

ENVIRONMENTAL PERMITTING

Key Facts

- Streamlined permitting would cut delays and speed up rail projects.
- NEPA and Clean Water Act reforms would boost transparency and consistency.
- Rail-specific fixes would ensure fair, timely reviews for key upgrades.

Railroads continually invest in infrastructure construction projects throughout their private networks. These projects may require federal licenses or permits, such as improvements to bridges, terminals and lines of track. In 2023 alone, Class I railroads reinvested \$26.8 billion in modernizing infrastructure, enhancing safety and improving reliability.

Too often, though, the required permitting processes and related environmental reviews are overbroad. They are inefficient and result in costly delays that can extend projects for years. In addition, rail projects can be subject to an inconsistent patchwork of processes and requirements from State reviews of federally approved projects.

Streamlining permitting processes for critical infrastructure projects will help railroads maintain existing and build new, modern infrastructure. This will safely, reliably, and sustainably meet our nation's expected 30% growth in freight transportation demand by 2040.

The statutory changes below will give the freight rail industry and other sectors the certainty they need. These changes help companies invest wisely in future projects without enduring years of regulatory back-and-forth. AAR urges Congress to enact these reforms.

RAIL-SPECIFIC REFORMS

- Apply a narrow scope of review for freight rail project permits under NEPA and the Clean Water Act. Freight railroads, as common carriers, cannot choose which commodities they ship. Regulators should not require railroads to account for upstream or downstream impacts of those commodities during environmental reviews.
- Ensure the Advisory Council on Historic Preservation's (ACHP) compliance with section 11504 of the FAST Act. This section directed ACHP to issue a final exemption from Section 106 requirements (historic preservation reviews) for railroad rights-of-way. It should be consistent with the exemption issued for interstate highways.

ECONOMY-WIDE REFORMS

National Environmental Policy Act (NEPA) Legislative Reforms

- Amend NEPA to clarify the Council on Environmental Quality's (CEQ) authority to issue implementing regulations. Following the D.C. Circuit's ruling in *Marin Audubon Society v. Federal Aviation Administration*, CEQ's authority to issue binding regulations was rescinded. Without uniformity, each federal agency would be required to issue their own regulations, potentially leading to a patchwork of regulations.
- Enhance the deadlines under NEPA to ensure timely responses from federal agencies to respond to applicants and review permit requests.
- 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. Expanding the application of One Federal Decision is important, especially since the Army Corps of Engineers, rather than DOT, is often the "lead federal agency" for rail projects.

Clean Water Act (CWA) Legislative & Regulatory Reforms

- Modify section 401 of the CWA to set timelines for final actions on water quality certification requests. Limit State reviews to direct impacts on water quality. Additionally, require publication of clear requirements for certification requests, and prohibit States from requesting that project sponsors withdraw applications to restart timelines.
- Codify a statutory definition of "Waters of the U.S." that mirrors the jurisdictional boundaries identified by the U.S. Supreme Court in *Sackett II* while further clarifying that man-made ditches would not be included.
- Develop a consistent and transparent approach to obtaining a jurisdictional determination (JD) from the Army Corps of Engineers by codifying the availability of JDs, preliminary jurisdictional determinations, and no jurisdictional determinations. The process should be standardized for obtaining each of these items. Moreover, a permit application should not be required to file a stand-alone JD request. Finally, rigid timelines should be created for the reviews and decisions on applications.
- Mandate that water quality standards and total maximum daily load determinations under the Clean Water Act include the evaluation of naturally occurring or background conditions. Also, ensure that target thresholds are not set lower than existing background levels.