Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air Pollution Control, Environmental protection, National parks, Wilderness areas.

Dated: January 4, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–520 Filed 1–16–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 262

[Docket No. FRA 2005–23774, Notice No. 1]

RIN 2130–AB74

Implementation of Program for Capital Grants for Rail Line Relocation and Improvement Projects

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) amends chapter 201 of Title 49 of the United States Code by adding section 20154. Section 20154 authorizes—but does not appropriate—$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. Section 20154 directs the Secretary of Transportation (Secretary) to issue regulations implementing this grant program, and the Secretary has delegated this responsibility to FRA. This NPRM proposes a regulation intended to carry out that statutory mandate. As of the publication of this NPRM, Congress had not appropriated any funding for the program for FY 2006 or FY 2007.

DATES: (1) *Written Comments:* Written comments must be received on or before March 5, 2007. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* Requests for a public hearing must be in writing and must be submitted to the Department of Transportation Docket Management System at the address below on or before March 5, 2007. If a public hearing is requested and scheduled, FRA will announce the date, location, and additional details concerning the hearing by separate notice in the **Federal Register**.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA 2005–23774 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John A. Winkle, Transportation Industry Analyst, Office of Railroad Development, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 13, Washington, DC 20590 (*John.Winkle@fra.dot.gov* or 202–493–6320); or Elizabeth A. Sorrells, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (*Betty.Sorrells@fra.dot.gov* or 202–493–6057).

SUPPLEMENTARY INFORMATION:

I. Background

Much of the economic growth of the United States can be linked directly to the expansion of rail service. As the nation moved westward, railroads expanded to provide transportation services to growing communities. No

event better illustrates this point than the ''golden spike'' ceremonies at Promontory Point, Utah in 1869 that ushered in transcontinental rail service. Travel times between the Atlantic and Pacific coasts were dramatically reduced opening numerous new markets for both passenger and freight operations. Municipalities throughout the country knew that their economic success rested on being served by the railroad and many offered incentives to railroads for the chance to be served. As a result, many communities' land use patterns are developed around the railroad lines that became an economic artery as important as ''Main Street.'' By 1916, rail expansion peaked as miles of road owned [1] reached 254,251.

Soon after the end of the Second World War, the railroads' competitors—the auto, truck, air, pipeline and modern barge industries—proved to be superior to the railroads in responding to many of the growing demands for speed, convenience and service quality that characterized the evolving economy of the 20th century. Mired in stifling economic over-regulation, railroads were unable to respond effectively to the competitive challenges facing them. These changes had a dramatic effect on rail's market share. From nearly 80 percent of the intercity freight market in the early 1920s, rail share fell to less than 37 percent in 1975. The decline was even more dramatic with regard to passenger service. The industry responded by cutting excess capacity, often through bankruptcy. By 1975, miles of road owned had fallen to 199,126, a 22 percent decline from 1916. The most current data from 2004 shows a further decline to 140,806 road miles or 45 percent fewer miles than was available in 1916.

By the early years of the 21st century up to the present time, however, the rail industry has made a significant turnaround. Beginning with rate deregulation ushered in by the Staggers Act in 1980, and a number of other favorable changes, railroads have introduced innovative services and modern pricing practices, and, as a result, have become profitable and have recaptured market share. Between 1985 and 2004, revenue ton-miles [2] nearly doubled from 876.9 billion to 1.7 trillion. Rail's market share of intercity revenue freight is approaching 45 percent. This growth is being accommodated on a system that shrunk in response to conditions noted above. The smaller physical plant is handling greater and greater freight volumes.

The clearest evidence of more intense use of the industry's plant is found in measuring ''traffic density.'' ''Traffic density'' is the millions of revenue ton-miles per owned mile of road. In 1985, this indicator stood at 6.02. By 2004, this figure had nearly tripled to 17.02 millions of revenue ton-miles per mile of road owned. This more intense use of rail infrastructure is especially challenging in communities that developed adjacent to or around rail lines, most built over a century ago on alignments appropriate to the times.

As a result, in many places throughout the country, the rail infrastructure that was once so critical to communities now presents problems as well as benefits. For example, the tracks that run down the middle of towns separate the communities on either side. Rail yards and tracks occupy valuable real estate. Trains parked in sidings may present attractive nuisances to children and vandals, and, in the case of tank cars containing hazardous materials, may present serious security or health risks. Grade crossings may present safety risks to the cars and pedestrians that must cross the tracks. These same crossings create inconveniences when long trains block crossings for extended periods of time and sound horns as they operate through crossings in neighborhoods. In some cases, trains operate over lines at speeds that are suited for the type of track but often present safety concerns to those in the surrounding community. In some cases, rail lines have become so congested that communities experience what they perceive as almost continuous train traffic. In short, rail lines, which once brought economic prosperity and social cohesion, are now sometimes viewed as factors that decline both.[3]

In an effort to satisfy all constituents, state and local governments are looking for ways to eliminate the problems created by the increased demand on the infrastructure while still maintaining the benefits the railroad provides. Many times, the solution is merely to relocate the track in question to an area that is better suited for it. For example, a recently completed relocation project in Greenwood, Mississippi eliminated twelve at-grade highway-rail crossings, which greatly improved safety for motorists and eliminated blocked crossings. With that success in mind, Mississippi is currently looking to relocate two main lines that run through the heart of the Central Business District in Tupelo. Combined, these two lines cross 26 highways in the city, and all but one are at-grade crossings. One of the options the State is considering is laterally relocating the lines outside of the business district. FRA would like commenters to discuss other potential projects that could benefit from the program implemented by this regulation.

In some situations, vertical relocation may be the best solution. For example, Nevada has undertaken the Reno Transportation Rail Access Project (ReTRAC), the purpose of which is to ''sink'' 33 feet below the ground in a trench the approximately 2.25 mile segment of main line track that runs through Reno. Both the Union Pacific Railroad Company (UP) and Amtrak operate over this line. The project will allow for the closing of 11 grade crossings and will generally improve both highway efficiency and safety as well as the safety and efficiency of the trains that operate through Reno. Many of these relocation projects, like the ReTRAC project, are expensive, and state and local governments lack the resources to undertake them.[4] When commenting on potential projects, FRA requests that commenters discuss the estimated costs of those projects.

In addition to relocation projects, many communities are eager to improve existing rail infrastructure in an effort to mitigate the perceived negative effects of rail traffic on safety in general, motor vehicle traffic flow, economic development, or the overall quality of life of the community. For example, in an effort to improve train speed and reduce the risk of derailments, rail lines that were built a century ago with sharp curves can be straightened. In addition, significant efficiencies can be gained and safety enhanced by, as examples, extending passing tracks and yard lead tracks, and adding track circuits and signal spacing changes.

II. SAFETEA–LU

On August 10, 2005, President George W. Bush signed SAFETEA–LU, (Pub. L. 109–59) into law. Section 9002 of SAFETEA–LU amended chapter 201 of Title 49 of the United States Code by adding a new § 20154, which establishes the basic elements of a funding program for capital grants for local rail line relocation and improvement projects.

[1] This measure is the aggregate length of roadway and excludes yard tracks and sidings, and does not reflect the fact that a mile of road may include two, three or more parallel tracks.

[2] A ton of any commodity transported one-mile.

[3] In some locations, passenger trains, both intercity and commuter, will continue to serve downtown locations. Passenger trains generally operate less often than freight trains, are shorter, and, therefore, do not create the extensive problems that freight trains do.

[4] The ReTRAC project is expected to cost in excess of $260,000,000.

Subsection (b) of the new § 20154 mandates that the Secretary issue ''temporary regulations'' to implement the capital grants program and then issue final regulations by October 1, 2006. This NPRM proposes a regulation intended to carry out that statutory mandate.

In order to be eligible for a grant for an improvement construction project, the project must mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, including noise mitigation, or economic development, or involve a lateral or vertical relocation of any portion of the rail line, presumably to reduce the number of grade crossings and/or serve to mitigate noise, visual issues, or other externality that negatively impacts a community. A more detailed explanation of the rule text is provided below in the Section-by-Section Analysis.

Congress authorized, but did not appropriate, $350 million per year for each fiscal year 2006 through 2009. At least half of the funds awarded under this program shall be provided as grant awards of not more than $20 million each. A State or other eligible entity will be required to pay at least 10 percent of the shared costs of the project, whether in the form of a contribution of real property or tangible personal property, contribution of employee services, or previous costs spent on the project before the application was filed. The state or FRA may also seek financial contributions from private entities benefiting from the rail line relocation or improvement project.

In SAFETEA–LU, Congress directed FRA to issue ''temporary regulations'' by April 1, 2006. Under the Administrative Procedure Act and Executive Orders governing rulemaking, FRA could comply with Congress's deadline only by issuing a direct final rule or an interim final rule by April 1, 2006. However, the FRA cannot use either a direct final rule or an interim final rule because the legal requirements for using those instruments cannot be satisfied. The case law is clear that a statutory deadline does not suffice to justify dispensing with notice and comment prior to issuing a rule on grounds that notice and comment are ''impracticable, unnecessary, or contrary to the public interest'' under Section 553(b)(B) of the Administrative Procedure Act. Because as of this date no funding has been appropriated for the program and no projects can be funded at this time, FRA believes the purposes of SAFETEA–LU can best be met by proceeding in lieu of an interim final rule with an NPRM, which satisfies the requirements of the Administrative Procedure Act and allows for greater public participation in the rulemaking process.

III. Section-by-Section Analysis

SAFETEA–LU contains very specific language regarding implementation of the rail line relocation and improvement program. In several sections, the language in this proposed regulation is reprinted directly from SAFETEA–LU. Given such an unambiguous statutory mandate, FRA has made only a few additions in this proposed regulation to include language that was not in the statute. For those sections, there is a further discussion of FRA's intent and a request for comments. This Section-by-Section Analysis does not discuss Congressional intent.

Section 262.1 Purpose

This section merely states that the purpose of this NPRM is to carry out the Congressional mandate in § 9002 of SAFETEA–LU by promulgating regulations which implement the grant financial assistance program for local rail relocation and improvement projects set forth in new § 20154 of Title 49 of the United States Code.

Section 262.3 Definitions

Act

When used in this Part, ''Act'' means SAFETEA–LU.

Administrator

This definition makes clear that when the term ''Administrator'' is used in this Part, it refers to the Administrator of the Federal Railroad Administration. It also provides that the Administrator may delegate authority under this rule to other Federal Railroad Administration officials.

Allowable costs

This definition makes clear that only costs classified as ''allowable'' will be reimbursable under a grant awarded under this Part. Specifically, construction costs are the only costs that are reimbursable.

Construction

This definition sets out the types of project costs that are contemplated as being reimbursable under this Part. Only these costs will be allowable under a grant from this program. This definition closely tracks 49 U.S.C. 20154(h)(1). Subsection 20154(h)(1)(F) gave the Secretary the authority to prescribe additional costs, other than those specifically listed in § 20154(h)(1), as allowable under this Part. As the authority to promulgate this rule has been delegated to FRA by the Secretary, subsection (6) makes clear that FRA has that authority to prescribe additional costs. In addition, subsection (6) also makes clear that architectural and engineering costs associated with the project as well as costs incurred in compliance with applicable environmental regulations are considered construction costs, and will be allowable. Because FRA has some discretion with regard to this definition, commenters are invited to suggest additional costs that might be allowable under the regulation.

FRA

This definition makes clear that when the term ''FRA'' is used in this Part, it refers to the Federal Railroad Administration.

Improvement

The program established by the Act is intended to provide funds for both rail line relocation and improvement projects. This definition makes clear the types of projects that fall under the category of ''improvements.'' FRA considers improvements to be projects such as those that repair defective aspects of a rail system's infrastructure, projects that enhance an existing system to provide for improved operations, or new construction projects that result in better operational efficiencies. Examples include track work that increases the class of track, signal system improvements, and lengthening existing sidings or building new sidings. FRA invites comments on the definition of ''improvement'' as well as the types of projects that should be considered. Commenters should keep in mind, however, that any project must achieve the goals set forth in § 262.7(a)(1).

Non-Federal Share

This definition indicates that Non-Federal share means the portion of the allowable cost of the local rail line relocation or improvement project that is being paid for through cash or in-kind contributions by a State or other non-Federal entity.

Private Entity

This definition makes clear what types of entities are contemplated under § 262.13. A private entity must be a nongovernmental entity, but can be a domestic or foreign entity and can be either for-profit or not-for-profit.

Project

This definition makes clear that the term ''project'' refers only to a local rail line relocation or improvement project

undertaken with funding from a grant from FRA under this Part.

Quality of Life

FRA is requesting comments on what factors should be considered when measuring ''quality of life.'' The Act requires only that the definition include first responders'' emergency response time, the environment, noise levels, and other factors as determined by FRA. Thus, Congress left FRA some discretion in determining what else should be considered under this definition. FRA believes ''quality of life'' should include factors associated with an individual's overall enjoyment of life or a community's ability both to function and to provide services to its residents at a reasonable level. Commenters are invited to discuss specific factors that can measure these somewhat amorphous concepts, as well as any other factors that may be appropriate.

Real Property

This definition makes clear that ''real property'' refers to land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Relocation

This definition states what relocation consists of and provides the distinction between the two types of rail line relocations. A lateral relocation occurs when a rail line is horizontally moved from one location to another, usually away from dense urban development, grade crossings, etc., in an effort to allow trains to operate more efficiently and the community surrounding the old line to function more effectively. The typical example is moving a rail line that runs through the middle of a town or city to a location outside of the town or city.

A vertical relocation occurs when a rail line remains in the same location, but the track is lifted above the ground, as with an overpass, or is sunk below ground level, as with a trench. Vertical relocations may be preferable when the community surrounding the rail line still needs the line (for example, when a busy passenger station is located on the line), but the line is causing problems because of its location at grade.

Secretary

This definition makes clear that ''Secretary'' refers to the Secretary of Transportation.

State

This definition is reprinted from SAFETEA–LU and can be found at 49 U.S.C. 20154(h)(3). It makes clear that, for the purposes of this Part except for § 262.17, any of the fifty States, political subdivisions of the States, and the District of Columbia is a ''State'' and eligible for funding from this program. The definition also makes clear, however, that for purposes of § 262.17 only, ''State'' does not include political subdivisions of States, but instead only the fifty States and the District of Columbia.

Tangible Personal Property

This definition indicates that ''tangible personal property'' refers to property that has physical substance and can be touched, but is not real property. Examples of tangible personal property include machinery, equipment and vehicles.

Section 262.5 Allocation Requirements

This section is reprinted directly from SAFETEA–LU and can be found at 49 U.S.C. 20154(d). It mandates that at least fifty percent of all grant funds awarded under this Part out of funds appropriated for a fiscal year be provided as grant awards of not more than $20,000,000 each. Designated, high-priority projects will be excluded from this allocation formula. The statute states that the $20,000,000 amount will be adjusted by the Secretary to reflect inflation for each fiscal year of the program beginning in FY 2007. Under the Secretary's delegation of rulemaking authority to FRA, however, FRA will make the annual inflationary adjustment. In making the adjustment for inflation, FRA will use guidance published by the Association of American Railroads (AAR). Specifically, FRA will use the materials and supplies component of the AAR Railroad Cost Indexes. FRA will make the adjustment each October based on the most recent edition of the Cost Indexes.

Section 262.7 Eligibility

This section is reprinted directly from SAFETEA–LU and can be found at 49 U.S.C. 20154(b). It sets out the eligibility criteria for projects and declares that any state (or political subdivision of a state) is eligible for a grant under this section for any construction project for the improvement of a route or structure of a rail line that either is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle, traffic flow, community quality of life, or economic development, or involves a lateral or vertical relocation of any portion of a rail line. Lateral relocation refers to horizontally moving the rail line to another location while vertical relocation refers to either lifting the rail line above the ground or sinking it below the ground. Subpart (b) of this section also makes clear that only costs associated with construction, as defined in this Part, will be allowable costs for purposes of this Part. Therefore, only construction costs will be eligible for reimbursement under a grant agreement administered under this Part.

Section 262.9 Criteria for Selection of Rail Lines

This section is reprinted almost entirely from SAFETEA–LU and, aside from subsection (f), can be found at 49 U.S.C. 20154. It sets out the criteria for FRA to use in determining which projects should be approved for grants under this Part. It mandates that the Secretary, through FRA, consider the following factors in deciding whether to award a grant to an eligible state (as defined in this Part):

- The capability of the state (as defined in this part) to fund the project without Federal grant funding;
- The requirement and limitation relating to allocation of grant funds provided in § 262.5 of this Part;
- Equitable treatment of the various regions of the United States;
- The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce; and
- The effects of the rail line, relocated or improved as proposed, on the freight and rail passenger operations on the rail line.

In making the determination required by the first factor of the State's capability to fund the project without Federal grant funding, FRA will look at indicators such as the existence of authorized and funded State programs for railroad improvement projects, the State's use of available highway-rail grade crossing improvement funds provided through 23 U.S.C. 130, and other indicia of credit worthiness such as bond ratings. FRA welcomes comments on these indicators as well as proposals for additional information that may be relevant in determining the State's ability to fund the project without Federal grant funding.

With regard to the third factor—equitable treatment of the various regions of the United States—Congress did not indicate how the geographical boundaries of the regions should be determined. For purposes of this regulation, FRA is proposing to divide the country into the same regions that FRA's Office of Safety divides the country for enforcement purposes. FRA's regional boundaries take into account factors such as density of rail

lines, frequency of rail operations, and population centers. For example, FRA's Regions 1 and 2, which encompass all of Amtrak's Northeast Corridor, contain many large cities, and have extensive freight, commuter, and intercity passenger rail operations; cover much less territory that FRA's Region 8, which encompasses the Pacific Northwest, including States such as Montana, Wyoming, and Idaho that have smaller populations, little or no commuter or intercity passenger service, and less frequent freight rail operations. A map of FRA's Regions is included as Appendix A. FRA is soliciting comments on this proposed division of the country and welcomes suggestions for alternative methods.

Subsection (f) states that FRA will consider the level of commitment of non-Federal and/or private funds when determining whether to award a grant under this program. This requirement was not listed in § 20154(c) of SAFETEA–LU, but the statute did not mandate that FRA consider only the listed factors in determining whether to award a grant to an eligible state. The listed factors are fairly comprehensive, but FRA wants to retain the flexibility to consider other factors, as well, that may not be readily apparent. Therefore, FRA added a ''catch-all'' factor to the criteria. Subsection (f) allows FRA to also consider any other factors that the agency deems relevant to assessing the effectiveness and or efficiency of the grant application in achieving the goals of the national program and specifically mentions the level of financial commitment provided by non-Federal and/or private entities noted in § 20154(e)(4)(B). FRA welcomes comments on this addition and any other potential factors that the FRA may consider in determining whether to award a grant.

Section 262.11 Application Process

All grant applications submitted under this program must be submitted to FRA through the Internet at *http://www.grants.gov.* All Federal grant-making agencies are required to receive applications through this website. Potential applicants should note that the information below describes FRA's typical grant application requirements. However, the specific requirements for individual grants will be listed in the ''Instructions'' section for the particular grant for which FRA is accepting applications.

The application process for funds appropriated under § 20154 will differ depending on whether the grant is non-competitive or discretionary (competitive). Non-competitive applications—usually projects designated in the appropriations statute or in the Conference Report accompanying an annual appropriation as high-priority—generally must include the following: (1) A detailed project description; (2) Standard Forms (SF) 424 —Application; SF 424A or C—Budget Information; SF 424B or D—Assurances; Certifications and Assurances, i.e. debarment/suspension/ineligibility, Drug-free Work Place; Lobbying, Indirect Costs; SF 3881—Payment Information; SF 1194—Authorized Signatures; and (3) an Audit History. Potential applicants should keep in mind that these are the typical forms that FRA requests with non-competitive applicants. FRA may not require all of these for a particular application.

For a discretionary (competitive) grant, applicants will be provided with certain basic information covering deadlines and addresses for submitting statements of interest, the entities eligible for funding, an estimate of the amount of funding available and the expected number of awards, and the selection criteria for evaluating statements of interest. A major responsibility of FRA's technical staff will be development of a Source Selection Plan (SSP) to be used for evaluating applications. The SSP will be available to all applicants.

All applicants should keep in mind that no funding will be available for this program unless and until Congress appropriates funding for it. SAFETEA–LU authorized, but did not appropriate, $350 million per fiscal year for each fiscal year 2006 through 2009. As of the publication date of this Part, Congress has not appropriated any funds for fiscal year 2006 or 2007. If Congress appropriates non-competitive funds for a specific project under this Program, FRA will notify the potential recipient of the appropriation. If Congress approves funding for a discretionary grant or grants, FRA will publish a Notice of Funds Availability in the **Federal Register** and eligible applicants will be able to apply for a grant through *http://www.grants.gov.*

Subsection (b) of this section mandates that, when submitting an application, a state must submit a description of the anticipated public and private benefits associated with each proposed rail line relocation or improvement project. The determination of the benefits must be developed in consultation with the owner and user of the rail line being relocated and improved or other private entity involved in the project. Since one of the factors that FRA will consider in selecting projects is the level of commitment of non-Federal and/or private funds available for the project (see proposed section 262.9(f)), applications should also identify the financial contributions or commitments the state has secured from any private entities that are expected to benefit from the proposed project. The language for this subsection is based upon SAFETEA–LU requirements and can be found at 49 U.S.C. 20154(e)(4)(A) and (B).

Subsection (c) of this section allows for a potential applicant to request a meeting with the FRA Associate Administrator for Railroad Development or his designee to discuss a project the potential applicant is considering for financial assistance under this Part. Subsection (c) does not require that such a meeting occur, but it has been FRA's experience that pre-application meetings generally save the potential applicant both time and money, and, therefore, FRA strongly encourages potential applicants to schedule such a meeting.

Section 262.13 Matching Requirements

This section is reprinted entirely from SAFETEA–LU and can be found at 49 U.S.C. § 20154(e). It sets out the requirement that a State (as defined in this Part) or other non-Federal entity shall pay at least ten (10) percent of the shared costs of a project that is funded in part by a grant awarded under this Part. The ten percent may be in cash or in the form of the following in-kind contributions:

- Real property or tangible personal property, whether provided by the State (as defined by this Part) or a person for the State;
- The services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs;
- A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made to comply with a provision of a statute required to be satisfied in order to carry out the project.

Finally, this section states that FRA will consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the anticipated

public and private benefits that accrue to such entities from the project. FRA invites comments and suggestions from commenters on how FRA can best accomplish this requirement. Since project sponsors are most directly involved and familiar with the details of the proposed projects and are required to submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project as a part of the application process, the requirement to seek financial contributions or commitments from private entities might best be accomplished by the project sponsors in assembling the overall financial package to complete the project. This could then be one of the factors to be evaluated by the FRA in deciding whether to proceed with a project or in selecting one project over another should there be more than one project competing for any available funding.

Section 262.15 Environmental Assessment

This section clearly states to all grantees that, in order for FRA to award funding for any project, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related laws, regulations and orders must be complied with. NEPA mandates that before any ''major'' Federal action can take place, the Federal entity performing the action must complete an appropriate environmental review. The use of Federal funds in a project triggers the NEPA process. Thus, because FRA will be providing Federal funds to grantees for local rail line relocation and improvement projects, a completed NEPA review will be required before the agency decides to approve any project. A State may be requested to provide environmental information and/or fund the NEPA review, either directly (if the entity administering the grant is a State agency with statewide jurisdiction) or through a third party contract. FRA's NEPA compliance will be governed by FRA's ''Procedures for Considering Environmental Impacts'' (65 FR 28545) and the NEPA regulations of the Council on Environmental Quality (40 CFR part 1500).

This section also notes several of the other environmental and historic preservation statutes that must be considered during the NEPA review. This is not, however, a comprehensive list of all environmental and historic preservation statutes and implementing regulations that must be considered, but instead merely illustrative of the issues that a State may be required to address in the environmental review.

Section 261.17 Combining Grant Awards

This section is reprinted entirely from SAFETEA–LU and can be found at 49 U.S.C. 20154(f). It allows for two or more States, but not political subdivisions of States, pursuant to an agreement entered into by the States, to combine any part of the amounts provided through grants for a project under this Part, provided the project will benefit each State and the agreement is not a violation of a law of any of the States. SAFETEA–LU specifically excludes political subdivisions of States from taking advantage of this section, but does not exclude the District of Columbia.

Section 261.19 Closeout Procedures

The ''grant closeout'' is the process by which the FRA and grantee perform final actions that document completion of work, administrative requirements, and financial requirements of the grant agreement. FRA, the grantee, and any other involved parties, such as an auditor, need to fulfill these requirements promptly in order to avoid unnecessary delays in grant closeout.

FRA will notify the grantee in writing 30 days before the end of the grant period regarding what final reports are due, the dates by which they must be received, and where they must be submitted. The grantee will be required to submit the reports within 90 days after the expiration or termination of the grant. Copies of any required forms and instructions for their completion will be included with the notification. The financial, performance, and other reports required as a condition of the grant will generally include the following:

- Final performance or progress report;
- Financial Status Report (SF–269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271);
- Final Request for Payment;
- Federally-Owned Property Report. A grantee must submit an inventory of all Federally-owned property (as opposed to property acquired with grant funds) for which it is accountable and request disposition instructions from FRA if the property is no longer needed.

Upon receipt of this information, FRA will determine whether any additional funds are due the grantee or whether the grantee needs to refund any funds. FRA will also determine final costs and, if necessary, make upward or downward adjustments to any allowable costs within 90 days after receipt of reports and make prompt payment to the grantee for any unreimbursed allowable costs. If the grantee has received more funds than the total allowable costs, the grantee must immediately refund to FRA any balance of unencumbered cash advanced that is not authorized to be retained for use on other grants.

FRA will notify the grantee in writing that the grant has been closed out. The grant agreement will in most cases be ready to be closed out before receipt of the single audit report that covers the period of the grant performance. Therefore, the grant will be closed administratively without formal audit. The grant may be reopened later to resolve subsequent audit findings.

The closeout of a grant does not affect FRA's right to disallow costs and recover funds on the basis of a later audit or other review and the grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

IV. Regulatory Impact

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has determined preliminarily that this action represents a ''significant regulatory action'' within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866. This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more because Congress has authorized the appropriation of $350,000,000 per year for fiscal years 2006 through 2009. However, no funds to implement the program were appropriated for fiscal year 2006 and no funds were requested in the Administration's Fiscal Year 2007 budget request. The NPRM was reviewed by the Office of Management and Budget under E.O. 12866.

This section summarizes the estimated economic impact of the proposed rule. As mandated by section 9002 of SAFETEA–LU, this rulemaking proposes establishment of the basic elements of a funding program for capital grants for local rail line relocation and improvement projects. This regulation would affect only those entities that voluntarily elected to apply for the capital grants under section 9002 and were selected to receive a grant under the program. It would not impose any direct involuntary un-reimbursed costs on non-participants. Prospective applicants will normally have available the information needed to prepare applications for funding so these costs would be minimal.

FRA has undertaken a preliminary evaluation of the economic impact of this proposed regulatory action. However, because the number, nature, and size of projects to be assisted would not be known until funds are appropriated and specific applications are received, this analysis is by necessity an estimate. Since the actual projects have yet to be identified, it is also not possible at this stage to ascertain the appropriate benefit/cost ratios. The only costs imposed on the participants (States and political subdivisions) are the costs associated with completing an application and providing the required minimum ten percent non-Federal funding match.

FRA has also concluded that the local rail line relocation and improvement projects capital grants program could generate both direct and indirect benefits, providing economic, safety and environmental benefits. Of the $350 million authorized to be appropriated annually, fifty percent of all grant funds awarded are reserved for projects of no more than $20 million each, adjusted for inflation. Lacking specifics about individual projects, it is difficult to estimate whether the benefits are anticipated to surpass the combined potential direct costs to the Federal Government (potentially $350 million annually) and to the entities that elect to participate in the program. The statutory criteria for evaluating applications do not require a cost/benefit analysis for each project but instead focus on the capability of the state to fund the project without Federal grant funding, the effects of the relocated or improved rail line on traffic, safety, quality of life, area commerce, and freight and passenger operations on the line. Because of the voluntary nature of participation in the program, this regulatory action is not anticipated to impose any non-reimbursed costs upon non-participants (relocation assistance is an eligible program cost which would mitigate impacts to non-participants). The FRA requests comments, information, and data from the public and potential users concerning the economic impact of implementing this rule and the local rail line relocation and improvement projects capital grants program.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth eligibility and selection criteria for project proposals in the local rail line relocation and improvement projects capital grants program, which will result in only minimal cost to program applicants. In addition, this proposed rule would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires a review of rules to assess their impact on small entities. FRA is not able to certify that this proposed rule would not have a significant impact on a substantial number of small entities and seeks comments from the public. For government entities, the definition of small entities is based on population served. As defined by the Small Business Administration (SBA), this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. States are not included in the definition of small entity set forth in 5 U.S.C. 601, but political subdivisions of states may well fall into this category. Given FRA's lack of knowledge about specific projects, applicants or applications that might be filed if Congress appropriated funds for the program, it is not possible to determine the number of small government entities that may be involved in applications under the local rail line relocation and improvement projects capital grants program or the impacts to those entities from the program.

FRA has not conducted a regulatory flexibility assessment of this proposed rule's impact on small entities. FRA views it as unlikely that a small entity such as a local government would be disproportionately impacted by the proposed rule. The capital grants for rail line relocation program could certainly provide benefits to small entities, such as local governments (political subdivisions of a State). The funds being made available through this program could provide economic, safety, and environmental benefits. Moreover, participation in the local rail line relocation and improvement projects capital grants program is voluntary. The statute requires a State or other non-Federal entity to provide at least ten percent of the shared cost of a project funded under this program. To the extent a small entity was providing that non-Federal share, the impact would be calculated by the small entity in deciding whether to file the application under the program.

At the same time, small governmental entities, limited by Section 9002 to political subdivisions of a State, would likely benefit from the economic opportunities resulting from infrastructure improvements to existing rail lines that connect small governmental entities to the national railroad system. As discussed in greater detail in the background section of this NPRM, rail infrastructure that was once critical to many communities can now present problems as well as benefits. To the extent the program can be used by a local government to address an existing problem, it could provide a substantial benefit to the community. The cost to governmental entities of applying for the program would be minimal since applicants will normally have available most of the information needed to prepare applications for a grant under Section 9002.

Written public comments that will clarify the number of affected small entities and what the impacts will be for the affected small entities are requested. FRA especially encourages political subdivisions that may be considered to be small entities to participate in the comment process and submit written comments to the docket.

Small entities, other than political subdivisions of states, are not eligible to apply for relocation or improvement funds, though on a voluntary basis a non-governmental small entity could agree to supply the non-Federal match. The statute also requires the Secretary to consider the feasibility of seeking financial contributions or commitments from private entities involved with a project in proportion to the expected benefits that accrue to such private entities. Project beneficiaries could include small entities; however, without details about specific projects, it is not possible to realistically estimate whether impacts to non-governmental small entities in these circumstances is likely. FRA invites public comment on this component of the analysis, as well.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. This Notice of Proposed Rulemaking contains information requirements that would apply to States or political subdivisions of States that file applications for Federal funding for local rail line relocation and improvement projects.

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
262.11—Application Process	50 States	7 applications	580 hours	4,060	$0 (Cost incl. in RIA).
—Requests for Meeting with FRA	50 States	5 requests	30 minutes	3	$120.
—Meeting Discussions	50 States	5 meetings	2 hours	10	$700.
262.15—Environmental Assessment	50 States	7 documents	200 hours	1,400	$0 (Cost incl. in RIA).
262.19—Close-Out Procedures	50 States	7 document sets	6 hours	42	$1,680.
—Inspection of All Construction Report	50 States	7 reports	80 hours	560	$39,200.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for FRA to properly perform its functions, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collecting information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 21, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan at the following address: *robert.brogan@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related directives (*see* FRA Policy Statement on Procedures for Considering Environmental Impacts, 64 FR 28545). FRA has concluded that the issuance of this NPRM, which establishes regulations governing the awarding of grants for local rail line relocation and improvement projects, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement. Because all projects undertaken with grants administered under this section will involve Federal funding, appropriate NEPA analyses, including studies of any potential environmental justice issues, will be necessary prior to the award of any grant.

E. Federalism Implications

FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This NPRM will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This NPRM will not have federalism implications that impose any direct compliance costs on State and local governments. There will be costs associated with the submission of applications, but they are discretionary and will only be incurred should a State or local government wish to apply for funding. Otherwise, this NPRM directs how Federal funds will go to the States, and thus, there are no federalism implications.

F. Unfunded Mandate Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector.

There are no ''regulatory actions'' contemplated within the meaning of the Unfunded Mandate Reform Act of 1995. Furthermore, this grant program is not an ''unfunded mandate,'' in that there will be no money until Congress specifically appropriates it. The only requirements in this NPRM for funding other than grant funds provided to State and local governments is the ten percent matching requirement, which may

include costs associated with NEPA compliance. That requirement, however, is specifically set forth in § 9002 of SAFETEA–LU and FRA need not assess its effect. This NPRM, therefore, will not result in the expenditure by State, local, or tribal governments, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

V. The Proposed Rule

For the reasons discussed in the preamble, the Federal Railroad Administration proposes to add part 262 to Title 49, Code of Federal Regulations, as follows:

PART 262—PROGRAM FOR CAPITAL GRANTS FOR RAIL LINE RELOCATION AND IMPROVEMENT PROJECTS

Table of Contents for Proposed Part 262

Authority: 49 U.S.C. 20154 and 49 CFR 1.49.

§ 262.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in § 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109–59) that the Secretary of Transportation promulgate regulations implementing new § 20154 of Title 49 of the United States Code, which establishes a capital grants program to provide financial assistance for local rail line relocation and improvement projects.

§ 262.3 Definitions.

Act means the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109–59).

Administrator means the Federal Railroad Administrator, or his or her delegate.

Allowable costs means those project costs for which Federal funding may be expended under this part. Only construction and construction-related costs will be allowable.

Construction means supervising, inspecting, demolition, actually building, and incurring all costs incidental to building a project described in § 262.9 of this part, including bond costs and other costs related to the issuance of bonds or other debt financing instruments and costs incurred by the Grantee in performing project related audits, and includes:

(1) Locating, surveying, and mapping;

(2) Track and related structure installation, restoration, and rehabilitation;

(3) Acquisition of rights-of-way;

(4) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(5) Elimination of obstacles and relocation of utilities; and

(6) Any other activities as defined by FRA, including architectural and engineering costs, and costs associated with compliance with the National Environmental Policy Act, National Historic Preservation Act, and related statutes, regulations, and orders.

FRA means the Federal Railroad Administration.

Improvement means repair or enhancement to existing rail infrastructure, or construction of new rail infrastructure, that results in improvements to the efficiency of the rail system and the safety of those affected by the system.

Non-Federal share means the portion of the allowable cost of the local rail line relocation or improvement project that is being paid for through cash or in-kind contributions by a state or other non-Federal entity.

Private Entity means any domestic or foreign nongovernmental for-profit or not-for-profit organization.

Project means the local rail line relocation or improvement for which a grant is requested under this section.

Quality of Life means the level of social, environmental and economic satisfaction and well being a community experiences, and includes factors such first responders' emergency response time, the environment, grade crossing safety, and noise levels.

Real Property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Relocation means moving a rail line vertically or laterally to a new location. Vertical relocation refers to raising above the current ground level or sinking below the current ground level a rail line. Lateral relocation refers to moving a rail line horizontally to a new location.

Secretary means the Secretary of Transportation.

State except as used in § 262.17, means any of the fifty United States, a political subdivision of a State, and the District of Columbia. In § 262.17, *State* means any of the fifty United States and the District of Columbia.

Tangible personal property means property, other than real property, that has a physical existence and an intrinsic value, including machinery, equipment and vehicles.

§ 262.5 Allocation requirements.

At least fifty percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each. Designated, high-priority projects will be excluded from this allocation formula. FRA will adjust the $20,000,000 amount to reflect real inflation for fiscal years beginning

after fiscal year 2006 based on the materials and supplies component from the all-inclusive index of the AAR Railroad Cost Indexes.

§ 262.7 Eligibility.

(a) A state is eligible for a grant from FRA under this section for any construction project for the improvement of the route or structure of a rail line that either:

(1) Is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or

(2) Involves a lateral or vertical relocation of any portion of the rail line.

(b) Only costs associated with construction will be considered allowable costs.

§ 262.9 Criteria for Selection of Rail Lines.

FRA will consider the following factors in determining whether to award a grant to an eligible State under this part:

(a) The capability of the State to fund the rail line relocation project without Federal grant funding;

(b) The requirement and limitation relating to allocation of grant funds provided in § 262.7;

(c) Equitable treatment of various regions of the United States;

(d) The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

(e) The effects of the rail line, relocated as proposed, on the freight rail and passenger rail operations on the line;

(f) Any other factors FRA determines to be relevant to assessing the effectiveness and or efficiency of the grant application in achieving the goals of the national program, including the level of commitment of non-Federal and/or private funds to a project.

§ 262.11 Application process.

(a) All grant applications for opportunities funded under this section must be submitted to FRA through *www.grants.gov.* Opportunities to apply will be posted by FRA on *www.grants.gov* only after funds have been appropriated for Capital Grants for Rail Line Relocation Projects. The electronic posting will contain all of the information needed to apply for the grant, including required supporting documentation.

(b) In addition to the information required with an individual application, a State must submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in § 262.7(a)(1) and (2). The determination of such benefits shall be developed in consultation with the owner and user of the rail line being relocated or improved or other private entity involved in the project. The State should also identify any financial contributions or commitments it has secured from private entities that are expected to benefit from the proposed project.

(c) Potential applicants may request a meeting with the FRA Associate Administrator for Railroad Development or his designee to discuss the nature of the project being considered.

§ 262.13 Matching requirements.

(a) A State or other non-Federal entity shall pay at least ten percent of the construction costs of a project that is funded in part by the grant awarded under this section.

(b) The non-Federal share required by sub-part (a) of this section may be paid in cash or in-kind. In-kind contributions that are permitted to be counted under this section are as follows:

(1) A contribution of real property or tangible personal property (whether provided by the State or a person for the State) needed for the project;

(2) A contribution of the services of employees of the State or other non-Federal entity or allowable costs, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs;

(3) A payment of any allowable costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application; if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

(c) In determining whether to approve an application, FRA will consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the expected benefits determined under § 262.11(b) of this Part that accrue to such entities from the project.

§ 262.15 Environmental assessment.

The provision of grant funds by FRA under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including, but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. 4332 *et seq.*), Section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)), the National Historic Preservation Act (16 U.S.C. 470(f)), and the Endangered Species Act (16 U.S.C. 1531). Appropriate environmental and historic documentation must be completed and approved by the Administrator prior to a decision by FRA to approve a project for construction. FRA's ''Procedures for Considering Environmental Impacts'' (65 FR 28545 (May 26, 1999)) or any replacement environmental review procedures that FRA may later issue and the NEPA regulation of the Council on Environmental Quality (40 CFR Part 1500) will govern FRA's compliance with applicable environmental and historic preservation review requirements. Applicants will be expected to fund costs associated with FRA NEPA compliance. Those costs will be considered allowable costs should FRA and the state enter into a grant agreement.

§ 262.17 Combining grant awards.

Two or more States, but not political subdivisions of States, may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section provided:

(a) The project will benefit each of the States entering into the agreement; and

(b) The agreement is not a violation of the law of any such State.

§ 262.19 Close-out procedures.

(a) Thirty days before the end of the grant period, FRA will notify the state that the period of performance for the grant is about to expire and that close-out procedures will be initiated.

(b) Within 90 days after the expiration or termination of the grant, the state must submit to FRA any or all of the following information, depending on the terms of the grant:

(1) Final performance or progress report;

(2) Financial Status Report (SF–269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271);

(3) Final Request for Payment (SF–270);

(4) Patent disclosure (if applicable);

(5) Federally-owned Property Report (if applicable)

(c) If the project is completed, within 90 days after the expiration or termination of the grant, the State shall complete a full inspection of all construction work completed under the grant and submit a report to FRA. If the project is not completed, the State shall

submit a report detailing why the project was not completed.

(d) FRA will review all closeout information submitted, and adjust payments as necessary. If FRA determines that the State is owed additional funds, FRA will promptly make payment to the State for any unreimbursed allowable costs. If the State has received more funds than the total allowable costs, the State must immediately refund to the FRA any balance of unencumbered cash advanced that is not authorized to be retained for use on other grants.

(e) FRA will notify the State in writing that the grant has been closed out.

Issued in Washington, DC, on December 19, 2006.

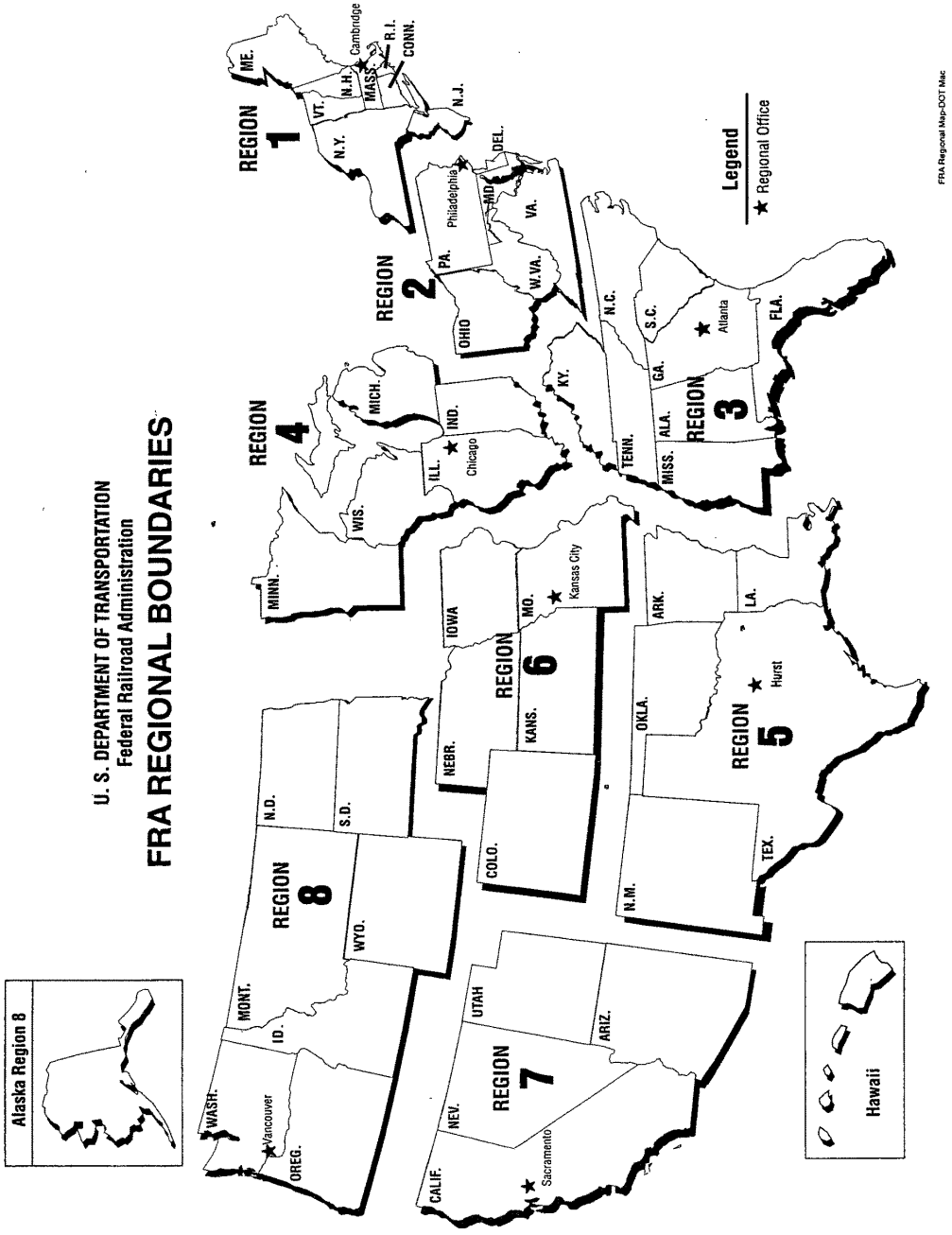
Joseph H. Boardman,

Federal Railroad Administrator.

BILLING CODE 4910–06–P

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS

Appendix A to Part 262 -- FRA Regional Boundaries



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