



[4910-06-P]

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

[Docket No. FRA-2012-0016]

### **National Environmental Policy Act Implementation**

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

**Action:** Notice of intent to amend FRA's Procedures for Considering Environmental Impacts by adding categorical exclusions.

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**SUMMARY:** FRA is publishing this notice to request comments on FRA's proposed additions to the list of categorical exclusions (CEs) contained in FRA's Procedures for Considering Environmental Impacts (Environmental Procedures). CEs are actions that FRA has determined do not individually or cumulatively have significant effects on the human or natural 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). FRA's Environmental Procedures currently contain twenty CEs, and FRA is proposing to add seven additional CEs.

FRA is also making a Categorical Exclusion Substantiation Document (Substantiation Document) available for public review. That document supports the proposed CEs and demonstrates that the actions covered by the proposed CEs are unlikely to have significant impacts on the human or natural environment. The Substantiation Document is available on FRA's website at <http://www.fra.dot.gov/>.

**DATES:** FRA invites the public to comment on the proposed CEs that will be added to FRA's Environmental Procedures. Comments on this notice are due on or before [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0016. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Website: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Railroad Administration" and include docket number FRA-2012-0016. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed

electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please 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:**

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**I. Background**

FRA's Environmental Procedures were published in the Federal Register on May 26, 1999 (64 FR 28545) and are available on the agency's website at <http://www.fra.dot.gov/Pages/252.shtml>. The Environmental Procedures 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 Environmental Procedures supplement the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). Topics addressed in the Environmental Procedures include, among other things, the preparation of environmental

impact statements (EIS), environmental assessments (EA), findings of no significant impact, and section 4(f) analyses. Section 4(c) of the 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 actions encompassed within these classes or categories do not individually or cumulatively have a significant effect on the human or natural environment. The Procedures contain a process for identifying “extraordinary circumstances,” or unusual situations where a particular action normally included within one of these categories is determined to potentially have 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 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, October 16, 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 high-speed intercity passenger rail programs in the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Public Law 111-5, 123 Stat. 115). Congress also appropriated additional funds for high-speed and intercity rail projects in the Transportation, Housing and Urban Development and Related Agencies Appropriations Act for 2010 (Div A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117)).

PRIIA, the Recovery Act, and other appropriations greatly expanded FRA's capacity to fund rail projects in order to achieve a world class high-speed and passenger rail program 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.<sup>1</sup> Many of these investments involve large scale projects that FRA and project sponsors (typically State transportation departments) 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 could be categorically excluded if the agency had the appropriate CEs in place. Preparing EISs or EAs for projects that can be categorically excluded is not an efficient use of resources of either FRA or our state partners.

Accordingly, the added CEs will facilitate the responsible and efficient implementation of the HSIPR, RRIF, and other FRA programs.

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<sup>1</sup> 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](http://www.fra.dot.gov/downloads/Research/FinalFRA_HSR_Strat_Plan.pdf).

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 771). FRA has 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 prior extensive environmental review by FRA, FHWA and FTA, are comparable to activities categorically excluded by other Federal agencies, and were identified through FRA's 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 that require additional environmental review.

## **II. Process Used To Identify the Categorical Exclusions**

FRA undertook a rigorous process to identify categories of actions appropriate for new CEs. This evaluation process 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 CEQ, and now 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 do not cause significant impacts on the human or natural environment.

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 CEs as templates, FRA has coordinated the effort to develop new CEs with FTA and jointly submitted its 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 experts' 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 that included suggested changes or modifications or, 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 CEs where appropriate. The experts suggested ways in which to narrow the categories of actions to ensure that all covered activities were likely to have less than 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 40 CFR 1507.3 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), FRA consulted with CEQ prior to publishing this notice and posting the Substantiation Document for public review and comment. CEQ suggested modifications to clarify FRA's intended application and the intended scope of the proposed CEs, and the CEs proposed in this notice and the accompanying Substantiation Documentation reflect CEQ's comments and suggestions.

FRA is making the Substantiation Document available on FRA's website <http://www.fra.dot.gov/rpd/passenger/33.shtml> for public review and comment for a period of 30 days running concurrently with this notice. After the 30 day comment period, FRA will consider comments received and make any necessary changes to address substantive issues raised by the public.

### **III. Proposed Categorical Exclusions**

FRA is proposing to add the following seven CEs to section 4(c) of FRA's Environmental Procedures as follows:

(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, or constructing accessible platforms.

(22) Bridge rehabilitation, reconstruction or replacement, and the construction of bridges, culverts, and grade separation projects, predominantly within existing right-of-way and 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, or construction or replacement of short span bridges.

(23) Acquisition (including purchase or lease), rehabilitation, or maintenance of vehicles and 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, 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, or 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, including activities such as noise mitigation, landscaping, natural resource management

activities, replacement or improvement to storm water systems, installation of pollution containment systems, slope stabilization, and contaminated soil removal in conformance with applicable regulations and permitting requirements.

(26) Assembly and construction of facilities and 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 10 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 and 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, improving or replacing interlockings, or the installation or maintenance of ancillary equipment.

Issued in Washington, D.C. on \_\_June 5, 2012\_\_\_\_\_

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Joseph C. Szabo  
Administrator

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