

Appendix B

Surface Transportation Board

**Substantiation Record of Proposed New and
Revised Categorical Exclusions Under the
National Environmental Policy Act**

March 25, 2026

I. INTRODUCTION

Under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, Federal agencies may establish categorical exclusions (CEs) within agency NEPA procedures for actions that the agency has determined do not normally have a significant effect on the human environment. 42 U.S.C. 4336(b)(2), 4336c, 4336e(1). The use of CEs allows agencies to satisfy NEPA’s requirements more efficiently by focusing resources on proposals that may have significant environmental impacts and reducing the resources spent analyzing proposals that generally do not have significant environmental effects.

The Surface Transportation Board’s (STB or Board) environmental procedures are contained in 49 CFR part 1105. The regulations were issued in 1991 and have not been substantively amended since. The STB is proposing changes to its environmental regulations, including its CEs, to reflect changes in the law, update outdated references, conform the regulations to agency practice, and make its environmental review process more efficient. This substantiation record supports the STB’s proposal to update its CEs by establishing 5 new CEs, modifying 6 existing CEs, and removing 3 CEs. The STB does not require or prepare specific documentation to apply a categorical exclusion.

Summary Table of Proposed Additions and Revisions

Proposed New CEs	
Text of Proposed CE	
1105.7(a)(1)(ii) Abandonments & Discontinuances	
(1) Proposals that would not result in substantial changes in the applicant’s operations (<i>i.e.</i> , changes that would not exceed the thresholds established at § 1105.16(d) or (e)), including, but not limited to, all of the following: ... (ii) An abandonment (not including those proposed under the Bankruptcy Act (11 U.S.C. 1170)) or discontinuance under 49 U.S.C. 10903, that does not fall under § 1105.8(b)(1);	
1105.7(a)(1)(iv) Proceedings under 49 U.S.C. 24308	
(1) Proposals that would not result in substantial changes in the applicant’s operations (<i>i.e.</i> , changes that would not exceed the thresholds established at § 1105.16(d) or (e)), including, but not limited to, all of the following: ... (iv) A proceeding pursuant to 49 U.S.C. 24308;	
1105.7(a)(6) Offers of Financial Assistance	
(6) Offers of Financial Assistance to avoid abandonment and discontinuance under 49 U.S.C. 10904 (<i>see</i> § 1152.27 of this chapter);	
1105.7(a)(7) Reciprocal Switching Agreements	
(7) A determination imposing or approving a reciprocal switching agreement; and	
1105.7(a)(8) Connecting Track	
(8) Construction of connecting track within an existing rail right-of-way or on land owned by the connecting railroads and/or applicant (<i>see</i> § 1150.36 of this chapter), unless the construction of such connecting track is not within the Board’s licensing authority under 49 U.S.C. 10906 or exempt from review under § 1105.5.	

Proposed Substantive Revisions to Existing CEs	
Current CE	Proposed Revision
Current 1105.6(c)(2) (2) Rate, fare, and tariff actions;	Proposed 1105.7(a)(2) (2) <u>Adjudications regarding R</u> ates, fares, and <u>tariff</u> actions, <u>practices, and service</u> ;

Proposed Editorial, Non-Substantive Revisions to Existing CEs	
Current CE	Proposed Revision
<p>Current 1105.6(c)(1)(i) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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:</p> <p style="padding-left: 40px;">(i) An acquisition, lease, or operation under 49 U.S.C. 10901, 10902, or 10907, . . . that does not come within subsection (b)(4) of this section.</p>	<p>Proposed 1105.7(a)(1)(i) (1) Any action <u>Proposals</u> that does <u>would</u> not result in significant <u>substantial</u> changes in the <u>carrier applicant's</u> operations (<i>i.e.</i>, changes that would not exceed the thresholds established at in section § 1105.716(de)(4) or (e5), including, (but not limited to), all of the following <u>actions that meet this criterion</u>:</p> <p style="padding-left: 40px;">(i) An acquisition, lease, <u>feeder line sale</u>, or operation under 49 U.S.C. 10901, 10902, or 10907, that does not <u>come within fall under subsection (b)(4) § 1105.8(b)(1) of this section</u>;</p>
<p>Current 1105.6(c)(1)(i) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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:</p> <p style="padding-left: 40px;">(i) . . . , 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.</p>	<p>Proposed 1105.7(a)(1)(iii) (1) Any action <u>Proposals</u> that does <u>would</u> not result in significant <u>substantial</u> changes in the <u>carrier applicant's</u> operations (<i>i.e.</i>, changes that would not exceed the thresholds established at in section § 1105.716(de)(4) or (e5), including, (but not limited to), all of the following <u>actions that meet this criterion</u>:</p> <p style="padding-left: 40px;">. . . (iii) <u>A</u> consolidation, merger, or acquisition of control under 49 U.S.C. 11323 <u>and/or</u> 14303, that does not <u>come within fall under subsection (b)(4) § 1105.8(b)(1) of this section</u>;</p>
<p>Current 1105.6(c)(1)(ii) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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:</p> <p style="padding-left: 40px;">. . . (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;</p>	<p>Proposed 1105.7(a)(1)(v) (1) Any action <u>Proposals</u> that does <u>would</u> not result in significant <u>substantial</u> changes in the <u>carrier applicant's</u> operations (<i>i.e.</i>, changes that would not exceed the thresholds established at in section § 1105.716(de)(4) or (e5), including, (but not limited to), all of the following <u>actions that meet this criterion</u>:</p> <p style="padding-left: 40px;">. . . (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;</p>
<p>Current 1105.6(c)(5) (5) Discontinuance of trackage rights where the affected line will continue to be operated; and</p>	<p>Proposed 1105.7(a)(4) (5) Discontinuance of trackage rights where the affected line will continue to be operated <u>within Board jurisdiction</u>; and</p>

<p>Current 1105.6(c)(6) (6) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.</p>	<p>Proposed 1105.7(a)(5) (6) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts-effects;</p>
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Proposed Removal of Existing CEs	
Current CE	Proposed Revision
<p>Current 1105.6(c)(1)(ii) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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: . . . (iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;</p>	<p>Proposed 1105.7(a)(1)(vi) (1) Any actionProposals that doeswould not result in significantsubstantial changes in the carrier applicant's operations (<i>i.e.</i>, changes that dowould not exceed the thresholds established at in section § 1105.716(de)(4) or (e5)), including, (but not limited to), all of the followingactions that meet this criterion: . . . (iiivi) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and wWaivers of lease and interchange regulations; and</p>
<p>Current 1105.6(c)(1)(v) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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: . . . (v) Determinations of the fact of competition;</p>	<p>Proposed 1105.7(a)(1) (1) Any actionProposals that doeswould not result in significantsubstantial changes in the carrier applicant's operations (<i>i.e.</i>, changes that dowould not exceed the thresholds established at in section § 1105.716(de)(4) or (e5)), including, (but not limited to), all of the followingactions that meet this criterion: . . . (v) Determinations of the fact of competition;</p>
<p>Current 1105.6(c)(4) (4) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;</p>	<p>Proposed 1105.7(a) (4) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;</p>

II. BACKGROUND

A. Context and Rationale for This Proposal

The STB (previously the Interstate Commerce Commission (ICC)) is responsible for the economic regulation of various modes of transportation (primarily freight rail). The agency has jurisdiction over railroad rate, practice, and service issues and rail restructuring transactions, including mergers and line sales. The STB also has jurisdiction over rail line construction (entry into the interstate rail system), and rail line abandonments (exit from the interstate rail system). In addition, the STB has jurisdiction over certain passenger rail matters, certain aspects of the intercity bus industry, non-energy pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation.

The STB's environmental regulations were issued in 1991 and have not been substantively amended since. Significant changes to the STB's statutory authority have occurred since 1991, most notably with the ICC Termination Act of 1995, Pub. L. 104-88 (ICCTA), which eliminated the ICC and established the STB and its regulatory authority. It is thus necessary to update the STB's CEs to align with its current statutory authority. Additionally, in accordance with amendments to NEPA,⁴² the recent U.S. Supreme Court decision in Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168 (2025), and Executive Order 14154, Unleashing American Energy, 90 Fed. Reg. 10610 (Feb. 25, 2025), the STB is proposing changes, including new and revised CEs, to make its environmental review process more efficient. The proposed new and revised CEs will also ensure the development and continuance of a sound rail transportation system and reduce regulatory barriers to entry into and exit from the rail industry consistent with the rail transportation policy of the United States at 49 U.S.C. 10101.

B. Process for Substantiating the Proposed CEs

The STB may use various methods to gather and evaluate information to substantiate the STB's proposed new and revised CEs. The amount of information required to substantiate a CE depends on the circumstances. Categories of actions that the agency reasonably expects to have few or no environmental effects do not require extensive supporting information. For actions that do not obviously lack significant environmental effects, the STB must gather sufficient information to support its determination that the category of actions normally does not have a significant effect on the human environment.

In keeping with these principles, the STB relied on the following sources of information to substantiate its proposed new and revised CEs:

⁴² See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023); One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 157 (2025).

1. Previously Implemented Actions

The STB has identified a set of previously implemented actions for which the STB has consistently made a finding of no significant impact (FONSI).

2. Information from Professional Staff

The STB has relied on the expertise, experience, and judgment of its professional staff to assess the potential environmental effects of applying the proposed CEs, who have knowledge, training, and experience relevant to the implementation and environmental effects of the actions. In particular, the STB relies on the experience of agency experts.

3. Benchmarking to Other Agencies' Experience

The STB has identified a comparable CE in another agency's NEPA procedures and has evaluated that agency's interpretation and application of the comparable CE. An evaluation of the other agency's CE and of the agency's experience interpreting and applying the CE is included below.

III. PROPOSAL TO ESTABLISH NEW CATEGORICAL EXCLUSIONS

The STB proposes to establish the following new and revised CEs in its NEPA procedures:

A. 1105.7(a)(1)(ii) - Abandonments & Discontinuances

Language of the Proposed Categorical Exclusion:

(1) Proposals that would not result in substantial changes in the applicant's operations (*i.e.*, changes that would not exceed the thresholds established at § 1105.16(d) or (e)), including, but not limited to, all of the following:

...

(ii) An abandonment (not including those proposed under the Bankruptcy Act (11 U.S.C. 1170)) or discontinuance under 49 U.S.C. 10903, that does not fall under § 1105.8(b)(1);

Explanation of the Categorical Exclusion:

The current regulations categorically exclude actions that do not result in significant changes in operations because they do not exceed certain traffic thresholds (based on current traffic volumes), and the regulation includes a non-exhaustive list of actions that fall within that category. This new CE (proposed § 1105.7(a)(1)(ii)) would add certain types of abandonment and discontinuance of rail lines to that list of actions because, as explained below, these types of abandonment and discontinuance proceedings do not normally result in significant environmental impacts. The proposed § 1105.8(b)(1) provides that an Environmental Assessment (EA) will typically be prepared for an abandonment or discontinuance that results in operational changes or traffic diversions that would exceed the STB's environmental

thresholds,⁴³ or as explained below, an abandonment where salvage would occur prior to consummation of the abandonment or entry into an interim trail use agreement pursuant to the Trails Act, 16 U.S.C. 1247(d). Thus, the CE would not apply to those actions.

Legal Background:

As stated above, the STB regulates entry and exit of both rail lines and rail carriers into and out of the interstate rail system. Rail lines and operators within the interstate rail system are subject to economic regulation by the STB and certain statutory and regulatory obligations. Rail operators and owners may remove themselves from regulation only if authorized to do so by the STB.

In order to obtain authorization to stop providing rail service over an interstate rail line, an interstate rail carrier requests a “discontinuance.” If the STB grants a rail carrier discontinuance authority, that carrier is relieved of its statutory and regulatory rail service obligations, but the line itself remains within the interstate rail system and thus also within the STB’s jurisdiction unless and until the rail line is abandoned.

In order to remove a rail line from the interstate rail system and regulation by the STB, rail owners must request STB authority to “abandon” the line. If the STB authorizes abandonment, the rail line may be removed from the interstate rail system. Once it is removed, it will no longer be subject to STB jurisdiction or regulation. Authorization to abandon is permissive and, therefore, a line is not abandoned and removed from the interstate rail system unless the rail owner exercises that authority within a year and notifies the STB that it has done so by filing a notice that they have “consummated” the abandonment. 49 CFR 1152.29(e)(2).

Thus, the STB has regulatory authority over rail lines only while they are part of the interstate rail system, and its jurisdiction ends when abandonment is consummated. Preseault v. ICC, 494 U.S. 1, 5 n.3 (1990); RLTD Ry. Corp. v. STB, 166 F.3d 808, 814 (6th Cir. 1999); Consol. Rail Corp. v. STB, 93 F.3d 793, 797 (D.C. Cir. 1996). Because rail lines are privately owned property over which the STB has no jurisdiction after consummation, it cannot control or

⁴³ The STB’s environmental regulations use traffic thresholds to determine whether operational changes related to certain types of actions that require STB authorization have the potential to result in significant environmental effects. The thresholds differ based on whether the proposed action is in an attainment or nonattainment area for the primary air pollutants regulated under the Clean Air Act. In attainment areas, the thresholds are: (1) an increase of rail traffic of at least 100 percent (as measured in gross ton miles annually) or at least 8 trains per day, (2) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (3) 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. In nonattainment areas, the thresholds are: (1) an increase in rail traffic of at least 50 percent (as measured in gross ton miles annually) or at least 3 trains per day, (2) an increase in rail yard activity of at least 20 percent (measured by carload activity), or (3) 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. See current 49 CFR 1105.7(e)(4) & (5) and proposed 49 CFR 1105.16(d) & (e).

mitigate actions taken in connection with the rail line once its jurisdiction and regulatory authority ends. See Hayfield N. R.R. v. Chi. & N.W. Transp., 467 U.S. 622, 632 (1984) (explaining that when a rail line is abandoned for purposes of the STB’s regulatory jurisdiction, the underlying right-of-way becomes “ordinary real property,” and its disposition becomes subject to the application of state property law).

After the STB grants abandonment authority and before consummation occurs, a rail line may be “railbanked” under the National Trails System Act (Trails Act). In essence, the Trails Act enables railroads to transfer rail rights-of-way not presently needed for rail service and which the railroad is authorized to abandon, to states, municipalities, or private groups (i.e., a trail sponsor or trail manager) for establishing trails. 16 U.S.C. 1247(d); 49 CFR 1152.29(a) (only a line authorized for abandonment may be railbanked). To invoke the Trails Act, a prospective trail sponsor or manager must file a request with the STB stating its willingness to assume responsibility for the right-of-way and acknowledging that its “interim trail use” is subject to restoration for rail purposes at any time. Id.; see also 16 U.S.C. 1247(d). Under the Trails Act, if a railroad and a trail sponsor reach an interim trail use agreement, rail corridors may be converted to recreational trail use as an alternative to abandonment.

The STB’s role under the Trails Act is “essentially ministerial.” See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001); Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990). When a request to railbank is filed, the STB’s sole responsibility is to confirm that the trail sponsor agrees to assume full legal and financial responsibility for management of the right-of-way during the interim trail use and to keep the right-of-way available for reactivation of rail service. The STB does not decide whether interim trail use is desirable for a particular line nor is there a requirement under the Trails Act that a railbanked line be developed in a certain way for recreational use. The STB does not supervise or manage use of the line as a trail. While a line is railbanked, the STB retains jurisdiction over the corridor to allow for possible reactivation of the corridor for railroad use in the future.

The current environmental regulations provide that an EA will normally be prepared in most abandonment cases.⁴⁴ 49 CFR 1105.6(b)(2).

CE Rationale and Previously Implemented Actions:

Abandonments

Because abandonment proceedings are limited to authorizing the cessation of STB regulation of a rail line as part of the interstate rail system, the STB has limited its environmental review to the only reasonably foreseeable environmental impacts caused by the abandonment: impacts from the removal of the physical components of the track itself (i.e., salvage) and impacts from

⁴⁴ Abandonments sought under the Railroad Reconstruction Act and the Bankruptcy Act are the exceptions in the current regulations. In such abandonments, the ICC’s role at the time that the current regulations were issued – and the STB’s role after 1995 – was considered ministerial and, because the STB did not have the discretion to deny them, an environmental review did not serve the purposes of NEPA.

changes in rail operations resulting from the removal of the rail line from the interstate rail network (i.e., increases in rail traffic on other rail lines or roads caused by diversion of traffic that had been using the abandoned line). See Iowa So. R.R. Co. – Exemption – Abandonment, 5 I.C.C.2d 496, 501 (1989), aff’d, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990). In proceedings in which there is diversion of traffic as a result of a rail line abandonment, there could be environmental impacts on other rail lines or roads to which traffic is diverted. The STB, however, has determined that those impacts will not have the potential to be significant unless the volume of traffic diverted exceeds the environmental thresholds (based on current traffic volumes). See current 49 CFR 1105.7(e)(4) & (5) and proposed 49 CFR 1105.16(d) & (e).

Because the STB’s jurisdiction ends upon consummation and the rail lines are privately owned property, the STB does not have the authority to dictate what occurs after consummation, and environmental conditions must be satisfied before any abandonment is consummated and STB jurisdiction ends. See In re Implementation of Env’t Laws, 7 I.C.C.2d 807, 828-29 (1991) (the STB “do[es] not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a condition to obtaining abandonment or acquisition authority.”); see also Hayfield N. R.R., 467 U.S. at 632. Without such authority, there is no reason for the STB to consider the potential effects arising from salvage occurring post-abandonment. See Seven Cnty., 605 U.S. at 183 (“doubly underscore[ing]” that inherent in NEPA is a rule of reason that ensures that agencies determine the extent of environmental review “based on the usefulness of any new potential information to the decisionmaking process”).⁴⁵

Limiting review of salvage prior to entry into an interim trail use agreement is also appropriate because interim trail use under the Trails Act is non-discretionary: as noted above, as long as the trail sponsor and the railroad satisfy the statutory requirements of the Trails Act (i.e., the trail sponsor commits to assuming responsibility for the right-of-way and acknowledges that the corridor may be reactivated for future rail service), the STB does not have discretion to deny interim trail use and does not manage or regulate the line while subject to an interim trail use agreement. For that reason, under current agency practice, the STB does not require compliance with environmental and historic conditions with “respect to any portion of a line covered by the interim trail use agreement for the duration of the agreement.” See, e.g., E. Idaho R.R.—Aban. Exemption—in Bonneville Cnty., Id., AB 1252 (Sub-No. 1X), slip op. at 5 n.3 (STB served June 5, 2020); E. Idaho R.R.—Aban. Exemption—in Bonneville Cnty., Idaho, AB 1252 (Sub-No. 1X), Final EA at 3 (STB served June 2, 2020) (explaining that such compliance is not required because interim trail use under the Trails Act is not a “federal action that is subject to environmental review under NEPA”); see also Goos, 911 F.2d at 1295 (“Because we agree with the I.C.C. that its role in [railbanking] proceeding is essentially a ministerial one in which the I.C.C. has no discretion to consider the environmental effects of [railbanking], we find no legal control, and thus no major federal action”).

In developing this CE, the STB conducted an electronic review of abandonment proceedings available on Westlaw and searchable on the STB website (www.stb.gov) and did not locate any

⁴⁵ In addition, imposing involuntary post-abandonment land use restrictions on private property without compensation could constitute a taking of private property under the Fifth Amendment. See In re Implementation of Env’t Laws, 7 I.C.C.2d at 828-29; see also Preseault, 494 U.S. at 13-15 (addressing when Fifth Amendment takings occur under the Trails Act).

proceedings where the STB did not make a FONSI and prepared an Environmental Impact Statement. The STB further reviewed every abandonment proceeding in which both a Draft and Final EA was completed in 2024. There were 13 abandonment EAs completed in 2024, and in each one, the STB issued a Finding of No Significant Impact (FONSI). In these 13 proceedings, the environmental conditions imposed were mostly consultations requirements (examples given below) and only one of those conditions was not expressly related to salvage. Moreover, there were no conditions imposed related to diversion of rail traffic.

As a typical example, in Allegheny Valley, the EA recommended two consultation conditions relating to a bridge. Allegheny Valley R.R. Co. – Aban. Exemption – In Allegheny Cnty., Pa., AB 1233 (Sub-No. 2X), Final EA at 2 (STB served Apr. 29, 2024). The recommended conditions required that, prior to commencing any abandonment-related salvage activities, the railroad consult with (1) the U.S. Corps of Army Engineers to determine whether a permit was needed, and (2) to consult with the state department of environmental protection, pursuant to a state law requiring a permit to abandon a water obstruction or encroachment. Id. These conditions impose obligations that would otherwise be required by applicable laws once the right-of-way is abandoned and no longer within the STB’s jurisdiction. Moreover, these conditions related to potential salvage activities and, under the new CE salvage that will occur prior to consummation of abandonment authority (while the STB still has jurisdiction over the right-of-way) and prior to railbanking (which is a non-discretionary) will not be categorically excluded and an environmental review will occur.

Even with the new CE, EAs will still generally be prepared in abandonment proceedings where salvage will occur while the STB still has jurisdiction and sufficient control over the right-of-way, and thus, can impose conditions (i.e., before consummation or entry into an interim trail use agreement). These cases support the STB’s conclusion that an EA is only necessary in abandonment cases involving a significant diversion of rail traffic or salvage, provided that salvage occurs prior to consummation of abandonment or railbanking.

Discontinuances

A proceeding granting discontinuance authority permits or requires a rail carrier, for an indefinite period, to be relieved of its common carrier obligation to offer (and, upon reasonable request, provide) rail service. If a carrier discontinues service over, but does not abandon, a line that it owns, the line remains part of the national transportation system and subject to the STB’s jurisdiction, and the carrier has the option of resuming common carrier operations over the line in the future without obtaining new STB authority. Except in rare cases,⁴⁶ the rail line itself remains within the interstate rail system and the STB’s jurisdiction, and available for common carrier rail service. See, e.g., St. Lawrence & Atl. R.R.—Discontinuance of Serv. Exemption—in Cumberland Cnty., Me., AB 1117X, slip op. at 4 (STB served Feb. 25, 2014) (“[B]ecause [the

⁴⁶ These rare cases are cases in which the Board has authorized operations over a right-of-way that is owned by a non-carrier and is not subject to abandonment authority by the Board, such as rail lines that are already abandoned, authorized for abandonment, exempt from exit licensing, or private track. See, e.g., Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No 1X), slip op. at 3 (STB served Apr. 6, 2020).

carrier] is seeking only discontinuance, not abandonment, the Line will remain part of the national rail transportation system within our jurisdiction and available for restored rail service in the future if economic circumstances warrant.”). Accordingly, unlike in abandonments, where the underlying rail assets become “ordinary real property” post-abandonment, discontinuance does not change the status of the rail property and right-of-way: it relieves only the common carrier obligation. Nor does the STB expressly authorize salvage when it grants discontinuance authority. Thus, the only potential environmental impacts from a discontinuance would be if there is rail traffic operating on the line at the time of the discontinuance that would need to be diverted to another line or road. The STB has determined that, unless those diversions involve a substantial change in operations on another rail line or road (i.e., exceeds the STB’s environmental thresholds based on current traffic volumes), there are no reasonably foreseeable significant environmental impacts.

Although the current regulations require an EA for discontinuances, the STB typically does not conduct an environmental review in discontinuances where the rail line has not been authorized for abandonment, the reason being that any necessary environmental review would occur when abandonment authority is sought. As noted above, there is a subset of discontinuance proceedings in which abandonment authority is not subsequently sought and, as a result, an EA was done in those cases. These cases, however, are functionally no different than those where the STB authorizes abandonment, in the sense that it has no jurisdiction or control over disposition (i.e., salvage) of the rail assets after licensing the discontinuance. Indeed, in those cases the assets are not even owned by the discontinuing carrier, but rather by a non-carrier over which the STB has no jurisdiction. See, e.g., Boston & Maine Corp.—Discontinuance of Service Exemption—in Essex Cnty., Mass., AB 32 (Sub-No. 106X), EA, slip op. at 5 (STB served March 3, 2015) (“Because the owner of the rail-right-of-way, MBTA is not a rail carrier subject to Board regulation, OEA may not recommend, and the Board may not impose, environmental mitigating conditions on MBTA in this proceeding.”). There is accordingly no value to the decision-maker resulting from STB’s consideration of potential effects arising from salvage occurring post-discontinuance in these cases, even if discontinuance means the STB has no remaining jurisdiction with respect to the right-of-way. See Seven Cnty., 605 U.S at 183.

Moreover, the STB conducted a review of these cases, and they show that the STB has concluded that, when there is no diversion of traffic as a result of the discontinuance, the discontinuance would not result in significant impacts to the human environment. See, e.g., Boston & Maine Corp., AB 32 (Sub-No. 106X), EA, slip op. at 6 (“OEA concludes that discontinuance of rail service on the Line would not significantly affect the quality of the human environment.”). In addition, in cases where there was diversion of traffic and the STB prepared an EA, the cases show that the STB has not found it necessary to impose environmental conditions related to diversion traffic in order to make a FONSI. See e.g. Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Stanly County, N.C., AB-290 (Sub-No. 254X), Final EA (STB served June 12, 2006) (“discontinuance of service on the Line would not significantly affect the quality of the human environment”). Therefore, this case review supports the STB’s conclusion that an environmental review is not necessary for proceedings in which any diversion of rail traffic will not exceed the environmental thresholds.

Accordingly, the STB concludes, based on its review of abandonment and discontinuance proceedings, that the actions covered by the proposed CE will not normally have the potential to cause significant impacts on the human environment.

B. § 1105.7(a)(1)(iv) – Proceedings under 49 U.S.C. 24308

Language of the Categorical Exclusion:

(1) Proposals that would not result in substantial changes in the applicant's operations (*i.e.*, changes that would not exceed the thresholds established at § 1105.16(d) or (e)), including, but not limited to, all of the following:

- ...
- (iv) A proceeding pursuant to 49 U.S.C. 24308;

Explanation and Substantiation of the Categorical Exclusion:

This new CE is based on new statutory authority since the last substantive revision of the STB's environmental regulations. The STB's current and proposed rules include CEs for proposals involving certain types of rail service if the STB's action on the proposal would not result in significant changes to an applicant's rail operations. Both the current and proposed rules include a non-exclusive list of the types of actions that would qualify for such exclusion. For clarity, the STB proposes to add actions under 49 U.S.C. 24308, authority that was added by statute in 1994, to that list. Section 24308 provides that, if a freight carrier and Amtrak cannot agree to terms for sharing facilities or providing services to Amtrak, the STB may, when appropriate, resolve the dispute and set terms and compensation for use and services. It further provides that the STB may order the freight carrier to provide or allow for the operation of additional Amtrak trains over such facilities.

The STB has already determined that this is the type of change in carrier operations that does not normally have significant impacts on the human environment. App. of the Nat'l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. & Norfolk So. Ry. Co., FD 36496, slip op. at 8-9 (STB served Aug. 6, 2021). The addition of section 24308 is simply explicitly including this type of carrier operational change that is already covered by the current 49 CFR 1105.6(c)(1).

C. 1105.7(a)(6) – Offers of Financial Assistance**Language of the Categorical Exclusion:**

(6) Offers of Financial Assistance to avoid abandonment and discontinuance under 49 U.S.C. 10904 (*see* § 1152.27 of this chapter);

Explanation and Substantiation of the Categorical Exclusion:

The STB is proposing to remove this category of actions from the list of actions that are not a major federal action in STB's current regulations, at § 1105.5(c)(3). Instead, STB proposes to establish this category of actions as a CE. STB is proposing this revision based on changes in the STB's regulations since the last substantive revision of the STB's environmental rules. An Offer of Financial Assistance (OFA) involves a new entity seeking permission to take over operations of an existing rail line that the current operator is seeking to abandon. Therefore, a grant of an OFA would result in a continuation of existing rail service. At the time that the STB's current environmental regulations were issued in 1991, the STB determined that the STB's role in the OFA process was merely ministerial and thus, did not qualify as a major federal action. However, the STB revised its OFA regulations in 2017,⁴⁷ and the STB's role is no longer ministerial. As result of the regulatory changes, the grant of an OFA is no longer a non-discretionary action, but it continues to be an action that does not normally have significant effects on the human environment. Therefore, the STB has determined that a CE is appropriate.

The STB is further relying on agency expert Danielle Gosselin to substantiate this CE. Ms. Gosselin, the Director of OEA, has been with the STB for 20 years, has been involved in conducting and supervising environmental reviews since 2007, was Deputy Director of OEA from 2018 to 2021, was Acting Director of OEA from 2021-2022, and has been the Director of OEA since 2022. As a result of her extensive experience with the STB, she is an expert on the types of STB proceedings requiring environmental review, as well as the STB's environmental review process and the substance of those reviews. Based on Ms. Gosselin's experience and expertise, the STB has concluded that the type of proceeding covered by this CE does not normally have significant impacts on the human environment because an OFA is merely a mechanism to preserve the authority for continued rail service by permitting a third party to subsidize or purchase a line for continued rail service on a line that a carrier seeks to abandon.

⁴⁷ See Offers of Fin. Assistance, EP 729 (STB served June 29, 2017).

D. 1105.7(a)(7) – Reciprocal Switching Agreements

Language of the Categorical Exclusion:

(7) A determination imposing or approving a reciprocal switching agreement; and

Explanation and Substantiation of the Categorical Exclusion:

This new CE adds the imposition or approval of reciprocal switching agreements. Reciprocal switching agreements provide for the transfer of a rail shipment between Class I rail carriers or their affiliated companies within the terminal area in which the shipment begins or ends its journey on the rail system.

The STB has already determined that actions “involv[ing] interchange between two carriers,” would be “without environmental consequences” and “closely analogous” to an order providing for the common use of rail terminals, which is an existing CE. Cape Cod & Hyannis R.R.—Exemption from 49 U.S.C. Subtitle IV, FD 31229, slip op. at 2 (ICC served Mar. 25, 1988). The addition of the imposition or approval of reciprocal switching agreements formalizes the STB’s prior determination that this type of action is closely analogous to actions that are already categorically excluded under the current regulations and adds clarity.

E. 1105.7(a)(8) – Connecting Track

Language of the Categorical Exclusion:

(8) Construction of connecting track within an existing rail right-of-way or on land owned by the connecting railroads and/or applicant (*see* § 1150.36 of this chapter), unless the construction of such connecting track is not within the Board’s licensing authority under 49 U.S.C. 10906 or exempt from review under § 1105.5.

Explanation and Substantiation of the Categorical Exclusion:

The STB will substantiate this CE by relying on experience with previously implemented actions and benchmarking to other agency experience.

Previously Implemented Actions:

Under the current rules, an EA would typically be prepared for these cases. In developing this CE, the STB reviewed the three EAs it previously completed for similar actions, of which all resulted in FONSI. These EAs represent the EAs prepared for this category of actions since the inception of the STB in 1996. EAs for proposals for construction of connecting track related to mergers and acquisitions were excluded, as the STB anticipates that even under the proposed CE, such proposals would be considered when the STB conducts an environmental review for the applicable merger or acquisition.

In analyzing these three actions, the STB found that they normally occurred in existing industrial areas and did not result in significant environmental effects. They generally did not result in significant increases in rail traffic, with expected traffic increases of only one to two trains per day in each direction. See Hartwell R.R. Co.—Construction of Connecting Track Exemption—in Elbert Cnty., Ga., FD 35756, Final EA at SMC-1, ES-9 (STB served Oct. 3, 2014); Meridian So. Ry. LLC—Construction of Connecting Track Exemption—in Lauderdale Cnty., Miss., FD 35218, Final EA at 4-5 (STB served July 30, 2009); see also City of Peoria, Il. d/b/a Peoria, Peoria Heights & Western R.R.—Construction of Connecting Track Exemption—in Peoria Cnty., Il., FD 34395, EA at 5-2 (STB served Mar. 9, 2004) (noting no expected increase in rail traffic).

Based on a review of these cases, the STB has concluded that the type of proceeding covered by this CE does not normally have significant impacts on the human environment.

Benchmarking to Other Agencies' Experiences:

The STB reviewed existing CEs across Federal agencies and identified one CE that covers comparable actions. The Federal Railroad Administration (FRA) has categorically excluded this type of action. Specifically, FRA has categorically excluded minor rail line additions, including short connections between existing rail lines, provided such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities. Similar to FRA's CE, the STB CE is limited to construction of connecting track that is in an existing right-of-way or on land already owned by the railroads and therefore would not involve acquisition of right-of-way. The proposed CE would also be consistent with FRA's limitation that constructions are not inconsistent with existing zoning, as an existing right-of-way or land owned by a railroad would generally already be used for railroad purposes. And, as noted above in the assessment of previously implemented actions, construction of connecting track does not generally result in significant increases in traffic. The STB also reviewed relevant litigation history, finding no judicial decisions that cast doubt on the validity of the CE or limited its use. Therefore, the STB concluded that the actions covered by the proposed new CE normally do not have significant effects.

Proposed CE	FRA CE (23 CFR 771.116)
<p>(a)(8)</p> <p>Construction of connecting track within an existing rail right-of-way or on land owned by the connecting railroads and/or applicant (<i>see</i> § 1150.36 of this chapter), unless the construction of such connecting track is not within the Board's licensing authority under 49 U.S.C. 10906 or exempt from review under § 1105.5.</p>	<p>(c)(12)</p> <p>Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.</p>

IV. PROPOSAL TO REVISE CERTAIN CATEGORICAL EXCLUSIONS

A. Proposed Substantive Revisions to Existing CEs

1. Proposed 1105.7(a)(2) – Adjudications Regarding Rates, Tariffs, Practices, and Service

Current CE	Proposed Revision
1105.6(c)(2) (2) Rate, fare, and tariff actions;	1105.7(a)(2) (2) <u>Adjudications regarding R</u> ates, fares, <u>and</u> tariffs <u>actions</u> , <u>practices, and service</u> ;

Explanation and Substantiation of the Categorical Exclusion:

This revised CE changes the current language of “rate, fare and tariff actions” to add “[a]djudications regarding” these types of actions, for clarity.

Additionally, the CE adds adjudications regarding “practices and service.” Adjudications regarding practices include claims relating to unfair and discriminatory practices. These actions do not normally have a substantial impact on future traffic volumes and therefore do not normally result in significant environmental impacts. As to adjudications regarding service, rail operators on the lines within the interstate rail system have a common carrier obligation under 49 U.S.C. 11101, which means that rail carriers providing rail service subject to the STB’s jurisdiction must provide service upon reasonable request. Adjudications involving service can involve a determination of whether a carrier holds the obligation or whether a carrier has met that obligation. These actions often involve economic damages for past actions and do not normally have a substantial impact on future traffic volumes, and therefore do not normally result in significant environmental impacts.

The STB is relying on agency expert Danielle Gosselin to substantiate this CE. As discussed above, based on her extensive experience with the STB, Ms. Gosselin is an expert on the types of STB proceedings requiring environmental review, as well as the STB’s environmental review process and the substance of those reviews. Based on Ms. Gosselin’s experience and expertise, the STB has concluded that the types of proceedings being added to this CE do not normally have significant impacts on the human environment.

B. Proposed Non-Substantive Revisions to Existing CEs

The following proposed revisions are technical corrections and editorial revisions that the STB has determined do not substantively affect the scope or change the meaning of the CE. The STB is making these revisions to provide clarification for practitioners, use plain language, and update cross-references. As none of the changes below impact the scope of activities to be covered by the CEs, the STB has determined that no additional substantiation is required for these revisions. To the extent any revisions are not obviously technical and editorial, they are explained below.

1. Proposed 1105.7(a)(1)(i) - Acquisitions, Leases and Operation Changes

Current CE	Proposed Revision
<p>Current 1105.6(c)(1)(i) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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:</p> <p>(i) An acquisition, lease, or operation under 49 U.S.C. 10901, 10902, or 10907, . . . that does not come within subsection (b)(4) of this section.</p>	<p>Proposed 1105.7(a)(1)(i) (1) Any action <u>Proposals</u> that does <u>would</u> not result in significant <u>substantial</u> changes in the <u>carrier</u> applicant's <u>operations</u> (<i>i.e.</i>, changes that would not exceed the thresholds established at in section § 1105.716(de)(4) or (e5)), including, <u>(but not limited to),</u> all of the following actions that meet this criterion: <u>actions</u></p> <p>(i) An acquisition, lease, <u>feeder line sale,</u> or operation under 49 U.S.C. 10901, 10902, or 10907, that does not come within <u>fall under subsection (b)(4) § 1105.8(b)(1) of this section;</u></p>

The proposed regulation changes “carrier” to “applicant” for clarity. The proposed regulation also adds the term “feeder line sale” to the list of actions categorically excluded unless they result in significant changes in operations. Proceedings relating to feeder lines are done under 49 U.S.C. 10907, which is cited in the current version of the regulations. As such, this revision to the existing CE does not entail a substantive change and is simply added for clarity.

2. Proposed 1105.7(a)(1)(iii) - Mergers and Acquisitions

Current CE	Proposed Revision
<p>Current 1105.6(c)(1)(i) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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:</p> <p>(i) . . . , 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.</p>	<p>Proposed 1105.7(a)(1)(iii) (1) Any action <u>Proposals</u> that does <u>would</u> not result in significant <u>substantial</u> changes in the <u>carrier</u> applicant's <u>operations</u> (<i>i.e.</i>, changes that would not exceed the thresholds established at in section § 1105.716(de)(4) or (e5)), including, <u>(but not limited to),</u> all of the following actions that meet this criterion: <u>actions</u></p> <p>. . .</p> <p>(iii) <u>A</u> consolidation, merger, or acquisition of control under 49 U.S.C. 11323 and/or 14303, that does not come within <u>fall under subsection (b)(4) § 1105.8(b)(1) of this section;</u></p>

3. Proposed 1105.7(a)(1)(v) - Corporate Changes

<p>Current 1105.6(c)(1)(ii) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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: (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;</p>	<p>Proposed 1105.7(a)(1)(v) (1) Any actionProposals that doeswould not result in significantsubstantial changes in the carrier applicant's operations (<i>i.e.</i>, changes that dowould not exceed the thresholds established at in section § 1105.716(de)(4) or (e5)), including, (but not limited to), all of the followingactions that meet this criterion: . . . (ii) Transactions involving corporate changes (such as a change in the ownership or theoperator, orthe issuance of securities, or reorganization), including grants of authority to hold position as an officer or director;</p>
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4. Proposed 1105.7(a)(4) - Trackage Rights

Current CE	Proposed Revision
<p>Current 1105.6(c)(5) (5) Discontinuance of trackage rights where the affected line will continue to be operated; and</p>	<p>Proposed 1105.7(a)(4) (5) Discontinuance of trackage rights where the affected line will continue to be operated <u>within Board jurisdiction</u>; and</p>

The proposed regulations add the phrase “within Board jurisdiction” to the end of the current CE for “discontinuance of trackage rights where the affected line will continue to be operated.” This addition is for clarification and is not a substantive change.

5. Proposed 1105.7(a)(5) - Rulemaking, Policy Statement, or Legislative Proposal

Current CE	Proposed Revision
<p>Current 1105.6(c)(6) (6) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.</p>	<p>Proposed 1105.7(a)(5) (6) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts<u>effects</u>;</p>

The proposed regulations change the word “impacts” to “effects,” in accord with the language used in NEPA, following amendments from the Fiscal Responsibility Act of 2023.

V. EXTRAORDINARY CIRCUMSTANCES

The STB’s current regulations do not specifically address extraordinary circumstances. Accordingly, the STB’s proposed regulation revisions include provisions at proposed 49 CFR 1105.6(b)(1) and 1105.7(e) to explicitly state that the if the Director of OEA concludes that extraordinary circumstances exist indicating an action that would normally fall within one of the STB’s CEs is likely to have a reasonably foreseeable significant effect, the Director will evaluate the action and may determine that an EA or an Environmental Impact Statement is required. The

STB expects this proposed procedure for identifying extraordinary circumstances to be adequate to ensure that actions taken under CEs are not likely to result in significant effects, and to otherwise ensure the STB conducts the appropriate level of NEPA review.

VI. PROPOSAL TO REMOVE CATEGORICAL EXCLUSIONS

The STB intends to remove three existing CEs, as explained below.

A. Current (c)(1)(iii) – Declaratory Orders, Interpretation or Clarification of Operating Authority, Substitution of an Applicant, and Name Changes

Current CE	Proposed Deletion
<p>Current 1105.6(c)(1)(ii) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i>, 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: . . . (iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;</p>	<p>Proposed 1105.7(a)(1)(vi) (1) Any actionProposals that doeswould not result in significantsubstantial changes in the carrierapplicant's operations (<i>i.e.</i>, changes that dowould not exceed the thresholds established in section § 1105.716(de)(4) or (e5)), including, (but not limited to), all of the following actions that meet this criterion: . . . (iiivi) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and wWaivers of lease and interchange regulations; and</p>

The proposed rules reclassify declaratory orders as actions that are not major federal actions based on the decision in Padgett v. STB, 804 F.3d 103 (1st Cir. 2015). The First Circuit held that an STB declaratory order holding that state and local laws were preempted by the ICCTA, the STB’s authorizing statute, was not a major federal action requiring NEPA review because the STB “did not provide federal funds, approve or license the [proposed action], or otherwise manifest ‘indicia of control’ over [the applicant] that would be sufficient to establish a ‘major Federal action.’” Id. at 110. The characteristics of the declaratory order that the First Circuit relied on in Padgett is typical of all STB declaratory orders and, thus, the proposed change is being made in response to the First Circuit’s findings.

Similarly, the proposed rules also reclassify interpretations or clarification of operating authority, substitution of an applicant, and name changes, as actions that are not major federal actions, because such actions are ministerial and do not manifest sufficient indicia of control by the STB.

B. Current (c)(4) – Modified Certificates

Current CE	Proposed Deletion
Current 1105.6(c)(4) (4) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;	Proposed 1105.7(a) (4) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;

The proposed rules also reclassify termination of freight rail service under a modified certificate pursuant to 49 CFR 1150.21 as not a major federal action. Under these procedures, termination of service is effectuated via notice to the STB, with the STB having no discretion to forestall it. Accordingly, these actions are ministerial and not subject to NEPA.

C. Current (c)(1)(v) – Determinations of the Fact of Competition

Current CE	Proposed Deletion
Current 1105.6(c)(1)(v) (1) Any action that does not result in significant changes in carrier operations (<i>i.e.</i> , 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: . . . (v) Determinations of the fact of competition;	Proposed 1105.7(a)(1) (1) Any action Proposals that does would not result in significant substantial changes in the carrierapplicant's operations (<i>i.e.</i> , changes that do would not exceed the thresholds established at in section § 1105.716 (de)(4) or (e 5)), including, (but not limited to), all of the following actions that meet this criterion: . . . (v) Determinations of the fact of competition;

STB proposes to delete this action because it was omitted from STB's statutory authority by the ICCTA.

VII. CONSULTATION & NOTICE

The STB consulted with CEQ in developing its proposal and in preparing this substantiation document. The STB will provide the public with notice of its proposal, including this document, and an opportunity to comment. The agency will consider the comments it receives and revise this document, in further consultation with CEQ, as necessary. If the agency determines that it is appropriate to finalize the establishment of and revisions to these CEs, STB and CEQ will conclude consultation, and STB will publish its revised regulations including these new and revised CEs. *See* 42 U.S.C. 4332(2)(B).

VIII. CONCLUSION

Based on the information provided in this record, the STB has made a preliminary determination that these proposed changes to the STB's CEs are consistent with the STB's obligations under NEPA.