

requirement. A copy of the denial letter has been placed in the docket identified in Table 1.

#### Western Pilot Service

Western sought exemption for 15 CMV drivers who transport aviation fuel for aircraft engaged in firefighting operations in remote areas. Western asked for exemption from the provision of the HOS rule that limits CMV drivers to a maximum of 70 on-duty hours in any period of 8 consecutive days [49 CFR 395.3(b)(2)]. When the 70-hour limit is reached, this provision bars CMV drivers from operating a CMV on a public highway until they attain the amount of off-duty time prescribed by the HOS regulations. Western proposed that it be given an exemption that would permit its CMV drivers to satisfy the off-duty requirement by being off duty for 2 consecutive days in any 14-day period. Thus, Western drivers could be eligible to drive a CMV when their hours on duty exceeded 70 hours in the most recent 8-day period. Western sought this exemption so that the work schedules of its CMV drivers would more closely correspond with the work schedules of its aircraft pilots. FMCSA reviewed the application and the two public comments submitted. On June 4, 2012, FMCSA concluded that Western had not demonstrated how it would achieve a level of safety equivalent to or greater than the level of safety that would be obtained by complying with the limit of 70 on-duty hours in 8 days. A copy of the denial letter has been placed in the docket identified in Table 1.

#### Redding Air Service/Guardian Helicopters

These two entities, owned by the same individual, filed a joint application seeking relief for 20 CMV drivers who transport jet fuel in tank CMVs in support of aircraft engaged in firefighting operations. The applicants asked for exemption from the HOS rule that prohibits a driver from operating a CMV after accumulating 70 on-duty hours in an 8-day period [§ 395.3(b)(2)]. The applicant sought the exemption so that the work schedules of its ground support employees would more closely correspond to the work schedules of its aircraft employees. On June 4, 2012, the Agency concluded that the applicant failed to explain how it would ensure that drivers operating tank vehicles laden with hazardous materials beyond the 70-hour/8-day limit of section 395.3(b)(2) would achieve a level of safety equivalent to, or greater than, the level that would be achieved by compliance with that limitation. Section

381.305(a) requires that the Agency be satisfied that this standard would be met before granting an exemption from the FMCSRs. A copy of the denial letter has been placed in the docket identified in Table 1.

#### Conclusion

FMCSA reviewed each application and all public comments received. The Agency concluded in each case that the application for exemption lacked sufficient merit to justify the exemption sought. Accordingly, FMCSA denied the applications for exemption of Rotel, Underwater, Western, Redding and Guardian.

Issued on: June 27, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Adoption of the Environmental Impact Statement (EIS) and Participation in the Section 106 Programmatic Agreement for the East Side Access Project

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of adoption and recirculation of the Final Environmental Impact Statement for the East Side Access Project and participation in the Section 106 Programmatic Agreement.

**SUMMARY:** FRA is issuing this notice to advise the public and interested agencies that FRA is adopting the Federal Transit Administration (FTA) March 2001 Final Environmental Impact Statement and subsequent FTA reevaluations (collectively, the "2001 EIS") for the East Side Access project proposed by the Metropolitan Transportation Authority (MTA) in the State of New York. FRA is adopting the 2001 EIS to satisfy FRA's National Environmental Policy Act (NEPA) obligations related to MTA's request for financing for the East Side Access project through the FRA Railroad Rehabilitation and Improvement Financing (RRIF) Program. Through Amendment No. 3, FRA is becoming a signatory to the 2006 Amended Programmatic Agreement to satisfy Section 106 of the National Historic Preservation Act.

**FOR FURTHER INFORMATION CONTACT:** Michelle W. Fishburne; Environmental Protection Specialist; Federal Railroad

Administration; Office of Railroad and Policy Development; 1200 New Jersey Avenue SE., MS-20; Washington, DC 20590; Phone (202) 493-0398.

**DATES:** Submit comments regarding adoption of the 2001 EIS no later than 30 days following EPA's notice of availability of the 2001 EIS to Michelle Fishburne, at the address listed above.

**ADDRESSES:** The 2001 EIS can be inspected at the FRA office at the address listed above and locally at the following locations:

#### Manhattan

- Community Board 4, Muhlenberg Library, 209 West 23rd Street, New York, NY 10011-2379; Phone (212) 924-1585.

- Community Board 5, Mid-Manhattan Library, 455 Fifth Avenue, New York, NY 10016-0122; Phone (212) 340-0863.

- New York Public Library, Fifth Avenue at 42nd Street, New York, NY 10018-2788; Phone (212) 275-6975.

- Community Board 6, Epiphany Library, 228 East 23rd Street, New York, NY 10010-4672; Phone (212) 679-2645.

#### Queens

- Community Board 8, Yorkville Library, 222 East 79th Street, New York, NY 10021-1295; Phone (212) 744-5824.

- Community Board 2, Court Square Library, 25-01 Jackson Avenue, Long Island City, NY 11101; Phone (718) 937-2790.

- Community Board 5, Maspeth Library, 69-70 Grand Avenue, Maspeth, NY 11378; Phone (718) 639-5228.

The 2001 EIS is also located on the FRA Web site at [www.fra.dot.gov](http://www.fra.dot.gov) or on the MTA East Side Access project Web site at [www.mta.info/capconstr/esas/](http://www.mta.info/capconstr/esas/).

**SUPPLEMENTARY INFORMATION:** MTA has applied to FRA for a RRIF loan for the East Side Access project. The East Side Access project will provide direct access for Long Island Rail Road (LIRR) riders to Grand Central Terminal (GCT) by connecting to the MTA LIRR Main Line and Port Washington tracks. LIRR provides service to 124 stations on 11 branch lines, within five counties in New York State: New York County, Kings County, Nassau County, Suffolk County, and Queens County. The East Side Access will be the LIRR's largest system expansion in over 100 years. The East Side Access project will open a second Manhattan gateway, greatly expanding its LIRR service by connecting Queens and Long Island with East Midtown Manhattan. With direct LIRR service to Midtown East, LIRR will further increase its market share by saving up to 40 minutes per

day in subway/bus/sidewalk travel time for commuters who work on Manhattan's East Side.

The East Side Access project includes construction of new tunnel connections beneath Sunnyside Yard and approximately three miles of new tunnel in Manhattan. The project's multiple tunnels total approximately 7.5 miles of new tunnels with approximately 13 miles of tracks. The project also involves the construction of numerous new structures, including new tracks, platforms, new off-street entrances, a new LIRR passenger station, ventilation and substation facilities, and new storage and maintenance facilities.

Analysis of environmental effects from the East Side Access project began in 1995 with the preparation of a Major Investment Study (MIS) by MTA. The MIS evaluated the effectiveness of a wide range of alternative investments and strategies for the Long Island Transportation Corridor. FTA circulated

a Draft EIS in May 2000, and published notices of the 2000 Draft EIS availability with the public hearing date in the **Federal Register** on May 26, 2000. MTA held the public hearing on June 15, 2000, and public comments were accepted through December 1, 2000. FTA received over 300 public comments, which FTA addressed in the 2001 Final Environmental Impact Statement (FEIS). FTA published the Record of Decision (ROD) in May 2001.

The FEIS evaluated the environmental impacts for the No Action Alternative, the Transportation Systems Management Alternative, and the Preferred Alternative described in the MIS. Because the East Side Access project has the potential to affect a diverse set of stakeholders, MTA developed and implemented a comprehensive Communications and Coordination Plan during the development of the project. FRA was not a cooperating agency because it had

no involvement with the project at that time.

Subsequent to the release of the FEIS and ROD, MTA proposed several design changes to the project. In each instance, MTA prepared a technical memorandum identifying the need for design revisions and any resulting potential environmental impacts. FTA then reviewed and analyzed these MTA memoranda to determine if any additional NEPA review was required. FTA analyzed the proposed design changes in FTA memoranda and issued a letter to MTA finding in each case that the proposed design changes would not result in additional significant impacts not already analyzed in the FEIS, that the NEPA requirements as outlined in 23 CFR 771.130 were met, and that no supplemental environmental review was required. The following table documents the technical memoranda and decision dates by FTA.

MTA technical memoranda	FTA reevaluation
1. Technical Memorandum Assessing Potential Design Changes, February 26, 2002 .....	Aug. 30, 2002.
2. Design Changes in Queens Revision 14-4M Environmental Analysis, November 2005 .....	Apr. 13, 2006.
3. Technical Memorandum Assessing Design Refinement: Tail Tracks Ventilation Plenum and Grate, February 2008 .....	July 18, 2008.
4. Technical Memorandum Assessing Design Changes: LIRR Concourse and Street Entrances, July 30, 2009 .....	Mar. 3, 2010.
5. Redundant Elevator for East Side Access Concourse, March 12, 2010 .....	Aug. 2, 2010.
6. 48th Street Entrance Design, October 6, 2011 .....	Nov. 23, 2011.

Additionally, due to proposed modifications to the design of the project near East 50th Street, FTA prepared the "MTA Long Island Rail Road East Side Access 50th Street Facility Revised Supplemental Environmental Assessment to the East Side Access Final Environmental Impact Statement" (2006 EA) in April 2006, and issued the Finding of No Significant Impact in July 2006.

The Council on Environmental Quality (CEQ) regulations implementing NEPA strongly encourage agencies to reduce paperwork and duplication, 40 CFR 1500.4. One of the methods identified by CEQ to accomplish this goal is adopting the environmental documents prepared by other agencies in appropriate circumstances, 40 CFR 1500.4(n), 1500.5(h), and 1506.3. In instances where the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement, 40 CFR 1506.3(b).

FRA has conducted an independent review of the FEIS, the six MTA technical memoranda with the subsequent FTA reevaluations, and the 2006 EA for the purpose of determining

whether FRA could adopt FTA's environmental review pursuant to 40 CFR 1506.3 and FRA's NEPA implementing procedures, Procedures for Considering Environmental Impacts, 64 FR 28545, May 26, 1999. First, FRA's review concluded that the action encompassed by the MTA RRIF application is substantially the same as the action documented in the 2001 EIS. The RRIF loan application encompasses elements of the East Side Access project covered by the 2001 EIS. Because specific elements for FRA financing have not been determined, FRA is adopting the 2001 EIS in its entirety to facilitate funding of multiple RRIF eligible elements of the project. Second, the 2001 EIS and subsequent analyses adequately assess the environmental impacts associated with the project. Although the original FEIS is over 10 years old,<sup>1</sup> there have been no changes to the project that would result in significant environmental impacts that were not evaluated in the FEIS. There is no new information or circumstance that would result in significant environmental impacts not already

evaluated in the FEIS, as demonstrated by FTA's reevaluations of modifications to the project since the issuance of the FEIS. Therefore, because FTA's environmental review covers the same project and adequately analyzes the impacts of the currently proposed project, FRA has determined that no supplemental EIS or reevaluation under FRA's implementing procedures is required. Third, the 2001 EIS meets the standards of the CEQ regulations, 40 CFR Parts 1500-1508. Therefore, FRA can adopt the 2001 EIS.

In addition to NEPA compliance, the 2001 FEIS incorporated the analyses required for compliance with additional environmental statutes, including Section 176(c) of the Clean Air Act (CAA), 42 U.S.C. 7506; the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*; and Section 4(f) of the Department of Transportation Act of 1966 (Section 4(f)), 49 U.S.C. 303. With respect to the CAA, FTA projects must comply with the Transportation Conformity regulations, 40 CFR part 51 Subpart T and Part 93 Subpart A, and the 2001 EIS contains the requisite analysis. However, FRA projects must comply with the General Conformity regulations in accordance with 40 CFR 93.154. Generally, if a project meets

<sup>1</sup> See CEQ's Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 23 March 1981, number 32, which suggests a hard look at EISs older than five years.

Transportation Conformity, it will also satisfy General Conformity. FRA reviewed the analysis in the 2001 EIS and confirmed with MTA that the project remains within the current State Transportation Plan, which, on January 3, 2012, received Federal approval for its conformity with the State Implementation Plan. The East Side Access project has been in continuous progress, is not considered a new action requiring redeterminations, and satisfies General Conformity requirements in accordance with 40 CFR part 51, Subpart W, and Part 93, Subpart B.

FRA finds that the undertaking under Section 106 of the National Historic Preservation Act is substantially the same as the undertaking addressed by FTA, FTA, MTA, and the New York State Historic Preservation Officer (NYSHPO) developed and executed a Programmatic Agreement to address potential effects on historic properties. Because of new project elements and modifications, the Programmatic Agreement was amended in June 2006 to update the Areas of Potential Effect to reflect additional archaeological and historic resources not covered in the FEIS. FRA seeks to join the June 2006 Amended Programmatic Agreement (2006 Amended PA) as a signatory for the project in its entirety. FRA will become a signatory through the execution of Amendment No. 3 to the 2006 Amended PA. By becoming a signatory, FRA will be able to require MTA to comply with the 2006 Amended PA, as a condition of an FRA RRIF loan, and monitor future design decisions regarding historic resources, should FRA decide to approve a loan.

Additionally, in the 2001 EIS, FTA evaluated the use of the historic resources and made a determination pursuant to Section 4(f), 49 U.S.C. 303. Section 4(f) requires that projects undertaken by DOT must avoid using parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent alternative, and the action includes all possible planning to minimize harm to the Section 4(f) resource. FTA implemented measures to avoid and minimize harm to the historic resources during project development and design phases of the East Side Access project. In addition, the 2006 Amended PA includes additional measures to minimize harm to these resources. FRA is not aware of any adverse effects to historic resources since the construction of the East Side Access project began in 2001. FRA anticipates that FTA's Section 106 process following the 2006 Amended PA will continue the avoidance of

adverse effects from the undertaking to historic resources identified in Exhibits A, B, and C of the 2006 Amended PA.

In accordance with the Environmental Protection Agency's (EPA) requirements regarding the filing of EISs, FRA has provided EPA with electronic copies of FTA's 2001 EIS. EPA will publish a notice of availability of the 2001 EIS in the **Federal Register** consistent with its usual practices. Because of the multivolume size of the FEIS and its continued availability in libraries in the affected community and on the MTA's and FRA's Web sites, FRA is not republishing the document on its own. This would be costly, defeat CEQ's goals of reducing paperwork and duplication of effort, and be of little or no additional value to other agencies or the public. The review period for the adoption of the 2001 EIS shall extend for 30 calendar days following publication of the EPA notice of availability.

The final stage in the environmental review process under NEPA is the issuance of a ROD describing the agency's decision and the basis for it. Under the timelines included in the CEQ regulation, 40 CFR 1506.10, a ROD cannot be issued by an agency earlier than thirty days after EPA publishes its **Federal Register** notice notifying the public of the availability of the final EIS. Any ROD issued by FRA will be consistent with 40 CFR 1505.2 and section 15 of FRA's Procedures for Considering Environmental Impacts.

Accordingly, FRA is adopting and recirculating the 2001 FEIS, seeking to join the 2006 Amended PA, and has concluded that no supplemental or additional environmental review is required to support FRA's proposed action.

Issued in Washington, DC, on July 2, 2012.

**Paul Nissenbaum,**

*Associate Administrator, Office of Railroad Policy & Development.*

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**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2012-0076]

#### **Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SATISFACTION; Invitation for Public Comments**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation,

as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before August 6, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD-2012-0076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-0903, Email [Linda.Williams@dot.gov](mailto:Linda.Williams@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SATISFACTION is:

*Intended Commercial Use of Vessel:* "Sightseeing, whale watching, snorkeling, and cruising Maui, Hawaii and Leeward waters."

*Geographic Region:* "Hawaii."

The complete application is given in DOT docket MARAD-2012-0076 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver