FEDERAL RAILROAD ADMINISTRATION CATEGORICAL EXCLUSION SUBSTANTIATION MAY 2012

The Federal Railroad Administration (FRA) proposes to add categorical exclusions (CEs) to the list provided in FRA's Procedures for Considering Environmental Impacts (64 Fed. Reg. 28545, May 26, 1999) ("Procedures"). The Procedures describe FRA's process for assessing the environmental impacts of actions and legislation proposed by the agency and for the preparation and processing of documents based on such assessments. As discussed below, the Procedures supplement the Council on Environmental Quality (CEQ) Regulations (40 C.F.R. Part 1500 et seq.). CEs are categories of 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 an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The use of CEs helps streamline the environmental review process by reducing paperwork (40 C.F.R. §1500.4) and delay (40 C.F.R. §1500.5). After an exhaustive review, FRA's environmental and legal staff has determined that the proposed new CEs addressed herein are consistent with FRA's obligations under NEPA, and the adoption of the new CEs would improve the efficiency and effectiveness of the agency's programs. Many of FRA's existing CEs were adopted when the agency first published its Procedures in 1978, and the rest have been in place since at least 1999 when FRA last updated the Procedures. As a result, FRA has had both a long experience working with the existing CEs and also the opportunity to consider other types of action that could and should be covered by CEs.² This document 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 or natural environment. FRA has 20 existing CEs, so the proposed CEs included below begin with number 21.

Introduction

NEPA requires Federal agencies to consider the environmental effects or impacts of major Federal actions including many FRA routinely undertakes. The purpose of this effort is to ensure that a full range of information is made available to decisionmakers and to members of the public. To implement the procedural provisions in NEPA, CEQ was established and issued regulations available at 40 C.F.R. parts 1500–1508. CEQ also issues periodic guidance

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¹ See 40 C.F.R § 1508.4.

² FRA recognizes the recent CEQ "Guidance on Establishing and Applying Categorical Exclusions under the National Environmental Policy Act" calling for Federal agencies to periodically review their existing CEs to "assure their continued appropriate use and usefulness." 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) (hereinafter "CE Guidance") available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-categorical-exclusions-draft-guidance.pdf. Although FRA recognizes that periodic review of the existing categories of excluded actions has merit, FRA has urgent need for new categories to appropriately manage recent program expansion and higher workload. Future review and update of FRA's entire Environmental Procedures is another need that will reflect recent programmatic changes (discussed further in Section II), at which time, FRA will revisit their existing CE's.

documents and memorandums. In addition, CEQ regulations require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations and to establish appropriate categorical exclusions (40 C.F.R. § 1507.3). FRA's Procedures were issued to meet these CEQ requirements and to ensure FRA's environmental reviews and activities conform to the requirements of NEPA and the implementing CEQ regulations.

FRA's Procedures require that all environmental reviews are thoroughly reviewed by both the Environment and Systems Planning Division of the Office of Railroad Policy and Development and the Office of Chief Counsel before a final determination is made. This dual review requirement ensures that all environmental reviews—whether they merit an EA, EIS, or CE are properly classified and are in full compliance with all applicable regulations and procedures. FRA's practice is to prepare documentation in support of activities that appear to fall within one or more CEs before the proposed action is approved for implementation. This documentation identifies the CE relied upon (this is particularly important when more than one CE appears applicable), describes the purpose and need and the activities comprising the proposed action, includes a description of the potential impacts organized by resource area, and identifies any appropriate mitigation.³ Furthermore, as required by CEQ regulations and reflected in Section 4(c) and (e) of FRA's Procedures, in extraordinary circumstances, an action that would normally be categorically excluded may require a more detailed review and the preparation of an associated environmental document at the EA or EIS level. FRA's Procedures state,

"[i]n extraordinary circumstances, a normally excluded action may have a potentially significant environmental effect because it does not satisfy one or more of the criteria in subsection (e) of this section. In such case, the Program Office shall prepare the necessary environmental assessment and follow the appropriate FONSI or EIS process for that action."⁴

In addition, including the proposed actions on the FRA CE list does not release FRA from complying with mandatory consultations and any permitting requirements under relevant Federal statutes, including Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the Department of Transportation Act of 1966, the Endangered Species Act (ESA), or the Clean Water Act (CWA). Therefore, in making its determination, FRA takes into account the CE documentation described in the paragraphs above to ensure compliance with other statutory and regulatory requirements so that even an activity that is clearly categorically excluded undergoes a thorough and comprehensive review prior to implementation.

³ For further information about the level of documentation required please see FRA's Guidance on completing a Categorical Exclusion Worksheet available online at http://www.fra.dot.gov/Downloads/RRDev/fraceworksheetguidance.pdf.

The recent CE Guidance requires Federal agencies proposing new CEs to review the existing "extraordinary circumstances" language to ensure it "adequately account[s] for those situations and settings in which a proposed CE should not be applied." FRA believes that the existing language meets this goal by referencing well-defined criteria providing a description of the type of conditions that typically must be present for a categorically excluded activity. Therefore, if the proposed action does not meet one or more of the specified conditions typical of categorically excluded activities, it falls within the category of an "extraordinary circumstance" and thus requires a more searching environmental review in the form of an EA or an EIS.

Under the existing Procedures, 20 specific categories of actions are categorically excluded from the EA and EIS requirements consistent with NEPA. This supporting document identifies seven additions to that list. Generally the additional actions are either currently categorically excluded by both the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) (supporting FRA's finding that that they are unlikely to have a significant effect on the human or natural environment) or clarify the nature and scope of actions that sometimes fit existing FRA CEs. Therefore, in accordance with CEQ's regulations, FRA is adding certain categories to clarify the exclusion of minor actions to help FRA in pursuing its statutory mandates and obligations (40 C.F.R. § 1507.3(b)(2)).

Until now, many proposed FRA actions have fallen within a few existing CEs that address either maintenance or minor additions to rail lines. Although these broader CEs were adequate for agency use while FRA's primary focus was on regulating rail safety, through several statutory initiatives (described in more detail in Section II), this focus has expanded to include a comprehensive financial assistance program. This comprehensive financial assistance program makes it essential to refocus the CEs to eliminate grantee confusion and efficiently implement the new program. The proposed CEs will target the specific actions that regularly occur as FRA oversees and regulates the safe expansion of high-speed and intercity passenger rail. For example, the proposed CE for bridge rehabilitation targets activities that have, until now, often fallen under FRA's more general "Maintenance" CE. By targeting regularly occurring activities, FRA is better positioned to understand and monitor the potential environmental impacts of its decisionmaking. FRA drafted the proposed CEs to clearly define each eligible category of action, including necessary spatial, temporal, or geographic limitations, and provided demonstrative examples of the types of actions that would typically be covered under the text of the CE.

This supporting statement provides the rationale for the addition of seven CEs to FRA's Procedures. For each proposed CE, FRA has reviewed substantially similar CEs currently used by other operating administrations within the U.S. Department of Transportation (U.S. DOT) and other Federal agencies (referred to as "benchmarking"). FRA has experience with the types of activities covered by the FTA/FHWA CEs as well as any associated potential environmental impacts. FRA has a long history of working with both FTA and FHWA on other transportation projects as cooperating or participating agencies in the NEPA process. In addition, these projects are often very similar in both type and potential environmental impacts. This is especially true for FTA, which oversees many rail and rail-related projects.⁷ Although there are differences between intercity passenger rail projects, overseen by FRA, and commuter rail projects, overseen by FTA, the construction methods and infrastructure types are substantially the same. Therefore,

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⁵ *Id.* (requiring Federal agencies to periodically review CEs to ensure compliance with NEPA requirements).

⁶ The existing CE reads, "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."

⁷ For a further description of the statutory difference between commuter and intercity passenger rail please see Notice of Funding Availability for Service Development Programs, 75 Fed. Reg. 38344, 38358 (July 1, 2010), Appendix A.

the FTA/FHWA CEs are an excellent benchmark to compare the activities covered by the proposed CEs as well as the potential environmental impacts.

Included below are also CEs already approved and in use by other Federal agencies. In selecting the CEs for comparative benchmarking, FRA's review was focused on the plain text of the CE and whether the types of activities described therein were substantially similar to those FRA is proposing in this document. These comparative benchmarks are intended to illustrate that similar activities are being categorically excluded by other Federal agencies. For example, in reviewing other agency's CEs for comparative benchmarks for FRA's proposed CE # 25 (covering environmental restoration and remediation activities), FRA reviewed existing CEs for examples that contained covered environmental remediation activities generally and then, if appropriate, reviewed the list of example project types and any limitations that might be applicable to FRA's projects.

While completing this review, FRA also considered completed intercity passenger rail projects to determine whether they represented categories of actions without significant impact and could inform FRA's determinations regarding the activities covered by the proposed CEs. In addition, FRA submitted its proposal to experts in the environmental process field and coordinated with CEQ, and each provided individual opinions and constructive comments to guide FRA in drafting and finalizing the attached proposal. The findings of the FRA review are described below and contain a supporting statement for each proposed CE, a list of substantially similar CEs used by other Federal agencies, a description of the expert's opinions, and a narrative statement describing FRA's experience with actions that would now be covered by the new CE.

I. HIGH-SPEED INTERCITY PASSENGER RAIL PROGRAM

FRA is hampered in meeting the environmental review demands of new grant programs and FRA's expanded authority to make loans, in part because the current list of actions eligible for categorical exclusion do not reflect these additional responsibilities. FRA needs additional categories of actions for exclusion from detailed review to meet expanded interest in FRA's loan programs as well as the demands of a new grant program focused on funding new and improved high-speed intercity passenger rail projects. Recent statutory initiatives have greatly expanded FRA's mission by creating new programs to provide financial assistance to high-speed and intercity passenger railroad programs. In addition, FRA has expanded lending authority (expanded from \$3.5 to \$35 billion) for loans from the Railroad Rehabilitation and Improvement Financing (RRIF) program, which can provide loans and loan guarantees for eligible railroad projects.

Regarding the new grant programs, the Passenger Rail Investment and Improvement Act (PRIIA) of 2008 (Division B of Pub. L. 110-432, 122 Stat. 4907, Oct. 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. In an effort to stimulate the economy, create jobs, and jumpstart a new era of high-speed rail in this

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⁸ 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 (Feb. 18, 2010).

country, Congress passed the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Public Law 111-5, 123 Stat. 115), which provided \$8 billion in grant funding for projects that support new or improved high-speed intercity passenger rail. In addition to the Recovery Act, Congress appropriated \$2.5 billion 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) (FY 2010 DOT Appropriations Act).

PRIIA, the Recovery Act, and the FY 2010 DOT Appropriations Act greatly expanded FRA's financial capacity to fund rail projects to achieve a world-class high-speed and passenger rail program in the United States. Consequently, there is a drastic increase in the number of passenger rail projects and programs that can be funded by FRA. To meet the expectations of Congress and the President, as demonstrated by both PRIIA and the Recovery Act, FRA is advancing a new High-Speed Intercity Passenger Rail (HSIPR) program that will redefine the intercity passenger rail system in this country. The purpose of the new 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. Many of these investments involve major corridor development programs and/or significant or large-scale individual projects, and for these types of projects, FRA and project sponsors (typically State Departments of Transportation) will be preparing EISs and EAs. However, given the very limited funding that has been available in past years to support capital investments benefitting passenger rail services, investments are needed and are contemplated in a number of smaller projects that relieve congestion or otherwise produce more modest benefits for passenger rail that FRA has concluded do not require either an EIS or an EA. As a result, FRA determined it was necessary to add CEs to facilitate the responsible and efficient implementation of the HSIPR, RRIF, and other agency programs.

Because of the widespread interest in the HSIPR program and the nature of the funding programs created by PRIIA, the HSIPR Program's investment will expand upon a longstanding relationship between FRA and its State partners requiring FRA involvement in both rail funding and environmental review. For example, some funding for the HSIPR Program was awarded to make major improvements to rail corridors with a collection of component projects by employing a tiered approach to environmental review. Under this approach, the initial application for funding was selected on the basis of a Tier 1 or "service" environmental document (EA or EIS), which will be followed by a series of Tier 2 or "project-level" environmental documents for individual projects that make up the program. ¹⁰ In some cases, the

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⁹ See FRA, 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.

This tiered approach to NEPA was required by FRA for certain programs funded by the Recovery Act under the HSIPR Program. (75 Fed. Reg. 38344 and 38365 (July 1, 2010)). Tiering is a concept encouraged by CEQ for certain environmental reviews so as to eliminate repetitive discussions of the same issues and focus on the actual issues ripe for decisions at each level of environmental review (see 49 C.F.R. §§ 1502.20 and 1508.28). Service NEPA addresses broader questions and likely environmental effects for the entire corridor relating to the type of service(s) being proposed, including cities and stations served, route alternatives, service levels, types of operations (speed, electric, or diesel powered), ridership projections, major infrastructure components, and identification of major terminal area or facility capacity constraints. In many cases, the Service NEPA document will be followed by

project-level reviews cover smaller discrete elements, with independent utility, of the larger program and may be the types of activities that should be categorically excluded. This means that FRA will continue to complete environmental reviews for many Recovery Act projects into the foreseeable future. This process will also be facilitated by the addition of the proposed CEs. In addition to the need for continued NEPA review of projects funded under the Recovery Act, the \$2.5 billion for HSIPR projects funded in the FY 2010 DOT Appropriations Act will require FRA to complete even more project-level NEPA reviews. As a result, the HSIPR Program has drastically increased the amount of rail projects for which FRA is responsible. In the past two years, FRA has prepared EAs for actions that would normally be categorically excluded by sister agencies in DOT. After careful review, FRA has determined, based on agency experience, expert opinions, and comparative benchmarking, that certain additional categories of activities should be categorically excluded. This would eliminate unnecessary preparation of EAs, clarify the applicability of CEs for a greater number of actions in a wider variety of settings, allow us to focus our resources where they are most needed, and help implement the goals of the HSIPR Program and the Recovery Act.

II. PROCESS USED TO IDENTIFY THE PROPOSED CATEGORICAL EXCLUSIONS

FRA undertook a rigorous evaluation process to update the existing CE list. This evaluation process included an internal review by FRA's Environment and Systems Planning Division as well as FRA's Office of Chief Counsel, a review by environmental staff at FTA, a review and comment by experts enlisted by FRA in coordination with the John A. Volpe National Transportation Systems Center (Volpe Center) in Cambridge, MA, a secondary review by FRA environmental and legal staff, a submission and review and comment by CEQ, and now a publication for public review and opportunity to comment. FRA undertook this review to ensure that the projects covered by the new CE categories presented in Section IV below will not cause significant impact on the human or natural environment.

The new list of CEs was generated in close collaboration with FTA. FRA and FTA each have responsibility for some 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. Commuter rail track and infrastructure is substantially the same as that used for intercity passenger rail and freight rail operations. Often the same stations or other rail infrastructure is used for both commuter rail and intercity rail service, and both types of passenger train and freight services use and share the same tracks. The majority of the proposed CEs were, in part, formulated using existing FTA categorical exclusions. As many of the activities that FRA identified are also carried out by FTA, FRA was able to use FTA's experiences to support the finding that the types of activities would not have a significant effect on the human or natural environment. In addition to using existing FTA CEs as templates, FRA has coordinated its proposal with FTA and jointly submitted its CEs to NEPA professionals for review.

project-level documentation for components of the Program with independent utility that can be analyzed and funded separately.

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¹¹ See Notice of Funding Availability for Individual Projects, 75 Fed. Reg. 38365 (July 1, 2010). Notice of Funding Availability for Service Development Programs, 75 Fed. Reg. 38344 (July 1, 2010).

FTA and FRA, in coordination with the Volpe Center, called on a number of professionals with considerable NEPA experience, the reputation of each of whom was familiar to agency staff, to provide feedback on FTA and FRA's initial list of actions to be classified as categorical exclusions. The experts were consulted on the basis of their knowledge of the environmental process and were asked to offer individual opinions regarding the actions on the basis of their professional experience working in the environmental field. The experts who participated in the review are listed below:

- Dr. Linda Abbott is regulatory risk analyst with USDA's Office of Risk Assessment and Cost-Benefit Analysis in the Office of the Chief Economist. Prior to this position, Dr. Abbott was an ecologist at the Animal and Plant Health Inspection Service's Environmental Analysis and Documentation unit, the NEPA unit. Dr. Abbott has a Ph.D. in biology-ecology from Utah State University and a J.D. from the George Mason University School of Law.
- Mr. Harold Johnson served from 1995 through 2007 as NEPA Compliance Manager for the U.S. Department of Energy (DOE), Carlsbad Field Office in Carlsbad, N.M. Prior to this position, Mr. Johnson was a physical scientist for DOE's Office of NEPA Oversight (now the Office of NEPA Policy and Compliance) in Washington, D.C. Mr. Johnson has also been an attorney-adviser for the Interstate Commerce Commission (ICC), serving as staff attorney for the ICC's NEPA unit. Mr. Johnson holds a BS in math and physics from Mercer University, and a JD from the Walter F. George School of Law.
- Mr. Rhey Solomon retired from the U.S. Forest Service in 2003 after 32 years of government service. Mr. Solomon served as the Deputy Director of Ecosystem Management in the Washington Office. In his Forest Service career, Mr. Solomon worked as a hydrologist, Forest Planner, Regional Hydrologist, Regional NEPA coordinator, and a number of different jobs prior to moving to the Washington Office. He also spent one year working as the Natural Resource Staff Assistant for a member of Congress. Prior to retirement, Mr. Solomon spent his last year on detail to the Council on Environmental Quality leading a team charged with modernizing the CEQ Regulations and other CEQ guidance on NEPA.

The experts' opinions were invaluable in refining the CEs including identifying appropriate limitations necessary to avoid covering activities that have the potential for significant environmental impacts. The experts were asked to draw upon their general knowledge of and experience/involvement with the environmental process and were not limited to offering opinions on CEs with which they might be familiar based on past experience. 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 used by other Federal agencies. FRA held a call with the experts after the submission of the CE packet to answer any questions about the proposal and/or FRA's existing program and to receive any initial feedback. After a period of review, the experts submitted comments to FRA that included suggested changes or modifications or, as in most cases, an endorsement of the suggested CE.

¹² The expert's recommendations are on file with FRA as part of the administrative record.

After receiving the experts' comments and suggestions, FRA environmental and legal staff with intercity passenger rail experience met to discuss the comments and to modify 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, which informed the FRA reviewers. In addition, using their own professional experience, the experts provided insights into the practical application of many of the proposed CEs and the implications of proceeding to adopt FRA's draft CEs. To incorporate the comments, FRA reviewed them to determine whether the experts' comments were appropriate for the types of activities carried out under various FRA programs. In some circumstances, the comments were not relevant to typical FRA activities and were therefore not addressed. Responses to these comments are further explained below under discussion for specific proposed categorical exclusions.

Consistent with the CE Guidance, FRA then consulted with CEQ prior to publishing this substantiation document for public review and comment. As part of this consultation effort, representatives from FRA, CEQ, and U.S. DOT Office of the Secretary participated in a teleconference to discuss the proposed CEs. During that call, CEQ staff suggested modifications to clarify FRA's intended application and scope of the proposed CEs. CEQ also submitted written comments, which FRA carefully considered when finalizing this document for public review.

FRA will publish a notice in the *Federal Register* informing the public that it intends to add the proposed CEs to the list in its Procedures and to give the public an opportunity to review and comment. This document will be made available on FRA's website for public review and comment for a period of not less than 30 days. After the 30-day comment period, FRA will consider all comments and make any necessary changes to address substantive issues raised by the public. FRA will then submit the final document and list of CEs to CEQ for approval.

III. SUMMARY LIST OF PROPOSED CATEGORICAL EXCLUSIONS

PROPOSED CATEGORICAL EXCLUSION # 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.

PROPOSED CATEGORICAL EXCLUSION # 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.

PROPOSED CATEGORICAL EXCLUSION #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.

PROPOSED CATEGORICAL EXCLUSION # 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.

PROPOSED CATEGORICAL EXCLUSION # 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.

PROPOSED CATEGORICAL EXCLUSION # 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.

Proposed Categorical Exclusion # 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.

IV. DETAILED ANALYSIS OF PROPOSED CATEGORICAL EXCLUSIONS

PROPOSED CATEGORICAL EXCLUSION # 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.

EXPLANATION

This categorical exclusion, which focuses on the improvements to facilities, stations, and rail cars to accommodate the elderly and persons with disabilities, is derived from the categorical exclusion currently used by both FTA and FHWA (23 C.F.R. § 771.117(c)(15)). The proposed changes to the text of the existing FTA and FHWA CE includes the addition of examples that are typical to the railroad industry and the replacement of the term "vehicle" with "locomotive." These examples are activities that are typically carried out within existing facilities, are by their nature previously disturbed areas, and in FRA's experience, pose little harm of causing significant environmental impacts. As described below, in the past, FRA has used the existing CE covering the "maintenance of...stations" because the proposed modifications are often in response to periodic updates to the Americans with Disabilities Act's (ADA) legal requirements and such modifications do not "change the existing character of the facility."

By statute, Amtrak is required to ensure its stations are fully ADA compliant, and FRA may provide funding for some of these projects. It is therefore reasonable to assume that FRA will become more involved in projects that would be covered by the proposed CE. To facilitate review of these projects to ensure the stations are accessible to everyone, it is now appropriate to have a CE designed specifically to address these minor modifications to enhance accessibility.

FRA has over 30 years of experience funding the alteration of facilities, vehicles, and rail cars to make them accessible for the elderly and persons with disabilities. FRA finds that there are many situations in which it is necessary to modify or make minor additions to railroad facilities and equipment to maximize their accessibility to railroad customers and to comply with the ADA. Furthermore, in FRA's experience, the modifications are unlikely to have significant environmental impact.

Since 2003, FRA has funded projects through its grants to Amtrak that involve accessibility improvements to facilities, vehicles, stations, and rail cars, and FRA has often categorically excluded them as minor improvement activities. Such projects are representative of an increasingly frequent number of ADA improvements that would be included in the proposed categorical exclusion. Many of these projects, by their very nature, are modest in scale and visual impact and have frequently involved the replacement or alteration of railroad car doors, provision of ramps or lifts, and alteration of station features (such as restrooms and station platforms) that had already reached the end of their useful lives and were in need of replacement. FRA funded ADA improvements at stations as part of the Northeast Corridor Improvement Project during the 1980s. FRA has supported numerous small Amtrak station projects that have

been categorically excluded. Many of these projects include ADA components, which are typically found to have no significant adverse effect to stations, including historic stations, or any potential effects on other resources in the human or natural environment.

In certain cases, accessibility improvements have involved modifications to historic structures (such as modifications to ticket counters in historic stations). In keeping with FRA's Procedures, any modifications to historic structures must be implemented in compliance with the requirements of Section 106 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act of 1966. Such modifications to historic structures and compliance with Section 106 and Section 4(f) does not automatically trigger a higher level environmental review or mean the action qualifies as an "extraordinary circumstance" under FRA's Procedures. However, consistent with FRA's existing environmental review process, FRA will collect the necessary information about the impacts of activities covered under the proposed CE and determine, on an individual basis, whether the effects on historic properties elevates the level of potential impacts to a degree that it is appropriate to consider preparing either an EA or an EIS.

The listed activities are consistent with the other activities currently categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list on the next page and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" on the next page). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any inherent limitations already included in the text of the CE.

The benchmarked actions are comparable to those in the proposed categorical exclusion because they focus on activities involving minor alternations that do not significantly change the existing use of facilities, equipment or vehicles. Several of the cited categorical exclusions are specifically intended to cover the type of minor alternations required to conform to codes, standards, legislation or/regulations. Additionally, similar to the limitation included in the text of Proposed Categorical Exclusion # 21, the benchmarked actions are generally limited to activities within existing buildings, property boundaries, or existing vehicles and would not alter environmental conditions or functional use of the facilities, equipment or vehicles.

THE OPINIONS OF EXPERTS

In general, the experts found that the proposed CE was appropriate and consistent with the categories of actions that are categorically excluded by other Federal agencies. The experts suggested that FRA include some information regarding FRA's experience regarding past actions covered by the proposed CE and the potential for environmental impacts. ¹³ In response

¹³ The experts also assumed that FRA could provide environmental monitoring data for the numerous activities, both completed and currently under way, that would typically fall under this category of actions. However, FRA has not carried out detailed monitoring of these activities, and thus, the agency's files do not contain data of this type. FRA is also not aware of any such data available from FHWA or FTA, and it is not aware of any controversy regarding the implementation of projects using these CEs. However, as part of the new HSIPR Program and in order to

to this request, FRA has included the above discussion of FRA's environmental experience with similar actions supporting the appropriateness of the CE.

COMPARATIVE BENCHMARKING

• Federal Transit Administration / Federal Highway Administration

23 C.F.R. § 771.117(c)(15) (2009)

(c)(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

• Federal Emergency Management Administration

44 C.F.R. § 10.8(d)(xv) (2009)

(d)(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location.

(b)(x) Routine maintenance, repair, grounds keeping activities at FEMA facilities.

United States Coast Guard

COMDTINST M16475.1D

2. Real and Personal Property Related Actions q. Minor renovations and additions to buildings, roads, airfields, grounds, equipment and other facilities that do not result in a change in functional use of the real property (e.g. realigning interior spaces of an existing building, extending an existing roadway in a developed area a short distance, installing a small antenna on an already existing antenna tower, adding a small storage shed to an existing building, etc.).

• Immigration and Naturalization Service

28 C.F.R. § 61, App. C (1981)

10. (a) Construction projects for existing facilities including but not limited to: Remodeling; replacement of building systems and component; maintenance and operations repairs and general improvement when such projects do not significantly alter the initial occupancy and program of the facility or significantly impact upon the environment.

comply with the recent Memorandum on Categorical Exclusions and CEQ's Memorandum the Appropriate Use of Mitigation and Monitoring, FRA intends to take necessary steps to develop and maintain sufficient monitoring protocols proportionate to the potential for impacts for FRA projects. *See*, Memorandum for the Heads of Federal Departments and Agencies from Nancy H. Sutley, Chair, Council on Environmental Quality on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate use of Mitigated Findings of No Significant Impact (January 14, 2011) *available at*

http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf

• Department of the Navy

32 C.F.R. § 775.6 (e)(14) (2004)

(e)(14) Alteration of and additions to existing buildings, facilities, structures, vessels, aircraft, and equipment to conform or provide conforming use specifically required by new or existing applicable legislation or regulations (e.g., hush houses for aircraft engines, scrubbers for air emissions, improvements to storm water and sanitary and industrial wastewater collection and treatment systems, and installation of firefighting equipment).

• Department of Homeland Security

71 Fed. Reg. 16790, Table 1 (Nov. 4, 2006)

D1 Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation)

D2 Routine upgrade, repair, maintenance, or replacement of equipment and vehicles, such as aircraft, vessels, or airfield equipment that does not result in a change in the functional use of the property.

PROPOSED CATEGORICAL EXCLUSION # 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.

EXPLANATION

This categorical exclusion, which focuses on bridge rehabilitation, reconstruction, replacement, or construction, expands upon the existing FRA categorical exclusion in Section 4(c)(11) of FRA's Procedures ("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."). The language of the proposed CE is derived from the categorical exclusion currently used by both FTA and FHWA (23 C.F.R. § 771.117(d)(3)). The only change to the existing FTA and

FHWA categorical exclusion is the addition of examples that are typical to the railroad industry that, in FRA's experience, have limited potential for environmental impact.

FRA has many years of experience funding the rehabilitation, reconstruction, replacement, and construction of bridge structures that span or channel minor water bodies or other transportation rights-of-way. FRA has funded replacement of many minor bridges and culverts on Amtrak rail lines in the northeast States over the past three decades. Over the past decade, FRA funded the replacement of many minor timber bridges with new bridges or culverts on the Alaska Railroad. FRA has experience with the construction of new bridges adjacent to existing bridges or rail facilities when adding tracks to a rail line or constructing grade separation facilities; FRA has found that these actions are similar to bridge replacement and that they do not typically have any significant environmental impact. Through the RRIF loan program, FRA has funded the rehabilitation and replacement of existing bridges and culverts along existing rail lines throughout the United States, primarily on short-line railroads. FRA now faces many situations in which the agency funds the rehabilitation, reconstruction, or replacement of bridges and grade separation projects to increase safety and improve service. Furthermore, in FRA's experience, these bridge projects typically do not have any significant environmental impact because the work occurs predominantly on existing infrastructure in already disturbed railroad or highway right-of-way. In addition, FRA currently has a CE covering maintenance of "bridge structures," which has been applied to numerous maintenance projects that have been completed successfully without any known significant environmental impacts.

FTA and FHWA have many years of experience funding similar types of projects along with construction of highway-rail grade separations that involve new bridges to replace at-grade highway rail crossings. FTA and FHWA have funded many projects involving the "construction of bridges, culverts, or grade separation projects" for decades, without resulting adverse environmental consequences. FRA finds the highway-rail grade separations currently covered by the FTA/FHWA CE involve the same types of construction activities that FRA intends to cover with the proposed CE as well as the same associated impacts. FRA has experience with the construction of rail-rail grade separations and similarly typically finds these can be accomplished without adverse environmental consequences. In addition, the limitations on the CE will ensure it is not used for projects that may cause significant environmental impacts. The proposed CE limits the activities to those located predominantly within the existing right-of-way that do not involve extensive in-water construction.

For example, for over 30 years, FRA has funded numerous bridge projects located on Amtrak's Northeast Corridor (NEC). The NEC is a nearly fully grade-separated facility (having very few remaining at-grade crossings with roads or other railroads). It has literally hundreds of bridges, many of which date back to the early 20th century, that carry the railroad over roadways, other rail lines, small watercourses, and other features. Although the cost of projects to rehabilitate, reconstruct, or replace these bridges can be significant (because of high material costs, specialized labor requirements, and the difficulties of performing such work on an operating railroad), FRA has found that replacement of minor bridges of a typical short span and conversion of small bridges to culverts have not had any significant environmental impacts. FRA documentation of projects replacing common timber bridges on the Alaska Railroad with new bridges or culverts, some with limited in-water work, has also demonstrated little potential

for significant environmental impact. Historic preservation issues and impacts that are common to many bridge projects are addressed and resolved through the Section 106 process. To FRA's knowledge, there have been no discoveries of significant environmental impacts as a result of these projects. Although such projects sometimes require coordination with other public entities (such as State highway agencies and permitting resource agencies), this is part of normal project management and is accounted for in FRA's existing process of documenting categorically excluded projects.

The listed activities are consistent with the other activities currently categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list below and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" below). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any limitations already included in the text of the CE.

The benchmarked activities are comparable to those in Proposed Categorical Exclusion #22 as they focus on the rehabilitation, reconstruction or replacement of facilities along existing alignments or facility footprints or the construction of short span bridges to grade-separate roads or rail lines predominantly within existing transportation rights-of-way or new construction with limited disturbance. The majority of the examples below are applicable to transportation infrastructure projects and are therefore appropriate for comparison to the activities proposed in this categorical exclusion. Other benchmarked activities that disturb minimal area are comparable in the level of disturbance of new construction in proposed Categorical Exclusion #22. The examples that are routine maintenance and rehabilitative actions on existing facilities apply to work carried out within the same location of the facility, conform to previous design and function, and have no significant impact on surrounding environment. The benchmark examples are consistent with the timing, context, and setting of the activities covered by the Proposed Categorical Exclusion #22 because they are generally within or accommodated by existing facilities or in the case of transportation projects, within or proximate to already disturbed right-of-way.

THE OPINIONS OF EXPERTS

The expert's opinions demonstrated a shared belief that the initial draft could be improved, however, none of their comments suggested that the CE was inappropriate as written. Rather, the comments suggested modifications to better describe FRA's experience with the actions described by this CE. First, one expert suggested modifying the CE by moving the language "do not involve extensive in-water construction activities" so that it would clearly apply to all of the example activities described in the CE. FRA agrees with this modification and has made the necessary edits to reflect the expert's suggestion and improve upon the initial draft.

Second, the experts suggested that FRA provide more detailed information regarding past FRA actions that support the proposed CE as well as a description of FRA's experience with the

environmental impacts of this type of work. In response, FRA has included in the Explanation Section a description of FRA's experience overseeing this type of work.

COMPARATIVE BENCHMARKING

• Federal Transit Administration / Federal Highway Administration

23 C.F.R. § 771.117(d)(3) (2009)

(d)(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

• United States Coast Guard

67 Fed. Reg. 48242 (June 23, 2002)

Bridge Administration Program actions which can be described as one of the following:

- (a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands or beaches.
- (b) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons or public safety, health, or welfare.

• Federal Aviation Administration

64 Fed. Reg. 55526-01 (Oct. 13, 1999) (also available at FAA Order 5050.4A Chapter 3, Section 23)

1. Access road construction and relocation or repair of entrance and service roadways that do not reduce the Level of Service on local traffic systems below acceptable levels. (AAF, AND, APP, AST).

United States Army

32 C.F.R. § 651, App. B (2002)

- (c) Construction and demolition:
- (1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).
- (2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

PROPOSED CATEGORICAL EXCLUSION #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 beyond the existing right-of-way or other previously disturbed locations, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment.

EXPLANATION

This categorical exclusion, which focuses on the acquisition, rehabilitation, maintenance and use of vehicles or equipment, is a limited expansion upon the existing FRA categorical exclusion (Section 4(c)(17)) found at 64 Fed. Reg. 28545 (May 26, 1999) ("Acquisition 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 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"). The additional activity reflected in the revised CE is the purchase of new equipment and is appropriate because vehicle and equipment purchases are fundamentally different from the purchase of other rail infrastructure and should have a separate dedicated CE.

FRA has many years of experience regulating and overseeing the acquisition, rehabilitation, maintenance, and the use of railroad equipment. For example, FRA finds that there are many situations where, in response to aging and outdated rail equipment fleets or to meet expanded demand, States and railroads take action to acquire, rehabilitate, maintain, and use railroad equipment. The new equipment typically is less polluting than the older, used equipment being replaced, especially with respect to locomotives covered by the Environmental Protection Agency's emission standards. Furthermore, in FRA's experience, equipment modifications are generally minor and are unlikely to have any environmental impact.

For decades, FRA has funded vehicle-related projects and activities through its grants to Amtrak. FRA has more recently provided loans to freight railroads for rail vehicle-related projects. These projects have ranged from the simple use and daily maintenance of passenger rolling stock, to major midlife overhauls of passenger coaches, passenger and freight locomotives, and maintenance equipment, to the acquisition of new trains and equipment. Perhaps more so than for any other type of project funded, FRA has found vehicle-related projects, such as rehabilitation or purchase of new passenger or freight locomotives, passenger coaches, or railroad maintenance equipment, have not had a likelihood of any environmental impact and typically have environmental benefits through reduced energy use and air pollution. FRA currently has a CE that covers the "[a]cquisition of existing railroad equipment," which has been used in the past to cover these types of activities. For clarity, FRA believes it is appropriate to have a CE focusing specifically on the acquisition of vehicles and equipment with the

appropriate limitations, while also keeping the existing CE for application to other types of acquisitions ("electrification, communication, signaling or security facilities, stations").

Although there may be occasions where vehicle acquisition is intended to support a significant increase in railroad service, equipment acquisitions associated with major corridor investment programs typically will be addressed through the EAs or EISs prepared for such programs. However, this CE would be available for acquisition, rehabilitation or maintenance activities that involve minor increases in rail service because such minor increases have been found to be unlikely to have the potential for significant environmental impacts. Determining whether an increase is reasonably foreseeable and substantial will be made by FRA environmental and legal staff taking into account a number of factors, including the anticipated traffic growth contained in existing State or railroad planning documents, the adequacy of the existing infrastructure to accommodate additional growth, and the ability of existing stations and associated facilities to handle additional service. When FRA staff determines that an equipment purchase is connected to another action with the combined potential for significant impacts, an environmental assessment or environmental impact statement is prepared. In addition, equipment acquisitions supporting additional service are often handled through the addition of additional cars to existing trains rather than through the addition of new trains, which also acts to limit environmental impacts.

The listed activities are consistent with the other activities currently and categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list on the next page and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" on the next page). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any limitations already included in the text of the CE.

The benchmarked activities are comparable to those in the proposed categorical exclusion because they focus on acquisition, maintenance, repair or rehabilitation of vehicles or equipment. These actions are generally routine and limited in scope and are often made to achieve a state of good repair or to comply with requirements or regulations. Some of the benchmarked examples specify that the actions do not involve change in functional use of the vehicles or equipment or require new infrastructure. This is similar to the limitation in Categorical Exclusion # 23 which limits the application to those activities which do not "cause a substantial increase in the use of infrastructure within the existing right-of-way or other previously disturbed locations."

THE OPINIONS OF EXPERTS

Overall, the experts believed that the proposed CE was appropriate but suggested adding additional information regarding FRA's experience with similar actions. One of the experts was specifically concerned with the proposed CE's potential impact on production of regulated waste products. Although FRA does not believe that the acquisition actions covered by this category are likely to generate quantities of hazardous waste that would present significant environmental impacts, during the CE review process, FRA considers the potential environmental impacts

related to hazardous waste for all its projects. Therefore, if during the review, it is found that the project has extraordinary circumstances that present the potential for significant impacts as a result of hazardous waste production, FRA would require preparation of additional environmental studies and documentation, as appropriate.

Another expert believed the CE was appropriate but requested more information regarding FRA's past experience with similar activities. In response to this request, FRA has included a description of past FRA actions as well as FRA's experience reviewing the environmental impacts of such actions.

Another suggestion was a text change to the CE; however, FRA does not concur with the rationale behind the change and consequently decided to retain the original language. In general terms, the expert requested that FRA limit the CE to activities that would be accommodated by existing facilities. ¹⁴ FRA modified the CE in a manner appropriate to the railroad context by excluding CE application for equipment that would cause a substantial increase in use of infrastructure beyond the existing right-of-way or other previously disturbed locations. FRA's programs sponsor equipment replacement for railroad operations that are not typically within FRA's control and vary with economic cycles and are dispersed on a vast national network. The context for the use of new equipment is the existing railroad system generally. The expert's comment seemed to be premised on the incorrect assumption that the place where railroad equipment would be used is a geographically closed system or facility. The suggested limitation creates the potential for a serious conflict that would render the CE ineffective because new railroad equipment purchase decisions and maintenance facility investment decisions are typically independent. In any case, FRA staff is expected to determine whether an equipment purchase is connected to another facility action taking into account specific information about the proposed action. Overall, the requested change would hinder FRA's ability to provide funding for replacement of passenger rail equipment fleets and for equipment replacements for the freight rail industry. Thus, FRA understands the expert lacked adequate information about this type of action and disagrees with the suggested change intended to reflect experience with public transit activities in closed systems that are not representative of FRA's project types or experience, and made a change appropriate for the railroad context.

COMPARATIVE BENCHMARKING

• Federal Transit Administration / Federal Highway Administration

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¹⁴ "...In most situations the acquisition of new equipment and vehicles is a "connected action" to another action to expand an existing transportation facility or create a new facility. In these situations, the acquisition and operation of these vehicles and equipment would be evaluated in the NEPA document for the new facility. The "such as" statements do allude to the idea that these acquisitions are appropriate only to augment existing facilities and operations. But these clarifications are listed only as "such as" examples rather than as an "extraordinary circumstance" or limit within the categorical exclusion description. I would, therefore, suggest the following change in the description on the category: 'Acquisition, rehabilitation and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use, such as equipment to be located within existing facilities and with no significant off-site impacts; and, vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities which qualify for categorical exclusion..."

23 C.F.R. § 771.117(d) (2009)

- (c)(14) Bus and rail car rehabilitation.
- (c)(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (c)(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

United States Coast Guard

COMINST M16475.1D, Fig. 2-1

- 1. Administrative Actions: b. Routine procurement activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance.
- 2. Real and Personal Property Related Actions t. Routine repair, renovation, and maintenance actions on aircraft and vessels.

• Department of the Army

32 C.F.R. § 651, App. B (2002)

- (e) Procurement and contract activities:
- (1) Routine procurement of goods and services (complying with applicable procedures for sustainable or "green" procurement) to support operations and infrastructure, including routine utility services and contracts.
- (2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).
- (3) Conversion of commercial activities under the provisions of AR 5–20. This includes only those actions that do not change the actions or the missions of the organization or alter the existing land-use patterns.
- (4) Modification, product improvement, or configuration engineering design change to materiel, structure, or item that does not change the original impact of the materiel, structure, or item on the environment (REC required).
- (5) Procurement, testing, use, and/or conversion of a commercially available product (for example, forklift, generator, chain saw, etc.) which does not meet the definition of a weapon system (Title 10, U.S.C., Section 2403. "Major weapon systems: Contractor guarantees"), and does not result in any unusual disposal requirements.

• Department of the Navy

32 C.F.R. § 775.6(f)(11) (2004)

(f)(11) Routine movement of mobile assets (such as ships and aircraft) for homeport reassignments, for repair/overhaul, or to train/perform as operational groups where no new support facilities are required.

(f)(12) Routine procurement, management, storage, handling, installation, and disposal of commercial items, where the items are used and handled in accordance with applicable regulations (e.g., consumables, electronic components, computer equipment, pumps).

(f) (14) Alteration of and additions to existing buildings, facilities, structures, vessels, aircraft, and equipment to conform or provide conforming use specifically required by new or existing applicable legislation or regulations (e.g., hush houses for aircraft engines, scrubbers for air emissions, improvements to storm water and sanitary and industrial wastewater collection and treatment systems, and installation of firefighting equipment).

• <u>Department of Homeland Security</u>

71 Fed. Reg. 16790, Table 1 (April 4, 2006)

D1 Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation).

D2 Routine upgrade, repair, maintenance, or replacement of equipment and vehicles, such as aircraft, vessels, or airfield equipment that does not result in a change in the functional use of the property.

D3 Repair and maintenance of Department-managed buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (e.g. replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, and maintenance of waterfront facilities that does not require individual regulatory permits).

PROPOSED CATEGORICAL EXCLUSION #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.

EXPLANATION

This categorical exclusion, which focuses on the activities to promote safety, security, accessibility, and effective communication, covers technology and systems components common to modern railroads and builds upon the existing FRA categorical exclusion (Section 4(c)(18)) found at 64 F.R. 28545 (May 26, 1999) ("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."). This categorical exclusion expands the scope of the existing language to include similar actions that are routinely and categorically excluded by other agencies but with examples that are typical to the railroad industry. FRA experience with the existing CE has found these types of system component improvements have highly limited potential for significant environmental impact.

FRA has many years of experience with activities that promote transportation safety, security, accessibility, and effective communication, including the installation of new signal systems or security measures designed to increase passenger safety and improve the passenger's experience. FRA finds that there are many situations in which States and railroads are required to improve their safety, security, and communication infrastructure by statute or regulation or because deteriorating infrastructure is being repaired or replaced. FRA's experience sponsoring the installation of fencing, security equipment and monitors, passenger information systems, and train control equipment by Amtrak has consistently shown that such activities are unlikely to have significant environmental impact. FRA has also sponsored installation of radio communications towers for the Alaska Railroad and for the Nationwide Differential Global Positioning System. Environmental assessments were prepared for these actions, and no significant environmental impacts were identified.

The communication and safety systems that would be repaired, replaced, or installed under this CE are communication and signaling systems that are subject to the regulatory approval of FRA's Office of Safety, which affords FRA a high level of familiarity with the characteristics of the systems. Train communication and signal systems have been ubiquitous features of railroads for almost a century, and signal computerization and conversion to wireless communications are changes that have little to no impact on the environment. Most of these activities occur either within existing facilities or along existing railroad right-of-way that are already disturbed areas; thus, they are highly unlikely to cause significant environmental impacts.

Many of the listed activities are consistent with the other activities currently categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list on the next page and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" on the next page). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any limitations already included in the text of the CE.

The benchmarked activities are comparable to those in Proposed Categorical Exclusion # 24 because most also apply to discrete activities specifically designed to increase safety and/or operational convenience and are not the type of activities that would significantly impact the environment. Like the proposed categorical exclusion, many of the benchmarked activities include installation of electronics, communication facilities and small structures. The benchmarked activities also include routine maintenance and repair and most include a spatial limitation, like Proposed Categorical Exclusion # 24, for activities within previously disturbed areas within or directly adjacent to the existing right-of-way. The benchmarked activities are similar in timing, context and environmental setting to the proposed categorical exclusion.

THE OPINIONS OF EXPERTS

The experts agreed that the CE was appropriate if the geographic scope was narrowed, and if FRA could provide a description of the agency's past experience with similar activities. In response, FRA accepted the intent of a suggested text edit because it was consistent with the intended scope and included "substantially within the existing right-of-way" and "does not significant alter traffic density characteristics of the existing rail line," which FRA believes adequately addresses the expert's concerns. FRA has also provided a narrative description of FRA's experience with these activities.

COMPARATIVE BENCHMARKING

Federal Transit Administration / Federal Highway Administration
 23 C.F.R. § 771.117(c) (2009)

(c)(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantially land acquisitions or traffic disruption will occur.

(c)(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on busses.

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¹⁵ FRA's original proposal read, "<u>Activities designed to promote transportation safety (including emergency repairs)</u>, security, accessibility and effective communication, such as 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, and security equipment including surveillance and detection cameras."

• Department of Energy

10 C.F.R. § 1021, App. B (2003)

- B1 Categorical exclusions applicable to facility operation:
- B1.7 Acquisition, installation, operation, and removal of communication systems, data processing equipment, and similar electronic equipment.
- B1.19 Siting, construction, and operation of microwave and radio communication towers and associated facilities, if the towers and associated facilities would not be in an area of great visual value.
- B1.11 Installation of fencing, including that for border marking, that will not adversely affect wildlife movements or surface water flow.

• Bureau of Land Management

516 DM 11.9 (available at BLM National Environmental Policy Handbook App. 4, H-1790-1)

(g)(2) Installation of routine signs, markers, culverts, ditches, waterbars, gates or cattleguards on/or adjacent to roads and trails identified in any land use or transportation plan, or eligible for incorporation in such plan.

• Federal Emergency Management Administration

44 C.F.R. § 10.8(b)(ix) (2009)

(b)(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way.

National Parks Service

NPS-Director's Order 12 (2001)

- C. Actions related to development:
- (5) Installation of signs, displays and kiosks

• U.S. Air Force

32 C.F.R. § 989, App. B (1999)

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

• U.S. Army

32 C.F.R. § 651, App. B (2002)

(e)(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

• U.S. Forest Service

36 C.F.R. § 220.6 (2008)

- (e)(2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor (Project/case file and decision memo required). Examples include, but are not limited to:
- (i) Replacing an underground cable trunk and adding additional phone lines, and
- (ii) Reconstructing a power line by replacing poles and wire.

PROPOSED CATEGORICAL EXCLUSION # 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.

EXPLANATION

This categorical exclusion focuses on environmental remediation activities to existing and former railroad track, including rail yards. This categorical exclusion would cover those actions undertaken for the purpose of preventing or correcting past pollution of soil, air, water, and other activities related to correcting past environmental harms including impacts related to noise and vibration.

FRA has years of experience with environmental remediation at existing and former railroad track, infrastructure, stations, and facilities. FRA finds that there are many situations where it is necessary or appropriate to fund environmental remediation projects that are intended to clean up or remedy past environmental harms related to the railroad industry, or address and prevent emissions from railroad facilities. Furthermore, in FRA's experience, railroad operations remediation projects usually are limited in scope and are designed to produce an environmental benefit, are often monitored by State or Federal environmental regulatory agencies, and are intended to avoid any significant environmental impact.

Through its grants to Amtrak and the Alaska Railroad, FRA has experience in funding environmental remediation projects, including wastewater and stormwater treatment facilities located at maintenance shops, minor soil contamination remediation, and lead-based paint and asbestos removal and remediation. Although such projects can be technically complex and

costly, this is generally because of the equipment and care that is necessary in implementing such projects. Although the projects may involve hazardous materials, the projects are specifically intended to reduce environmental impacts from those materials and involve proven technical approaches that do not typically present new environmental impacts and that separate and contain the contaminated or hazardous materials.

In addition, many of the activities carried out under this CE would result in a net environmental benefit because they are, by design, intended to remediate past environmental impacts or restore otherwise degraded or impacted natural systems. An example of this are slope stabilization projects near rivers where it is necessary to replace the existing riprap to prevent additional runoff from existing rail lines. In these cases, although the project might include minimal inwater work, consistent with regulations and other permitting requirements, it will produce an overall net environmental benefit because it would reduce soil erosion and therefore improve overall water quality. Another example is the installation of stormwater collection and treatment at a train service facility that would reduce discharges of polluted water into the local waterways.

The listed activities are consistent with the other activities currently categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list below and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" below). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any limitations already included in the text of the CE.

The benchmarked activities are comparable to those in the proposed categorical exclusion since the activities focus on the restoration, remediation and mitigation activities designed to reduce or prevent environmental pollution. Like the activities covered by Proposed Categorical Exclusion # 27, the benchmarked activities do not normally have adverse environmental impacts and are instead intended to have beneficial environmental impacts. The timing, context and environmental setting of these actions are similar to the proposed categorical exclusion.

THE OPINIONS OF EXPERTS

The experts had three basic comments regarding the proposed CE. First, they suggested limiting the geographic scope of the excludable activities to include only those that "occupy substantially the same footprint...." FRA notes that the CE now includes a geographic limitation "in or proximate to existing and former" which limits the geographic application of the CE, and which FRA believes meets the intent of the expert's suggestion. Second, the experts suggested providing more information regarding FRA's experience dealing with the projects covered under the proposed CE. Provided above is an explanation describing FRA's experience with similar projects and how FRA determined that the proposed CE would not result in activities significantly affecting the human or natural environment. Third, the experts were concerned about the potential disposal of hazardous wastes associated with this CE. As discussed above, during the CE review process, FRA considers the potential environmental impacts related to hazardous waste. FRA-sponsored remediation typically deals with common contaminants, like

hydrocarbons, asbestos, or lead-based paint, for which there are established disposal methods and facilities. In addition, language has been added to the proposed CE to make it clear that all activities covered by the CE must be carried out in compliance with all appropriate environmental regulations and permitting requirements. Also, as noted above, these projects are often carried out pursuant to or in consultation with State and Federal environmental review agencies, which approve the processes for the remediation before they are implemented.

COMPARATIVE BENCHMARKING

• Federal Transit Administration / Federal Highway Administration

23 C.F.R. § 771.117(d) (2009)

(c)(7) Landscaping

• Department of Energy

10 C.F.R. § 1021, App. B (2003)

- (B1.20) Small-scale activities undertaken to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders or minor diversion channels), or fisheries.
- (B1.21) Noise abatement
- (B2.5) Safety and environmental improvements of a facility, replacement/upgrade of facility components
- (B5.1) Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that do not increase the indoor concentrations of potentially harmful substances.
- (B6.3) Improvements to environmental monitoring and control systems of an existing building or structure
- (C8) Protection, restoration, or improvement of fish and wildlife habitat, fish passage facilities, and fish hatcheries if the proposed action may adversely affect an environmentally sensitive resource.

• Federal Aviation Administration

64 Fed. Reg. 55526-01 (Oct. 13, 1999) (also available at FAA Order 5050.4A Chapter 3, Section 23)

(a)(7) Landscaping generally, and landscaping or construction of physical barriers to diminish impact of airport blast and noise.

• Federal Emergency Management Agency

44 C.F.R. §10.8 (2009)

(d)(2) (xi) Planting of indigenous vegetation

• U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service Department Manual 516, Part 8

- (b)(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.
 - (a) The installation of fences.
 - (b) The construction of small water control structures.
 - (c) The planting of seeds or seedlings and other minor revegetation actions.
 - (d) The construction of small berms or dikes.
 - (e) The development of limited access for routine maintenance and management purposes.

• <u>U.S. Forest Service</u>

36 C.F.R. § 220.6 (2008)

- (d)(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:
 - (i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;
 - (ii) Grading a road and clearing the roadside of brush without the use of herbicides;
 - (iii) Resurfacing a road to its original condition;
 - (iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and
 - (v) Surveying, painting, and posting landline boundaries.
- (d)(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:
 - (i) Applying registered herbicides to control poison ivy on infested sites in a campground;
 - (ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;
 - (iii) Repaying a parking lot; and
 - (iv) Applying registered pesticides for rodent or vegetation control.

• Department of Homeland Security

71 Fed. Reg. 16790, Table 1 (Nov. 4, 2006)

E5 Natural resource management activities on Department-managed property to aid in the maintenance or restoration of native flora and fauna, including site preparation, landscaping, and control of non-indigenous species.

E6 Reconstruction of roads on Departmental facilities, where runoff, erosion, and sedimentation issues are mitigated through implementation of best management practices.

E8 Construction of aquatic and riparian habitat in streams and ponds on Departmentmanaged land, using native materials or best natural resource management practices. Examples include, but are not limited to:

- (a) Installing or repairing gabions with stone from a nearby source,
- (b) Adding brush for fish habitat,
- (c) Stabilizing stream banks through bioengineering techniques, and,
- (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls.

• U.S. Coast Guard

67 Fed. Reg. 48243 (July 23, 2002)

(2)(r) Installation of devices to protect human or animal life such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas. (Checklist and CED required.)

COMDTINST M16475.1D, Figure 2-1

(27) Natural and cultural resource management and research activities that are in accordance with inter-agency agreements and which are designed to improve or upgrade the USCG's ability to manage those resources.

PROPOSED CATEGORICAL EXCLUSION # 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 less than approximately 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.

EXPLANATION

This categorical exclusion, which focuses on the construction of facilities or stations, expands upon the existing FRA categorical exclusion found in Section 4(c)(15) of FRA's Procedures at 64 Fed. Reg. 28545 (May 26, 1999) ("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").

FRA has experience financing and overseeing the assembly and construction of facilities or stations. FRA finds that there are many situations where it is necessary to complete these types of activities to improve train service and increase safety. Furthermore, in FRA's experience, activities of this type generally do not cause significant environmental impacts.

Although the construction of large stations and facilities are significant undertakings that merit more rigorous environmental assessment, FRA's experience is that the majority of projects involving the construction of new or expanded stations and facilities that are less than approximately 10 acres are unlikely to have significant environmental impacts. The geographic limitation for projects of less than approximately 10 acres will confine the application of this CE to modest-scale facilities and construction activities that are also consistent with local zoning ordinances. Intercity passenger rail service often reaches many small stations along routes, and there are many small freight facilities dispersed across the country.

FRA has experience funding these types of smaller projects, which generally are intended to result in incremental improvements to the capacity or utility of such passenger or freight rail facilities. In this they are in almost all circumstances located on existing rights-of-way and adjacent properties that have been subject to periodic disturbance. FRA has recently prepared EAs for small passenger station projects involving up to approximately ten acres of land that would have been categorically excluded under FTA regulations. These reviews affirmed the determination that small station projects that are consistent with zoning and land use are unlikely to cause significant environmental impacts. FRA's Procedures have long contained a CE covering FRA's financial assistance for "minor loading and unloading facilities." The proposed CE is just an expansion of the existing category of actions to include activities that are related to FRA's expanded role in funding intercity passenger rail facilities and stations through the funding programs described in Section II above. The expansion is consistent with FTA's practice and CE, and because FRA has never found the activities covered under the existing CE to cause significant environmental impacts, FRA believes the proposed CE is also appropriate.

The listed activities are consistent with the other activities currently categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list below and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" below). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any limitations already included in the text of the CE.

The benchmarked activities are comparable to those in the proposed categorical exclusion, as they also include the construction of certain classes of facilities and contain certain limitations like consistency with existing land use and zoning requirements and not making a substantial change in the use of the facility. Similar to actions under Proposed Categorical Exclusion # 26, the benchmarked examples would be carried out when needed and have similar context and setting. Limitations within the benchmarked examples are similar to those in the proposed categorical exclusion, because in general they require compliance with local planning and zoning, disturb a minimal amount of land, and/or include a total approximate acreage of disturbance.

THE OPINIONS OF EXPERTS

The experts had two general comments. First, they requested more detailed evidence demonstrated by agency experience that the proposed CE is appropriate, and that the envisioned actions do not have significant impact on the human or natural environment. FRA has provided an explanation above that describes FRA experience with similar projects, and how FRA determined that the proposed CE would not result in activities significantly affecting the human or natural environment. Second, the experts suggested that FRA narrow the possible application of the CE by the number of activities in a year and the size of the disturbance to reduce the possible cumulative impacts of this type of activity. FRA believes that along with the existing limitations requiring conformance with existing zoning and not altering traffic densities, generally limiting the size of the disturbance is appropriate and will reduce the possible cumulative impact of such activities. Therefore, FRA revised the CE to provide that included projects would generally result in less than 10 acres of surface disturbance. FRA selected 10 acres based on its experience in evaluating the environmental impacts of recent station and storage/maintenance facility projects and concludes this is reasonable for projects that are likely to have no significant environmental impacts and in consideration of the fact that any included facility would also have to be consistent with local zoning and land use. FRA did not adopt the recommendation to narrow the possible application of the CE by limiting the number of activities in a year that might qualify. FRA has not done this with respect to any of its other CEs and given the nationwide scope of FRA's financial assistance and other programs this appeared to the agency to be unduly limiting while not producing a meaningful benefit. There is no indication that an action considered later in the year would be any less eligible for the CE than one considered at the beginning of the year, and the concern related to connected actions within the same geographic area producing combined effects can be better addressed by assuring that individual actions that are connected actions are evaluated within the context of the overall program. This is part of FRA's overall approach to rail corridor development and analysis. In addition, one criterion under FRA's environmental procedures for excluding a particular action from proceeding as a CE is whether the action is an integral part of a program of actions which when considered together would be classified as a major FRA action (and thus be evaluated through an EA or EIS). In this way, FRA assures that projects are not inappropriately segmented and that cumulative impacts are properly recognized.

COMPARATIVE BENCHMARKING

Federal Transit Administration / Federal Highway Administration
 23 C.F.R. § 771.117(c) (2009)

(d)(8) Construction of new bus storage and maintenance facilities in areas used predominately for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(d)(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(d)(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

• Department of Energy

10 C.F.R. § 1021, App. B (2003)

B1.15 Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

Department of the Navy

32 C.F.R. § 775.6(f)(34) (2004)

(34) New construction that is similar to existing land use and, when completed, the use or operation of which complies with existing regulatory requirements (e.g., a building within a cantonment area with associated discharges/runoff within existing handling capacities).

• Department of the Army

32 C.F.R. § 651, App. B (2002)

- (c) Construction and demolition:
- (1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).

United States Coast Guard

COMDTINST M16475.1D

2. Real and Personal Property Related Actions q. Minor renovations and additions to buildings, roads, airfields, grounds, equipment and other facilities that do not result in a change in functional use of the real property (e.g. realigning interior spaces of an existing building, extending and existing roadway in a developed area a short distance, installing a small antenna on an already existing antenna tower, adding a small storage shed to an existing building, etc.).

• U.S. Army

32 C.F.R. § 651, App. B (2002).

(c)(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

• Federal Emergency Management Agency

44 C.F.R § 10.8 (2009)

(d)(2)(viii) Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.

• <u>Immigration and Naturalization Services</u>

28 C.F.R § 61, App. C (1981)

10(a) Construction projects for existing facilities including but not limited to: Remodeling; replacement of building systems and components; maintenance and operations repairs and general improvements when such projects do not significantly alter the initial occupancy and program of the facility or significantly impact upon the environment.

United States Army

32 C.F.R. § 651, App. B (2002)

- (c) Construction and demolition:
- (1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).
- (2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

PROPOSED CATEGORICAL EXCLUSION # 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.

EXPLANATION

This categorical exclusion, which focuses on track and track structure maintenance and improvements carried out within existing railroad right-of-way, is an elaboration of two of FRA's existing CEs and is supported by CEs currently used by both FTA and FHWA (23 C.F.R. § 771.117(c)(18)). FRA's proposed categorical exclusion includes a list of examples that are typical to the railroad industry that have limited potential for environmental impact.

FRA has many years of experience overseeing track and track structure maintenance carried out within the existing railroad right-of-way. FRA finds that there are many situations where it is necessary to maintain or improve the track and track structure predominantly within the existing right-of-way to improve service and increase the safety of existing train operations and to preserve the right-of-way for potential future use for new or improved rail services. In many areas of the country, railroad tracks were removed from existing corridors as the demand for rail services declined in the 1960s and 1970s when many railroads faced severe financial difficulties. The economic recovery spurred by the enactment of the Staggers Rail Act of 1980 and the reconfiguration of the railroad industry in the 1980s and 1990s has led to the need to reinstall tracks on these existing rights-of-way to meet current and future demands for rail services. Furthermore, in FRA's experience, track and track structure maintenance and improvements carried out within existing rights-of-way are usually consistent with existing transportation use and are unlikely to have significant environmental impact. FRA's experience also shows that reinstalling rail to existing corridors helps avoid the significant impacts that would be associated with new so called "green-field" development.

Track and track structure maintenance and improvement projects are perhaps the most common type of project that FRA has funded through its various financial assistance programs over the past four decades. FRA frequently sponsors track projects and has found that such projects have not had significant environmental impacts. These projects typically constitute little more than the replacement of life-expired track materials (such as rails, ties, and ballast) equivalent to common railroad maintenance activities, the reinstallation of track that had been previously removed, or the reconfiguration of existing tracks (through the addition or relocation of turnouts or crossovers) to allow for more efficient operations. Track maintenance is routinely performed throughout the railroad system usually without Federal funding and is required by FRA safety regulations. FRA has funded track maintenance on Amtrak property since the 1970s and, in

1979, completed a programmatic EIS for the Northeast Corridor Improvement Project that categorically excluded track maintenance activities on the Northeast Corridor after a thorough evaluation. In the past decade, FRA has funded track maintenance on numerous freight railroads including the Alaska Railroad through the RRIF loan program and small grants. In none of these projects have there been evidence of adverse environmental effects, and FRA has not found the frequency of track maintenance activities to have a significant cumulative environmental effect in NEPA documents prepared over four decades.

The listed activities are consistent with the other activities currently categorically excluded by other Federal agencies as illustrated in the comparative benchmarking list on the next page and are supported by FRA's own internal review and expertise and by the established exclusions of many Federal agencies that conduct actions of a similar nature, scope, and intensity (see "Comparative Benchmarking" on the next page). The examples included in the proposed category are representative of the types of activities that fit within the broadly defined criteria of the exclusion; they are not intended to limit the categorical exclusion beyond any limitations already included in the text of the CE.

The benchmarked activities are comparable to those in the proposed categorical exclusion, as they focus on the maintenance, repair or improvement of existing facilities within an existing footprint or right-of-way. The benchmarked activities are mostly routine maintenance and rehabilitative or minor improvement actions to existing facilities where the work is done within the same location of the facilities, conforms to previous design and function, and has no significant impact on the surrounding environment. The timing, context and environmental setting of the activities covered by the Comparative Benchmarks are similar to those covered by the proposed categorical exclusion as they are done routinely and generally limited to previously disturbed sites. Limitations in the benchmarked examples that focus on use of the facility after improvement and location of the improvement are similar to those in the proposed categorical exclusion.

THE OPINIONS OF EXPERTS

The experts had two main comments. First, they were concerned about the potential disposal of hazardous wastes associated with this CE. As discussed above, during the CE review process, FRA considers the potential for environmental impacts related to hazardous waste. If during the review it is found that the project has the potential for significant hazardous waste impacts, FRA would prepare additional environmental studies and documentation. FRA has also found that track does not correlate with the presence of hazardous waste or ground contamination. There are times when hazardous materials may be present in removed track components or debris but in all cases, this is addressed by standard waste disposal requirements set by regulatory agencies. Second, another expert believed the CE was appropriate but requested more information regarding FRA's past experience with similar activities. In response to this request, FRA has included a description of past FRA actions that would be covered by the proposal as well as a narrative describing FRA's experience reviewing the environmental impacts of such actions. ¹⁶

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¹⁶ The experts also assumed that FRA could provide environmental monitoring data for the numerous activities, both completed and currently under way, that would typically fall under this category of actions. However, FRA has not carried out monitoring of these activities, and thus the agency's files do not contain data of this type. FRA is also

COMPARATIVE BENCHMARKING

• Federal Transit Administration / Federal Highway Administration

23 C.F.R. § 771.117(d)(18) (2009)

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

• U.S. Coast Guard

67 Fed. Reg. 48243 (July 23, 2002)

(2)(e) Acquisition of real property (including fee simple estates, leaseholds, and easements) improved or unimproved, and related personal property from a non-Federal party by purchase, lease, donation, or exchange where the proposed real property use is similar to existing uses for the foreseeable future (acquisition through condemnation not covered). (Checklist and CED required.).

Bureau of Land Management

516 DM 11.9 (available at BLM National Environmental Policy Handbook App. 4, H-1790-1).

(E)(10)Transfer or conversion of leases, permits, or rights-of-way from one agency to another (e.g., conversion of Forest Service permits to a BLM Title V Right-of-way).

(E)(12) Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.

(E)(17)Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.

Federal Aviation Administration

64 Fed. Reg. 55526-01 (Oct. 13, 1999) (also available at FAA Order 5050.4A Chapter 3, Section 23)

1. Access road construction and relocation or repair of entrance and service roadways that do not reduce the Level of Service on local traffic systems below acceptable levels. (AAF, AND, APP, AST).

not aware of any such data available from FHWA or FTA, and it is not aware of any substantial controversy associated with implementing projects covered by these CEs. However, as part of the new HSIPR Program and in order to comply with the recent Memorandum on Categorical Exclusions, FRA intends to take necessary steps to develop and maintain sufficient monitoring protocols proportionate to the potential for impacts for FRA projects.

United States Army

32 C.F.R. § 651, App. B (2002)

- (c) Construction and demolition:
- (1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).
- (2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).
- (3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

• Department of Energy

10 C.F.R. § 1021, App. B (2003)

- B1.3 Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (e.g., pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that replacement is in kind and is not a substantial upgrade or improvement. In kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:
 - (a) Repair of facility equipment, such as lathes, mills, pumps, and presses;
 - (b) Door and window repair or replacement;
 - (c) Wall, ceiling, or floor repair;
 - (d) Reroofing;

- (e) Plumbing, electrical utility, and telephone service repair;
- (f) Routine replacement of high-efficiency particulate air filters;
- (g) Inspection and/or treatment of currently installed utility poles;
- (h) Repair of road embankments;
- (i) Repair or replacement of fire protection sprinkler systems;
- (j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing; (k) Erosion control and soil stabilization measures (such as reseeding and revegetation);
- (l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 5820.2, "Radioactive Waste Management";
- (m) Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions);
- (n) Routine testing and calibration of facility components, subsystems, or portable equipment (including but not limited to, control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes); and
- (o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), including removal of contaminated intact equipment and other materials (other than spent nuclear fuel or special nuclear material in nuclear reactors).

U.S. Forest Service

36 C.F.R § 220.6 (2008)

- (d)(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:
 - (i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road:
 - (ii) Grading a road and clearing the roadside of brush without the use of herbicides:
 - (iii) Resurfacing a road to its original condition;
 - (iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail:
 - (v) Surveying, painting, and posting landline boundaries.