

Environmental Permitting

KEY TAKEAWAY

Freight railroads support reforms that would provide greater predictability and transparency in federal permitting processes while ensuring a timely, focused review of the environmental impacts of proposed projects.

Railroads continually invest in infrastructure construction projects throughout their private networks that may require federal licenses or permits, such as improvements to bridges, terminals and lines of track. Over the last 15 years, freight railroads have invested, on average, \$24.2 billion of their capital into improving and maintaining their networks.

To provide perspective, that is \$1 billion more than Congress's historic investments this year in rail and multi-modal programs in the Infrastructure Investment and Jobs Act (IIJA) and the FY 2023 Omnibus combined. These investments are why the American Society of Civil Engineers has awarded rail its highest grade multiple years in a row.

Too often, though, the required permitting processes and related environmental reviews are overbroad, inefficient, and expensive and can unnecessarily delay projects for years. Streamlining permitting processes for critical infrastructure projects will help railroads maintain existing and build new, modern infrastructure to safely, reliably and sustainably meet our nation's expected 30% growth in freight transportation demand by 2040.

AAR urges Congress to enact the below reforms:

Rail-specific Reforms

- Align the timeframes for filing claims seeking judicial review of a permit, license, or approval for any railroad project issued by the Federal Railroad Administration (FRA) under the National Environmental Policy Act (NEPA) with those used for highway or public transportation projects. The deadline for highway and public transportation projects is 150 days after the publication of a notice in the Federal Register announcing that the permit, license, or approval is final. In contrast, the deadline for railroad projects is two years.
- Apply the project development procedures used by DOT under 23 U.S.C. 139, including One Federal Decision, to the Surface Transportation Board's (STB) review of railroad projects that require approval under NEPA.
- Ensure the Advisory Council on Historic Preservation's (ACHP) compliance with section 11504 of the FAST Act, which directed ACHP to issue a final exemption from Section 106 requirements (historic preservation reviews) for railroad rights-of-way that is consistent with the exemption issued for interstate highways.

Economy-wide Reforms

- Modify section 401 of the Clean Water Act to, among other things, set timelines for final actions on water quality certification requests, limit State reviews to direct impacts on water quality, require publication of clear requirements for certification requests, and prohibit States from requesting that project sponsors withdraw applications to restart timelines.
- Permit federal agencies to utilize the categorical exclusions of other federal agencies, including the STB, other modal administrations, and resource agencies, such as the Army Corps of Engineers and the Coast Guard.
- Extend the application of One Federal Decision (section 11301 of the IIJA) to include reviews under NEPA of infrastructure projects undertaken by all federal agencies. The benefits of One Federal Decision include, among other things, page limits for NEPA documents, completion targets of no more than two years for environmental impact statements and one year for environmental assessments, joint or coordinated agency approvals, and final agency action from cooperating agencies no later than 90 days after the release of the lead federal agency NEPA decision document. Expanding the application of One Federal Decision is important since DOT and the STB are not often the “lead federal agency” for most rail projects, and NEPA is generally triggered due to resource agency permitting.