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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**EP 779 – PERMITTING REFORM – ENVIRONMENTAL REVIEW
PROCESS**

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (“AAR”), on behalf of itself and its member railroads, respectfully submits the following comments on the Surface Transportation Board’s (“STB” or “the Board”) notice of proposed rulemaking on Permitting Reform – Environmental Review Process (“the Proposal”).¹

Railroads play an outsized role in keeping climate goals on track and our economy moving. On average, railroads are three to four times more fuel efficient than trucks—a single train can replace several hundred trucks on the nation’s congested highways.² Rail makes up about 28% of U.S. freight movement by ton-miles. And while rail is essential to national and global supply chains, railroads account for only 1.7% of total U.S. transportation-related greenhouse gas emissions.

The environmental benefits of transport by rail, coupled with its crucial role in the supply chain and the nation’s infrastructure, underscore the importance of continuing to maintain, expand, and improve the efficiency, safety, and resiliency of railroad networks. The

¹ 91 Fed. Reg. 14490 (March 25, 2026).

² Association of American Railroads, *Freight Railroads & Climate Change*, at 2 (June 2023) (<https://www.aar.org/wp-content/uploads/2023/06/AAR-Climate-Change-2023-Report.pdf>).

vast majority of the U.S. freight rail network is privately owned, maintained, and operated by companies with a vested interest in keeping their network operations safe and fluid. In order to do that, these companies are investing billions of dollars in private capital to replace bridges, add track to congested locations, and build new facilities to ship goods faster and more efficiently. This work is needed not only to upgrade aging infrastructure and keep operations safe but to also allow for growth that powers the U.S. economy. Frequently, these projects require authorizations or permits from federal agencies, including the STB, and, therefore, the completion of a National Environmental Policy Act (“NEPA”) review process.³ As such, AAR’s member railroads have a significant interest in this Proposal.

AAR and its members fully support informed agency decision-making and public engagement of the potential environmental impacts of a proposed federal action as facilitated by the NEPA process. However, to fully realize Congress’ directive in enacting and subsequently amending NEPA, this process must be predictable, efficient, and transparent – particularly with respect to certain categorical exclusions. Doing so will allow regulated parties to clearly anticipate the scope and nature of environmental review. AAR believes that the Board’s Proposal advances these objectives and offers the below comments on certain provisions. Additionally, individual members of AAR may submit separate comments providing further thoughts and suggestions on the proposed rulemaking for the Board’s consideration.

³ 42 U.S.C. § 4321 et seq.

Discussion

I. Streamlining and Efficiency

a. The Proposal is consistent with established law on the limitations of NEPA.

The Proposal reflects changes to NEPA’s statutory text and binding case law that occurred since the Board last made significant updates to its environmental review regulations in 1991. Congress significantly altered NEPA’s statutory text in 2023, at which point it expressly sought to streamline the NEPA process and speed up federal infrastructure project development. Specifically, Section 321 of the Fiscal Responsibility Act, known as the “BUILDER Act,” narrows and clarifies the scope of agency considerations and takes other steps to make the NEPA review process more efficient and transparent.⁴ In 2025, the Council on Environmental Quality rescinded its NEPA implementing regulations. And, perhaps most importantly, in 2025 the U.S. Supreme Court decided *Seven County Infrastructure Coalition v. Eagle County, Colorado*, and held that NEPA only requires an agency to examine the environmental impacts of the proposed action, not of future or geographically separate projects, and grants agencies substantial deference in defining the scope of the environmental review.⁵

The Board’s proposed changes will streamline and clarify NEPA review of proceedings before it. Not only will reviews be more efficient, but parties will have additional clarity on which Board actions trigger NEPA, as well as applicable procedures, timelines, and page limits. AAR supports these proposed changes.

⁴ Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 321, 137 Stat. 10, 38 (2023).

⁵ 605 U.S. 168 (2025).

b. The Proposal Clarifies When NEPA Does Not Apply to a Board Action.

NEPA is triggered only by a “major federal action significantly affecting the quality of the human environment.”⁶ By clarifying when NEPA applies to a proposed action, including where federal law exempts NEPA review or where Board action is a ministerial act, proposals to the Board will be more efficiently filed and processed.⁷ Also helpful is the non-exhaustive list of actions not subject to NEPA because the Board does not consider them to be a “major federal action.”⁸

AAR strongly supports this change and clarification. The Proposal will significantly improve the efficiency of certain matters before the Board, save resources, and expedite projects that keep supply chains moving and network operations fluid and safe.

c. Environmental Assessments are an Appropriate Default in Cases of New Line Construction.

The Board proposes to codify the current Environmental Impact Statements (“EIS”) process, incorporates the Congressional amendments to the NEPA statute, and lists actions typically requiring an EIS unless categorically excluded or reclassified by the Director.⁹

AAR suggests that an Environmental Assessments (“EA”) become the default for new rail line construction, with an EIS required only if initial review indicates significant impacts affecting the quality of the environment. This will allow both the Board and applicants to use a less extensive approach unless early findings suggest the potential for significant environmental

⁶ 42 U.S.C. § 4332.

⁷ 91 Fed. Reg. 14502 (March 25, 2026).

⁸ *Id.*

⁹ 91 Fed. Reg. 14504 (March 25, 2026).

impacts because of the proposed action. It will allow all parties to reserve the time and cost of an EIS for proposals where significance is demonstrated, thus improving scheduling predictability.

d. The Proposal Will Streamline the NEPA Review Process for Board Actions.

The Proposal includes several changes that will further streamline the NEPA review process. Specifically, the Board proposes to reduce the prefiling notice period from six months to 45 days with exceptions for abandonment and discontinuance, thus significantly shortening the timeline for Board review.¹⁰ Additional streamlining will be achieved by implementing the page limits and timeframes for both EA and EIS, as required by Congress in the BUILDER Act.¹¹ These changes, when coupled with the goal of frontloading the work on scoping documents, will help reduce the timelines by providing more information on the frontend. All these changes are important to improve the overall process while maintaining focus on environmental issues.

II. Categorical Exclusions

a. The Proposal Properly Implements Congress' Directive on the Use of Categorical Exclusions.

The Proposal appropriately expands categorical exclusions in recognition of the Congressional directive to streamline the NEPA review process.¹² The new and revised exclusions recognize that certain actions do not individually or cumulatively have a significant effect on the human environment. Therefore, such actions do not require an EA or an EIS,

¹⁰ 91 Fed. Reg. 14505 (March 25, 2026).

¹¹ 91 Fed. Reg. 14504-05 (March 25, 2026).

¹² 91 Fed. Reg. 14503 (March 25, 2026).

thereby reducing paperwork, saving time and resources, and ensuring network fluidity and safety.

In addition, under the BUILDER Act, Section 109 of NEPA now states that “[a]n agency may adopt a categorical exclusion listed in another agency’s NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established” and identifies a short list of requirements for the agency to do so.¹³ Specifically, the statute requires that the agency seeking to use another agency’s categorical exclusion confirm that the intended use is appropriate, inform the public, and document the adoption of the categorical exclusion.¹⁴

The Proposal incorporates this directive in proposed § 1105.7(c) and clearly identifies the process for adopting categorical exclusions from other federal agencies, which will further streamline the environmental review process.¹⁵ AAR strongly supports the Board’s proposed use of categorical exclusions to streamline the NEPA review process.

b. AAR Recommends Several Additional Categorical Exclusions.

In addition to those included in the Proposal, AAR suggests the Board adopt the Federal Railroad Administration’s (“FRA”) categorical exclusions at 23 C.F.R. § 771.116 to the extent they are applicable to STB actions. Some of the FRA’s categorical exclusions include:

- Acquisition or transfer of real property or existing railroad facilities, including track and bridge structures; electrification, communication, signaling, or security facilities; stations; and maintenance of equipment bases or the right to use such real property and railroad facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties or facilities.

¹³ 42 U.S.C. § 109.

¹⁴ *Id.*

¹⁵ Fed. Reg. 14503 (March 25, 2026).

- Maintenance or repair of existing railroad facilities, where such activities do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and maintenance-of-equipment bases.
- Planning or design activities that do not commit to a particular course of action affecting the environment.
- The rehabilitation, reconstruction or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.¹⁶

Adopting the FRA's categorical exclusions to the extent applicable to STB actions would harmonize the exclusions for both agencies to avoid divergence for the same physical rail assets.

c. The Potential Effects of Excluding Post-consummation Salvage Activities from the List of Categorical Exclusions.

AAR supports the categorical exclusion for abandonments and discontinuances where they would not involve salvage or substantial traffic diversions. Not having to undertake the NEPA review in these particular circumstances will speed up the regulatory process and allow railroads to reallocate resources from NEPA, a cost-driver for abandonments, to initiatives that support service, reliability, and safety. As such the Board's proposal would serve several of the Rail Transportation Policies, including "to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required", "to reduce regulatory barriers to entry into and exit from the industry",

¹⁶ 23 C.F.R. § 771.116

and “to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.”¹⁷

III. Third-Party Contractors

The Board proposes to move existing third-party provisions into a new section and to require a contractor disclosure statement certifying that they have no financial or other interests in the outcome of the proposal.¹⁸ AAR respectfully suggests that the Board allow contractors with potential interests to participate if they disclose conflicts (with appropriate mitigation), rather than a categorical bar. Many experienced contractors have prior work with potential applicants and disclosure is more workable than exclusion as a practical matter.

IV. Conclusion

AAR appreciates the opportunity to provide comments on the Proposal and supports the Board’s effort to streamline environmental review in agency proceedings. Implementing the Proposal will facilitate both informed decision-making and responsible investment in our nation’s rail infrastructure. AAR welcomes additional conversations with the Board on this topic.

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¹⁷ 49 U.S.C. § 10101(2), (7), (15).

¹⁸ 91 Fed. Reg. 14507 (March 25, 2026).

Respectfully submitted,

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