

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney
General



**STATE OF COLORADO
DEPARTMENT OF LAW**

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

April 24, 2026

311174

Danielle Gosselin
Director of the Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Chief Counsel
April 24, 2026
Part of
Public Record

Submitted Via STB E-Filing System

**RE: Docket No. EP 779 – Notice of Proposed Rulemaking,
Permitting Reform-Environmental Review Process**

Dear Director Gosselin:

Thank you for the opportunity to comment on the Surface Transportation Board's proposed revisions to its National Environmental Policy Act (NEPA) regulations at 49 C.F.R. parts 1011 and 1105. While the proposal contains updates that reflect changes in the law and may improve efficiency, several of the proposed provisions risk narrowing the Board's consideration of reasonably foreseeable indirect and downline effects, which remain central to informed decision-making under NEPA. NEPA reviews are an important tool that allows the public and other interested stakeholders to weigh in on proposed actions and allows states to provide their expertise on potential impacts through the consultation process. Colorado urges the Board to uphold these principles in any final rule.

I. NEPA Requires Analysis of Reasonably Foreseeable Indirect Effects

The Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025), affirms that agencies have discretion in scoping the impacts they study as part of their environmental reviews, but does not alter NEPA's requirement to analyze reasonably foreseeable effects that bear a reasonably close causal relationship to the federal action under review. As the Supreme Court noted, "the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time." 605 U.S. at 187 (emphasis in original). Where indirect effects are foreseeable and informative to the agency's decision-making, they are squarely within NEPA's mandate. To ensure consistent

application, the final rule should clarify in Sections 1105.4(f), 1105.6(c), 1105.8, and 1105.9 that such indirect effects remain part of the required analysis, even where other sovereigns or agencies regulate aspects of those effects.

II. Categorical Exclusions and “Extraordinary Circumstances”

The Board proposes adopting several expanded categorical exclusions for actions that would not require further environmental review. While many of these actions normally have limited impacts, it is important to preserve a robust and meaningful safeguard through the “extraordinary circumstances” standard set forth in Section 1105.7(e), which provides that “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.”

Colorado’s experience with past Board proceedings shows that foreseeable risks may arise where hazardous cargo moves through sensitive corridors, where projects can increase ignition risks in wildfire-prone regions, and where the project area encompasses endangered species habitat and migration pathways. Given the types of rail projects the Board oversees, proposals that may nominally fall into a proposed categorical exception by virtue of making “unsubstantial” changes to an applicant’s rail operations could still increase the risk of impacts in these sensitive areas. Thus, a meaningful backstop that authorizes the Director to require environmental review notwithstanding the categorical exclusion is critical to ensure the Board considers these impacts. To ensure transparency, the Board should publish additional guidance or a screening memorandum to clarify when a categorical exclusion will or will not apply in such settings.

Finally, it is unclear whether the Board consulted with the Council on Environmental Quality (CEQ) on the proposed changes to the categorical exclusions. Recent guidance from CEQ directs agencies to consult with CEQ on proposed categorical exclusions prior to providing public notice.¹ The Board should ensure that CEQ has an opportunity to review the proposal and provide feedback before it takes final action.

III. Downline Impacts in Construction Proceedings

The Board proposes to remove a blanket requirement to describe “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”—in an Environmental Assessment (EA) or Environmental Impact Statement (EIS), replacing it with a project-specific approach to determine when analysis of indirect

¹ Council on Environmental Quality, [Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act](#) (Apr. 9, 2026).

downline impacts must be completed. By creating a presumption against considering these impacts, the Board risks missing key impacts that merit review. The *Seven County Infrastructure Coalition* case demonstrates the importance of requiring project applicants to provide information on such impacts to enable meaningful review under NEPA. There, the project under review was a proposed 88-mile rail line in Utah that would connect to existing rail networks, including rail lines in Colorado. The original EIS prepared for the project demonstrated significant, foreseeable downline impacts from the increased rail traffic facilitated by the project, including impacts to endangered Colorado River fish from downline accidents and spills. While the proposed rule allows the Board to require information on downline impacts on a case-by-case basis, setting a default rule that this information is not required will decrease the quality of information provided to the Board and inevitably result in the Board missing key considerations that should inform its decisions. By contrast, keeping a clear requirement to evaluate such foreseeable downline effects would align the rule with NEPA's purpose and recent caselaw.

V. State Consultation and Cooperative Federalism

NEPA's cooperative-federalism structure requires early and meaningful state involvement, particularly where projects have downline, cross-boundary, or cumulative effects, and where state technical expertise can assist the Board's review of the real-world impacts of a proposed action. To facilitate state involvement, the final rule should incorporate explicit state-consultation checkpoints in Sections 1105.8(c)(2), 1105.9(d), and 1105.11; requirements to share key technical materials (such as hydrology, spill modeling, and endangered-species analyses) with consulting and interested state agencies before scoping closes; and public posting of preliminary environmental analyses where they can meaningfully inform participation. These additions would strengthen the NEPA process and fulfill the statute's commitment to meaningful state input.

VI. Proposed Addition Addressing Emergencies

The Board proposes a new provision at Section 1105.8 to address situations where "emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental impacts without observing the provisions of" the Board's NEPA implementing regulations. Neither the text of the proposed regulation nor the explanatory materials included with the proposal indicate the types of emergency circumstances where the Board expects to invoke such emergency procedures. Because such provisions can be subject to abuse where the standards governing their use are unclear, Colorado urges the Board to provide a guidance memorandum or additional regulatory text documenting the limited situations where it believes emergency consideration might be necessary. Consistent with emergency procedures of other agencies, such circumstances might

include where there is an imminent risk of harm to public safety or the environment.

VII. Conclusion

NEPA remains a critical tool for ensuring that federal agencies make informed decisions that consider the full spectrum of significant impacts that may result from their actions. To ensure consistency with NEPA's text and purpose, the Board's final regulations should preserve robust analysis of reasonably foreseeable indirect effects, ensure clear safeguards in categorical exclusions, formalize early state engagement on environmental issues, and clarify when emergency procedures might be invoked.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phil J. Weiser". The signature is fluid and cursive, with the first name "Phil" and last name "Weiser" clearly distinguishable.

Phil Weiser
Attorney General