



U.S. Department of Transportation
Federal Railroad Administration

FRA Categorical Exclusion Companion Guide
Revised August 2019

Background

The National Environmental Policy Act (NEPA) requires federal agencies to consider the potential environmental impacts of their proposed actions (see 40 Code of Federal Regulations (CFR) parts 1500–1508). In certain circumstances, an agency may determine that its action is categorically excluded from further review under NEPA. Categorical exclusions (CEs) are categories of actions (i.e., types of projects) an agency has determined, based on its experience, typically do not individually or cumulatively have a significant effect on the human environment and which generally do not require the preparation of either an environmental impact statement (EIS) or an environmental assessment (EA). The Federal Railroad Administration (FRA) has established a number of CEs, which are available at 23 CFR part 771.116.

FRA makes the final decision whether a CE is the appropriate class of action for a proposed action/project or whether an EA or EIS is necessary. FRA typically makes this decision based on information provided by the project sponsor that has developed a CE worksheet to help organize this information.

Purpose

This document is intended to serve as a companion to FRA’s CE worksheet. The CE worksheet assists FRA in identifying if a proposed project fits a category of actions excluded from detailed environmental review. However, even if a project fits within one of the identified categories of an excluded action FRA may nonetheless determine it is not eligible for a categorical exclusion if the project will have unusual circumstances.¹ In instances where a CE is not appropriate, an EA or EIS will be prepared in accordance with guidance provided by FRA environmental staff.

I. Project Description

Section I of the FRA CE worksheet contains basic project information—including the project title, type of grant, or FRA action triggering NEPA.

The “description of the proposed action (project)” describes the project components, relevant project background, the project’s potential to positively or negatively affect environmental resources, and/or any changes to rail service. Also, include the total project cost, if known.

This section should also include a description of the proposed action/project area, a list of required construction activities, potential project-related property acquisition, utility relocations, and construction activities that may require a temporary change in transportation access. Also, any state or federal permit or consultation requirements should also be noted.

The “purpose and need of the proposed action” statement should convey enough information to FRA

¹ Unusual circumstances defined at 23 CFR 771.117 (b) 1-4

to understand why the project is being proposed and potential project outcomes.

II. NEPA Class of Action

Section II should list the FRA CE type appropriate for the proposed action/project found at 23 CFR part 771.116. FRA may request the applicant or project sponsor submit documentation to demonstrate that the specific conditions or criteria for the CEs are met and no unusual circumstances are present. In some cases, more than one CE category can be listed for a proposed action/project as appropriate.

If no FRA CE category applies, contact FRA environmental staff.²

III. Project Information for CE

Section III should contain the information necessary to inform FRA's determination on whether a CE is the appropriate class of action for the proposed action/project. Section III also helps identify the required technical studies needed to aid in this determination and the compliance with Federal laws associated with NEPA. For example, required technical studies may include Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act, and Section 7 of the Endangered Species Act.

To complete the CE worksheet, consultation with resource agencies may be necessary. FRA advises project sponsors to coordinate with FRA's environmental staff early in the project planning process to identify which (if any) additional consultations, permits, or technical studies are needed for NEPA compliance.

A. Affected Environment

In this section of the CE worksheet, project sponsors should describe the general environmental characteristics of the proposed action/project area, addressing ecosystems and community conditions. Attach photographs, a map, or diagram of the proposed action/project area.

The map or diagram should identify locations of critical resource areas such as wetlands, potential historic sites, parks and recreational areas, or sensitive noise receptors such as schools, hospitals, and residences, if applicable. If these types of critical resource areas are present, describe how the proposed action/project will affect these resource areas within the applicable sections of the CE worksheet.

B. Location & Land Use

In this section of the CE worksheet, project sponsors should provide evidence that the project is

² For projects initiated after November 28, 2018, in some circumstances, FRA may apply the Federal Highway Administration and Federal Transit Administration's categorical exclusions (see 23 CFR 771.116(d)).

compatible with surrounding land uses and zoning, such as describing local land use or any comprehensive plans as they relate to the proposed action/project.

Indicate whether work is to be completed within existing railroad rights-of-way. For fixed facilities, attach a map or diagram identifying the location of the proposed project area and the surrounding land uses and zoning.

C. Cultural Resources

To complete this section of the CE worksheet, project sponsors should identify if their project may disturb or adversely affect a cultural resource/historic property.

Project sponsors should first define an Area of Potential Effects (APE). The APE is the geographic area in the vicinity of the proposed project within which the proposed project may directly or indirectly cause changes to the character or use of a cultural resource/historic property. The APE may extend beyond the immediate project area depending upon the project's visibility from surrounding areas. The APE should be depicted on a map or aerial image.

The project sponsor then needs to determine if a building, structure, object, historic district or site (including archaeological sites) that is older than 50 years of age is present within the APE. Information regarding the presence of cultural resources/historic properties can be obtained and verified with the State Historic Preservation Officer (SHPO) or through a cultural resource professional. If research shows that there are no known cultural resources/historic properties in the APE, including those important to Federally recognized Native American Tribes, the project is not likely to affect cultural resources. Document this information on the CE worksheet and continue to section D.

If the APE contains a building, structure, object, historic district or site (including archaeological sites) that is older than 50 years of age, including those important to Federally recognized Native American Tribes, the project may affect a cultural resource/historic property (e.g., from ground disturbance or alteration of a view shed). If there are known cultural resources/historic properties present within the project's APE, complete section C.

To complete section C, project sponsors should coordinate early with FRA environmental staff.

Project sponsors should propose to FRA what elements of the scope of work they feel are exempted from further Section 106 review by the Advisory Council on Historic Preservation's (ACHP) Program Comment to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way (Section 106 Program Comment). The list of Exempted Activities found in Appendix A of the Section 106 Program Comment is a comprehensive list of maintenance, repair, and upgrade activities that the ACHP has determined are likely to result in minimal to no adverse effects primarily to existing historic rail properties in rail rights-of-way. Project sponsors need to provide FRA environmental staff with a description of the project activities, their proposed Exempted Activity List number per activity, and

associated supporting documentation in order to exempt the scope of work from further Section 106 review. FRA environmental staff will verify if the project activities are exempted under the Section 106 Program Comment or if further consultation with the SHPO is necessary.

Project sponsors will work with FRA environmental staff to ensure that the Section 106 process is completed if there are elements of the scope of work that are not covered by the Section 106 Program Comment. FRA staff will use information provided by the project sponsor to make a final Section 106 determination for the proposed project, and consult with SHPO, a Tribal Historic Preservation Officer (if required), and other interested parties.

These processes are required for the CE. FRA environmental staff will record and attach any correspondence and concurrence related to Section 106 NHPA to the CE worksheet.

D. Parks and Recreational Facilities

List all publicly owned or accessible parks and/or recreational facilities along with any wildlife refuges in or adjacent to the proposed project area in this section of the CE worksheet and provide a map that identifies these areas. Describe the recreational uses of the parks and any direct and/or potential impacts that may be caused by the proposed action/project.

Impacts to publicly owned parks, recreational facilities, and wildlife refuges require additional documentation and coordination under Section 4(f) of the Department of Transportation Act. Project sponsors should work with FRA environmental staff to verify the presence of properties that require Section 4(f) documentation and coordination within the project area, and complete any Section 4(f) reporting or coordination as required per statute (49 U.S.C. part 303 and 23 U.S.C. part 138).

E. Transportation

In this section, project sponsors should describe how the proposed project will benefit or adversely affect local transportation—including but not limited to railway operations, road traffic, or increased demand for parking. Also, briefly describe whether the proposed action includes an increase in the number of trains operated per day, an increase or decrease in operational speeds, an increase or decrease in the length of trains operated, and the associated impacts of these changes.

If new stations or loading facilities are proposed, describe and document the road traffic impacts from accessing the new or modified site, such as changes to road capacity or parking demand. Indicate the extent/duration of impacts and provide maps or diagrams to illustrate these impacts. Also, summarize and attach documentation of any consultation with affected railroads, transit, or highway authorities.

F. Noise and Vibration

Noise and vibration can come from various sources, such as additional trains, increased speeds, or

stationary facilities and may affect sensitive receptors or noise-sensitive land uses. A 'receiver/receptor' is defined by FRA as a stationary far-field position at which noise or vibration levels are specified. Examples of sensitive receptors are residences, hospitals, schools, and parks within the immediate vicinity of the proposed project. If these receptors are present, project sponsors should identify these receptors on a map or diagram and mark the distance from the proposed action/project area.

If the proposed action/project is anticipated to change either the noise or vibration exposure to sensitive receptors, complete and attach a General Noise and/or Vibration Assessment. This assessment analyzes airborne noise or vibration. Use the FTA's Transit Noise and Vibration Impact guidance manual for rail operations under 120 mph and the FRA High-Speed Ground Transportation Noise and Vibration Impact Assessment guidance manual for high-speed passenger rail operations. Consult with FRA environmental staff on which manual to use for the project if you have a question. Both manuals are found on FRA's website: <https://www.fra.dot.gov/Page/P0216>.

Describe the results of the assessment and any mitigation that will address potential impacts. Also, note any anticipated temporary or short-term noise or vibration increases related solely to project construction along with any mitigation that will address potential construction impacts.

G. Air Quality

Describe any impacts to air quality from the proposed project/action and whether these effects are beneficial or adverse. Include a discussion of impacts to National Ambient Air Quality Standards and impacts to areas that meet or do not meet these standards. The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards (NAAQS) for six common air pollutants (also known as "criteria air pollutants"). These pollutants are: Carbon Monoxide (CO), Ozone (O₃), Particulate Matter (PM₁₀ and PM_{2.5}), Nitrogen Oxide (NO_x), Sulphur Dioxide (SO₂), and Lead (Pb). These pollutants are found all over the U.S. and can harm your health, the environment, and cause property damage. The EPA designates areas as meeting (attainment) or not meeting (nonattainment) NAAQS. Nonattainment areas that are currently meeting NAAQs are re-designated by the EPA as attainment areas with a maintenance plan, these areas are referred to as maintenance areas. To determine whether your project is located in a non-attainment or maintenance area for criteria air pollutants, refer to EPA's Green Book: <https://www.epa.gov/green-book>

Indicate whether the release of any of these emissions will lead to levels that exceed the NAAQS, lead to the establishment of a new non-attainment area, or delay achievement of attainment and provide supporting documentation. Be sure to include relevant analysis for each non-attainment or maintenance area affected by the proposed project.

If there will be substantial air quality impacts from the proposed action/project, provide an emissions analysis for General Conformity of the Clean Air Act, regarding the criteria pollutants and any substantial impacts from the proposed action/project. For more information on General Conformity,

see EPA's General Conformity website at <https://www.epa.gov/general-conformity>

H. Hazardous Materials

Hazardous waste materials include petroleum products, pesticides, organic compounds, heavy metals, or other compounds injurious to human health and the environment.

Project sponsors should identify if the proposed project will involve the use, handling, or movement of hazardous materials as defined in the Hazardous Materials Regulations (49 CFR Parts 100 – 185). If hazardous materials will be used, handled, or transported as a result of the project, describe the use and measures that will mitigate any potential for release and contamination.

I. Hazardous Waste:

Document if the proposed project location is at a site that was previously developed or used for industrial or agricultural production. Contact local officials for property and zoning records to obtain this information. If hazardous waste is a concern, detail the results of consultation with the relevant local, state, and/or Federal agency regarding the proposed remediation on the CE worksheet. If the project does not pose any concern regarding hazardous waste, provide a basis for this determination, and describe the steps taken to determine that hazardous materials are not present within the vicinity of the proposed project site.

If real property is to be acquired, the project sponsor should complete a Phase I site assessment to determine if contaminated soil and groundwater are present, and provide the Phase I assessment documentation to FRA with the completed CE worksheet. A Phase II site assessment may also be required if there is a presence of contaminated soils. Consult with FRA regarding these issues prior to acquiring land or other physical facilities with FRA funds.

J. Property Acquisition

Describe any land and property acquisitions identified as necessary for the project and any resulting displacements of businesses and residences within the CE worksheet. If not already provided earlier in the CE worksheet, include a site map or diagram identifying the property to be acquired, the land uses and resources of the project site, and those adjacent to the site.

Acquiring property before FRA has completed the NEPA process may jeopardize Federal financial participation in the project.

K. Community Disruption and Environmental Justice

Project sponsors should provide an overview of the socio-economic profile of the community where the proposed action/project is located. Describe the community composition of the affected area and determine whether minority populations, low-income populations, elderly, or Native American

populations are present. If these populations are present determine and describe whether there will be disproportionately high or adverse impacts from the proposed project to these communities.

Project sponsors should also identify community resources and any potential impacts to these resources from the proposed action/project. This may include any areas of the community that may potentially be disrupted, displaced, or segmented by the project. Indicate and document if there is any known project opposition or outreach to the community about the proposed project.

L. Impacts on Wetlands

Project sponsors should identify if wetlands are located within the project vicinity and verify on the CE worksheet how this determination was made. Wetlands can be identified using an online mapping tool: <https://www.fws.gov/wetlands/data/mapper.html>. Describe any potential impacts of the proposed project on wetlands and wildlife, considering both impacts from construction and operation of the project. Be sure to include information regarding the location, type, and extent of wetlands that may be affected. Provide a basis for this determination and provide measures to minimize adverse impacts and to avoid any disturbance of wetlands and the water resources supplying them.

FRA environmental staff and the project sponsor will consult with the U.S. Fish and Wildlife Service (FWS), U.S. Army Corps of Engineers, or the appropriate State Wildlife or Natural Resources agency, as necessary. A Clean Water Act permit (i.e., Section 404) may be required from the U.S. Army Corps of Engineers depending on the impacts to wetland and habitat. Attach relevant decision correspondence, concurrences, and/or copies of permits.

M. Floodplain Impacts

Use Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRMs) maps to determine whether the project is located within the 100-year floodplain. Most known floodplains have been mapped and are available for review at local zoning or planning commission offices or online at the FEMA Map Service Center: <https://msc.fema.gov/portal/home>.

If the proposed action/project is not located within a floodplain and does not involve changes in the existing pattern of water runoff, then a detailed analysis is not required.

If the proposed action/project is located within a 100-year floodplain, address possible flooding of the proposed project site and possible flooding induced by the proposed project due to its impact on floodplain capacity. Include a detailed analysis of any risk to, or resulting from, the action; the impacts on natural and beneficial floodplain values; the degree to which the action provides direct or indirect support for development in the floodplain. Additionally, discuss measures to minimize harm or to restore or preserve the natural and beneficial floodplain values affected by the project.

N. Water Quality

Determine whether the proposed project will impact water quality and provide the basis for the determination. Rail projects can impact water quality by increasing runoff, generating wastewater, or altering surface or sub-surface drainage patterns. Indicate whether the project is adjacent to protected waters, essential fish habitats, or drinking water resources. Maps of essential fish habitats are available at: <http://www.noaa.gov/fisheries.html>

If a project results in discharges of wastewater into the stormwater system, a permit may be required under the National Pollutant Discharge Elimination System (NPDES). If a project may affect ground water, one or more aquifers, or a recharge area, consult with the appropriate water resource district hydrologist early in the planning stages. Additionally, initiate early consultation with the EPA Regional Administrator if the project has direct or indirect contamination of a sole or principal source aquifer, a recharge zone for such an aquifer, or a related streamflow source zone that has been designated or for which a petition for designation is being processed.

O. Navigable Waterways

Determine whether the project is located within or affecting a navigable waterway. Navigable waterways are defined by the US Army Corps of Engineers as those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high-water mark—and that are presently used, have been used in the past, or may be susceptible to use for transport of interstate or foreign commerce. Projects that affect navigable waterways are subject to permitting and review; it will be necessary to consult with the US Coast Guard to determine impacts. The US Army Corps of Engineers must also authorize any construction over navigable waterways. Consult with the appropriate agency to coordinate any permitting requirements. More information can be found: <https://www.epa.gov/cwa-404/guidance-identify-waters-protected-clean-water-act>

P. Coastal Zones

If the proposed project is located within a coastal zone, determine if the project's State is participating in the National Coastal Zone Management Program. For a list of participating States and territories, see: <https://coast.noaa.gov/czm/mystate/>. If the project's State is participating, provide evidence that the project is consistent with the coastal management plan and obtain written concurrence from the administering state agency, which is typically the state Department of Natural Resources or equivalent agency.

Q. Prime and Unique Farmlands

Consult with appropriate Natural Resources Conservation Service (NRCS) State office or USDA State Land Use Committee chairperson for technical data to determine if prime or unique farmland is within the proposed project area. Local NRCS staff and/or FRA staff can provide assistance in making prime and unique farmland determinations, and if farmland becomes [converted](#) as part of the proposed project. If this resource is within the project area, include the [NRCS Important Farmlands Inventory/Important Farmlands Maps](#) and the [NRCS Statewide list of soil mapping units](#)

[and results of standard soil surveys](#) with the CE worksheet. Attach relevant decision correspondence, concurrence letters, and/or permit copies to the completed CE worksheet. Find your local NRCS contact online: <http://www.nrcs.usda.gov/about/organization/regions.html>

R. Critical Habitat and Endangered Species

Identify and describe in the CE worksheet any critical habitat and endangered species that may be present in or adjacent to the proposed project area. Habitat may include forested areas, prairie, geologic formation, or type of wetland areas. For additional information see: <http://criticalhabitat.fws.gov/crithab/>

Section 7 of the Endangered Species Act requires FRA to ensure that no Federally funded rail projects will jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. FRA staff will consult with FWS or National Marine Fisheries Service (NMFS) if needed. For local FWS Endangered Species Program contacts by region, see: <http://www.fws.gov/Endangered/>

For a listing of endangered and threatened species (wildlife and flora/fauna), including listings by geographic area, see: <https://www.fws.gov/endangered/species/us-species.html>. If the list provided to FRA by the project sponsor is older than six months, verify on the CE worksheet that there have been no changes.

If there is no likelihood of a Federally listed endangered, threatened, or proposed species within the project area, document this on the CE worksheet, and this section is complete.

Document on the CE worksheet if an endangered species, threatened species, or habitat is present but is not affected by the proposed project. Include on the CE worksheet what the species is, its location, and how the determination was made. FRA will confirm whether additional steps are necessary to complete the resource analysis.

If endangered species, threatened species, or habitat is present and affected by the proposed project, Section 7 consultation will be required. Coordination between FRA and FWS or NMFS should be initiated by FRA as appropriate, and additional steps are necessary to complete the resource analysis. This may include the preparation of a Biological Assessment.

S. Public Safety

Consider safety and security issues of the proposed project/action and document this information on the CE worksheet. This may include the safety and security of employees, passengers, and pedestrians as well as the safety and security of vehicles, platforms, or stations, and security of the project and its facilities as well as any potential construction safety concerns. This should also include any safety impacts, positive or negative, from modal shifts or new threats.

T. Cumulative Impacts

The CE worksheet provides a definition of cumulative impacts. Determine if cumulative impacts will likely result for any specific resource based on this definition by conducting a cumulative impacts analysis. Council on Environmental Quality (CEQ) guidance identifies methods for analyzing cumulative effects, including: questionnaires, interviews and panels, checklists, matrices, networks and system diagrams, modeling, trends analysis, overlay mapping and geographic information systems, carrying capacity analysis, ecosystem analysis, economic impact analysis, and social impact analysis. The analysis requires careful development of a “no-build” alternative scenario that includes reasonably foreseeable future actions. Coordination with FRA environmental staff and local officials is an important part of identifying other projects that should be included as part of the no-build alternative.

U. Indirect Impacts

Identify any likely indirect impacts resulting from the project. Indirect effects (effects caused by the project, but occurring later in time or farther in distance than direct impacts) include changes in land use attributable to the proposed project (induced growth) and impacts to environmental resources from the project’s influence on land use. The definition of indirect effects also includes other potential environmental impacts caused by a project, such as the effect of habitat fragmentation on species viability over time or changes in wetland functions due to stormwater runoff.

V. Mitigation

Describe any and all mitigation measure commitments that are incorporated into the proposed project to address identified impacts. Mitigation measures should be developed in coordination with applicable resource agencies and FRA, so groups can identify and work through possible sources of conflict and develop agreements to advance these projects. Describe any plan developed to monitor and enforce the proposed mitigation.

Mitigation measures include (as defined by 40 CFR 1508.20):

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

W. Public Notification

Detail any outreach efforts that have occurred to notify the public about the proposed action/project

in this section (e.g., board meetings, open houses, and special hearings). Also, indicate other opportunities the public has had to comment on the proposed action/project, even if these were not efforts directly undertaken by the project sponsor (e.g., media coverage, city or town council meetings) or through the NEPA-related actions.

X. Related Federal, State, or Local Actions

Does the proposed project require any additional actions (e.g., permits) by other agencies? Attach copies of relevant correspondence. It is not necessary to attach voluminous permit applications if a single cover Agency transmittal will indicate that a permit has been granted. Permitting issues should be described in the relevant resource discussion on the CE worksheet.

Section 106 – Historic Properties: <https://www.fra.dot.gov/Page/P1008>

Clean Water Act: <https://www.epa.gov/laws-regulations/summary-clean-water-act>

US Coast Guard – Bridge Permit: <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Bridge-Programs/Bridge-Permit-Application-Process/>

Migratory Bird Treaty Act Endangered Species Act:
<https://www.fws.gov/laws/lawsdigest/migtrea.html>

Section 7 Endangered Species Act: <https://www.fws.gov/endangered/laws-policies/>

Magnuson-Stevens Fishery Conservation and Management Act:
<https://www.fisheries.noaa.gov/topic/laws-policies#magnuson-stevens-act>

Safe Drinking Water Act: <https://www.epa.gov/sdwa>

Section 6(f) Land and Conservation Act: <https://www.nps.gov/subjects/lwcf/protection.htm> **Other State or Local Requirements** (Describe)

Additional permit and links to specific resources are found on FRA's website:
<https://www.fra.dot.gov/Page/P1148>

23 CFR part 771.116 FRA Categorical Exclusions. (for use after November 28, 2018)

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FRA's past experience with similar actions, do not involve significant environmental impacts. They are actions that do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FRA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FRA determines fall within the following categories of FRA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FRA approval. FRA may request the applicant or project sponsor submit documentation to demonstrate that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.

- (1) Administrative procurements (e.g., for general supplies) and contracts for personal services and training.
- (2) Personnel actions.
- (3) Planning or design activities that do not commit to a particular course of action affecting the environment.
- (4) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
- (5) Internal orders, policies, and procedures not required to be published in the Federal Register under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).
- (6) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916.
- (7) Financial assistance to an applicant where the financial assistance funds an activity that is already completed, such as refinancing outstanding debt.
- (8) Hearings, meetings, or public affairs activities.
- (9) Maintenance or repair of existing railroad facilities, where such activities do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and

maintenance-of-equipment bases.

(10) Emergency repair or replacement, including reconstruction, restoration, or retrofitting, of an essential rail facility damaged by the occurrence of a natural disaster or catastrophic failure. Such repair or replacement may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the rail facility's original construction.

(11) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not significantly alter the traffic density characteristics of existing rail service.

(12) Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.

(13) Acquisition or transfer of real property or existing railroad facilities, including track and bridge structures; electrification, communication, signaling or security facilities; stations; and maintenance of way and maintenance of equipment bases or the right to use such real property and railroad 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 or facilities.

(14) Research, development, or demonstration activities on existing railroad lines or facilities, such as advances in signal communication or train control systems, equipment, or track, provided that such activities 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 or facility.

(15) Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.

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

(17) The rehabilitation, reconstruction or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects that are 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, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.

(18) Acquisition (including purchase or lease), rehabilitation, transfer, or maintenance of vehicles or equipment, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment, that does not significantly alter the traffic density characteristics of an existing rail line.

(19) Installation, repair, and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication, or operational efficiency that

take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair, or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(20) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations, and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to stormwater oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

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

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

(d) Any action qualifying as a CE under 771.117 or 771.118 may be approved by FRA when the applicable requirements of those sections have been met. FRA may consult with FHWA or FTA to ensure the CE is applicable to the proposed action.