

## Surface Transportation Board

Pt. 1105

I certify that I have this day served copies of document upon all parties of record in this proceeding, by (here state the method of making service which must be consistent with this part).

\_\_\_\_\_  
Signature Date

(49 U.S.C. 721, 5 U.S.C. 553)

(d) *Service by the Board.* Service of decisions and other Board issuances as appropriate generally will be made by electronic means (e-service), except in the case of paper filers that have not consented to e-service, in which case service upon that recipient will be made by first-class mail. Paper filers that include email contact information on their filing and do not opt out of e-service via written notification will be deemed to have consented to e-service.

[47 FR 49554, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983; 61 FR 52711, Oct. 8, 1996; 69 FR 18499, Apr. 8, 2004; 81 FR 8853, Feb. 23, 2016; 84 FR 12944, Apr. 3, 2019]

### § 1104.13 Replies and motions.

(a) *Time.* A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided.

(b) *Number of copies.* The original of a reply or motion should be accompanied by the same number of copies required to be filed with the pleading to which the reply or motion is addressed.

(c) *Reply to a Reply.* A reply to a reply is not permitted.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

### § 1104.14 Protective orders to maintain confidentiality.

(a) *Segregation of confidential material.* A party submitting materials which it believes are entitled to be kept confidential and not made part of the public docket should submit these materials as a separate package, clearly marked on the outside "Confidential materials subject to a request for a protective order." When confidential documents are filed, redacted versions must also be filed.

(b) *Requests for protective orders.* A request that materials submitted to the Board be kept confidential should be

submitted as a separate pleading and clearly headed "Motion for protective order."

(c) *Requests for protective orders in stand-alone cost and simplified standards cases.* A motion for protective order in stand-alone cost and simplified standards cases shall specify that evidentiary submissions will designate confidential material within single braces (*i.e.*, {X}), highly confidential material within double braces (*i.e.*, {{Y}}), and sensitive security information within triple braces (*i.e.*, {{{Z}}}). In stand-alone cost cases, the motion for protective order shall be filed together with the notice pursuant to 49 CFR 1111.1.

[48 FR 44827, Sept. 30, 1983, as amended at 61 FR 52711, Oct. 8, 1996; 81 FR 8853, Feb. 23, 2016; 82 FR 57378, Dec. 5, 2017]

### § 1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 862.

(a) An individual who is applying in his or her name for a certificate, license or permit to operate as a rail carrier must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceeding under 49 U.S.C. 11323 and 11324 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

(b) Certification:

I \_\_\_\_\_ (Name) \_\_\_\_\_, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or by operation of law, pursuant to 21 U.S.C. 862.

[54 FR 48250, Nov. 22, 1989, as amended at 61 FR 52711, Oct. 8, 1996; 64 FR 53268, Oct. 1, 1999; 67 FR 5515, Feb. 6, 2002]

## PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

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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.

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 Environmental Analysis 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 Director of the Office 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 National Environmental Policy Act (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 pol-

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icy. Appeals to the Board will be available as a matter of right.

[81 FR 8853, Feb. 23, 2016]

### § 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 Office of Environmental Analysis.

[81 FR 8853, Feb. 23, 2016]

### § 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.

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(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) *Office of Environmental Analysis* or “OEA” means the Office that prepares the Board’s environmental documents and analyses.

(j) *Third-Party Consultant* means an independent contractor, utilized by the applicant, who works with OEA’s approval and under OEA’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.

[56 FR 36105, July 31, 1991, as amended at 64 FR 53268, Oct. 1, 1999; 81 FR 8853, Feb. 23, 2016]

### § 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. 10904 (*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; 81 FR 8853, Feb. 23, 2016]

### § 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, 10902, or 10907, or consolidation, merger or acquisition of control under 49 U.S.C. 11323 and 14303, 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; and

(6) 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 section 1105.8) for the following actions:

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(1) Any action that does not result in significant changes in carrier operations (*i.e.*, changes that do not exceed the thresholds established in section 1105.7(e) (4) or (5)), including (but not limited to) all of the following actions that meet this criterion:

(i) An acquisition, lease, or operation under 49 U.S.C. 10901, 10902, or 10907, or consolidation, merger, or acquisition of control under 49 U.S.C. 11323 and 14303 that does not come within subsection (b)(4) of this section.

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

(iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;

(iv) Pooling authorizations, approval of rate bureau agreements, and approval of shipper antitrust immunity;

(v) Determinations of the fact of competition;

(2) Rate, fare, and tariff actions;

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

(4) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;

(5) Discontinuance of trackage rights where the affected line will continue to be operated; and

(6) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.

(d) The Board may reclassify or modify these requirements for individual proceedings. For actions that generally require no environmental documentation, the Board may decide that a particular action has the potential for significant environmental impacts and that, therefore, the applicant should provide an environmental report and either an EA or an EIS will be prepared. For actions generally requiring an EA, the Board may prepare a full EIS where the probability of significant impacts from the particular proposal is high enough to warrant an EIS. Alternatively, in a rail construction, an applicant can seek to demonstrate

(with supporting information addressing the pertinent aspects of §1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact. Any request for reclassification must be in writing and, in a rail construction, should be presented with the prefiling notice required by §1105.10(a)(1) (or a request to waive that prefiling notice period).

(e) The classifications in this section apply without regard to whether the action is proposed by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

[56 FR 36105, July 31, 1991, as amended at 81 FR 8853, Feb. 23, 2016]

### § 1105.7 Environmental reports.

(a) *Filing.* An applicant for an action identified in §1105.6 (a) or (b) must submit to the Board (with or prior to its application, petition or notice of exemption) except as provided in paragraph (b) for abandonments and discontinuances) an Environmental Report on the proposed action containing the information set forth in paragraph (e) of this section. The Environmental Report may be filed with the Board electronically.

(b) At least 20 days prior to the filing with the Board of a notice of exemption, petition for exemption, or an application for abandonment or discontinuance, the applicant must serve copies of the Environmental Report on:

(1) The State Clearinghouse of each State involved (or other State equivalent agency if the State has no clearinghouse);

(2) The State Environmental Protection Agency of each State involved;

(3) The State Coastal Zone Management Agency for any state where the proposed activity would affect land or water uses within that State's coastal zone;

(4) The head of each county (or comparable political entity including any Indian reservation) through which the line goes;

(5) The appropriate regional offices of the Environmental Protection Agency;

(6) The U.S. Fish and Wildlife Service;

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(7) The U.S. Army Corps of Engineers;

(8) The National Park Service;

(9) The Natural Resources Conservation Service;

(10) The National Geodetic Survey (formerly known as the Coast and Geodetic Survey) as designated agent for the National Geodetic Survey and the U.S. Geological Survey; and

(11) Any other agencies that have been consulted in preparing the report.

(c) *Certification.* In its Environmental Report, the applicant must certify that it has sent copies of the Environmental Report to the agencies listed and within the time period specified in paragraph (b) of this section and that it has consulted with all appropriate agencies in preparing the report. These consultations should be made far enough in advance to afford those agencies a reasonable opportunity to provide meaningful input. Finally, in every abandonment exemption case, applicant shall certify that it has published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment, to available reuse alternatives, and to how it may participate in the STB proceeding.

(d) *Documentation.* Any written responses received from agencies that were contacted in preparing the Environmental Report shall be attached to the report. Oral responses from such agencies shall be briefly summarized in the report and the names, titles, and telephone numbers of the persons contacted shall be supplied. A copy of, or appropriate citation to, any reference materials relied upon also shall be provided.

(e) *Content.* The Environmental Report shall include all of the information specified in this paragraph, except to the extent that applicant explains why any portion(s) are inapplicable. If an historic report is required under §1105.8, the Environmental Report should also include the Historic Report required by that section.

(1) *Proposed action and alternatives.* Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current op-

erations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

(2) *Transportation system.* Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

(3) *Land use.* (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by §1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.

(4) *Energy.* (i) Describe the effect of the proposed action on transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year; or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in §1105.7(e)(4)(iii) need not be supplied if the more detailed information in §1105.7(e)(4)(iv) is required.

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(5) *Air.* (i) If the proposed action will result in either:

(A) 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 proposal, or

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

(C) 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, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or re-institute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

(A) 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,

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

(C) 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, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(6) *Noise.* If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (*e.g.*, schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

(7) *Safety.* (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

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

(8) *Biological resources.* (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(9) *Water.* (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are

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required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

(10) *Proposed Mitigation.* Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

(11) *Additional Information for Rail Constructions.* The following additional information should be included for rail construction proposals (including connecting track construction):

(i) Describe the proposed route(s) by State, county, and subdivision, including a plan view, at a scale not to exceed 1:24,000 (7½ minute U.S.G.S. quadrangle map), clearly showing the relationship to the existing transportation network (including the location of all highway and road crossings) and the right-of-way according to ownership and land use requirements.

(ii) Describe any alternative routes considered, and a no-build alternative (or why this would not be applicable), and explain why they were not selected.

(iii) Describe the construction plans, including the effect on the human environment, labor force requirements, the location of borrow pits, if any, and earthwork estimates.

(iv) Describe in detail the rail operations to be conducted upon the line, including estimates of freight (carloads and tonnage) to be transported, 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.

(v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§ 1105.7(e)(4), (5), or (6) are met.

(vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.

(vii) Discuss societal impacts, including expected change in employment during and after construction.

(f) *Additional information.* The Board may require applicants to submit additional information regarding the environmental or energy effects of the proposed action.

(g) *Waivers.* The Board may waive or modify, in whole or in part, the provisions of this section where a railroad applicant shows that the information requested is not necessary for the Board to evaluate the environmental impacts of the proposed action.

[56 FR 36105, July 31, 1991; 56 FR 49821, Oct. 1, 1991, as amended at 58 FR 44619, Aug. 24, 1993; 60 FR 32277, June 21, 1995; 61 FR 67883, Dec. 24, 1996; 64 FR 53268, Oct. 1, 1999; 69 FR 58366, Sept. 30, 2004; 81 FR 8854, Feb. 23, 2016; 83 FR 15078, Apr. 9, 2018; 83 FR 17300, Apr. 19, 2018]

### § 1105.8 Historic Reports.

(a) *Filing.* An applicant proposing an action identified in § 1105.6 (a) or (b), or an action in § 1105.6(c) that will result in the lease, transfer, or sale of a railroad's line, sites or structures, must submit (with its application, petition or notice) the Historic Report described in paragraph (d) of this section, unless excepted under paragraph (b) of this section. This report should be combined with the Environmental Report where one is required. The purpose of the Historic Report is to provide the Board with sufficient information to conduct the consultation process required by the National Historic Preservation Act. The Historic Report may be filed with the Board electronically.

(b) *Exceptions.* The following proposals do not require an historic report:

(1) A sale, lease or transfer of a rail line for the purpose of continued rail operations where further STB approval is required to abandon any service and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older.

(2) A sale, lease, or transfer of property between corporate affiliates where

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there will be no significant change in operations.

(3) Trackage rights, common use of rail terminals, common control through stock ownership or similar action which will not substantially change the level of maintenance of railroad property.

(4) A rulemaking, policy statement, petition for declaratory order, petition for waiver of procedural requirements, or proceeding involving transportation rates or classifications.

(c) *Distribution.* The applicant must send the Historic Report to the appropriate State Historic Preservation Officer(s), preferably at least 60 days in advance of filing the application, petition, or notice, but not later than 20 days prior to filing with the Board.

(d) *Content.* The Historic Report should contain the information required by § 1105.7(e)(1) and the following additional historic information:

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (*i.e.*, prehistoric or native American).

(e) Any of these requirements may be waived or modified when the information is not necessary to determine the presence of historic properties and the effect of the proposed action on them.

(f) Historic preservation conditions imposed by the Board in rail abandonment cases generally will not extend beyond the 330-day statutory time period in 49 U.S.C. 10904 for abandonment proceedings.

[56 FR 36105, July 31, 1991, as amended at 61 FR 67883, Dec. 24, 1996; 81 FR 8854, Feb. 23, 2016]

**§ 1105.9 Coastal Zone Management Act requirements.**

(a) If the proposed action affects land or water uses within a State coastal



zone designated pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) applicant must comply with the following procedures:

(1) If the proposed action is listed as subject to review in the State's coastal zone management plan, applicant (with, or prior to its filing) must certify (pursuant to 15 CFR 930.57 and 930.58) that the proposed action is consistent with the coastal zone management plan.

(2) If the activity is not listed, applicant (with, or prior to its filing) must certify that actual notice of the proposal was given to the State coastal zone manager at least 40 days before the effective date of the requested action.

(b) 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 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.

#### § 1105.10 Board procedures.

(a) *Environmental Impact Statements*—  
(1) *Prefiling Notice*. Where an environmental impact statement is required or contemplated, the prospective applicant must provide the Office of Environmental Analysis (OEA) with written notice of its forthcoming proposal at least 6 months prior to filing its application.

(2) *Notice and scope of EIS*. When an Environmental Impact Statement is prepared for a proposed action, the Board will publish in the FEDERAL REGISTER a notice of its intent to prepare an EIS, with a description of the proposed action and a request for written comments on the scope of the EIS. Where appropriate, the scoping process may include a meeting open to interested parties and the public. After considering the comments, the Board will publish a notice of the final scope of the EIS. If the Environmental Impact Statement is to be prepared in coopera-

tion with other agencies, this notice will also indicate which agencies will be responsible for the various parts of the Statement.

(3) *Notice of availability*. The Board will serve copies of both the draft Environmental Impact Statement (or an appropriate summary) and the full final Environmental Impact Statement (or an appropriate summary) on all parties to the proceeding and on appropriate Federal, State, and local agencies. A notice that these documents are available to the public will be published (normally by the Environmental Protection Agency) in the FEDERAL REGISTER. (Interested persons may obtain copies of the documents by contacting OEA.)

(4) *Comments*. The notice of availability of the draft Environmental Impact Statement will establish the time for submitting written comments, which will normally be 45 days following service of the document. When the Board decides to hold an oral hearing on the merits of a proposal, the draft Environmental Impact Statement will be made available to the public in advance, normally at least 15 days prior to the portion of the hearing relating to the environmental issues. The draft EIS will discuss relevant environmental and historic preservation issues. The final Environmental Impact Statement will discuss the comments received and any changes made in response to them.

(5) *Supplements*. An Environmental Impact Statement may be supplemented where necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information. If so, the notice and comment procedures outlined above will be followed to the extent practical.

(b) *Environmental Assessments*. In preparing an Environmental Assessment, OEA will verify and independently analyze the Environmental Report and/or Historic Report and related material submitted by an applicant pursuant to sections 1105.7 and 1105.8. The Environmental Assessment will discuss relevant environmental and historic preservation issues. OEA will serve copies of the Environmental Assessment on

## § 1105.11

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all parties to the proceeding and appropriate federal, state, and local agencies, and will announce its availability to the public through a notice in the FEDERAL REGISTER. In the case of abandonment applications processed under 49 U.S.C. 10903, the availability of the Environmental Assessment must be announced in the applicant's Notice of Intent filed under 49 CFR 1152.21. The deadline for submission of comments on the Environmental Assessment will generally be within 30 days of its service (15 days in the case of a notice of abandonment under 49 CFR 1152.50). The comments received will be addressed in the Board's decision. A supplemental Environmental Assessment may be issued where appropriate.

(c) *Waivers.* (1) The provisions of paragraphs (a)(1) or (a)(4) of this section or any STB-established time frames in paragraph (b) of this section may be waived or modified where appropriate.

(2) Requests for waiver of § 1105.10(a)(1) must describe as completely as possible the anticipated environmental effects of the proposed action, and the timing of the proposed action, and show that all or part of the six month lead period is not appropriate.

(d) *Third-Party Consultants.* Applicants may utilize independent third-party consultants to prepare any necessary environmental documentation, if approved by OEA. The environmental reporting requirements that would otherwise apply will be waived if a railroad hires a consultant, OEA approves the scope of the consultant's work, and the consultant works under OEA's supervision. In such a case, the consultant acts on behalf of the Board, working under OEA's direction to collect the needed environmental information and compile it into a draft EA or draft EIS, which is then submitted to OEA for its review, verification, and approval. We encourage the use of third-party consultants.

(e) *Service of Environmental Pleadings.* Agencies and interested parties sending material on environmental and historic preservation issues directly to the Board should send copies to the applicant. Copies of Board communications to third-parties involving environ-

mental and historic preservation issues also will be sent to the applicant where appropriate.

(f) *Consideration in decisionmaking.* The environmental documentation (generally an EA or an EIS) and the comments and responses thereto concerning environmental, historic preservation, Coastal Zone Management Act, and endangered species issues will be part of the record considered by the Board in the proceeding involved. The Board will decide what, if any, environmental or historic preservation conditions to impose upon the authority it issues based on the environmental record and its substantive responsibilities under the Interstate Commerce Act. The Board will 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.

(g) *Finding of No Significant Impact.* In all exemption cases, if no environmental or historic preservation issues are raised by any party or identified by OEA in its independent investigation, the Board will issue a separate decision making a Finding of No Significant Impact ("FONSI") to show that it has formally considered the environmental record.

[56 FR 36105, July 31, 1991, as amended at 56 FR 49821, Oct. 1, 1991; 64 FR 53268, Oct. 1, 1999; 81 FR 8854, Feb. 23, 2016; 83 FR 15078, Apr. 9, 2018]

### § 1105.11 Transmittal letter for Applicant's Report.

A carrier shall send a copy of its Environmental and/or Historic Report to the agencies identified in section 1105.7(b) and/or the appropriate State Historic Preservation Officer(s) and certify to the Board that it has done this. The form letter contained in the Appendix to this section should be used in transmitting the Environmental and/or Historic Reports.

APPENDIX TO § 1105.11—TRANSMITTAL LETTER  
FOR APPLICANT'S REPORT

(Carrier Letterhead)  
(Addresses)

Re: (Brief description of proposed action  
with STB docket number, if available)  
(Date)

## Surface Transportation Board

## § 1105.12

On (date), we are (or expect to be) filing with the Surface Transportation Board a (type of proceeding) seeking authority to ( ) located in (state) (city or town) and (mileposts, if applicable). Attached is an Environmental Report (and/or Historic Report) describing the proposed action and any expected environmental (and/or historic) effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC, telephone [INSERT TELEPHONE NUMBER] and refer to the above *Docket No.* (if available). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to OEA (with a copy to our representative) would be appreciated within 3 weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is (name) who may be contacted by telephone at (telephone number) or by mail at (address).

(Complimentary close)

(Name and title of author of letter)

[56 FR 36105, July 31, 1991, as amended at 58 FR 44619, Aug. 24, 1993; 64 FR 53268, Oct. 1, 1999; 81 FR 8854, Feb. 23, 2016; 83 FR 15078, Apr. 9, 2018]

### § 1105.12 Sample newspaper notices for abandonment exemption cases.

In every abandonment exemption case, the applicant shall publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Board that it has done this by the date its notice of (or petition for) exemption is filed. The notice shall alert the public to the proposed abandonment, to available reuse alternatives, such as trail use and public use, and to how it may participate in a Board proceeding. Sample newspaper notices are provided in the Appendix to this section for guidance to the railroads.

### APPENDIX TO § 1105.12—SAMPLE NEWSPAPER NOTICES

#### SAMPLE LOCAL NEWSPAPER NOTICE FOR OUT-OF-SERVICE ABANDONMENT EXEMPTIONS

##### NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE RAIL SERVICE

(Name of railroad) gives notice that on or about (insert date notice of exemption will be filed with the Surface Transportation Board), it intends to file with the Surface Transportation Board, Washington, DC, a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments permitting the (abandonment of or discontinuance of service on) a \_\_\_ mile line of railroad between railroad milepost \_\_\_, near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes) and railroad milepost \_\_\_, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes) in \_\_\_ County(ies), (State). The proceeding will be docketed as No. AB \_\_\_ (Sub-No. \_\_\_X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC or by calling that office at [INSERT TELEPHONE NUMBER].

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of Proceedings, Washington, DC [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at [INSERT TELEPHONE NUMBER]. Copies of any comments or requests for conditions should be served on the applicant's representative: (Name, address and phone number).

SAMPLE LOCAL NEWSPAPER NOTICE FOR  
PETITIONS FOR ABANDONMENT EXEMPTIONS

NOTICE OF INTENT TO ABANDON OR TO  
DISCONTINUE RAIL SERVICE

(Name of railroad) gives notice that on or about (insert date petition for abandonment exemption will be filed with the Surface Transportation Board) it intends to file with the Surface Transportation Board, Washington, DC, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting the (abandonment of or discontinuance of service on) a \_\_\_ mile line of railroad between railroad milepost \_\_\_, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes), and railroad milepost \_\_\_, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes) in \_\_\_ County(ies), (State). The proceeding has been docketed as No. AB \_\_\_ (Sub-No. \_\_\_ X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, Washington, DC or by calling OEA at [INSERT TELEPHONE NUMBER].

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of Proceedings, Washington, DC [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at [INSERT TELEPHONE NUMBER]. Copies of any comments or requests for conditions should be served on the applicant's representative (name and address).

[56 FR 36105, July 31, 1991, as amended at 56 FR 49821, Oct. 1, 1991; 58 FR 44619, Aug. 24, 1993; 61 FR 67883, Dec. 24, 1996; 64 FR 53268, Oct. 1, 1999; 69 FR 58366, Sept. 30, 2004; 74 FR 52906, Oct. 15, 2009; 81 FR 8854, Feb. 23, 2016; 83 FR 15078, Apr. 9, 2018]

**PART 1106—PROCEDURES FOR  
SURFACE TRANSPORTATION  
BOARD CONSIDERATION OF  
SAFETY INTEGRATION PLANS IN  
CASES INVOLVING RAILROAD  
CONSOLIDATIONS, MERGERS,  
AND ACQUISITIONS OF CON-  
TROL**

Sec.

- 1106.1 Purpose.
- 1106.2 Definitions.
- 1106.3 Actions for which Safety Integration Plan is Required.
- 1106.4 The Safety Integration Plan Process.
- 1106.5 Waiver.
- 1106.6 Reservation of jurisdiction.

AUTHORITY: 5 U.S.C. 553; 5 U.S.C. 559; 49 U.S.C. 1321; 49 U.S.C. 10101; 49 U.S.C. 11323–11325; 42 U.S.C. 4332.

SOURCE: 67 FR 11607, Mar. 15, 2002, unless otherwise noted.

**§ 1106.1 Purpose.**

This part is designed to ensure adequate and coordinated consideration of safety integration issues, by both the Board and the Federal Railroad Administration, the agency within the Department of Transportation responsible for the enforcement of railroad safety, in the implementation of rail transactions subject to the Board's jurisdiction. It establishes the procedures by which the Board will consider safety integration plans in connection with its approval and authorization of transactions for which the Board has concluded such consideration is required.

**§ 1106.2 Definitions.**

The following definitions apply to this part:

*Act* means the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995).

*Amalgamation of operations*, as defined by the Federal Railroad Administration at 49 CFR 244.9, means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.*, changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).