

by § 381.300. A copy of DOE's exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on DOE's application for an exemption from certain provisions of the driver's record of duty status rules in 49 CFR part 395. The Agency will consider all comments received by close of business on February 13, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: January 8, 2013.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Update to NEPA Implementing Procedures

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

ACTION: Notice of Updated Procedures for Considering Environmental Impacts by adding categorical exclusions.

SUMMARY: FRA announces that it has revised its Procedures for Considering Environmental Impacts to add seven new additions to the list of categorical exclusions (CE). Categorical exclusions are actions that FRA has determined do not individually or cumulatively have significant effects on the human environment and thus, do not require the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). To consolidate the location of all of FRA's CEs, this notice reproduces all 20 original CEs and adds the seven new CEs starting with number 21.

DATES: The new CEs are effective on January 14, 2013.

FOR FURTHER INFORMATION CONTACT: Christopher Van Nostrand, Attorney Advisor, Office of the Chief Counsel, Federal Railroad Administration, 1200 New Jersey Ave SE., W31-208, Washington, DC 20590, telephone: (202) 493-6058.

SUPPLEMENTARY INFORMATION:

I. Background

FRA's Procedures for Considering Environmental Impacts (FRA Environmental Procedures), 64 FR 28545 (May 26, 1999), which are available on the agency's Web site at <http://www.fra.dot.gov/eLib/details/L02561>, establish the process for the assessment of environmental impacts of actions and legislation proposed by FRA and for the preparation and processing of documents based upon such assessments. The FRA Environmental Procedures supplement the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR Parts 1500-1508). Currently, section 4(c) of FRA's Environmental Procedures identifies twenty classes of action that FRA has determined to be categorically excluded from the EIS or EA preparation requirements of NEPA and the Procedures because they do not individually or cumulatively have a significant effect on the human environment. This update adds seven new CEs to section 4(c). Sections 4(c) and (e) of FRA's Environmental Procedures contain a process for identifying "extraordinary circumstances" where FRA determines a particular action normally included within one of these categories has the potential for significant environmental impacts and an EA or EIS is prepared.

FRA has determined that additions to the existing list of CEs are necessary to facilitate FRA's administration of laws relating to railroad safety, development, rehabilitation, and railroad financial assistance programs, particularly the High-Speed Intercity Passenger Rail (HSIPR) grant program and the Railroad Rehabilitation and Improvement Financing (RRIF) loan/loan guarantee program. After careful consideration, FRA has determined that the actions included in the proposed seven new CEs are not of the type or character as to individually or cumulatively cause significant effects on the human or natural environment.

Recent statutory initiatives have greatly expanded FRA's ability to provide financial assistance to intercity passenger railroad projects and contributed to the need for these proposed CEs. The Passenger Rail Investment and Improvement Act (PRIIA) of 2008 (Division B of Pub. L. 110-432, 122 Stat. 4907, (2008)) created three new passenger rail capital assistance programs, the intercity passenger rail corridor capital assistance program, high-speed rail corridor development, and a congestion relief program. Additionally, in an effort to stimulate the economy, create jobs and

jumpstart a new era of high-speed rail in this county, Congress provided \$8 billion in grant funding for projects that support the High-Speed Intercity Passenger Rail (HSIPR) Program in the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5, 123 Stat. 115(2009)). Congress also appropriated additional funds for HSIPR projects in the Transportation, Housing and Urban Development and Related Agencies Appropriations Act for 2010 (Div. A of Pub. L. 111-117, 123 Stat. 3034 (2009)).

PRIIA, the Recovery Act, and other appropriations greatly expanded FRA's capacity to fund rail projects in order to achieve world class high-speed and intercity passenger rail in the United States. The purpose of the HSIPR Program is to address the nation's transportation challenges by investing in efficient high-speed and intercity passenger rail networks connecting communities across America.¹ Many of these investments involve large scale projects for which FRA and project sponsors (typically State Departments of Transportation) will be preparing EISs and EAs. However, other investments and components of multi-year programs are smaller projects that FRA has concluded do not require either an EIS or an EA and justify the creation of a CE since they would not have a significant effect on the environment. Preparing EISs or EAs for projects that do not have the potential for a significant effect on the environment is not an efficient use of resources of either FRA or State partners in the various Departments of Transportation. Accordingly, the added CEs will facilitate the responsible and efficient implementation of the HSIPR, RRIF, and other FRA programs.

Some of the proposed CEs were chosen from the list of categorical exclusions currently employed by both the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) (see 23 CFR Part 771). FRA identified these specific actions for categorical exclusion because they have direct applicability for many FRA programs and a limited potential for environmental impacts. All of the actions identified in this notice have been subject to extensive environmental review by FRA, FHWA and FTA, are comparable to activities categorically excluded by other Federal agencies, and were identified through FRA's

¹ See Federal Railroad Administration, Vision for High-Speed Rail in America (April 2009) (describing the general approach to revitalizing high-speed and intercity passenger rail in the United States) available at http://www.fra.dot.gov/downloads/Research/FinalFRA_HSR_Strat_Plan.pdf.

benchmarking effort (described in greater detail below). These environmental reviews, mostly in the form of documented CEs and EAs, demonstrate that the actions do not individually or cumulatively have a significant effect on the human or natural environment. As required under FRA's Environmental Procedures, FRA staff evaluates each action individually to ensure that the action meets the criteria for categorical exclusion, and whether extraordinary circumstances exist which require additional environmental review.

II. Process Used To Identify the Categorical Exclusions

FRA undertook a rigorous process to identify appropriate new CEs. This evaluation process followed CEQ's guidance on establishing new CEs and included an internal review by FRA's Environment and Systems Planning Division as well as FRA's Office of Chief Counsel, independent review and comment by experts enlisted by FRA in coordination with FTA and the John A. Volpe National Transportation Systems Center in Cambridge Massachusetts (Volpe Center), submission to and review by CEQ, and publication for public review and opportunity to comment. FRA undertook this process to ensure that the types of projects covered by the new CEs presented in Section III below comply with CEQ's NEPA regulations (40 CFR 1507.3, 1508.4) and do not cause significant impacts on the human or natural environment. The information assembled during the internal and independent reviews are described in a Categorical Exclusion Substantiation Documentation (CE Substantiation) that is available on the FRA Web site at www.fra.dot.gov/eLib/details/L03010.

The list of new CEs was generated in close collaboration with FTA. FRA and FTA each have responsibility for similar types of rail projects. FTA has historically provided funding for commuter rail projects, which have many similarities to intercity passenger rail projects and to freight railroad projects. In addition to using existing FTA CE's as templates, FRA has coordinated the effort to develop new CEs with FTA and jointly submitted proposed CEs to NEPA experts for independent review.

FTA and FRA, in coordination with the Volpe Center, called on several expert NEPA professionals to provide feedback on FTA's and FRA's initial list of actions to be classified as CEs. The expert's opinions were very valuable in refining the CEs, including identifying appropriate limitations necessary to

avoid covering activities that have the potential to have significant environmental impacts. The experts were asked to draw upon their general knowledge of and experience/ involvement with NEPA environmental processes. The submission to the experts consisted of the proposed CE, a brief explanation of the CE, and a list of comparative benchmarks or similar CEs currently employed by other Federal agencies. After a period of review, the experts submitted comments to FRA, which included suggested changes or modifications or, as in most cases, an endorsement of the proposed CE.

After receiving the experts' comments and suggestions, FRA staff met to discuss the comments and modified the CE's where appropriate. The experts suggested ways in which to narrow the categories of actions to ensure that all covered activities would not have significant impacts. In addition, using their own professional experience, they provided insights into the potential practical application of many of the proposed CEs.

Consistent with the CEQ Regulations and the *Memorandum for the Heads of Federal Departments and Agencies from Nancy H. Sutley, Chair, Council on Environmental Quality on Establishing and Applying Categorical Exclusions Under the National Environmental Policy Act* (Nov. 23, 2010) (CEQ Memorandum), FRA consulted with CEQ prior to making the CEs available for public review and comment. CEQ suggested modifications to clarify FRA's intended application and scope of the proposed CEs, and the CE Substantiation Document reflects the consideration of CEQ's comments and suggestions and FRA's final determinations.

On June 13, 2012, FRA published a notice in the **Federal Register** (77 FR 35471) advising the public of FRA's intent to add seven new CEs to its Environmental Procedures and solicited public comments on the proposal. Concurrent with the June 13 notice, FRA also made the CE Substantiation document available on its Web site. The CE Substantiation supports FRA's finding that the proposed CEs address actions that FRA has determined will not individually or cumulatively have a significant effect on the human environment. The comment period closed on July 13, 2012. FRA received comments from the American Road and Transportation Builders Association, three individuals, the National Railroad Passenger Corporation (Amtrak), the American Association of State Highway and Transportation Officials, New Jersey Transit, the Lone Star Rail District, the

Southern Environmental Law Center, the Illinois Department of Transportation, the Texas Department of Transportation, the American Public Transportation Association, the Alaska Railroad Corporation, the American Short Line and Regional Railroad Association, the Capital Corridor Joint Powers Authority, the Metropolitan Transportation Authority, the Californians for Alternatives to Toxics, Florida East Coast Industries, Inc., the Washington State Department of Transportation, the Natural Resources Defense Council, OneRail Coalition, the National Association of Railroad Passengers, Virginia Department of Rail and Public Transportation, and the Kanas City Southern Railway Company. The comments are addressed in this section. Several commenters submitted comments regarding FRA's HSIPR program as well as general comments about FRA's Environmental Procedures. Several commenters submitted general comments in support of the proposal.

Several commenters suggest that FTA, FHWA, and FRA consolidate their environmental procedures as the commenters believed it would minimize project sponsor confusion and the need for separate environmental documentation. In the alternative one commenter suggested FRA adopt all FTA/FHWA environmental categorical exclusion regulations through a new CE.

FRA agrees that avoiding duplicative environmental reviews is desirable. FHWA and FTA share a joint environmental regulation because of the close connection between the two agencies' programs and the metropolitan and statewide transportation planning processes. Further, Congressional authorizing legislation for highway and transit programs has resulted in statutory changes to FHWA and FTA's NEPA procedures that make them unique. FRA shares only some common activities with FHWA and FTA and has not had the close historical connections that would have made a joint FHWA/ FTA/FRA environmental review regulation necessary. CEQ directs Federal agencies to establish CEs based on their individual determinations that consider their experience in applying NEPA to their actions. With these seven new CEs, FRA will have established complementary CEs for the vast majority of actions eligible for FRA funding that may also be funded by FTA or FHWA, while appropriately relying on environmental procedures that are tailored to FRA's Federal actions.

It is also worth noting that Section 1314 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141 (2012)) allows an operating

administration to use another modal administration's CE for a multimodal project, subject to conditions described in the statute. However, this provision cannot be used until DOT issues future guidance on its application and use.

One commenter asked why FRA did not reevaluate and substantiate FRA's existing CEs in conjunction with the new CE proposal. As described in the Substantiation Document, FRA will engage in a reevaluation of the FRA Environmental Procedures in the future. As part of that effort, FRA will reexamine the existing CEs and may also consider adding additional CEs and making other changes to make the procedures more efficient for rail projects and projects sponsored by multiple agencies.

One commenter suggested adding a CE that would allow construction of critical improvement projects that address reliability problems for existing railroads provided that the improvements occur within the existing ROW. FRA has a number of existing CEs that in combination with the seven new CEs cover all appropriate types of minor railroad improvement that could address railroad system reliability. The commenter's proposal is too broad and cannot be reasonably expected to exclude construction activities that are likely to have significant impacts and therefore require additional environmental review and analysis.

One commenter suggests FRA impose a time limit for FRA to complete CE review and approval. The process for establishing new CEs does not require revisions to FRA's Environmental Procedures. FRA makes every effort to review and approve CEs as expeditiously as possible to avoid any unnecessary project delay. However, it is incumbent on FRA to ensure that the necessary information is available to confirm that the project is appropriate for categorical exclusion and does not raise any extraordinary circumstances that warrant a higher level of environmental review and analysis. Agency practice ensures FRA has the appropriate understanding of the nature and extent of the potential environmental impacts before FRA approves a project as a categorical exclusion and allowing the project proponent to proceed with construction activities. Imposing arbitrary time limits may unnecessarily limit the ability to set priorities in completing environmental reviews for proposed activities.

One commenter suggests FRA add an additional CE that would cover grants, loans, and refinancing for a project already approved and funded by

another Federal agency if the project has been subject to a separate NEPA review and where no changes to the project are involved that would result in significant environmental impacts.

An agency's obligations under NEPA are triggered by the agency's consideration of the environmental effects of a proposed action that is within the responsibility of the agency. Once such obligation is triggered, the agency is required to make an independent assessment of the potential environmental impacts that could result from its action from the perspective of the agency's mission and experience. CEQ regulations provide opportunity for agencies to adopt (in total or in part) or to incorporate by reference the analyses provided in another agency's EA or EIS. (40 CFR 1506.3). One commenter suggests expanding the list of CEs to include the purchase of existing railroad right-of-way and/or purchase of right-of-way for hardship or protective purposes. FRA notes that many acquisition activities typical of FRA projects are covered under FRA CE #17. FRA will reexamine CE #17 as part of the larger effort to reevaluate the FRA Environmental Procedures in the future.

One commenter is concerned of the broader application of future CEs because the new high-speed rail infrastructure has a wider right-of-way that could increase the potential impacts of future projects. CEs are applied to projects that do not have the potential for significant environmental impacts and are not applicable to projects that have the potential for significant environmental impacts due to expanded rights-of-way. Wider right-of-way is not clearly related to the severity or likelihood of environmental impact, and FRA examines the specifics of each proposed application of a CE to determine whether there are any extraordinary circumstances that raise the potential for significant impacts.

One commenter suggests FRA clarify its interpretation of the scope of the CEs so that all activities within the existing railroad right-of-way are excluded from further NEPA review, unless extraordinary circumstances exist. Put another way under the commenter's proposal, any new rail line construction taking place within an existing right-of-way would be categorically excluded.

FRA considers every proposal in light of the action's specific circumstances. The commenter's suggestion could permit activities inappropriate for categorical exclusion because of the likelihood of significant impacts. Both the existing and proposed CEs allow for construction activities within existing rights-of-way with the appropriate

limitations to reduce the potential for serious environmental impacts.

One commenter believes there was a lack of public notification related to FRA's proposal to add CEs and requests that FRA reopen the public comment period.

The CEQ Regulations and CEQ Memorandum outline procedures for establishing new or revised categorical exclusions. These procedures call for public involvement and opportunity and comment through a notice in the **Federal Register**. As described above, FRA published a notice in the **Federal Register** on June 13, 2012 and invited public comment for 30 days. FRA also made the Substantiation Document available on FRA's Web site which also contained instructions for submitting comments. FRA received 24 public comments and does not believe it is necessary to reopen the public comment period.

One commenter believes that the proposed CEs will limit the number of projects that are subject to public participation and believes strong public review is essential for the environmental process. FRA supports public involvement in project development; however, the commenter assumes that because a project is covered by a CE the public is not provided an opportunity to participate. When FRA reviews information provided by project proponents in support of a CE, one of the elements FRA considers is the extent to which the public has been informed of the proposed project and whether any environmental issues were raised by the public. This information helps FRA determine whether due to public concerns, the action while normally categorically excluded, raises to the level of extraordinary circumstances requiring a more extensive environmental review.

One commenter suggests FRA expand the scope of CE #22 to include activities related to historic bridges if the activity will not have an adverse effect on the historic bridge, and where FRA has received concurrence from the State Historic Preservation Officer. FRA does not agree that this change is necessary. CE #22 can be used for actions involving activities on historic bridges, particularly when compliance with Section 106 concludes that there is no adverse effect from the activity.

Several commenters suggested that CE #22 covering bridge work should be modified to include bridge approaches. Commenters suggested adding the following language to CE #22, "construction or reconstruction of approaches and/or embankments to

bridges". FRA finds that these activities are substantially similar to those already included as part of the illustrative list for CE #22 which are unlikely to have significant environmental impacts with the limitations contained in the CE (i.e. no extensive in-water work). Therefore, because approaches and/or embankments are consistent and integral to the category of activities intended to be excluded under this CE, the proposed activities were added to the illustrative list for CE #22.

Several commenters suggest FRA include rehabilitating and maintaining existing docks and piers to accommodate maintenance activities within existing ports connecting to rail facilities to CE #22.

FRA agrees that it is appropriate to adopt a modified version of the commenters' proposal. FRA finds that these activities are substantially similar to those already included as part of the illustrative list for CE #22 which are unlikely to have significant environmental impacts with the limitations contained in the CE (i.e. no extensive in-water work). In addition, FRA encounters these types of activities when involved in funding rail activities within ports. These projects are mostly related to improvements to the rail facilities in a port facility but also contain certain modest improvements to existing docks and/or piers to accommodate intermodal transfers. At present, even if FRA provides funding and the work is minor, because the activities are not covered by a CE, an EA is required even if the activities are otherwise appropriate for categorical exclusion.

The CE also limits the potential impacts by imposing a spatial limitation ("predominantly within the existing right-of-way") and an activity scope limitation ("do[es] not involve extensive in-water construction activities"). The limitation on in-water work coincides with the type of limitations on the extent of water impacts imposed through the use of nationwide permits issued by the U.S. Army Corps of Engineers. Should a project require an individual permit, the degree of impact to waters would be reviewed to determine if the project was consistent with the CE, or if an EA or EIS would be required. For these reasons, FRA has added "the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers" to permit limited work to rehabilitate or maintain the rail elements of docks and piers necessary to facilitate intermodal transfers.

Several commenters are concerned that the illustrative lists of activities

covered under the CEs are too narrow and suggest various additions to avoid excluding activities otherwise appropriate for categorical exclusion. Similarly, to clarify the purpose of the illustrative list, one commenter suggested FRA replace the phrase "such as" with "examples may include by are not limited to" for all of the CEs.

The purpose of the list of illustrative activities is to provide project proponents and FRA with examples of the types of activities that should be covered by the CE not to exclude others that are not specifically mentioned. FRA does not believe the phrase "such as" in any way limits the range of potential activities covered by the CE to the list of illustrative activities. The CEQ Memorandum encourages agencies to structure CEs to "offer several examples of activities frequently performed by that agency's personnel."

Several commenters recommend FRA add, "other passenger amenities/improvements" to CE #24." These activities would include "benches, signage, sidewalks or trails, equipment enclosures, and fencing." FRA agrees these activities are appropriate for categorical exclusion and has added "passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing" to the illustrative list for CE #24 because they are unlikely to have significant environmental impacts with the limitations contained in the CE and are consistent with the category of activities intended to be excluded under this CE.

One commenter is concerned with the potential hazardous materials associated with CE #24, installation of electronic and communication systems. It is unclear from the comment how electronics and communication systems could cause impacts related to hazardous materials. In general, FRA considers the project's potential for impact on a variety of resource areas, including hazardous materials, when deciding if it can apply a CE. Consistent with FRA practice, the project proponent is required to provide information on the potential impacts related to hazardous materials where relevant. FRA believes that this level of screening is appropriate and sufficient to protect against potential release of hazardous substances associated with the installation of electronic and communication systems. Additionally, project proponents are required to comply with all State and Federal requirements for the handling, transportation and disposal of hazardous materials.

Several commenters recommend that FRA add "wastewater treatment

systems" to the illustrative list of activities in CE #25. FRA agrees that water pollution abatement systems reduce the potential for environmental impacts and finds that some types of waste water treatment systems may be appropriate for exclusion under this CE. Oil/water separators are commonly installed to mitigate storm water pollution from locomotive fueling and maintenance activities and FRA has determined that the installation, improvement, and operation of such separators are unlikely to result in significant environmental impacts. While FRA will include "storm water oil/water separators" in the illustrative list, FRA finds that "wastewater treatment facilities" can be broadly interpreted and is not appropriate as an example in the illustrative list.

One commenter suggested clarifying or defining the term "right-of-way" and also suggested that FRA consider whether use of the term "railroad track" in CE #25 should actually be "railroad right-of-way". While FRA does not believe it would be appropriate to define the term right-of-way in the context of establishing new CEs alone, we will consider this suggestion as we conduct a more comprehensive review of the FRA Environmental Procedures as a whole. With respect to the second comment, CE #25 associates remediation or prevention actions proximate to existing and former railroad track, infrastructure, stations, and facilities. This approach ties the actions to railroad features and activities rather than a property boundary that may or may not consistently relate to the railroad use that relates to the pollution in question.

Several commenters suggest that the scope of CE #25 is too limited since additional remediation activities related to soils might be otherwise appropriate, but might be restricted as the CE is currently drafted. These commenters suggest adding the following language "any removal or remediation activity undertaken pursuant to an order, law, regulation, program, or policy".

As a matter of clarity, the illustrative list is not intended to restrict the range of remediation activities. To address the concern with the drafting of this CE, the limitation was moved to the CE definition to clarify that any applicable project should conform to applicable laws, regulations, and permits. This CE covers activities specifically undertaken to remediate past environmental degradation, to restore environmental conditions, or to prevent ongoing or potential pollution. As such, most covered actions have environmental benefits, and FRA believes the

installation and operation of remediation equipment associated with such remediation activities are unlikely to result in significant adverse environmental impacts. However, like all activities that might be categorically excluded, it is FRA's practice to require the project proponent to provide sufficient information to demonstrate that the proposed action is appropriate for categorical exclusion and is consistent with regulatory requirements that might apply to environmental remediation activities.

One commenter is concerned with soil remediation elements of CE #25 because of the potential impacts from contaminated soil. The commenter also notes that public participation is essential in ensuring remediation activities are fully implemented and is concerned that such participation is absent from FRA's CE process.

As discussed above, FRA's process for evaluating CEs requires project proponents to describe both the potential impacts of the project because of hazardous materials and to provide FRA with some information on the level of public involvement. FRA may ask for additional information with respect to both the level of public participation and the potential impacts related to hazardous material so that FRA staff have sufficient information to determine whether the project is appropriate for categorical exclusion or whether extraordinary circumstances exist requiring a more detailed environmental review.

One commenter is concerned with CE #26 because it would allow the construction/installation of potentially large rail facilities without input from local communities. As discussed above, it is FRA's practice to review the scope of each project before deciding the project meets the requirements for one of the CEs. As part of this process, FRA considers the potential community and land use impacts of the project. If there is substantial public concern or other extraordinary circumstances, FRA will require the development of additional environmental analysis.

Several commenters raised concerns with the reference to "existing land use and zoning" in CE #26 because in some cases railroads are exempt from local land use and zoning requirements. An example provided by a commenter is Amtrak's exemption under 49 U.S.C. 24902(j). While the commenters are correct that, in certain circumstances, railroads are exempt from certain local land use and zoning requirements, this comment overlooks the purpose of the limiting factors in all of the new CEs. The purpose of the factors is to limit the

activities permitted under each CE based on FRA's experience to reduce the likelihood of environmental effects, including those to local communities. Such limitations are encouraged by the CEQ Memorandum where activities might be variable in their environmental effects resulting in some situations where the activity is appropriate for a CE and others where it is not.

CE #26 does not require a project proponent to comply with local land use and zoning where it would be otherwise exempt, but rather places a limitation on the application of the CE because of potential for community impacts related to the construction of facilities that are not consistent with local land use and zoning.

One commenter is concerned with CE #27 because of the potential for the release of hazardous substances associated with replacing rail, ties, and other wood infrastructure. As discussed above, it is FRA's practice to determine the potential project impacts related to hazardous materials prior to approving a CE. In addition, during project implementation, the project proponents are expected to comply with all applicable State and Federal laws regarding the handling, transportation, and disposal of hazardous materials.

Two commenters suggest FRA add to the illustrative example list in CE #27, "installing, maintaining, or restoring drainage ditches; ballast cleaning, and; constructing minor curve realignments". FRA agrees these activities are appropriate for categorical exclusion and therefore added "installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments" to the illustrative list because they are unlikely to have significant environmental impacts with the limitations contained in the CE and are consistent with the category of activities intended to be included under this CE.

One commenter is concerned with the use of the term "predominantly" in CE #27 if the term would permit the installation of new tracks or other infrastructure improvements beyond the existing right-of-way. FRA intentionally included the term predominantly because in certain circumstances minor construction related activities (i.e. staging areas) may occur outside the railroad right-of-way due to spatial and safety constraints related to construction activities and equipment use near active rail corridors.

Several commenters requested clarification of the term "substantial" in CE #27. Some commenters sought assurances that the term would not be interpreted restrictively so the CE could

apply to more potential projects, while another wanted some assurance that the term would be read so that any new operations resulting from new infrastructure improvements would not interfere with existing operations.

The reason for including "substantial" as a limiting factor is because additional train service beyond current levels resulting from a project might also have additional and potentially unanalyzed indirect environmental impacts.

With respect to the request for assurance that the CEs would not be used to increase service interfering with existing operations, in light of the discussion above regarding the term "substantial", there is no need for any clarification in the CE itself.

III. Categorical Exclusions

Through this notice, FRA adds seven CEs to section 4(c) of FRA's Environmental Procedures. As discussed in the **SUMMARY** section above, to consolidate the location of all FRA's CEs, the entire list of CEs is reproduced here, including the seven new CEs starting with number 21 and ending at number 27. This notice does not otherwise amend or modify the requirements described in FRA's Environmental Procedures.

The following classes of FRA actions are categorically excluded:

- (1) Administrative procurements (e.g. for general supplies) and contracts for personal services;
- (2) Personnel actions;
- (3) Financial assistance or procurements for planning or design activities which do not commit the FRA or its applicants to a particular course of action affecting the environment;
- (4) Technical or other minor amendments to existing FRA regulations;
- (5) Internal orders and procedures not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1);
- (6) Changes in plans for an FRA action for which an environmental document has been prepared, where the changes would not alter the environmental impacts of the action;
- (7) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916;
- (8) State rail assistance grants under 49 U.S.C. 22101 *et seq.* for rail service continuation payments and acquisition, as defined in 49 CFR 266;
- (9) Guarantees of certificates for working capital under the Emergency Rail Services Act (45 U.S.C. 661 *et seq.*);
- (10) Hearings, meetings, or public affairs activities;

(11) Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption "maintenance" means work, normally provided on a periodic basis including the changing of component parts, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs;

(12) Temporary replacement of an essential rail facility if repairs are commenced immediately after the occurrence of a natural disaster or catastrophic failure;

(13) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not result in a change in the effect on the environment;

(14) State rail assistance grants under 49 U.S.C. 22101 *et seq.* for relocation costs as that term is defined in 49 CFR Part 266, where the relocation involves transfer of a shipper to a site zoned for the relocated activity. This categorical exclusion shall not apply to the relocation of a shipper involved in the transportation of any material classified as a hazardous material by DOT in 49 CFR Part 172;

(15) Financial assistance for the construction of minor loading and unloading facilities, provided that projects included in this category are consistent with local zoning, do not involve the acquisition of a significant amount of land, and do not significantly alter the traffic density characteristics of existing rail or highway facilities;

(16) 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 provided that 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;

(17) Acquisition of track and bridge structures, electrification, communication, signaling or security facilities, stations, maintenance-of-way or maintenance-of-equipment bases, and other existing railroad facilities or the right to use such facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties;

(18) Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided that such research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line;

(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks;

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation;

(21) Alterations to existing facilities, locomotives, stations and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.

(22) Bridge rehabilitation, reconstruction or replacement, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects, predominantly within existing right-of-way, that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches and/or embankments to bridges, or construction or replacement of short span bridges.

(23) Acquisition (including purchase or lease), rehabilitation, or maintenance of vehicles or equipment that does not cause a substantial increase in the use of infrastructure within the existing right-of-way or other previously disturbed locations, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment.

(24) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing

rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(25) Environmental restoration, remediation and pollution prevention activities in or proximate to existing and former railroad track, infrastructure, stations and facilities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(26) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(27) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

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Karen J. Hedlund,
Deputy Administrator.

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