informed by any public comments received on the NOI. The Board proposes to remove the requirement to issue a Final Scope of Study after comments are received on the NOI. The Board has determined that, consistent with the language of NEPA and other agencies' practices, a Final Scope of Study is not necessary to address public comments on the NOI (which is the Board's current practice), as those will be addressed, as appropriate, in the EIS. Overall, these changes will streamline and expedite the environmental review process, while still maintaining a meaningful opportunity for public comment.

The current regulations, at 49 CFR 1105.10(a)(4), provide that a draft EIS will be made available to the public prior to any oral hearing held on the transportation merits of a proposal. The Board proposes removing this provision because the proposed regulations will eliminate the draft EIS requirement, and a hearing on the transportation merits is not part of the NEPA process. Moreover, there is ample opportunity for public comment and participation in the EIS process (both written and orally at public meetings). The current regulations also provide for a 45-day comment period following service of the draft EIS. Because the proposed regulations do not include a requirement for a draft EIS, this comment period is extraneous, and the Board proposes to remove it.

§ 1105.10 – Supplements to Environmental Assessments and Environmental Impact Statements

The Board proposes to provide more detail on the process for determining when a supplemental EA or EIS will be prepared. These additions are consistent with the Board's current process and are added to provide clarity.

§ 1105.11 – Lead, Cooperating, and Participating Agencies

The Board proposes to add a section with provisions addressing lead, cooperating,

and participating agencies.

§ 1105.12 – Third-Party Contractors

The proposed regulations move the paragraphs addressing third-party contractors in the current regulations (49 CFR 1105.4(j) and 1105.10(d)) to a new section and clarify the process for using them. The only substantive proposed change is to require the contractor to execute a disclosure statement certifying that it has no financial or other interest in the outcome of the proposal.

§ 1105.13 – Environmental Reports for Abandonments and Discontinuances

Under the current regulations, before seeking Board licensing authority for proposals that require the preparation of an EA or EIS, applicants must consult with appropriate agencies and prepare and submit environmental and historic reports under 49 CFR 1105.7 and 1105.8.²⁷ The Board proposes to limit the use of environmental reports only to abandonment and discontinuance proposals that are not categorically excluded from further environmental review to align the Board's regulations with its current practice and lessen the burden on stakeholders by requiring them only in these circumstances. As previously noted, in abandonments and discontinuances, OEA (rather than a third-party contractor) prepares the EA under short regulatory deadlines based on information provided by the applicant. The information in these reports assists OEA in evaluating potential environmental effects and provides information needed for the public and other agencies to comment on the proposal.

Consultations. Early consultation with federal, state and local agencies, as well as affected communities, is essential to conducting meaningful environmental review, and the proposed regulations continue the Board's existing practice of requiring applicants to

²⁷ In these proposed revisions, the Board retains its current regulation regarding the historic review and reporting process. Proposed 49 CFR 1105.14 retains all the language that is in current 49 CFR 1105.8.

send environmental reports to consulting agencies for comment prior to filing them with the Board. As stated above, proposed 49 CFR 1105.8(d)(1) updates the list of agencies and entities with which applicants must consult in preparing their environmental reports. The Board also proposes to extend the timeframe for agency consultations from 20 days prior to filing the environmental report to 45 days prior. Consulting agencies frequently state that they lack enough time to review the reports, and this change would give consulting agencies sufficient review time to provide comments without unduly delaying the time when applicants may seek Board authority.²⁸

Further, to ensure that applicants submit complete environmental reports with the current information needed for OEA to properly assess the reports, proposed paragraphs (c) and (f) allow the Director to reject an environmental report if it does not provide the appropriate level of information for OEA to conduct the review or if the environmental report includes outdated agency responses.²⁹

Content. The proposed regulations require that environmental reports include the content described in 49 CFR 1105.16. As explained below in more detail, the Board has updated the content that will be contained in environmental reports, EAs, and EISs. Most of the information should be readily available to applicants or can be easily located online.³⁰ By requiring accurate and limited additional information in environmental

²⁸ In the Board's experience, agencies often submit information late, after the current 20-day timeframe, or sometimes not at all, which delays the Board's environmental review process.

²⁹ Responses or letters that predate the applicant's filing by more than two years.

³⁰ For example, when assessing impacts to biological resources, we recommend that applicants use the U.S. Fish and Wildlife Service's online system, IPaC (Information, Planning, and Conservation System), which is available at <http://ecos.fws.gov/ipac/>. IPaC provides information about sensitive resources within the vicinity of a proposed project and can facilitate applicants' ability to report whether any federally threatened or endangered species, designated critical habitat, or other natural resources of concern may be affected by a proposal. Use of this online system should result in more accurate and complete environmental reports, which would reduce the time and effort needed to secure responses from the U.S. Fish and Wildlife Service in individual cases.

reports, consulting agencies should have a better understanding of the nature of proposed abandonments and would be more likely to provide useful input earlier in the consultation process. As a result, OEA would be better able to evaluate the proposal and its potential environmental impacts in the short regulatory time period. Moreover, with improved environmental reports and more timely and constructive feedback from agencies, the number of consultation conditions should be significantly reduced because the Board would not need to impose conditions based on lack of information.

§ 1105.15 – Applicant-Prepared Environmental Assessments and Environmental Impact Statements

The Board proposes to add a section establishing a process by which an applicant can request and, if granted permission, prepare an EA or EIS under the supervision of OEA. The proposed regulations exclude abandonment and discontinuance proposals from this category, as OEA will continue to prepare EAs in those cases that require environmental review because of the short regulatory deadlines. The proposed regulations outline criteria that must be met for permission to be granted for an applicant-prepared EA or EIS.

§ 1105.16 – Content in Environmental Assessments and Environmental Impact Statements

The Board proposes to add a section outlining the content that will be included in any EA or EIS. This subsection is also referenced as the content that will be contained in an EA or EIS, see proposed 49 CFR 1105.8(c)(7) & (d)(3), 1105.9(i), and the content that must be contained in an environmental report for abandonments and discontinuances that require an environmental review, see proposed 49 CFR 1105.13(e). Much of this content is outlined in the current 49 CFR 1105.7(e); however, the Board proposes to clarify the requirements and update them to reflect current law and practice, and ensure that environmental reports, EAs, and EISs include the necessary information and analysis.

Some changes require additional information, while others eliminate information requirements that are no longer relevant or useful.

(a) *Proposal*. Proposed 49 CFR 1105.16(a) requires more detailed information about the action proposed, such as current traffic on the line and a more detailed map of the proposal. Maps that clearly show the location of the rail line and the surrounding resources are necessary for OEA to verify data provided. High quality maps also expedite the environmental review process by saving OEA staff from having to attempt to interpret deficient maps and by reducing the number of information requests to applicants. This paragraph eliminates the requirement to provide alternatives, as these are only applicable in construction cases. It clarifies language regarding changes associated with abandonments, from a description of “planned disposition (if any) of any . . . other structures that may be involved” to a description of “land disturbance within and outside the right-of-way” and “buildings, bridges, or other structures (to include track and ties in abandonment proposals) to be removed.” It also removes the requirement to include a description of “changes in maintenance practices,” as OEA generally does not find this information relevant to its environmental review.

(b) *Transportation System*. Proposed 49 CFR 1105.16(b) adds requirements to provide more information to be submitted when rail-to-truck diversions are expected to occur, specifically to identify the roadways to be impacted, the current average daily roadway traffic and expected increase in traffic, and a description of roadway capacity constraints.

(c) *Land Use*. The Board proposes to add designated flood zones and erosion mitigation practices to our requirements for land use.³¹ The Board also proposes to move

³¹ E.O. 11988, “Floodplain Management,” requires Federal agencies to avoid adversely impacting floodplains wherever possible and to reduce the risk of flood loss and minimize the impact of floods on human safety, health, and welfare.

requirements relating to the CZMA that are in current 49 CFR 1105.9 to this paragraph and to update the reference to the appropriate federal agency addressing prime agricultural land.

(d) *Energy*. The Board proposes to delete the current energy requirements to describe the effect of the proposed action on recyclable commodities, because such effects have not been an issue in Board proceedings for many years, and to make additional non-substantive clarifying changes.

(e) *Air*. The Board proposes to clarify the thresholds applicable to attainment and nonattainment areas, but the thresholds remain the same. As part of that clarification, the proposed regulation makes explicit that, when a threshold is exceeded, the anticipated effect on air emissions must be measured. The Board also proposes to eliminate the requirement addressing whether diversion or rerouting of ozone depleting materials is contemplated.³²

(f) *Noise and Vibration*. The Board proposes to add the term “vibration” to this paragraph to reflect the fact that environmental analyses typically evaluate noise and vibration together if the Board’s thresholds for noise impacts are met. With respect to noise impact analysis, the Board proposes to remove the current requirement to state whether the proposed action would cause an increase in noise levels of three decibels Ldn³³ or more or an increase to a noise level of 65 decibels Ldn or greater. Instead, the

³² As a result of a phase out program established under the Clean Air Act in the 1990s, chlorofluorocarbons (CFCs or “freon”) and other important ozone depleting substances are no longer being manufactured or imported into the United States. Hydrochlorofluorocarbons (HCFCs), which are lesser ozone depleting substances, are also in the process of being phased out. Therefore, it is unlikely that ozone depleting substances will be transported by rail in substantial amounts. See U.S. Env’t Prot. Agency, Phaseout of Ozone-Depleting Substances, <https://www.epa.gov/ods-phaseout> (last visited March 18, 2026).

³³ A decibel is the unit used to measure the magnitude of sound level based on a logarithmic scale that compresses the range of sound pressures audible to the human ear. The most commonly used measure of noise is expressed in “dBA,” which refers to

Board proposes to add that environmental noise and vibration analysis will be conducted to characterize any effects resulting from the proposed action. The Board intends to use guidance from the Federal Transit Administration (FTA)³⁴ in these analyses because it is a more nuanced way to measure noise impacts. The Board's current approach counts the number of receptors exposed to 65 decibels Ldn and 3 decibels or greater, whereas the FTA guidance characterizes the level of impact on each receptor. Consistent with the practices of other rail-related agencies and based on the Board's experience of following the FTA guidance in recent cases, it has concluded that the purposes of NEPA are better served by using this method.

(g) *Safety*. The Board proposes clarifying changes to this provision to conform to current practice.

(h) *Biological Resources*. The Board proposes to clarify the nature of its consultation with NOAA Fisheries (which has jurisdiction over certain fish), add the option to reference U.S. Fish and Wildlife Service's electronic database instead of direct consultation with U.S. Fish and Wildlife Service when feasible, and add language for consistency with the ESA.

(i) *Water*. The Board proposes to add requirements to consult with federal water quality officials in addition to state water quality officials and to indicate whether any waters of the United States (including lakes, streams and wetlands) or navigable waterways would be affected. The Board also proposes to add a reference to the River and Harbors Act, and to remove other unnecessary language.

(j) *Cultural Resources*. The Board proposes to add this paragraph, to reflect that

decibels of noise on an "A" weighted scale (noise audible to human ear). "Ldn" means average noise exposure over a 24-hour period, with an additional 10-decibel noise weighting during nighttime hours (between 10pm and 7am), to account for increased sensitivity to noise at night.

³⁴ Transit Noise & Vibration Impact Assessment Manual, FTA (2018).

it generally coordinates its historic reviews with its environmental reviews, and to note that a section 106 review under the NHPA must be conducted if required.

(k) *Voluntary Mitigation.* The Board proposes to add “voluntary” to this paragraph to clarify that an EA or EIS should include a description of any proposed voluntary mitigation offered by applicants, while OEA will determine whether to recommend any other mitigation, and the Board will determine whether to impose any mitigation.

(l) *Additional Information in Rail Construction Cases.* The Board proposes to update the additional information required for rail constructions by deleting unnecessary provisions and requiring more information on alternatives, rail operations, air, and safety impacts. For example, an EA or EIS will include specific information on air and safety impacts, such as the measurement of air quality effects based on construction activities, idling vehicles at crossings, and reasonably foreseeable changes in operations, as well as a description of the procedures that would be used for storing and fueling construction equipment. The inclusion of this information would expedite and improve environmental review of proposed rail constructions by providing OEA with more detailed, relevant, case-specific information at the beginning of the environmental review process.

The Board will no longer require a description of “down-line impacts”—i.e., impacts from rail operations along existing rail line segments from trains originating or terminating on a proposed new rail line. Nevertheless, the Board has discretion to draw the lines as to “how far” it will “go in considering the indirect effects that might occur outside the area of the immediate project.” Seven County, 605 U.S. at 182. As a result, project-specific determinations will be made with respect to the analysis of indirect downline impacts.

The Board also proposes to align the Board’s regulations with its current practice requiring a noise and vibration analysis for every construction or land-use-exemption

permit, regardless of the projected number of trains. Thresholds (which help OEA determine when a noise analysis is required based on the projected increase in train traffic or rail yard activity) are appropriate for certain actions involving traffic changes on existing lines. However, in OEA's experience, thresholds are generally not appropriate for proposals to build new rail lines or requests for land-use-exemption permits, because these types of rail projects introduce entirely new rail traffic and new sources of noise and vibration (including temporary noise and vibration associated with construction, and permanent noise and vibration associated with rail operations).

Finally, the Board proposes to delete the requirement to discuss impacts on essential public services, public roads, and adjoining properties as redundant. The Board does not view this as a substantive change because these impacts are required to be considered under other resource areas, such as transportation system (at proposed 49 CFR 1105.16(b)), noise and vibration (at proposed 49 CFR 1105.16(f)), and safety (at proposed 49 CFR 1105.16(g)). The Board also proposes to delete the requirement to discuss societal impacts as part of the environmental review and may consider such issues as part of the transportation merits review of the proposal.

(m) *Additional Information for Solid Waste Rail Transfer Facility Land-Use Exemptions.* The same additional information for constructions would be required for solid waste rail transfer facility land-use-exemption proceedings.³⁵

(n) *Additional Information.* The Board proposes to include that OEA may require applicants to submit additional information regarding the environmental effects of the proposed action, similar to a requirement that is in the Board's current regulations at 49 CFR 1105.7(f).

³⁵ Applicants seeking a land-use-exemption permit for a solid waste rail transfer facility under the CRA would also be required to include the information required by 49 CFR 1155.24 in the environmental report.

§ 1105.17 – Board Decisions

This section includes certain requirements relating to the CZMA that are located in current 49 CFR 1105.9. Consistent with its current practice, the Board also proposes to add a paragraph providing that any environmental or historic preservation conditions imposed by the Board will be held in abeyance if the rail right-of-way is converted to interim trail use subject to rail banking under the Trails Act. See also, e.g., E. Idaho R.R.—Aban. Exemption—in Bonneville Cnty., Idaho, AB 1252 (Sub-No. 1X), slip op. at 5 n.3 (STB served June 5, 2020); Final Env’t Assessment, E. Idaho R.R.—Aban. Exemption—in Bonneville Cnty., Idaho, AB 1252 (Sub-No. 1X), slip op. at 3 (STB served June 2, 2020). This paragraph aligns the regulations with the Board’s current practice requiring that, if a trail condition is vacated in the future for all or a portion of the right-of-way, any environmental condition or historic preservation conditions imposed by the Board must be satisfied before the abandonment may be consummated.³⁶

The Board also proposes changes to the paragraph addressing Findings of No Significant Impact (FONSI). The proposed regulations add that FONSI will typically be issued in the Board’s decision. In abandonment notice of exemption proceedings, pursuant to the new authority delegated by the Board under the proposed regulations, the Director of OEA will issue a FONSI if no environmental or historic preservation issues are raised by any party or identified by OEA in its independent review. The proposed regulations also identify what will be included in FONSI.

§ 1105.18 – Emergencies

The Board proposes to add a new section stating that the Board will consult with the Council on Environmental Quality if alternative arrangements for compliance with

³⁶ The Board does not conduct an environmental review of a potential conversion to interim trail use/rail banking, because such a conversion is a largely ministerial act not subject to NEPA. In addition, many SHPOs view rails-to-trails as a preservation activity that would not cause an adverse effect under NHPA.

NEPA are necessary in emergency circumstances, and establishing a procedure for requesting emergency consideration. The Board proposes adding this for consistency with other agencies' practices and to ensure that the Board has the flexibility to respond appropriately to an emergency situation.

§ 1105.19 – Sample Transmittal Letter for Environmental and Historic Reports and

§ 1105.20 – Newspaper Notice for Abandonment Exemption Cases

The Board proposes minor changes to these sections (49 CFR 1105.19 & 1105.20) to make them compatible with the proposed regulations.

REGULATORY CERTIFICATIONS

Regulatory Planning and Review

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this proposed rule is not significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Board has developed the proposed rule consistent with E.O. 13563.

National Environmental Policy Act

NEPA does not require agencies to prepare a NEPA analysis before establishing or updating agency procedures for implementing NEPA. Agency NEPA implementing procedures are not themselves subject to NEPA.³⁷ STB has determined that this rule will not have a significant effect on the environment because it will not authorize any specific

³⁷ Heartwood v. U.S. Forest Serv., 230 F.3d 947, 954–955 (7th Cir. 2000) (finding that neither NEPA nor the CEQ NEPA implementing regulations required the Forest Service to conduct an EA or an EIS prior to the promulgation of its procedures creating a categorical exclusion).

agency activity or commit resources to a project that may affect the environment.

Therefore, STB does not intend to conduct a NEPA analysis of this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601-604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities," 5 U.S.C. 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. White Eagle Coop. v. Conner, 553 F.3d 467, 480 (7th Cir. 2009).

The changes proposed here are largely procedural and would not have a significant economic impact on small entities within the meaning of the RFA.³⁸ The Board anticipates that the regulations would provide a faster environmental review

³⁸ For the purpose of RFA analysis for rail carriers subject to the Board's jurisdiction, the Board defines a "small business" as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1-1. See Small Entity Size Standards Under the Regul. Flexibility Act, EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of \$20 million or less in 1991 dollars, or \$48,237,637 or less when adjusted for inflation using 2024 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1-1; Indexing the Ann. Operating Revenues of R.Rs., EP 748 (STB served June 18, 2025).

process at a lower cost. Therefore, the Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of RFA. In the event that any parties disagree, the Board encourages them to comment on any information relevant to the burden they believe the proposed rule will have on small entities as defined by the RFA.

A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

Civil Justice Reform

The Board has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12988, Civil Justice Reform. Upon publication of the proposed rule, (1) all state and local laws and regulations that conflict with the proposed rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this proposed rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Under section 3(a) of E.O. 12988, agencies must review their regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the reviews required by section 3(a). The Board has conducted this review and determined that this proposed rule complies with the requirements of E.O. 12988.

Paperwork Reduction Act

The Board's proposal does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521.

It is ordered:

1. The Board proposes to amend its regulations as set forth in this decision.

Notice of the proposed rules will be published in the Federal Register.

2. Comments are due by April 24, 2026.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

Decided: March 21, 2026.

By the Board, Board Members Fuchs, Hedlund, and Schultz. Board Member Hedlund concurred with a separate expression.

BOARD MEMBER HEDLUND, concurring:

Today's NPRM proposes to categorically exclude abandonments from environmental review unless the abandoning carrier announces an intention to conduct salvage operations that would occur prior to consummation of the abandonment or entry into an interim trail use agreement.³⁹ The NPRM justifies this exclusion on the basis that "rail property is privately owned, and the Board has regulatory authority over it only while it is part of the interstate rail system and subject to the Board's jurisdiction. Once a railroad consummates the abandonment, the Board has no jurisdiction over the rail line or any control over disposition of the rail property." The accompanying Substantiation Record further notes that "typical" conditions currently imposed with respect to salvage operations are consultation requirements, such as the requirement that the railroad consult with (1) the U.S. Corps of Army Engineers to determine whether a permit is needed, and (2) the relevant state department of environmental protection pursuant to state laws requiring a permit to abandon a water obstruction or encroachment. Perhaps in an effort to assuage concerns about the impacts of the removal of STB jurisdiction relating to post-

³⁹ Subject to certain exceptions (e.g., if the abandonment would result in traffic diversions that would trip the relevant thresholds).

abandonment salvage, the Substantiation notes that such notification/consultation conditions impose obligations that would already be required by applicable laws once the right-of-way is abandoned and no longer within the STB's jurisdiction. The NPRM concedes that this new limitation would expressly rescind a 2008 policy statement concluding that the Board possessed the authority to impose certain conditions that would apply to salvage operations conducted post-abandonment,⁴⁰ a policy subsequently applied in a variety of cases.⁴¹

Pursuant to the new rule proposed in the NPRM, if a railroad wishes to avoid the imposition by the STB of any environmental or historic⁴² conditions that might attach to its salvage operations, it could simply remain silent and defer salvage activities until after the abandonment is consummated.

I encourage stakeholders to submit comments on this aspect of the NPRM, given that it proposes to reverse the Board's prior understanding of governing law. If any parties have concerns about potential environmental or historic impacts that could result from post-consummation salvage activities that would otherwise not be addressed by separate state and Federal laws, I hope they make their views known in this proceeding. Such comments should address the legal basis for the Board's imposition of conditions

⁴⁰ Consummation of Rail Line Abans. that are Subject to Historic Pres. & Other Env't Conditions, EP 678, slip op. at 5 (STB served April 23, 2008) (stating that an environmental condition on salvage "remains in place as a condition that attaches to the property and applies to salvage activities whenever they occur"). This legal proposition has never been successfully challenged.

⁴¹ See, e.g., BNSF Ry.—Aban. Exemption—In Los Angeles Cnty., Cal., AB 6 (Sub-No. 477X), slip op. at 7 n.13 (STB served Sept. 16, 2011); Landowners—Motion for Declaratory Ord. & Injunctive Relief, AB 1065 (Sub-No. 1X), slip op. at 5 n.5 (STB served Jan. 27, 2020); Cent. Kan. Ry.—Aban. Exemption—In Clark & Comanche Cntys., Kan., AB 406 (Sub-No. 5X), slip op. at 2 n.5 (STB served Oct. 28, 2020).

⁴² While the NPRM by its terms is limited to proposing revisions to the Board's environmental regulations, the underlying legal principle would equally restrict the Board's ability to impose historic conditions on salvage operations that would apply post-abandonment.

relating to post-consummation salvage, whether on the owner of the Line or any subsequent purchaser.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

Eden Besera,

Clearance Clerk.

For the reasons set forth in the preamble above and pursuant to the authorities listed below, the Surface Transportation Board proposes to amend parts 1011 and 1105 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 1301, 1321, 11123, 11124, 11144, 14122, and 15722.

2. Amend § 1011.2 by revising paragraph (a)(7) to read as follows.

§ 1011.2 The Board

(a) * * *

(7) All appeals of initial decisions issued by the Chief Counsel under the authority delegated by § 1011.7(a), all appeals of initial decisions issued by the Office of Public Assistance, Governmental Affairs, and Compliance under the authority delegated by § 1011.7(b), and all appeals of initial decisions issued by the Director of the Office of Environmental Analysis under the authority delegated by § 1011.7(c). Appeals must be filed within 10 days after service of the initial decision or publication of the notice, and

replies must be filed within 10 days after the due date for appeals or any extension thereof.

* * * * *

3. Amend § 1011.7 by:

a. Revising paragraph (a)(3)(iii);

b. Removing paragraph (a)(3)(ix);

c. Redesignating paragraphs (a)(3)(x) through (a)(3)(xx) as paragraphs (a)(3)(ix) through (a)(3)(xix); and

d. Adding a new paragraph (c).

The revision reads as follows:

§ 1011.7 Delegations of Authority by the Board to Specific Offices of the Board

(a) * * *

(3) * * *

(iii) Whether, in abandonment proceedings, to impose public use conditions under 49 U.S.C. 10905 and the implementing regulations at § 1152.28.

* * * * *

(c) The Director of the Office of Environmental Analysis is delegated the authority to:

(1) Direct the Board's implementation of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370m-11, and the National Historic Preservation Act (NHPA), 54 U.S.C. 300101–307108;

(2) Prepare documents and provide interpretation of the Board's NEPA and NHPA processes under part 1105 of this chapter;

(3) Render initial decisions on requests for waiver or modification of any of the rules in part 1105 in individual proceedings;

(4) Reject applicant-prepared documents that are not in compliance with part

1105 of this chapter;

(5) Determine whether to impose, modify, or remove environmental conditions;

(6) In proceedings under § 1152.50 of this chapter, issue a decision under § 1105.17(c) of this chapter making a Finding of No Significant Impact where no environmental or historic preservation issues have been identified or raised by any party;

(7) Act as the agency official for the purposes of the NHPA to:

(i) Determine whether a proposed federal action is an undertaking and, if so, whether it is a type of activity that has the potential to cause effects on historic properties pursuant to § 800.3 of this title;

(ii) Sign, on behalf of the Board, binding agreements pursuant to section 106 of NHPA (36 CFR part 800);

(iii) Determine whether to impose, modify, or remove historic conditions; and

(iv) Determine the applicability of section 110(k) of the NHPA.

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

4. The authority citation for part 1105 continues to read as follows:

Authority: 16 U.S.C. 1456 and 1536; 42 U.S.C. 4332 and 6362(b); 49 U.S.C. 1301 note (1995) (Savings Provisions), 1321(a), 10502, and 10903-10905; 54 U.S.C. 306108.

5. Revise §§ 1105.1 through 1105.13 to read as follows:

§ 1105.1 Purpose.

These rules are designed to ensure adequate consideration of environmental effects in the Board's decision making process pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370m-11, the Energy Policy and Conservation Act, 42 U.S.C. 6362(b), and related laws, including, but not limited to the Coastal Zone Management Act, 16 U.S.C. 1451–1458, and the Endangered Species Act, 16 U.S.C. 1531–1544. The

rules are also designed to ensure consideration of effects to historic resources, implement the National Historic Preservation Act (NHPA), 54 U.S.C. 300101–307108, and supplement its implementing regulations (36 CFR part 800).

§ 1105.2 Responsibility for Administration of These Rules.

The Director of the Office of Environmental Analysis (Director) shall have general responsibility for the overall management and functioning of the Office of Environmental Analysis (OEA). The Director is responsible for agency NEPA and NHPA implementation and for the preparation of documents under these rules.

§ 1105.3 Information and Assistance.

Information and assistance regarding these rules and the Board’s environmental and historic review processes are available by writing to the Surface Transportation Board, Office of Environmental Analysis, 395 E Street, SW, Washington, DC 20423-0001; visiting the Board’s website at www.stb.gov; or calling the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

§ 1105.4 Definitions.

As used in these regulations, terms have the meanings provided in section 111 of NEPA (42 U.S.C. 4336e) and in the Advisory Council on Historic Preservation’s regulations implementing the NHPA (36 CFR 800.16). In addition:

(a) *Applicant* means any person or entity seeking Board action, whether by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding. For the purposes of sections 107(f) and (g) and section 112 of NEPA (42 USC 4336a(f)-(g); 42 USC 4336f), an applicant is a project sponsor.

(b) *Attainment Area* means an area considered to have air quality as good as or better than the National Ambient Air Quality Standards for the criteria pollutants under the Clean Air Act (42 U.S.C. 7401–7675).

(c) *Board* means the Surface Transportation Board.

(d) *Class I Area* means an area granted special air quality and visibility protections under the Clean Air Act and includes certain national parks, wilderness areas, monuments, and other areas of special national and cultural significance (42 U.S.C. 7472).

(e) *Director* in this part means the Director of the Office of Environmental Analysis.

(f) *Effects or Impacts* mean changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(1) Effects may include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), historic, or cultural effects, to the extent the analysis of such effects can inform the Board's decision. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(2) A "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include, among other things, those effects that the agency has no ability to prevent due to the limits of its regulatory authority or that would occur regardless of the proposed action, or the effects of a third-party action lacking a reasonably close causal connection or a legally proximate causal relationship to the action at hand.

(g) *Environmental Report* means a document prepared by the applicant pursuant to § 1105.13(a) and filed with the Board that provides notice of an abandonment and evaluates potential environmental effects.

(h) *Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or the alternatives as described in an environmental

document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation may include:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing effects by limiting the degree or magnitude of the action and its implementation;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(i) *Nonattainment Area* means an area that does not meet one or more of the National Ambient Air Quality Standards for the criteria pollutants under the Clean Air Act (42 U.S.C. 7401–7675).

(j) *Office of Environmental Analysis (OEA)* means the office within the Board responsible for conducting environmental and historic reviews, preparing Environmental Assessments (EAs) or Environmental Impact Statements (EISs), or supervising the work of independent third-party contractors, and providing technical advice and recommendations to the Board on environmental and historic preservation matters.

(k) *Participating Agency* means a federal, state, Tribal, or local agency participating in an environmental review or authorization of an action.

(l) *Scope* means the range of actions, alternatives, and effects to be considered in an EA or EIS. The scope of an individual EA or EIS may depend on its relationship to other EAs or EISs.

(m) *Solid Waste Rail Transfer Facility* is defined at 49 U.S.C. 10908(e)(1)(H).

(n) *State Implementation Plan* means a federally enforceable plan for each state which identifies how that state will attain and/or maintain the primary and secondary National Ambient Air Quality Standards set forth in the implementing rules of the Clean Air Act (40 CFR part 243).

§ 1105.5 Determining When NEPA Applies

(a) NEPA does not apply to a proposed Board action when:

(1) The proposed action does not result in final agency action under the Administrative Procedure Act (*see* 5 U.S.C. 704) or other relevant statute that also includes a finality requirement;

(2) The proposed action is exempted from NEPA by law;

(3) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;

(4) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that the Board retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of the Board is nondiscretionary within the meaning of section 106(a)(4) and/or 111(10)(B)(vii) of NEPA (42 U.S.C. 4336(a)(4) and 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(5) The proposed action is an action for which another statute's requirements serve the function of the Board's compliance with NEPA; or

(6) The proposed action is not a "major federal action." The terms "major" and "federal action," each have independent force. NEPA applies only when both of these two criteria are met.

(b) In addition to the illustrative general categories set forth in section 111(10) of NEPA (42 U.S.C. 4336e(10)), the Board has determined that the following non-

exhaustive list of actions are not subject to NEPA, because they do not meet the definition of a “major federal action:”

(1) A determination that a proposal or action is not within the Board’s jurisdiction.

(2) Rail line improvements, routine maintenance, operational changes, or other proposals that are not subject to the Board’s licensing authority (e.g., haulage arrangements; improvements or traffic changes to existing rail lines; construction of multiple tracks on an existing line; track relocations; and construction, abandonment, or operation of ancillary (spur) track excepted from Board licensing under 49 U.S.C. 10906).

(3) Railbanking/interim trail use arrangements under the National Trails System Act, 16 U.S.C. 1247(d) (*see* § 1152.29 of this chapter).

(4) Abandonments that are authorized by a bankruptcy court or for transfers of rail lines under plans of reorganization under 11 U.S.C. 1166, 1170, and 1172.

(5) Declaratory orders, and interpretations or clarifications of operating authority.

(6) Substitution of applicant and name changes.

(7) Orders that are purely procedural in nature.

(8) Initiation and termination of freight service under modified certificates issued under part 1150 of this chapter.

§ 1105.6 Determining the Appropriate Level of NEPA Review.

(a) If NEPA applies to a proposed action, the Director will then determine the appropriate level of NEPA review in the following manner. As part of its process, OEA will consider the proposed action at hand and its effects.

(1) If the Board has established, or adopted pursuant to section 109 of NEPA (42 U.S.C. § 4336c), a categorical exclusion that covers the proposed action, the Board will apply the categorical exclusion to the proposed action, if appropriate, pursuant to

§ 1105.7(e).

(2) If another agency has already established a categorical exclusion that covers the proposed action, the Director will consider whether to adopt that exclusion pursuant to § 1105.7(c) so that it can be applied to the proposed action at issue.

(3) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § 1105.7(b), the Director will consider whether to propose establishing or revising, and if established by the Board, applying the categorical exclusion to the proposed action pursuant to § 1105.7(e).

(4) If a categorical exclusion cannot be applied to the proposed action consistent with paragraphs (a)(1)-(a)(3) of this section, OEA will consider the proposed action's reasonably foreseeable effects consistent with paragraph (c) of this section, and the Director will determine whether to prepare an EA or EIS.

(b) The Director may reclassify or modify environmental review requirements in this part for any individual proceeding subject to review under NEPA.

(1) If the Director concludes that, in connection with an action listed in § 1105.7(a), extraordinary circumstances exist that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant effect, the Director will evaluate the action listed in § 1105.7(a) pursuant to § 1105.7(e).

(2) For actions that typically require an EA (*see* § 1105.8(b)), the Director may determine that an EIS is required where the particular proposal is likely to have significant environmental effects. Alternatively, for proposals typically requiring an EIS (*see* § 1105.9(b)), the Director may determine, or an applicant can seek to demonstrate (by providing OEA with detailed supporting information after the conclusion of the scoping process), that an EA, rather than an EIS, would be sufficient because the particular proposal is not likely to have significant environmental effects or the effects

are unknown.

(c) When considering whether the reasonably foreseeable effects of the proposed action are significant, OEA will analyze the potentially affected environment and degree of the effects of the action. OEA may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

(1) In considering the potentially affected environment, OEA may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

(2) In considering the degree of the effects, OEA may consider the following, as appropriate to the specific action: both short- and long-term effects; and both beneficial and adverse effects.

(d) Unless otherwise specified, the classifications in this section apply without regard to whether the proposal is initiated by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

§ 1105.7 Categorical Exclusions.

(a) *Actions that are Categorically Excluded from Further Environmental Review.*

An EA or EIS will normally not be prepared (although additional review under section of 106 of the NHPA may be required) for:

(1) Proposals that would not result in substantial changes in the applicant's operations (*i.e.*, changes that would not exceed the thresholds established at § 1105.16(d) or (e)), including, but not limited to, all of the following:

(i) An acquisition, lease, feeder line sale, or operation under 49 U.S.C. 10901, 10902, or 10907, that does not fall under § 1105.8(b)(1);

(ii) An abandonment (not including those proposed under the Bankruptcy Act (11 U.S.C. 1170)), or discontinuance under 49 U.S.C. 10903, that does not fall under

§ 1105.8(b)(1);

(iii) A consolidation, merger, or acquisition of control under 49 U.S.C. 11323 or 14303, that does not fall under § 1105.8(b)(1);

(iv) A proceeding pursuant to 49 U.S.C. 24308;

(v) Transactions involving corporate changes (such as a change in ownership or operator, the issuance of securities, or reorganization), including grants of authority to hold position as an officer or director;

(vi) Waivers of lease and interchange regulations; and

(vii) Pooling authorizations, approval of rate bureau agreements, and approval of shipper antitrust immunity.

(2) Adjudications regarding rates, fares, tariffs, practices, and service;

(3) Common use of rail terminals and trackage rights;

(4) Discontinuance of trackage rights where the affected line will continue to be operated within Board jurisdiction;

(5) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental effects;

(6) Offers of Financial Assistance to avoid abandonment and discontinuance under 49 U.S.C. 10904 (*see* § 1152.27 of this chapter);

(7) A determination imposing or approving a reciprocal switching agreement; and

(8) Construction of connecting track within an existing rail right-of-way or on land owned by the connecting railroads and/or applicant (*see* § 1150.36 of this chapter), unless the construction of such connecting track is not within the Board's licensing authority under 49 U.S.C. 10906 or exempt from review under § 1105.5.

(b) *Establishing and Revising Categorical Exclusions.*

(1) To establish or revise a categorical exclusion, the Board will determine that the category of actions normally does not significantly affect the quality of the human

environment. To support this determination, OEA will:

(i) Develop a written record containing information to substantiate its determination;

(ii) Consult with CEQ on its proposed categorical exclusion, including the written record (typically for a period of 30 days) prior to providing public notice as described in subparagraph (2).

(2) The Board will provide public notice in the Federal Register of the establishment or revisions of the categorical exclusion and the location (e.g., website) of availability of the written record.

(c) *Adopting Categorical Exclusions from Other Federal Agencies.*

(1) Consistent with section 109 of NEPA (42 U.S.C. § 4336c), the Board may adopt a categorical exclusion listed in another agency's NEPA procedures. To support the adoption of a categorical exclusion, OEA will:

(i) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;

(ii) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;

(2) The Board will provide public notification of the categorical exclusion that the Board is adopting, including a brief description of the proposed action or category of proposed actions to which the Board intends to apply the adopted categorical exclusion.

(3) The Board will document the adoption of the categorical exclusion in a Board decision publicly available on the Board's website.

(d) *Removal of Categorical Exclusions.* The Board may remove a categorical exclusion from § 1105.7(a).

(1) To support the removal of a categorical exclusion, OEA will:

(i) Develop a written explanation for the removal; and

(ii) Consult with CEQ on its proposed removal of the categorical exclusion, including the written explanation (typically for a period of 30 days) prior to providing public notice as described in subparagraph (2).

(2) The Board will provide public notice of the Board's removal of the categorical exclusion and the written explanation in the Federal Register. The Board may provide notice of the availability of the explanation in the Federal Register notice (i.e., as a link to an agency website) if OEA prepares the explanation as a separate document.

(e) *Applying Categorical Exclusions.* If a categorical exclusion covers a proposed agency action, the categorical exclusion will be applied unless the Director determines that extraordinary circumstances indicate that a normally categorically excluded agency action is likely to have a reasonably foreseeable significant adverse effect.

(1) If an extraordinary circumstance is present, the Director will determine that the categorical exclusion applies to the proposed agency action and conclude review if either:

(i) The Director determines that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant effects; or

(ii) The applicant modifies the proposal to avoid those effects.

(2) If the Director determines that it cannot apply the categorical exclusion to the proposed action, OEA will prepare an EA or EIS, as appropriate.

(f) *Applying Legislative Categorical Exclusions.* If the Director determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed the Board to establish, covers a proposed agency action, OEA will conclude review consistent with applicable law. If appropriate, OEA may examine extraordinary circumstances, consult with the applicant to consider modifying the proposal, or document the determination that the legislative categorical

exclusion applies, consistent with paragraph (e) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(g) *Reliance on Categorical Exclusion Determinations of Other Agencies.* The Board may also rely on another agency's determination that a categorical exclusion applies to a particular proposed agency action if the agency action covered by that determination and the proposal before the Board are substantially the same, or if the proposal before the Board is a subset of the agency action covered by that determination. The Board will document its reliance on another agency's categorical exclusion in a Board decision.

§ 1105.8 Environmental Assessments.

(a) *Standard for Preparing an Environmental Assessment.* Unless the proposed action is excluded from further review under § 1105.7(a), the Board will prepare an EA when a proposed major federal action does not have a reasonably foreseeable significant effect on the quality of the human environment or if the significance of the effect is unknown.

(b) *Actions in Which an Environmental Assessment Will Normally be Prepared.*

An EA will normally be prepared for:

(1) An acquisition, lease, feeder line sale, operation, abandonment (not including those proposed under the Bankruptcy Act (11 U.S.C. 1170)), or discontinuance under 49 U.S.C. 10901, 10902, 10903, or 10907, or consolidation, merger, or acquisition of control under 49 U.S.C. 11323 or 14303, if it would:

(i) Result in operational changes or traffic diversions that would exceed any of the thresholds established in § 1105.16(d) or (e);

(ii) Include actions that would normally require preparation of an EA or EIS (such as construction of a new rail line); or

(iii) In the case of abandonment, if salvage will occur prior to consummation or

entry into an interim trail use agreement.

(2) A rulemaking, policy statement, or legislative proposal that has the potential to cause significant environmental effects; and

(3) Any other proceeding not listed in §§ 1105.7(a) or 1105.9(b).

(c) *Environmental Assessments in Proceedings Not Involving an Abandonment or Discontinuance.*

(1) *Prefiling Notice.* Where an EA is required or contemplated, the applicant must comply with the requirements of § 1105.9(c). The Director may waive or modify this requirement where appropriate.

(2) *Scoping Process.* OEA uses an early and open process to determine the scope of issues for analysis in the EA, including identifying substantive issues that meaningfully inform the consideration of environmental effects. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. During the process of preparing an EA, OEA may obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand; and appropriate state, Tribal, and local agencies that are authorized to develop and enforce environmental standards. When appropriate, OEA may conduct a site visit as part of scoping.

(3) *Determination to Prepare an Environmental Assessment.* Based on the record, including any input from federal, state, and local agencies and Tribes, the Director will determine whether an EA is appropriate and notify the applicant in writing of the decision.

(4) *Notice of Intent.* Where appropriate, OEA may publish a Notice of Intent or other environmental review document on the Board's website during the review process.

The Notice of Intent may include: the purpose and need for the proposed action; a preliminary description of the proposed action and alternatives; a summary of expected effects; a summary of anticipated reviews, consultations, permits and authorizations; a description of the scoping process; contact information for the person in the agency responsible for managing the environmental review process; and identification of any cooperating and participating agencies.

(5) *Publishing Draft or Preliminary Documents.* During the process of preparing an EA, OEA may publish draft or preliminary documents on the Board's website as in its judgment is needed to fulfill its responsibilities under NEPA and this part.

(6) *Additional Comment During the Environmental Assessment Process.* During the process of preparing an EA, OEA may request the comments of: state, Tribal, or local governments that may be affected by the proposed action; the applicant; and the public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(7) *Content of Environmental Assessment.* An EA will contain, where appropriate, analysis of the resource areas listed in § 1105.16, the purpose and need for the proposed action based on the goals of the applicant and the Board's statutory authority, a reasonable range of alternatives to the proposal to the extent required by section 102(2)(H) of NEPA, the reasonably foreseeable effects of the proposed action and the alternatives considered, and recommended mitigation measure(s), if any, for consideration by the Board. The scope of the analysis will be defined in accordance with § 1105.9(i)(1) and (2).

(8) *Page Limits.* In accordance with section 107(e)(2) of NEPA, an EA will not exceed 75 pages (excluding citations and appendixes). The appendixes, formatting, and certification requirements of § 1105.9(j)(1), (2), and (3) are incorporated by reference.

(9) *Deadlines.* In accordance with section 107(g)(1)(B) of NEPA, an EA will be published on the Board's website not later than one year after the Director makes a determination pursuant to paragraph (c)(3) of this section that an EA is appropriate, unless the Director determines that OEA is unable to meet that deadline. If OEA is unable to meet that deadline, the Director will establish a new deadline, in consultation with the applicant, to provide only so much additional time as is necessary to complete the EA.

(i) *Section 112.* An EA for which a fee is paid under section 112 of NEPA (42 USC 4336f) shall be completed not later than 180 days after date on which the fee is paid.

(ii) *Certification Regarding Deadlines.* When the EA is published, the Director will certify (and the certification will be incorporated into the EA) that the resulting EA represents a good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that in OEA's expert opinion it has thoroughly considered the factors mandated by NEPA; and that in OEA's judgment, the analysis contained therein is adequate to inform the Board's final decision regarding the proposed federal action.

(10) *Notice of Availability.* When an EA is completed, OEA will provide notice with a website link to the electronic document, as appropriate, to all participants in the environmental and historic review, as well as appropriate federal, state, and local agencies, federally recognized Tribes, and any person requesting the document. The notice will explain how to request a paper copy of the document, if needed due to economic or other hardship. The full document will be available on the Board's website.

(d) *Environmental Assessments in Abandonment and Discontinuance Proceedings.* Where an EA is to be prepared under paragraph (b)(1) of this section, after receiving any applicant-prepared environmental and historic reports required under §§ 1105.13 and 1105.14, OEA will prepare the EA.

(1) In general and as appropriate with respect to the specific proceeding, the following federal, state, and local agencies, and other entities will be consulted:

(i) Appropriate regional office(s) of the U.S. Environmental Protection Agency;

(ii) Appropriate regional office(s) and field office(s) of the U.S. Fish and Wildlife Service;

(iii) Appropriate regional office(s) of the National Oceanic and Atmospheric Administration (NOAA) Fisheries;

(iv) The Regulatory Division of the appropriate district office(s) of the U.S. Army Corps of Engineers;

(v) Appropriate district office(s) of the U.S. Coast Guard;

(vi) Appropriate regional office(s) of the National Park Service;

(vii) Appropriate state office(s) of the Natural Resources Conservation Service;

(viii) National Geodetic Survey;

(ix) State environmental protection agency for each state involved;

(x) State department of transportation for each state involved;

(xi) Coastal zone management agency for each state involved where the proposed action would affect land or water uses within a state-designated coastal zone;

(xii) Appropriate regional office(s) of the Federal Emergency Management Agency;

(xiii) Appropriate official for each county or comparable political entity in which the proposed action is located;

(xiv) Appropriate official for each federally recognized Tribe with current or ancestral connections to the land in the county(s) in which the proposed action is located;
and

(xv) Any other agencies whose input may be needed for the environmental review process under the circumstances of the case.

(2) OEA will issue an EA that complies with the requirements in § 1105.8(c)(7), (8), and (9) and publish it on the Board's website.

(3) The EA will contain, where appropriate, analysis of the resource areas listed in § 1105.16, and any recommended mitigation measure(s) for consideration by the Board.

(4) Unless otherwise directed, comments may be submitted within 30 days of publishing the EA (15 days in the case of a notice of exemption for abandonment under § 1152.50 of this chapter). Comments will be addressed, as appropriate, in the Board's decision.

§ 1105.9 Environmental Impact Statements.

(a) *Standard for Preparing an Environmental Impact Statement.* OEA will prepare an EIS when the proposed action does not fall under § 1105.5 and has a reasonably foreseeable significant effect on the quality of the human environment. Whether an impact rises to the level of "significant" is a matter of OEA's expert judgment.

(b) *Actions in Which an Environmental Impact Statement Will Normally be Prepared.* An EIS will normally be prepared for:

(1) Rail construction proposals other than those described in § 1105.7(a) or those reclassified pursuant to § 1105.6(b); and

(2) Requests for solid waste rail transfer facility land-use exemptions under the Clean Railroads Act (*see* 49 U.S.C. 10501(c)(2)(B) and 10908–10910).

(c) *Prefiling Notice.* Where an EIS is required or contemplated, the applicant must provide OEA with written notice of its forthcoming proposal at least 45 days prior to filing an application, petition, or notice of exemption with the Board. For rail construction proposals, the prefiling notice must include the information required in § 1105.16(l).

(1) *Waiver.* The Director may waive or modify this requirement where

appropriate. Requests for waiver of the prefiling notice required under paragraph (c) of this section must describe the anticipated environmental effects of the proposed action, include the information required in § 1105.16(l) if the proposal is a rail construction, and explain why the 45-day lead period cannot be met.

(2) *Section 112.* In the event an applicant elects to proceed under section 112 of NEPA (42 U.S.C. 4336f), the applicant shall file its Prefiling Notice and consult with OEA prior to any submission to the Council on Environmental Quality under section 112(a)(1).

(d) *Scoping Process.* OEA uses an early and open process to determine the scope of issues for analysis in the EIS, including identifying substantive issues that meaningfully inform the consideration of environmental effects. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. During the process of preparing an EIS, OEA will obtain the comments of any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand; and appropriate state, Tribal, and local agencies that are authorized to develop and enforce environmental standards. When appropriate, OEA may conduct a site visit as part of scoping.

(e) *Determination to Prepare an Environmental Impact Statement.* Based on the record, including any input from federal, state, and local agencies and Tribes, the Director will determine whether to prepare an EIS and notify the applicant in writing of the decision.

(f) *Notice of Intent.* OEA will publish a Notice of Intent to prepare an EIS on the Board's website and in the *Federal Register*.

(1) *Content.* The Notice of Intent shall include: the purpose and need for the

proposed action; a preliminary description of the proposed action and alternatives; a summary of expected effects; a summary of anticipated reviews, consultations, permits and authorizations; the expected timeline for the environmental review; a description of the public scoping process; contact information for the person in the agency responsible for managing the environmental review process; and identification of any cooperating and participating agencies. The notice may preliminarily identify and eliminate from detailed study issues that are not relevant and do not bear on the proposed action or its effects or have been covered by prior environmental reviews.

(2) *Public Comment on the Notice of Intent.* The Notice of Intent will include a request for public comment on alternatives or potential effects and on relevant information, studies, or analyses with respect to the proposed action. Comments should be as specific as possible, and commenters are encouraged to file any comments with the Board electronically. Where appropriate, the Notice of Intent may also include notice of a meeting(s) open to interested members of the public.

(g) *Publishing Draft or Preliminary Documents.* During the process of preparing an EIS, OEA may publish on the Board's website draft or preliminary documents as in its judgment is needed to fulfill its responsibilities under NEPA and this part.

(h) *Additional Comment During the Environmental Impact Statement Process.* During the process of preparing an EIS, OEA may request the comments of: state, Tribal, or local governments that may be affected by the proposed action; the applicant; and the public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(i) *Content of Environmental Impact Statement.* An EIS will contain each of the elements required in section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). In considering the reasonably foreseeable environmental effects of the proposed action, the statement

will include, where appropriate, analysis of the resource areas listed in § 1105.16. In addition, the statement will include the purpose and need for the proposed action based on the goals of the applicant and the Board's statutory authority, and recommended mitigation measure(s), if any, for consideration by the Board. An EIS will also address any substantive comments received.

(1) *Scope of Analysis.* OEA will focus its analysis on whether the environmental effects of the proposed action or project at hand are significant. Similarly, OEA will document where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(2) *Proportionate analysis.* OEA will discuss effects in proportion to their significance. With respect to issues that are not of a substantive nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there will be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not worthy of any further analysis. The analysis will be concise and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

(j) *Page Limits.* In accordance with section 107(e)(1) of NEPA, an EIS will not exceed 150 pages (excluding citations and appendices) and, in cases of extraordinary complexity, will not exceed 300 pages (excluding citations and appendices). OEA will determine at the earliest possible stage of preparing an EIS whether the conditions for exceeding the page limit are present.

(1) *Appendices.* Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided. Appendices are not to be used to provide additional

substantive analysis, because that would circumvent the congressionally mandated page limits.

(2) *Formatting.* EISs will be formatted for an 8.5"x11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.

(3) *Certification as to Page Limits.* The breadth and depth of analysis will be tailored to ensure that the environmental analysis does not exceed these page limits. The Director will certify (and the certification will be incorporated into the EIS) that the EIS has considered the factors mandated by NEPA and that the EIS represents OEA's good-faith effort to prioritize documentation of the most important considerations required by NEPA within the congressionally mandated page limits; that this prioritization reflects OEA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in OEA's judgment, comparatively not of a substantive nature to meaningfully inform the decisionmaker's consideration of environmental effects and the resulting decision on how to proceed.

(k) *Deadlines.* In accordance with section 107(g)(1)(A) of NEPA, an EIS will be published on the Board's website not later than two years after the Director makes a determination pursuant to paragraph (e) of this section to prepare the EIS, unless the Director determines that OEA is unable to meet that deadline. If OEA is unable to meet that deadline, the Director will establish a new deadline, in consultation with the applicant, to provide only so much additional time as is necessary to complete the EIS.

(1) *Section 112.* An EIS for which a fee is paid under section 112 of NEPA (42

USC 4336f) shall be completed not later than 1 year after the date of publication of the Notice of Intent to prepare the EIS.

(2) *Certification as to Deadlines.* When the EIS is published, the Director will certify (and the certification will be incorporated into the EIS) that the resulting EIS represents a good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete, and that in OEA's expert opinion it has thoroughly considered the factors mandated by NEPA; and that in OEA's judgment, the analysis contained therein is adequate to inform the Board's final decision regarding the proposed federal action.

(1) *Notice of Availability.* When an EIS is completed, OEA will provide notice with a website link to the electronic document, as appropriate, to all participants in the environmental and historic review, as well as appropriate federal, state, and local agencies, federally recognized Tribes, and any person requesting the document. The notice will explain how to request a paper copy of the document, if needed due to economic or other hardship. The Board will file EISs with the Environmental Protection Agency, Office of Federal Activities, for publication in the *Federal Register*. The full document will be available on the Board's website. OBJ

§ 1105.10 Supplements to Environmental Assessments and Environmental Impact Statements.

(a) *When Supplements Will Be Prepared.* An EA or EIS will be supplemented when:

(1) The applicant makes substantial changes to the proposed action that are relevant to environmental effects; or

(2) The Director determines, in his or her discretion, that there are substantial new circumstances or information relevant to environmental effects.

(b) *Process for Issuing Supplements.* A Supplemental EA or Supplemental EIS

will be prepared and published in the same manner as the original document, as appropriate, except that scoping may not be conducted.

(c) *Determining That a Supplement Is Not Required.*

(1) If changes to a proposed action or new circumstances are identified after an EA or EIS has been issued, and the Director concludes that those changes or new circumstances are not substantial and do not warrant the preparation of a supplement, those findings will be documented.

(2) If changes to a proposed action or new circumstances are identified subsequent to completion of OEA's review and findings but prior to OEA issuing the EA or EIS, and the Director concludes that those changes or new circumstances are not substantial and do not warrant the preparation of a supplement, the Director will summarize those findings in the EA or EIS.

§ 1105.11 Lead, Cooperating, and Participating Agencies.

(a) *Lead Agency.* The Board will generally act as the lead agency in the environmental review process when the proposed action requires Board authorization and is not federally funded. The designation and the role of the lead agency is subject to section 107(a) of NEPA.

(1) In many instances, a proposed action is undertaken in the context which entails activities or decisions undertaken by other federal agencies (*e.g.*, where multiple federal authorizations or analyses are required with respect to an applicant's project). These major federal actions are the responsibility of the particular agency, but to the extent that the proposed action will require action by more than one agency under NEPA, the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in section 107(a)(1)(A) of NEPA (42 U.S.C. 4336a(a)(1)(A)).

(2) When serving as the lead agency, the Board is responsible for completing the

NEPA process and will determine the scope of the project at hand.

(3) When a joint lead relationship is established pursuant to section 107(a)(1)(B) of NEPA (42 U.S.C. 4336a(a)(1)(B)), the Board and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

(b) *Cooperating Agency.* Pursuant to section 107(a)(3) of NEPA, any qualifying agency may be designated as a cooperating agency in the environmental review process.

(c) *Participating Agency.* Any interested federal, state, Tribal, or local agency may be a participating agency in the environmental review process.

§ 1105.12 Third-Party Contractors.

Except when documents are prepared under § 1105.15, an applicant should retain an independent third-party contractor to assist OEA in the preparation of any necessary environmental or historic documents. The applicant may provide input on the selection of the third-party contractor, but the Director retains the authority to approve or disapprove the selection of a third-party contractor. The third-party contractor approved by the Director will be required to execute a disclosure statement certifying that it has no financial or other interest in the outcome of the proposal (or other disqualifying conflict of interest). The third-party contractor acts on behalf of the Board and works under OEA's sole direction, supervision, and control in collecting, analyzing, and presenting any information required for the environmental review of a proposed action. OEA reviews, verifies, and approves all information and documentation provided by third-party contractors. A list of permissible third-party contractors is available on the Board's website at www.stb.gov.

§ 1105.13 Environmental Reports for Abandonments and Discontinuances.

(a) An applicant seeking authority to abandon and/or discontinue a rail line pursuant to part 1152 of this chapter that is not categorically excluded from further

environmental review under § 1105.7(a) must prepare an environmental report, which shall be sent to the agencies specified in § 1105.8(d)(1) at least 45 days prior to filing the report with the Board with the transmittal letter provided in Appendix A to this part.

(b) The environmental report must be filed with the Board at the same time as the application, petition, or notice of exemption. Applicants are encouraged to file environmental reports with the Board electronically.

(c) When the environmental report is filed with the Board, it must include all written communication submitted to and received from consulting agencies, including letters, emails, and attachments. Substantive oral communications must be documented by date with a written summary of the discussion, including name, telephone number, and/or email, and, if applicable, affiliation and title of each participant. Any communication occurring after an applicant's filing of the environmental report must also be promptly provided to OEA. Environmental reports that include consulting agency communications that predate the filing date of the application, petition, or notice of exemption by more than two years will be rejected. Environmental reports filed with little or no consulting agency responses may also be rejected.

(d) In its environmental report, the applicant must certify that it consulted with the agencies listed in § 1105.8(d)(1) and that it sent the environmental report to those agencies at least 45 days before filing its application, petition, or notice of exemption with the Board. An applicant seeking authority to abandon and/or discontinue a rail line pursuant to part 1152 of this chapter that is not categorically excluded from further environmental review under § 1105.7(a) must also certify that it has published a newspaper notice that alerts the public of the proposed abandonment pursuant to the requirements set forth at § 1105.19. Newspaper notice requirements for abandonment application cases are set forth at §§ 1152.20 and 1152.21 of this chapter.

(e) Environmental reports shall include the content described in § 1105.16, unless

the applicant explains why any reporting requirement is not applicable.

(f) Conclusions regarding potential environmental effects must be supported by specific information in the environmental report, and a copy of, or appropriate citation to, any reference materials relied upon in the report must also be provided. Environmental reports lacking all the necessary information may be rejected.

6. Redesignate § 1105.8 as § 1105.14.

7. Add new §§ 1105.15 through 1105.20 to read as follows:

§ 1105.15 Applicant-Prepared Environmental Assessments and Environmental Impact Statements.

(a) Except in the case of an abandonment proposal, an applicant may submit a written request for approval from the Director to prepare an EA or EIS under the supervision of OEA. In such cases, the applicant must consult with OEA and obtain approval from the Director prior to preparing any EA or EIS, or the EA or EIS will be rejected by the Director.

(b) The applicant's request for approval will include the names and qualifications of persons preparing the EA or EIS or sections of the document and include disclosure statements that certify that the applicant's contractor has no financial or other interest in the outcome of the proposed action.

(c) In reviewing the request, the Director will consider whether: the applicant and the applicant's contractor have the expertise necessary to prepare an EA or EIS that meets the requirements of Board regulations, NEPA, and related environmental laws; OEA has the resources necessary to independently evaluate the documentation; Government-to-Government consultations with federally recognized Tribes would be needed; and any other relevant project-specific considerations.

(d) The following procedures will apply in proceedings where the Director grants an applicant approval to prepare an EA or EIS under the supervision of OEA:

(1) *Content.* An applicant-prepared EA or EIS must contain the information and/or analysis identified in § 1105.16, unless the applicant explains why any requirement is not applicable.

(2) *Page Limits.* An applicant-prepared EA or EIS must conform to the page limits in §§ 1105.8(c)(8) and 1105.9(j). *See* 42 U.S.C. 4336a(e).

(3) *Deadlines.* As part of the approval, the Director will establish mandatory deadlines for the applicant to provide the EA or EIS to OEA for review and approval prior to publication by OEA. The Director will set the deadlines to ensure compliance with §§ 1105.8(c)(9) and 1105.9(k). *See* 42 U.S.C. 4336a(g).

(4) *Independent Evaluation.* OEA will independently evaluate the EA or EIS and will take responsibility for its contents. If, at any point during the environmental review process, the Director determines that the applicant-prepared EA or EIS does not meet the requirements of these regulations; is not adequate to meet the requirements of NEPA, related environmental laws; and/or the applicant fails to meet the deadlines discussed in paragraph (d)(3) of this section, the EA or EIS may be rejected; approval for applicant-prepared EA or EIS may be revoked; and the applicant may be required to pay a third-party contractor to work under OEA's exclusive control and direction as provided for in § 1105.12 to prepare an EA or EIS consistent with these regulations and the requirements of NEPA.

(5) *Section 112.* Section 112 of NEPA (42 USC 4336f) establishes a separate process under which the EA or EIS may be prepared under an expedited deadline. In the event that an applicant elects to proceed under section 112(b)(2) of NEPA, an applicant-prepared EA or EIS remains subject to the requirements of paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section and any other applicable requirements for applicant-prepared documents in these regulations.

§ 1105.16 Content in Environmental Assessments and Environmental Impact

Statements.

An EA or EIS will contain the following information and/or analysis, as applicable:

(a) *Proposal.*

(1) Description of the proposed action, including commodities transported; any possible changes in current operations; any current traffic on the line; the planned disposition (if any) of the line; land disturbance within and outside the right-of-way; buildings, bridges, or other structures (to include tracks and ties in abandonment proposals) to be removed.

(2) Accurate maps, sufficiently detailed to show the location of the rail line (including the right-of-way), longitude and latitude coordinates for beginning and end point milepost markers, bridges, waterways and water bodies, roads and road crossings, and any other relevant features and resources in the vicinity of the proposed action. Digital maps are strongly encouraged (e.g., Shapefile, KML, or KMZ). Standalone or static maps must be submitted in computer-readable, electronic formats (e.g., GIF, JPEG, or PDF).

(b) *Transportation System.* Description of the anticipated effects of the proposed action on regional or local transportation systems and patterns. Estimates of the amount of traffic likely to be diverted to other transportation systems or modes as a result of the proposed action, if any. If rail-to-truck diversions are expected to occur, identification of the roadways likely to be impacted, the annual average daily traffic on those roadways, estimates of the potential increase in daily roadway traffic as a result of the proposed action, and descriptions of any potential roadway capacity constraints.

(c) *Land Use.*

(1) Based on consultation with local and regional planning agencies or a review of the official planning documents prepared by such agencies, assessment of whether the proposed action is consistent with existing land use plans. Descriptions of any

inconsistencies.

(2) Based on consultation with the Natural Resources Conservation Service, descriptions of the effect of the proposed action on any prime agricultural land.

(3) If the proposed action would affect land or water resources within a designated coastal zone, documentation of the notification of the relevant state, and a consistency review and certification if required under Coastal Zone Management Act (16 U.S.C. 1451–1468) and its implementing regulations.

(4) Based on consultation with the Federal Emergency Management Agency (FEMA), or FEMA's online flood hazard mapping created under the National Flood Insurance Program, descriptions of whether the proposed action would occur within a designated flood zone.

(5) Descriptions of erosion mitigation practices to be used during activities associated with the proposed action.

(d) *Energy*.

(1) Descriptions of the effect of the proposed action on energy resources, *i.e.*, increase or decrease in overall energy efficiency of rail operations.

(2) Measurements of the proposed action's resulting net change in energy consumption and the data and methodology used if the proposed action would cause diversions from rail to truck of more than:

(i) 1,000 rail carloads a year, or

(ii) An average of 50 rail carloads per mile per year for any part of the affected line.

(e) *Air*.

(1) Measure anticipated effect on air emissions (for the air quality control region in which the proposed action is located) if the proposed action is located in an attainment area and would result in:

(i) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposed action,

(ii) An increase in rail yard activity of at least 100 percent (measured by carload activity), or

(iii) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment.

(iv) For proposed actions that involve reinstating service over an existing rail line that currently has no traffic, only the eight-train a day provision in paragraph (e)(1)(i) of this section applies.

(2) Measure anticipated effect on air emissions (for the air quality control region in which the proposed action is located), and determination of whether any expected increase would be within the parameters established by the relevant State Implementation Plan, if the proposed action affects a class I or nonattainment area and would result in:

(i) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,

(ii) An increase in rail yard activity of at least 20 percent (measured by carload activity), or

(iii) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment.

(iv) For proposed actions that involve reinstating service over an existing rail line that currently has no traffic, only the three-train a day provision in paragraph (e)(2)(i) of this section applies.

(f) *Noise and Vibration.* If any of the thresholds identified in paragraph (e)(1) of this section are exceeded, environmental noise and vibration analysis, e.g., modeling and measurements, will be conducted to measure any effects resulting from the proposed

action.

(g) *Safety.*

(1) Describe any environmental effects of the proposed action on safety, including at railroad grade crossings.

(2) If hazardous materials are expected to be transported, identify:

(i) The materials and quantity;

(ii) The frequency of service;

(iii) Whether chemicals would be transported that, if mixed, could react to form more hazardous compounds;

(iv) Safety practices (including any speed restrictions);

(v) The applicant's safety record, to the extent available, with respect to derailments, accidents, and hazardous spills; and

(vi) Procedures for preventing and controlling spills.

(3) If there are any known hazardous waste sites or sites where there have been known hazardous spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(h) *Biological Resources.*

(1) Based on consultation with the NOAA Fisheries and consultation with the U.S. Fish and Wildlife Service or reference to the U.S. Fish and Wildlife Service's electronic database(s), a statement of:

(i) Whether any federally listed threatened or endangered species or areas designated as a critical habitat are present in or adjacent to the area of the proposed action and how that determination was made; and

(ii) Whether the proposed action is likely to adversely affect federally listed threatened or endangered species or areas designated as a critical habitat, and if so, describe the effects.

(2) Statement of whether wildlife sanctuaries or refuges, national or state parks, or forests would be affected by the proposed action and, if so, description of the effects.

(i) *Water.*

(1) Based on consultations with federal and state water quality officials, explanation of whether the proposed action would be consistent with applicable water quality standards, and description of any inconsistencies.

(2) Based on consultation with the U.S. Army Corps of Engineers, explanation of whether any permits under section 404 of the Clean Water Act (33 U.S.C. 1344) or section 10 of the Rivers and Harbors Act (33 U.S.C. 401) would be required for the proposed action.

(3) Statement of whether any waters of the United States (including lakes, streams and wetlands), navigable waterways, or 100-year flood plains would be affected by the proposed action, and if so, description of the effects.

(4) Statement of whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) would be required for the proposed action.

(j) *Cultural Resources.* If historic review is required, a section 106 review under the implementing regulations (36 CFR part 800) for the NHPA must be conducted.

(k) *Voluntary Mitigation.* Description of any voluntary mitigation measures proposed by an applicant.

(l) *Additional Information in Rail Construction Cases.* In rail construction cases, the EA or EIS must also include the following:

(1) *Alternatives and Rail Operations.*

(i) Description of any reasonable alternative routes considered, and a no-build alternative, and explanation of why the alternative routes were not selected as the preferred route. Description of new access roads (if any) anticipated to be needed during rail construction, and statement of whether those access roads would be temporary or

permanent.

(ii) Detailed description of the rail operations to be conducted on the line, including estimates of freight (carloads and tonnage) to be transported, commodities to be transported (if known), the anticipated daily and annual number of train movements, number of cars per train, types of cars, motive power requirements, proposed speeds, labor force, and proposed maintenance-of-way practices.

(2) *Safety*. If hazardous materials are expected to be transported, description of procedures that would be used for storing and fueling construction equipment.

(3) *Energy*. If the proposed action would cause any diversion of traffic from rail to truck, the EA or EIS will include the information required in paragraph (d)(2) of this section.

(4) *Air*.

(i) Description of potential air quality effects and measurement of the anticipated effect on air emissions (for the air quality control region in which the proposed action is located) from:

(A) Construction activities;

(B) Idling vehicles delayed at public and/or private at-grade crossings; and

(C) Reasonably foreseeable train operations, including changes in operations on existing rail lines that would be impacted by the proposal.

(ii) If the proposed action would affect a class I or nonattainment area, then the EA or EIS will include the anticipated effect on air emissions and determine whether any expected increased emissions would be within the parameters established by the relevant State Implementation Plan.

(5) *Noise and Vibration*. Regardless of the number of trains expected to operate over a proposed rail line, environmental noise and vibration analysis will be conducted to measure any effects resulting from the proposed action.

(m) *Additional Information for Solid Waste Rail Transfer Facility Land-Use Exemptions.* An EA or EIS for an applicant seeking a land-use exemption permit under the Clean Railroads Act, 49 U.S.C. 10501(c)(2)(B), 10908–10910, will also include the information required in paragraph (l) of this section, where applicable, and in § 1155.24 of this chapter.

(n) *Additional Information.* The Director may require applicants to submit additional information regarding the environmental effects of the proposed action.

§ 1105.17 Board Decisions.

(a) *Decision.* As part of its final decision making in a proceeding in which an environmental and/or historic review was conducted, the Board will consider the entire environmental and historic record and issue a decision. The decision will be posted on the Board's website.

(b) *Conditions.* The Board will decide what, if any, environmental and historic conditions to impose upon the authority it is issuing, except with respect to environmental and historic conditions in proceedings under 49 C.F.R. § 1152.50 and historic requirements imposed pursuant to agreements signed under § 1011.7(c)(7)(ii) of this chapter, based on the environmental and historic record and its substantive responsibilities under the ICC Termination Act of 1995, Pub. L. 104-88, as amended. The Board may withhold a decision, stay the effective date of an exemption, or impose appropriate conditions upon any authority granted, when an environmental or historic preservation issue has not yet been resolved.

(1) The applicant shall comply with all conditions imposed by the Board and shall ensure that any party acting on its behalf (such as a construction contractor/subcontractor or rail salvage company) also complies with the conditions imposed by the Board.

(2) Compliance with environmental conditions and historic conditions imposed by the Board in rail abandonment and discontinuance cases is not required with respect to

any portion of a line covered by an interim trail use agreement entered into pursuant to the National Trails System Act, 16 U.S.C. 1247(d) and § 1152.29 of this chapter, for the duration of the agreement. If the interim trail use condition subsequently is vacated, any environmental or historic conditions previously imposed by the Board that are barriers to consummation must be satisfied before abandonment may be completed.

(3) If there is consistency review under 15 CFR 930.54, the Board and the applicant will comply with the consistency certification procedures of 15 CFR part 930. Also, the Board will withhold a decision, stay the effective date of a decision, or impose a condition delaying consummation of the action, until the applicant has submitted a consistency certification and either the state has concurred in the consistency certification, or an appeal to the Secretary of Commerce (under 15 CFR 930.64(e)) is successful.

(c) Finding of No Significant Impact.

(1) When the EA is complete, and the Board is able to determine that a proposed action would have no significant environmental effects (with or without mitigation), the Board will issue a Finding of No Significant Impact (FONSI) setting forth the basis for its determination, which will typically be included in the Board's decision.

(2) In abandonment exemption proceedings under 49 C.F.R. § 1152.50, if no environmental or historic preservation issues are raised by any party or identified by OEA in its independent review, the Director will issue a decision pursuant to § 1011.7(c)(6) of this chapter that includes a FONSI indicating that the environmental and historic record has formally been considered. The Director's decision will be posted on the Board's website.

(3) The FONSI will:

(i) Incorporate the EA by reference;

(ii) Document the reasons why the Board or the Director has determined that the

proposed action or project at hand will not have a significant effect on the quality of the human environment;

(iii) State the authority for any mitigation that the Board has adopted and any applicable monitoring or enforcement provisions. If the Board finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects;

(iv) Identify any other documents related to the finding of no significant impact; and

(v) State that an EIS will not be prepared for the proposed action or project at hand, concluding the NEPA process for that action.

§ 1105.18 Emergencies.

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these regulations, the Board will consult with the Council on Environmental Quality about alternative arrangements for compliance with NEPA. A request for emergency consideration may be filed in the formal docket, and the Board will determine whether the circumstances merit alternative arrangements for compliance with NEPA.

§ 1105.19 Transmittal Letter for Environmental and Historic Reports.

When an environmental report is filed with the Board, the applicant shall certify to the Board that it has sent a copy of the report to the agencies and entities identified in § 1105.8(d)(1) 45 days before filing. When a historic report is filed with the Board, the applicant shall certify to the Board that it has sent a copy of the report to the agencies and entities identified in § 1105.14(c) at least 20 days before filing. The sample letter contained in Appendix A to this part should be used in transmitting the environmental and historic reports to the applicable agencies and entities identified in § 1105.8(d)(1) and

§ 1105.14(c).

Appendix A to Part 1105—Sample Transmittal Letter for Applicant’s Report

Re: (Name of proposed action and Board docket number)

On or about (date), we expect to file with the Surface Transportation Board a (type of proceeding) seeking authority to () located in (city or town) (state). Attached is an environmental report and/or historic report describing the proposal and any expected environmental and/or historic effects, as well as a detailed map of the affected area.

We are providing this report so that you may review the information that will form the basis for the Board’s independent environmental and/or historic analysis under the National Environmental Policy Act (NEPA) and/or the National Historic Preservation Act (NHPA) in this proceeding. If you believe any of the information is incorrect or that information is missing, or if you have any substantive comments regarding the proposal and its potential effects, please file your comments electronically on the Board’s website at www.stb.gov. Alternatively, you may send your written comments to Surface Transportation Board, Office of Environmental Analysis (OEA) at 395 E Street, SW, Washington, DC 20423-0001, and include the docket number for this proceeding.

Because the applicable statutes and regulations impose stringent deadlines for processing this action, please provide written comments to OEA within three weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic effects of the contemplated proposal under NEPA and section 106 of the NHPA.

If you have any questions about the Board’s environmental or historic review process, please contact OEA. Questions regarding this proposal, may be directed to us or our representative, (name of applicant’s representative), who may be contacted at (telephone number), (email address), or (mailing address).

§ 1105.20 Newspaper Notices for Abandonment Exemption Cases

An applicant seeking authority to abandon and/or discontinue a rail line pursuant to part

1152 of this chapter that is not categorically excluded from further environmental review under § 1105.7(a)(1) shall publish a notice in a newspaper of general circulation, either print or online, in each county in which the rail line is located and certify to the Board that it has done so by the date its notice of exemption or petition for exemption is filed. The notice shall alert the public to: the proposed abandonment and/or discontinuance of service; available alternatives, such as interim trail use and public use; and how members of the public may participate in a Board proceeding. A sample newspaper notice is provided in Appendix B to this part.

Appendix B to Part 1105—Sample Newspaper Notice

Sample Local Newspaper Notice for Out-Of-Service Notice of Abandonment Exemptions

Notice of Intent To Abandon or To Discontinue Rail Service

(Name of applicant) gives notice that on or about (date notice of exemption will be filed with the Board), it intends to file with the Surface Transportation Board a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments permitting the (abandonment of and/or discontinuance of service over) a ___ mile line of railroad between milepost ___, near (station name or street name), and milepost ___, near (station name or street name), which traverses through (list ZIP codes) in (County, State). The docket number for this proceeding is AB ___ (Sub-No. ___ X).

The Board's Office of Environmental Analysis will prepare an Environmental Assessment (EA), which will typically be available 25 days after the filing of the notice of exemption. Comments on environmental and historic preservation matters may be submitted no later than 15 days after the EA becomes available to the public and will be addressed as appropriate in the Board's decision, which will be posted to the Board's website. Interested persons may obtain a copy of the EA or make inquiries regarding environmental or historic preservation matters by writing to the Surface Transportation

Board, Office of Environmental Analysis, 395 E Street, SW, Washington, DC 20423-0001; or visiting the Board's website at www.stb.gov. Comments may be submitted electronically on the Board's website at www.stb.gov, or may be mailed to the address provided above.

Offers of financial assistance to continue rail service can be filed with the Board under 49 U.S.C. 10904. Requests for environmental or historic conditions, public use conditions under 49 U.S.C. 10905, or rail banking/interim trail use conditions under 16 U.S.C. 1247(d) and 49 CFR 1152.29, can also be filed with the Board. Pleadings that raise matters other than environmental and historic preservation issues (such as interim trail use, public use, and offers of financial assistance) must be formally filed with the Board in accordance with the Board's regulations at 49 CFR part 1104. Questions regarding offers of financial assistance, public use or interim trail use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238.

Sample Local Newspaper Notice for Petitions for Abandonment Exemptions

Notice of Intent To Abandon or To Discontinue Rail Service

(Name of applicant) gives notice that on or about (date petition for abandonment exemption will be filed with the Board), it intends to file with the Surface Transportation Board a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, permitting the (abandonment of and/or discontinuance of service over) a ___ mile rail line located between milepost ___, near (station name or street name), and milepost ___, near (station name or street name), which traverses through (list ZIP codes) in ___ (County, State). The docket number for this proceeding is AB ___ (Sub-No. ___ X).

The Board's Office of Environmental Analysis (OEA) will prepare an Environmental Assessment (EA), which will typically be available 60 days after the filing of the petition

for abandonment exemption. Comments on environmental and historic preservation matters may be submitted no later than 30 days after the EA becomes available to the public and will be addressed as appropriate in the Board's decision, which will be posted on the Board's website. Interested persons may obtain a copy of the EA or make inquiries regarding environmental and historic matters by writing to the Surface Transportation Board, Office of Environmental Analysis, 395 E Street, SW, Washington, DC 20423-0001; or visiting the Board's website at www.stb.gov. Comments may be mailed to the address provided above or submitted electronically on the Board's website at www.stb.gov.

Offers of financial assistance to continue rail service can be filed with the Board under 49 U.S.C. 10904. Requests for environmental or historic conditions, public use conditions under 49 U.S.C. 10905, or rail banking/interim trail use conditions under 16 U.S.C. 1247(d) and 49 CFR 1152.29, can also be filed with the Board. Pleadings that raise matters other than environmental and historic preservation issues (such as interim trail use, public use, and offers of financial assistance) must be formally filed with the Board in accordance with the Board's regulations at 49 CFR part 1104. Questions regarding offers of financial assistance, public use or interim trail use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238.

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