

§ 1105.1

SOURCE: 56 FR 36105, July 31, 1991, unless otherwise noted.

§ 1105.1 Purpose.

These rules are designed to assure adequate consideration of environmental and energy factors in the Board's decisionmaking process pursuant to the National Environmental Policy Act, 42 U.S.C. 4332; the Energy Policy and Conservation Act, 42 U.S.C. 6362(b); and related laws, including the National Historic Preservation Act, 16 U.S.C. 470f, the Coastal Zone Management Act, 16 U.S.C. 1451, and the Endangered Species Act, 16 U.S.C. 1531.

§ 1105.2 Responsibility for administration of these rules.

The Director of the Office of Economics, Environmental Analysis, and Administration shall have general responsibility for the overall management and functioning of the Section of Environmental Analysis. The Director is delegated the authority to sign, on behalf of the Board, memoranda of agreement entered into pursuant to 36 CFR 800.5(e)(4) regarding historic preservation matters. The Chief of the Section of Environmental Analysis is responsible for the preparation of documents under these rules and is delegated the authority to provide interpretations of the Board's NEPA process, to render initial decisions on requests for waiver or modification of any of these rules for individual proceedings, and to recommend rejection of environmental reports not in compliance with these rules. This delegated authority shall be used only in a manner consistent with Board policy. The Director may further delegate procedural authority to the Chief of the Section of Environmental Analysis as appropriate. Appeals to the Board will be available as a matter of right.

[56 FR 36105, July 31, 1991, as amended at 64 FR 53268, Oct. 1, 1999]

§ 1105.3 Information and assistance.

Information and assistance regarding the rules and the Board's environmental and historic review process is available by writing or calling the Section of Environmental Analysis, Sur-

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face Transportation Board, 1925 K Street, NW, Washington, DC 20423.

[64 FR 53268, Oct. 1, 1999]

§ 1105.4 Definitions.

In addition to the definitions contained in the regulations of the Council on Environmental Quality (40 CFR part 1508), the following definitions apply to these regulations:

(a) *Act* means the Interstate Commerce Act, Subtitle IV of Title 49, U.S. Code, as amended.

(b) *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.

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

(d) *Environmental Assessment* or "EA" means a concise public document for which the Board is responsible that contains sufficient information for determining whether to prepare an Environmental Impact Statement or to make a finding of no significant environmental impact.

(e) *Environmental documentation* means either an Environmental Impact Statement or an Environmental Assessment.

(f) *Environmental Impact Statement* or "EIS" means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major Federal action significantly affecting the quality of the human environment.

(g) *Environmental Report* means a document filed by the applicant(s) that:

(1) Provides notice of the proposed action; and

(2) Evaluates its environmental impacts and any reasonable alternatives to the action. An environmental report may be in the form of a proposed draft Environmental Assessment or proposed draft Environmental Impact Statement.

(h) *Filing* means any request for STB authority, whether by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

(i) *Section of Environmental Analysis* or "SEA" means the Section that prepares the Board's environmental documents and analyses.

(j) *Third-Party Consultant* means an independent contractor, utilized by the applicant, who works with SEA's approval and under SEA's direction to prepare any necessary environmental documentation. The third party consultant must act on behalf of the Board. The railroad may participate in the selection process, as well as in the subsequent preparation of environmental documents. However, to avoid any impermissible conflict of interest (*i.e.*, essentially any financial or other interest in the outcome of the railroad-sponsored project), the railroad may not be responsible for the selection or control of independent contractors.

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§ 1105.5 Determinative criteria.

(a) In determining whether a "major Federal action" (as that term is defined by the Council on Environmental Quality in 40 CFR 1508.18) has the potential to affect significantly the quality of the human environment, the Board is guided by the definition of "significantly" at 40 CFR 1508.27.

(b) A finding that a service or transaction is not within the STB's jurisdiction does not require an environmental analysis under the National Environmental Policy Act or historic review under the National Historic Preservation Act.

(c) The environmental laws are not triggered where the STB's action is nothing more than a ministerial act, as in:

(1) The processing of abandonments proposed under the Northeast Rail Services Act (45 U.S.C. 744(b)(3));

(2) Statutorily-authorized interim trail use arrangements under 16 U.S.C. 1247(d) [*see*, 49 CFR 1152.29]; or

(3) Financial assistance arrangements under 49 U.S.C. 10905 (*see* 49 CFR 1152.27).

Finally, no environmental analysis is necessary for abandonments that are authorized by a bankruptcy court, or transfers of rail lines under plans of reorganization, where our function is merely advisory under 11 U.S.C. 1166, 1170, and 1172.

[56 FR 36105, July 31, 1991; 56 FR 49821, Oct. 1, 1991]

§ 1105.6 Classification of actions.

(a) Environmental Impact Statements will normally be prepared for rail construction proposals other than those described in paragraph (b)(1) of this section.

(b) Environmental Assessments will normally be prepared for the following proposed actions:

(1) Construction of connecting track within existing rail rights-of-way, or on land owned by the connecting railroads;

(2) Abandonment of a rail line (unless proposed under the Northeast Rail Services Act or the Bankruptcy Act);

(3) Discontinuance of passenger train service or freight service (except for discontinuances of freight service under modified certificates issued under 49 CFR 1150.21 and discontinuances of trackage rights where the affected line will continue to be operated);

(4) An acquisition, lease or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger or acquisition of control under 49 U.S.C. 11343, if it will result in either

(i) Operational changes that would exceed any of the thresholds established in §1105.7(e) (4) or (5); or

(ii) An action that would normally require environmental documentation (such as a construction or abandonment);

(5) A rulemaking, policy statement, or legislative proposal that has the potential for significant environmental impacts;

(6) Water carrier licensing under 49 U.S.C. 10922 that:

(i) Involves a new operation (*i.e.*, one that adds a significant number of barges to the inland waterway system requiring the addition of towing capacity, or otherwise significantly alters an existing operation, or introduces service to a new waterway that has had no previous traffic, or involves the commencement of a new service that is not statutorily exempt); or

(ii) Involves the transportation of hazardous materials; and

(7) Any other proceeding not listed in paragraphs (a) or (c) of this section.

(c) No environmental documentation will normally be prepared (although a Historic Report may be required under