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**VIA E- FILING**

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Re: Docket No. EP 779 Permitting Reform—Environmental Review Process

Dear Chair Fuchs, Member Schultz, and Member Hedlund:

The Rail Passengers Association appreciates the opportunity to comment on the Surface Transportation Board's Notice of Proposed Rulemaking (NPRM) regarding revisions to its environmental review procedures implementing the National Environmental Policy Act (NEPA).

The Association represents more than 127,000 members, donors, and supporters nationwide and advocates for the development of a safe, modern, and efficient passenger rail system as part of an integrated national transportation network. Because nearly all significant intercity passenger rail expansion in the United States requires Surface Transportation Board approval at some stage, the Board's environmental procedures are of direct importance to our members and to the traveling public.

We strongly support the Board's effort to modernize its environmental review regulations to reflect statutory amendments to NEPA, recent Supreme Court precedent, and current agency practice. In particular, we support the Board's goal of improving the efficiency and predictability of environmental review while preserving meaningful environmental analysis and interagency consultation. In fact, many of the reforms offered in this NPRM reflect policy ideas the Association has already advanced under its proposals for reauthorizing the current surface transportation bill.

Passenger rail projects routinely deliver net environmental benefits through reductions in highway congestion, aviation emissions, and land consumption. Delays in implementing such projects can therefore impose real environmental costs. For this reason, regulatory modernization that improves the timeliness and clarity of environmental review—without weakening substantive protections—is strongly in the public interest.

The Association generally supports the proposed rule. We respectfully offer the following recommendations intended to ensure that the Board's reforms achieve their intended streamlining benefits while preserving appropriate environmental safeguards.

## **I. The Proposed Rule Is Consistent With Ongoing Congressional Efforts to Improve Passenger Rail Project Delivery**

The Association notes that several elements of the Board's proposed rule are consistent with targeted environmental review reforms that Rail Passengers Association and partner organizations have recommended for consideration in the forthcoming surface transportation reauthorization. Those recommendations include establishing clearer timelines for Environmental Impact Statements and Environmental Assessments, strengthening early completeness determinations for applications before the Board, clarifying lead-agency responsibilities for intercity passenger rail infrastructure projects, and ensuring that the Board's Office of Environmental Analysis is adequately resourced to carry out its responsibilities efficiently.

While statutory action will ultimately be required to implement certain reforms under consideration by Congress, the procedural improvements proposed in this rulemaking represent a constructive step toward improving the predictability, coordination, and timeliness of environmental review for passenger rail projects nationwide, and they are broadly in line with statutory reforms Rail Passengers and its coalition partners are already advancing.

## **II. Categorical Exclusions for Certain Abandonments Should Retain a Limited Trigger for Known Resource Impacts**

The proposed rule would categorically exclude certain abandonments and discontinuances from environmental review where traffic diversions do not exceed the Board's thresholds and salvage will not occur prior to consummation of abandonment authority.

We agree that many contemporary abandonment proceedings involve lines that have been inactive for extended periods and therefore present minimal reasonably foreseeable environmental effects. In such cases, categorical exclusion is appropriate and consistent with efficient NEPA practice.

However, the Association recommends that the Board clarify that categorical exclusion would not apply where there is strong and credible evidence of:

- known contamination or hazardous material concerns within the right-of-way;
- sensitive habitat corridors, wetlands, or floodplains that may be affected by disturbance;
- bridges or structures whose removal could affect waterways or hydrologic conditions; or
- other site-specific conditions suggesting reasonably foreseeable environmental effects associated with abandonment or subsequent property disturbance.

Such a clarification would preserve flexibility for the Board to address the relatively small number of abandonment proceedings in which environmental effects remain reasonably foreseeable, while

maintaining the efficiency benefits of the proposed categorical exclusion for the vast majority of cases.

### **III. Abandonment Procedures Should Continue to Support Long-Term Corridor Preservation for Future Transportation Use**

Rail corridors represent uniquely valuable linear infrastructure assets that are difficult and costly to replace once fragmented or converted to non-transportation uses. Even where rail service is not currently active, preservation of corridor continuity can support future passenger rail restoration, freight reactivation, public transportation investments, utility co-location, and trail-with-rail opportunities.

Accordingly, the Association encourages the Board to ensure that revisions to its environmental review procedures for abandonments do not unintentionally reduce opportunities for early identification of corridor preservation interests or coordination with public agencies exploring future transportation use. Streamlined environmental review should remain compatible with the longstanding federal policy interest in preserving rail rights-of-way where feasible for future public purposes.

### **IV. The Board Should Avoid Creating an Incentive to Defer Disclosure of Salvage Activities Until After Consummation of Abandonment Authority**

The NPRM proposes to limit the Board's consideration of salvage-related impacts to activities occurring prior to consummation of abandonment authority and would rescind prior agency statements suggesting that certain environmental or historic preservation conditions could apply to salvage conducted after consummation.

As noted in Member Hedlund's concurrence accompanying the NPRM, this change could create an incentive for applicants to avoid the imposition of environmental or historic conditions by declining to identify anticipated salvage activities until after abandonment authority has been consummated.

The Association does not take a position here on the ultimate scope of the Board's jurisdiction over post-consummation salvage activities. However, we recommend that the Board ensure that its revised procedures do not unintentionally encourage nondisclosure of reasonably foreseeable activities with potential environmental consequences.

At minimum, the Board should consider clarifying that:

- applicants must disclose whether salvage activities are reasonably anticipated following abandonment; and
- categorical exclusion would not apply where post-consummation salvage is reasonably foreseeable and could affect wetlands, waterways, historic resources, sensitive habitat, or known contamination sites.

Such an approach would preserve the efficiency benefits of the proposed rule while ensuring that environmental review does not depend on whether anticipated salvage activities are formally identified prior to consummation.

## **V. The Proposed Elimination of Draft Environmental Impact Statements Should Be Accompanied by Robust Early Scoping Opportunities**

The proposed rule would replace the existing draft-and-final Environmental Impact Statement process with a single EIS document following publication of a Notice of Intent and associated scoping opportunity.

The Association recognizes that this approach reflects recent statutory changes to NEPA and is consistent with efforts to focus environmental review earlier in the decision process. Early scoping can improve the usefulness of environmental analysis, reduce duplication, lower preparation costs, and even discourage bad-faith uses of the draft EIS process to delay otherwise worthy projects.

At the same time, draft EIS circulation has historically provided an important opportunity for affected communities, local governments, and technical agencies to identify gaps in analysis prior to completion of the final document.

Accordingly, we recommend that the Board clarify that, in complex rail construction proceedings, the Office of Environmental Analysis will make appropriate use of preliminary technical memoranda, working alternatives analyses, or other interim materials where needed to ensure meaningful early engagement with stakeholders.

## **VI. The Board Should Clarify the Circumstances Under Which Downline Operational Effects Remain Appropriate for Analysis**

The proposed rule appropriately reflects recent Supreme Court precedent recognizing agency discretion in defining the scope of indirect environmental effects analysis. The Association supports this clarification and agrees that environmental review should remain focused on effects relevant to the Board's decision authority.

Nevertheless, some rail construction and operational proceedings—particularly those involving substantial changes in traffic patterns across existing corridors—can produce reasonably foreseeable environmental effects beyond the immediate project footprint.

The Association therefore recommends that the Board clarify that analysis of downline operational impacts remains appropriate where:

- the proposed action would materially alter corridor-level train volumes;
- traffic would shift to lines with known community exposure concerns; or
- operational changes would predictably affect air quality, noise, or safety conditions along existing routes.

Such clarification would ensure that environmental review remains appropriately targeted without expanding analysis beyond what is useful to decisionmakers.

## **VII. Environmental Review Procedures Should Recognize That Delay Itself Can Carry Environmental Costs**

The Association also encourages the Board to recognize an increasingly important feature of transportation environmental review: procedural delay can itself produce environmental consequences. Passenger rail and related infrastructure projects frequently reduce highway congestion, aviation emissions, land consumption, and energy use. When projects with demonstrable environmental benefits are delayed for extended periods by procedural uncertainty or duplicative review steps, those benefits are correspondingly deferred, and existing emissions-intensive travel patterns remain in place longer than necessary.

In some cases, extended environmental review timelines measured in decades rather than years can delay implementation of projects intended to shift travel demand from higher-emitting modes to lower-emitting rail service, thereby postponing otherwise achievable reductions in transportation-sector emissions for an entire generation of travelers.

NEPA is intended to inform agency decision-making through analysis of reasonably foreseeable environmental effects that are relevant to the action under consideration. Environmental review procedures are therefore most effective when they provide timely, decision-useful information while avoiding requirements that extend review without improving the quality of agency determinations. Modernization of the Board's procedures to improve predictability, clarify scope, and reduce unnecessary delay advances both the purposes of NEPA and the national interest in reducing transportation-sector emissions.

As Federal and state partners advance a new generation of intercity passenger rail corridor investments, predictable and timely environmental review procedures will be essential to ensuring that nationally significant transportation improvements can be implemented within planning horizons that preserve their intended environmental benefits.

## **Conclusion**

The Rail Passengers Association strongly supports the Board's effort to update its environmental review procedures to reflect current law, improve coordination among agencies, and reduce unnecessary delay in the development of rail infrastructure.

Efficient environmental review is particularly important for passenger rail projects, which can produce substantial long-term environmental benefits but often face extended and even crippling permitting timelines. The Association believes the proposed rule represents a constructive step toward improving the predictability and effectiveness of the Board's review process, and by extension creating the appropriate framework to speed advancements of critical rail projects.

With the clarifications described above, the Association supports adoption of the proposed revisions. Timely and predictable environmental review procedures will be essential to ensuring that the next generation of passenger rail corridor investments can move from planning to construction within reasonable and politically defensible timeframes that preserve their transportation, economic, and environmental benefits.

Respectfully submitted,



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