

**SURFACE TRANSPORTATION BOARD**  
Washington, DC 20423-0001

**Summary of the Environmental Review Process in Railroad Construction  
Cases Before the Surface Transportation Board**

Introduction

This overview has been prepared by the Surface Transportation Board's Section of Environmental Analysis (SEA) to assist the public in gaining a general understanding of the Board's environmental requirements in rail construction cases. It is not intended to be a formal agency statement.

SEA encourages all interested parties to contact SEA directly in order to further discuss and explain the Board's environmental review process. For additional information and assistance about the environmental review process, please contact Elaine K. Kaiser, Chief, Section of Environmental Analysis (202) 565-1538, or Victoria Rutson, Staff Attorney, Section of Environmental Analysis (202) 565-1545.

Questions concerning whether a proposed project falls within the Board's jurisdiction, procedures for filing an application, or questions regarding the Board's overall policies should be addressed to the Board's Office of Public Services at (202) 565-1592.

Rail Construction

Rail construction is subject to the Board's jurisdiction, and as a major Federal action is also subject to compliance with the National Environmental Policy Act (NEPA). In order to fulfill its responsibilities under NEPA, the Board's SEA prepares an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) identifying and analyzing the potential environmental effects of the proposed construction and recommending any necessary mitigation measures. These documents may be prepared either by the SEA staff, or, more usually, by an independent third party contractor working under the supervision and control of SEA.

The Board's environmental regulations are located at 49 CFR 1105 et seq. These regulations cover the Board's environmental regulations for rail abandonments and other licensing activities, in addition to rail construction.

Timing of the Environmental Review Process

Under NEPA, the Board must take a "hard look" at the potential environmental impacts of a proposed action before it makes a decision to approve or deny the proposal. To accomplish this hard look, early in the environmental review process SEA contacts a number of Federal, state and

local agencies, community organization, leaders of Indian tribes, and interested members of the public, informs them of the proposed action before the Board, and solicits their comments regarding potential environmental concerns and issues. Following receipt of these comments, SEA may initiate studies such as biological surveys, or archaeological surveys as part of the environmental review process. This does not mean that the environmental process must delay an applicant's proposed construction schedule. With early consultation, SEA can complete the necessary NEPA compliance in a timely fashion.

The environmental review process generally involves the steps listed below:

1. Prefiling Notice: An applicant is required by the environmental regulations to notify SEA of its rail construction proposal 6 months prior to filing its application. This 6-month prefiling notice may be waived by SEA upon written request by the applicant.
2. Initial Briefings: SEA will conduct initial briefings with applicants to discuss the environmental review process, required environmental information, and the use of the independent third party consultant process to prepare the EA or EIS on behalf of the Board. This is a critical step in the process and SEA requires applicants to be present in person. Although the consultant is retained by the applicant, the consultant must be approved by SEA and work under SEA's direction and approval in preparing the EA or EIS.
3. Site Inspection: This inspection is generally conducted by SEA staff to assess the project area and to determine any additional environmental aspects or concerns that need to be addressed.
4. EA or EIS: Based on the site inspection, assessment of all available environmental information, and review of any agency comments, SEA will make a preliminary determination regarding the type of environmental document that is appropriate. Although an EIS is generally required for most construction cases, the applicant may file a substantiated written request seeking the preparation of an EA rather than an EIS. Additionally, SEA on its own may decide an EA is appropriate. Under 49 CFR 1105.6(b) of the Board's environmental rules, an EA rather than EIS is to be prepared for construction cases involving connecting track within existing rail rights-of-way, or on land owned by the connecting railroads.
5. Notice and Scoping - Under the EIS process, the Board will publish in the Federal Register a notice of its intent to prepare an EIS with a description of the proposed action, a request for written comments on the scope of the EIS, and an announcement of any scoping meetings. This notice is usually served on all interested parties and appropriate government agencies. Where appropriate, scoping meetings will be scheduled in communities near the proposed

construction. After considering the comments, a notice of the final scope of the EIS will be published in the Federal Register and also sent to interested parties.

6. Oversight: SEA will conduct periodic meetings and briefings with the applicants, affected Federal and local government agencies, concerned members of the public, and will be in constant communication with the independent third party contractor during the preparation of the environmental document.
7. Public Comment on the Environmental Document: The Draft EIS or the EA is served on all concerned parties and requests comments on all aspects of the environmental document, including the extent and applicability of any recommended mitigation measures. A notice of availability of the Draft EIS or EA is also published in the Federal Register. The minimum comment period for a Draft EIS is 45 days. There is usually a 30-day comment period for an EA.
8. Final Environmental Document: Based on all available information in the environmental record, the comments received on the Draft EIS or the EA, and any further independent analysis, SEA prepares a Final EIS or a Post EA. The Final EIS is generally served on all the parties and a notice of availability is published in the Federal Register. The Post EA is generally available only by request. The Final EIS or the Post EA evaluates and considers all comments received, addresses any errors, includes any appropriate changes or additions, and makes final recommended mitigation measures. The Final EIS or the Post EA is then forwarded to the Board for its consideration in making a decision.
9. Final Board Decision: The Board considers and weighs all the issues involved in the proposed action, including the environmental concerns, and will then make and issue a final decision. In most cases, the Board adopts in its final decision the mitigation measures recommended in the environmental document.

### Third Party Consultant

The independent third party consultant prepares the environmental document on behalf of the Surface Transportation Board. Although the consultant's services are paid for by the applicant, the consultant is chosen with the approval of SEA and works under SEA's direct supervision. During the third party consultant's preparation an EA or an EIS, SEA ensures that the document fully addresses the environmental impacts of the project, includes appropriate mitigation measures, is objective, substantive, and readable.