

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 779

PERMITTING REFORM—ENVIRONMENTAL REVIEW PROCESS

COMMENTS OF CN

Grand Trunk Corporation on behalf of itself and its U.S. rail operating subsidiaries¹ (collectively, “CN”) respectfully submits these comments on the notice of proposed rulemaking to revise the Board’s regulations implementing the National Environmental Policy Act (“NEPA”) (the “Proposed Regulations”). *Permitting Reform—Env’t Rev. Process*, EP 779 (STB served Mar. 25, 2026). The Proposed Regulations are a promising opportunity to build on the STB’s existing regulatory framework and advance NEPA’s core purposes while streamlining the agency’s review process. We appreciate the Board’s efforts and believe the Proposed Regulations could be further refined in certain limited ways to ensure alignment with NEPA’s purposes and text. *See* 42 U.S.C. § 4333 (agency NEPA regulations must be in “conformity with the intent, purposes, and procedures” of the statute).

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Closer alignment with NEPA’s objectives would yield meaningful benefits, including greater analytical rigor, enhanced public confidence in Board decisions, and potentially reduced likelihood of challenges to Board action. Courts have recognized this value, and the STB is well-positioned to demonstrate leadership here. *See Nat. Res. Def. Council, Inc. v. SEC*, 389 F. Supp. 689, 695, 699-701 (D.D.C. 1974) (encouraging federal agencies to adequately explain how updated regulations effectuate NEPA’s purposes and noting “the procedural requirements of NEPA § 102 . . . must be carried out ‘to the fullest extent possible’” (citation omitted)).

Below, CN offers specific suggestions for the Board’s consideration to strengthen the Proposed Regulations.

I. Opportunities to Further Align the Proposed Regulations with NEPA

A. *Enhancing Public Comment Opportunities in the Environmental Assessment (“EA”) and Environmental Impact Statement (“EIS”) Processes*

CN shares the Board’s goal of streamlining environmental review. Too often, regulatory environmental review can become bogged down by voluminous and time-consuming tasks and deliverables. At the same time, meaningful public participation is essential to NEPA and the integrity of the Board’s decisions. The opportunity for public participation serves the Board’s interests by producing more robust analyses and reducing litigation risk, while enhancing public confidence. Courts have consistently emphasized that meaningful public participation is central to NEPA’s design. *See, e.g., WildEarth Guardians v. Bureau of Land Mgmt.*, 870 F.3d 1222, 1237 (10th Cir. 2017);

Idaho Wool Growers Ass’n v. Vilsack, 816 F.3d 1095, 1104-05 (9th Cir. 2016);
California v. Block, 690 F.2d 753, 770 (9th Cir. 1982).

As currently framed, the Proposed Regulations would reduce public comment opportunities in both the EA and EIS processes. CN is concerned that if there is no meaningful opportunity for public participation during the environmental review process, approvals of applications could be subject to appellate challenge. If a meaningful opportunity for participation is not made available, members of the public who have concerns about a proposed action are unlikely to set those concerns aside at the conclusion of the proceeding at the Board. Instead, those concerns would likely surface in court, nullifying the efficiencies of the streamlined environmental review process.

1. EA Public Comment Opportunities

The Proposed Regulations (excluding abandonment and discontinuance proceedings) do not guarantee public comment at several key junctures in the EA process. For example, under the current proposal, public comment is not required during EA scoping. While state, tribal, and local authorities will be consulted, there is no “as of right” public comment opportunity on any notice of intent to perform an EA that OEA may issue. [Proposed Regulation 1105.8(c)(2); 1105.8(c)(4).] Nor is there an opportunity for the public to comment on draft EA documents, which OEA may or may not make available. [Proposed Regulation 1105.8(c)(5).] Once an EA is complete, the Proposed Regulations likewise do not provide any public comment period. [Proposed

Regulation 1105.8(c)(10).] Public comment solicitation instead remains discretionary throughout the EA process. [Proposed Regulation 1105.8(c)(6).]

The Board has already recognized the value of public input in certain contexts. For abandonment and discontinuance proceedings, the Proposed Regulations provide a 30-day public comment period on the final EA. [Proposed Regulation 1105.8(d)(4).] This demonstrates the Board's appreciation for public participation, and EAs for actions other than abandonment and discontinuance should receive the same public comment opportunity. CN does not believe that public participation is needed at each step of the EA process, but we do believe that some public participation as of right is essential to fulfilling NEPA's purposes. 42 U.S.C. § 4333. CN thus suggests that the Proposed Regulations be revised to provide a 30-day public comment period on all notices of intent to perform an EA and all final EAs (or on draft EAs where published).

2. EIS Public Comment Opportunities

The Board's decision to provide some opportunity for public comment during the EIS process is commendable, but further refinement would ensure that the EIS process achieves NEPA's transparency objective. *See, e.g., N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 603 (4th Cir. 2012) ("NEPA procedures emphasize clarity and transparency of process over particular substantive outcomes.").

The Supreme Court has recognized that publication of an EIS serves as a "springboard for public comment." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Robust participation yields better analyses and more durable decisions. *See id.*; *WildEarth Guardians*, 870 F.3d at 1237; *Idaho Wool Growers*, 816

F.3d at 1104; *Prutehi Litekyan: Save Ritidian v. Dep’t of Air Force*, 128 F.4th 1089, 1101 (9th Cir. 2025), *cert. granted sub nom. Dep’t of Air Force. v. Prutehi Guahan*, No. 25-579, 2026 WL 642829 (U.S. Mar. 9, 2026); *Block*, 690 F.2d at 770. The Proposed Regulations themselves envision an “early and open process.” [Proposed Regulations 1105.8(c)(2); 1105.9(d).] Indeed, the preamble to the Proposed Regulations states that there is “ample opportunity for public comment and participation in the EIS process (both written and orally at public meetings).” *Permitting Reform—Env’t Rev. Process*, EP 779, slip op. at 15.

The EIS process provides a heightened level of environmental review, warranting a greater need for public involvement (relative to EAs) to fulfill NEPA’s purposes. Aligning the text of the Proposed Regulations with the above-stated goals and commitments would strengthen both the Board’s ability to make informed decisions and public confidence. In light of these considerations, CN offers the following comments on the proposed EIS process:

1. While the Board is proposing to provide a right to comment on the agency’s notice of intent to perform an EIS, there is no specific time period for providing such comments. [Proposed Regulation 1105.9(f)(2).] CN requests that the STB adopt a 30-day public comment period on notices of intent to perform an EIS.
2. Currently, public comment is not guaranteed at any of the following stages in the EIS process: (1) the EIS scoping phase [Proposed Regulation 1105.9(d)]; (2) draft EIS documents [Proposed Regulation

1105.9(g)]; or (3) final EISs [Proposed Regulation 1105.9(l)]. While CN recognizes that public comment at each of these phases may be excessive in some circumstances, there should be at least one guaranteed opportunity for public comment beyond the public comment opportunity on the notice of intent. We thus suggest providing a guaranteed 30-day period for public comment on draft EIS documents, which will lead to a more refined final EIS. Any other opportunities for public comment during the EIS process would remain at OEA's discretion.

B. *EAs: Strengthening the Notice of Intent Phase*

CN believes the Board's notice of intent mechanism can be enhanced to better serve NEPA's transparency objective.

Under the Proposed Regulations, if OEA decides an EA is warranted, it "may publish" a notice of intent. [Proposed Regulation 1105.8(c)(4).] Such notice "may include" various helpful pieces of information, including the purpose and need for the proposed action, a preliminary description of the proposed action and alternatives, a summary of expected effects, anticipated reviews, consultations, permits and authorizations, a description of the scoping process, contact information, and identification of cooperating and participating agencies. [*See id.*] CN requests that publication of EA notices of intent be made mandatory, and that such notices be required to include the listed information, unless clearly inapplicable, plus any

additional information OEA deems relevant to the public's and the applicant's ability to understand the proposed action and scope of NEPA review.

One of NEPA's core purposes is to facilitate "broad dissemination of relevant environmental information" to "allow public participation" in agency decisions affecting the environment. *Methow Valley*, 490 U.S. at 350; *WildEarth Guardians*, 870 F.3d at 1237. Making the EA notice of intent mandatory and requiring it to include the information in Proposed Regulation 1105.8(c)(4) would align the regulations more closely with this statutory purpose and enhance public understanding of proposed STB actions. *See also* 42 U.S.C. § 4333; *City of Port Isabel v. FERC*, 111 F.4th 1198, 1204 (D.C. Cir. 2024); *Idaho Wool Growers*, 816 F.3d at 1104; *Save Ritidian*, 128 F.4th at 1101; *Block*, 690 F.2d at 770.

C. *EISs: Ensuring Analysis of Meaningful Alternatives*

NEPA requires that an EIS contain a "detailed statement" of the "reasonable range of alternatives" that are "technically and economically feasible." 42 U.S.C. § 4332(2)(C)(iii); *see also Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 141 F.4th 976, 993 (9th Cir. 2025). But Proposed Regulation 1105.16, governing EIS content, does not expressly require discussion of the reasonable range of alternatives, which CN anticipates is an inadvertent oversight in the proposed language.

To ensure that NEPA's purposes of informed agency decision-making and transparency are fulfilled, and to avoid unnecessary legal challenges, CN suggests that Proposed Regulation 1105.16 be revised to make clear that discussion of the reasonable range of technical and feasible alternatives to the proposed action would be

incorporated into an EIS, as statutorily contemplated. 42 U.S.C. §§ 4333, 4332(2)(C)(iii).

D. *Categorical Exclusions (“CE”): Ensuring Compliance with Notice-and-Comment Requirements*

CEs are an important part of NEPA. They can be used to great effect to streamline agency processes. But because they reduce the scope of environmental review, the procedure for implementing CEs should be clear and well-defined. To ensure that the Board’s proposed CE procedures withstand legal scrutiny and serve all stakeholders, CN offers the following comments.

The Proposed Regulations provide that for establishing, revising, and removing CEs, the Board will publish notice in the Federal Register but will not provide an opportunity for public comment. [Proposed Regulation 1105.7(b)(2), 1105.7(d)(2).] This approach may create unnecessary legal risk for the Board and uncertainty for stakeholders—e.g., for an applicant who relies on a CE that is then removed or revised without an opportunity for public comment, or on a new CE adopted without an opportunity for public comment. Any new, revised, or removed CE constitutes final agency action changing the Board’s NEPA regulations. Under the Administrative Procedure Act, such changes require notice-and-comment rulemaking. *See* 5 U.S.C. § 553(c). While NEPA does have a “notice only” CE option, that only applies when the Board adopts a CE “listed in another agency’s NEPA procedures.” 42 U.S.C. § 4336c. For all other CEs, notice-and-comment rulemaking is required. 5 U.S.C. § 553(c).

CN therefore suggests that the Board provide notice-and-comment rulemaking on all proposals to revise or remove CEs, as well as to adopt CEs that are not otherwise

provided for in another agency's NEPA procedures. Incorporating notice-and-comment procedures would strengthen the Proposed Regulations' legal foundation and insulate the Board from avoidable scrutiny.

II. Opportunities for Enhanced Clarity and Transparency

A. *Proposed CE for Connecting Track Actions*

Proposed Regulation 1105.7(a)(8) provides that the “[c]onstruction of connecting track within an existing rail right-of-way or on land owned by the connecting railroads and/or applicant” will typically be excluded from NEPA review as a CE. CN supports this CE. However, CN observes that, if the CE is adopted, 49 C.F.R. § 1150.36(b), (c), and (d) should be modified to reflect that environmental review will no longer be required for that action.

CN also asks the Board to clarify that, in the rare instance where a crossing order pursuant to 49 U.S.C. § 10901(d) is sought in connection with a connecting track exemption, the connecting track CE will encompass the crossing action, as crossing actions generally have not required separate environmental review. *See, e.g., Pub. Serv. Co. of Colo.—Pet. for Crossing Auth. Under 49 U.S.C. 10901(d)*, 5 S.T.B. 480 (2001). To resolve any possible ambiguity, CN suggests crossing actions be explicitly incorporated as part of the CE for connecting track in Proposed Regulation 1105.7(a)(8).

B. *Providing Guidance on OEA Decision-Making Criteria*

The Proposed Regulations provide OEA with significant discretion in rendering decisions in a number of contexts, including determinations on (1) whether an effect or

impact is “reasonably foreseeable and [has] a reasonably close causal relationship to the proposed action or alternatives” [Proposed Regulation 1105.4(f)]; (2) significant environmental effects requiring an EIS [Proposed Regulation 1105.9(a)]; (3) extraordinary circumstances warranting a decision to not apply a CE [Proposed Regulation 1105.7(e)]; and (4) “substantial changes” or “substantial new circumstances or information” requiring EA or EIS supplementation [Proposed Regulation 1105.10(a)].

To strengthen the discretion that the Board seeks to grant OEA, and to allow the public greater insight into OEA’s decisions, CN suggests that, for each of these categories, the Proposed Regulations include a non-exhaustive list of the criteria that will be considered. In the alternative, the Proposed Regulations could be revised to provide that in rendering each of these decisions (and any other discretionary-based decisions throughout the environmental review process), OEA will, on a case-by-case basis, provide detail on the factors and information it considered and relied upon in exercising its discretion.

CONCLUSION

The Proposed Regulations are a significant step toward modernizing the STB's NEPA review framework. CN's suggested refinements – primarily focused on appropriately enhancing public participation, clearer notice-and-comment procedures in certain instances, strengthened notice of intent requirements, and additional insight into OEA decisions – will support the Board in achieving its objectives while ensuring NEPA alignment and reducing the likelihood of legal challenges to Board decisions. CN shares the Board's commitment to efficient, transparent, and effective environmental review and appreciates the opportunity to contribute to this important NEPA reform.²

Respectfully submitted,

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² Recognizing that the Board's filing fees are outside the scope of this proceeding, CN notes that certain of the Board's filing fees are based at least in part on the resources needed to conduct environmental review when necessary. If the Board adopts streamlined environmental review procedures, in the future it should consider whether the filing fees for the actions that will benefit from the streamlined processes could be reduced.