■ 4. Section 63.324 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

§ 63.324 Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(5) The date and monitoring results (temperature sensor or pressure gauge) as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a), (b), or (o); and

(6) The date and monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2), or (b)(3).

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[FR Doc. E8–15872 Filed 7–10–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 262

[Docket No. FRA 2005–23774, Notice No. 2]

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: Final rule.

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 final rule establishes a regulation intended to carry out that statutory mandate. As of the publication of this final rule, Congress did not appropriate any funding for the program for FY 2006 or FY 2007 but did appropriate $20,040,200 for fiscal year 2008.

DATES: August 11, 2008.

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W–12–140, West Building Ground Floor at the DOT's new headquarters at 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John A. Winkle, Transportation Industry Analyst, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 13, Washington, DC 20590 (*John.Winkle@dot.gov* or 202–493–6067); or Elizabeth A. Sorrells, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (*Betty.Sorrells@dot.gov* or 202–493–6057).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

On January 17, 2007, FRA published a notice of proposed rulemaking (NPRM) proposing to add part 262 to Title 49, Code of Federal Regulations. Part 262 would carry out the statutory mandate of section 9002 of SAFETEA–LU which amends chapter 201 of Title 49 of the United States Code by adding a new 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. The statute requires the Secretary to implement the grant program through regulations. The Secretary has delegated this responsibility to FRA. The language and provisions of Part 262 as reflected in the NPRM and this final rule closely track the language set out in section 20154.

B. Program Purpose

As noted in the background section of the NPRM, state and local governments are looking for ways to eliminate the problems created by the presence of railroad infrastructure in many communities, infrastructure that at one time was critical to the development of the community but which now presents problems as well as benefits. Problems that have been identified range from community separation to blocked grade crossings to limits on economic development. Many times, the solution is to relocate or raise track vertically or move the track to an area that is better suited for it. 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.

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. 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 final rule carries out that statutory mandate.

In order to be eligible for a grant for a relocation or 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.

In section 20154, 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 section 20154, Congress directed FRA to issue ''temporary regulations'' by April 1, 2006. As noted in the NPRM, 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)(3)(B) of the Administrative Procedure Act. Because as of the date of the NPRM no funding had been appropriated for the program and no projects could be funded at that time, FRA concluded that the purposes of SAFETEA–LU could best be achieved by proceeding with an NPRM in lieu of an interim final rule. Proceeding this way also satisfies the requirements of the Administrative Procedure Act and allows for greater public participation in the rulemaking process.

C. Discussion of Comments

FRA received approximately 28 written comments in response to the NPRM, including comments from state and local governments, the railroad industry and trade organizations, as well as members of the general public. Specifically, comments were received from the following organizations and individuals: Missouri Department of Transportation, Charlotte (NC) Area Transit System, South Dakota Department of Transportation, City of Marceline, MO, Sacramento (CA) Regional Transit District Capitol Corridor Joint Powers Authority (CA), Gateway Rural Improvement Pilot Association, Inc. (VT), International Air Rail Organization, City of Sacramento (CA), City of Greenville (NC), States for Passenger Rail Coalition, North Carolina Department of Transportation, County of Sacramento Department of Transportation, American Public Transportation Association, Board of Sumner County Commissioners (Wellington, KS), The New York Sate Department of Transportation, National Capital Planning Commission, North Carolina Railroad Company, Spokane Regional Transportation Council (WA), Caldwell Police Department (KS), City of Caldwell (KS), Idaho Transportation Department, Sacramento Area Council of Governments (CA), Kansas Department of Transportation, Troy Dierking.

The following discussion provides an overview of the written comments received in response to the NPRM. More detailed discussions of the specific comments and how FRA has chosen to address those comments in the final rule can be found in the relevant Section-by-Section portion of this preamble.

All of the comments submitted were in favor of the capital grants program. Many of the commenters had specific projects that they were interested in obtaining funding for under this program. A few commenters expressed concerns that the definition of allowable/reimbursable costs was too narrowly drawn and needed to include reimbursement for environmental assessments that may need to be performed or have already been performed prior to the application for grant funds. Several of the commenters observed that environmental costs constitute the great majority of the project costs, particularly in the early stages. Several other commenters wanted to add specific items as allowable/reimbursable costs. Others wanted specific assurances that a particular project fit within the parameters and eligibility criteria set out in the NPRM.

A few commenters had concerns regarding the potential distribution of any grant monies, wanting to ensure that rural areas were not overlooked in the application and selection process. Some commenters wanted changes or adjustments to the definitions section.

Finally, a few commenters requested that FRA hold a public hearing on the NPRM. Given the lack of substantial controversy raised in any of the comments and the effort and expense involved in holding a public hearing, FRA concluded that a public hearing was not necessary or justifiable. None of the requests for a hearing indicated how a hearing would assist in evaluating the NPRM. In addition, some of the hearing requests appeared more focused on increasing the visibility of the capital grants for rail line relocation and improvement program rather than addressing specific issues with the NPRM.

III. Section-by-Section Analysis and Response to Comments

SAFETEA–LU contains very specific language regarding implementation of the rail line relocation and improvement program. In several sections, the language in this final regulation is reprinted directly from 49 CFR 20154. Given such an unambiguous statutory mandate, FRA has made only a few additions in this final regulation to include language that was not in the statute. For those sections, there is a further discussion of FRA's intent. This Section-by-Section Analysis does not discuss Congressional intent or address the costs or benefits of the program as a whole or any potential relocation project. Decisions regarding the advisability of the program were made by the Congress in enacting section 20154.

Section 262.1 Purpose

This section, which has not changed from that which was proposed in the NPRM, merely states that the purpose of this final rule 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. No comments were received on this section.

Section 262.3 Definitions

One commenter (New York DOT) suggested adding a definition for the term ''project'' and specifically mentioned a highway bridge over rail tracks as a potentially eligible activity. The commenter expressed concern that such a bridge could constitute a grade separation and add to the safety and efficiency of rail service but might be excluded because the rail line would not be physically touched. While FRA makes no comment herein upon the eligibility or ineligibility of specific projects proposed by commenters, the agency believes that the current definition of ''project'' under subsection 262.3 clearly reflects the mandate of Congress to use the capital grant funds for local rail line relocation or improvement projects. The current definitions of the terms ''project'' and ''improvement'' along with the eligibility standards detailed in subsection 262.7 provide an adequate identification of eligible projects. The agency also notes that the term ''improvement'' encompasses rail infrastructure and not just railroad lines.

One commenter (Missouri DOT) wants to add language reading ''any combination thereof'' to the definition of ''Non-Federal share.'' Missouri DOT indicated that the current definition is too restrictive because the definition ends with ''by a State or other non-Federal entity'' when a particular project might receive financial support from a variety of sources. FRA agrees that adding this language is appropriate because non-Federal share funding is contemplated to come from a variety of sources and be supplied through a variety of channels. The definition has been revised to reflect this change.

Missouri DOT also wants to specifically add to the definition of ''construction'' the costs of consultants who are designing a project. FRA notes that the definition of construction,

which includes architectural and engineering costs under item number six of the definition, contains no requirement that these be incurred solely by in-house personnel. Thus, consultant costs should be eligible if they are a part of a project that meets all of the criteria under subsections 262.7 and 262.9.

Missouri DOT also recommends that the reasonable costs of closures should be included within the definition of existing rail crossings. FRA does not fully understand the intent of this comment but notes that the definitions of ''construction'' and ''improvement'' are broad enough to support consideration of reasonable costs of closing existing rail crossings.

One commenter (City of Marceline, MO) wants to add to the costs included in the definition of ''construction'' the costs associated with construction inspection management. The statute which mandates these regulations gives the Secretary discretion to determine eligible costs and while FRA has made clear that the costs listed in the definition under subsection 262.3 are not limited to those specifically mentioned, ''construction inspection management'' costs that are germane to the particular project certainly seem to qualify. The definition of ''construction'' also includes references to both supervising and inspecting as components of building a project. However, FRA does not believe it is necessary to add this particular item to the definitions section of the rule text.

The City of Marceline, MO also wants FRA to place greater emphasis on three areas in the definition of ''quality of life:'' (1) Impact on emergency services; (2) accessibility to the disabled as required under the Americans with Disabilities Act; and (3) school access. FRA notes that the statutory definition of ''Quality of Life'' in subsection 20154(h)(2) includes ''first responders' emergency response time.'' This specific portion of the comment appears to be addressing a broader view of ''quality of life'' by expanding the definition to include ''impact on emergency services.'' Accordingly, FRA has added this proposed language into the rule text.

The second proposed addition suggested by this commenter, while not elaborated upon, is an excellent addition to the definition of ''quality of life.'' Poorly located, hard-to-reach (or difficult to get around) rail lines that have little or no access to disabled passengers/commuters/citizens certainly can impact quality of life. FRA will incorporate this suggestion with a slight modification to include section 504 of the Rehabilitation Act of 1973, as amended. Third, the commenter proposed to add ''school access'' as a ''quality of life'' measure noting that the commenter's local school is located on the opposite side of the railroad from the central business district, the fire and police stations and a large portion of the residential neighborhoods. Insofar as the commenter was expressing concern that poorly or inconveniently placed rail lines contribute to students/parents/teachers' difficulties in getting to and from school, then this portion of the comment will also be adopted.

Kansas DOT also suggests that traffic, delay, and congestion should be taken into account when measuring ''quality of life'' under subsection 262.9(d). FRA agrees that these are important quality of life factors. The definition of ''quality of life'' has been expanded in subsection 262.3 to include these factors.

North Carolina DOT suggests that safety, congestion and air quality should be taken into account when measuring ''quality of life'' under subsection 262.9(d). FRA agrees that these are important quality of life factors. The definition of ''quality of life'' has been expanded in subsection 262.3 to include these factors, with the exception of ''air quality'' which FRA believes is already adequately addressed in the ''environmental'' factor.

Several commenters (City of Sacramento DOT, Sacramento Regional Transit District, County of Sacramento, Sacramento Area Council of Governments, Capital Corridor Joint Powers Authority CA) requested that relocation, reconstruction or construction of passenger rail facilities or stations be specifically mentioned in the definition of an ''improvement'' in subsection 262.3. The statute's mandate is clear: The purpose of the capital grants program is for the ''improvement of the route or structure of a rail line.'' The statute also makes clear that one of the considerations in approval of a project is the ''effects of the rail line on the freight and passenger rail operations on the line.'' FRA believes that these mandates are broad enough to support consideration of passenger rail facilities or stations if they are a part of a project that meets all the criteria under subsections 262.7 and 262.9; therefore, FRA has determined that it is not necessary to add ''relocation, reconstruction or construction of passenger rail facilities or station'' to the definition of ''improvement'' under subsection 262.3.

One commenter (Kansas DOT) is concerned that the definition of ''allowable costs'' states that only construction costs are reimbursable and that KDOT believes that right of way and utility adjustment costs should also be valid reimbursable construction costs. FRA notes that the definition of construction costs specifically includes both of those costs under subsection 262.3 in the definition of ''construction,'' items (3) and (5). Subsections 20154(h)(1)(C) and (E) also specifically list right of way acquisition and utilities relocation.

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 262.3, in the definition of ''construction,'' item (6) makes clear that FRA has that authority to prescribe additional costs. In addition, item (6) also makes clear that architectural and engineering costs associated with the project as well as costs incurred in compliance with applicable environmental laws and regulations are considered construction costs, and will be allowable.

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.

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. The definition has been revised in the final rule as explained above.

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 requested comments in the NPRM 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 were invited to discuss specific factors that can measure these somewhat amorphous concepts, as well as any other factors that may be appropriate. The definition has been revised in the final rule as discussed above.

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.

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 based on the language included in 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.*

Several commenters (North Carolina Railroad Company, Sacramento Area Council of Governments) suggested that the requirements could be more clearly defined by FRA, specifically what type of projects will be considered high-priority, and therefore, excluded from the allocation formula. FRA did not include a definition of ''high priority projects,'' because Congress designates certain projects as ''high-priority'' when it determines that specific projects will be funded and appropriates funds for those particular projects through the appropriations process. Subsection 262.5 remains unchanged from the NPRM.

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. As noted above, 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.

One commenter (New York DOT) suggested that FRA clarify what, if any, retroactive expenses will be eligible for reimbursement through identification of a time frame or project start date that would vary with expense type. This section was taken verbatim from the statute and can be found at 49 U.S.C. 20154(b). The statute is clear that ''only costs associated with construction, as defined in this Part [subsection 20154(h)(1)] will be considered allowable costs for purposes of this Part [section 20154].'' FRA has determined

that identifying specific expenses, including retroactive expenses, runs counter to the purposes of the statute which ties allowable costs to ''costs associated with construction.'' FRA does not opine on whether specific expenses, including retroactive expenses might be ''allowable costs'' as contemplated under the statute. This determination is best left to the individual grant agreements on a case-by-case basis.

New York DOT also requests that FRA clarify whether public or private grade crossings will be eligible for the program. Although it was not exactly clear what kind of grade crossing the commenter was referring to, FRA assumes the comment refers to any grade crossing, public or private within the confines of an otherwise eligible project. The statute's mandate is clear: The purpose of the capital grants program is for the ''improvement of the route or structure of a rail line.'' The statute also states that one of the considerations in approval of a project is the ''effects of the rail line on the freight and passenger rail operations on the line.'' FRA has concluded that these mandates are broad enough to support consideration of grade crossings if they are a part of a project that meets all the criteria under subsections 262.7 and 262.9. It is not necessary to specifically refer to ''public or private grade crossings'' as a potentially eligible project under subsection 262.7

New York DOT also suggests that FRA define more specifically what costs would be eligible for reimbursement under subsection 262.7 and to clarify how those costs will be verified. The commenter suggests referencing 23 CFR 140, Subpart 1—Reimbursement for Railroad Work. FRA has reviewed the regulation cited by the commenter. These regulations address reimbursement to the States for railroad work on projects undertaken in accordance with the provisions of 23 CFR 646, subpart B, entitled, ''Railroad-Highway Projects.'' The purpose of this subpart is to prescribe policies and procedures for advancing federal-aid projects involving railroad facilities.

While somewhat similar in nature, there are marked differences in the purposes of the two programs. This program is being promulgated under 49 CFR 262 and is solely applicable to rail line relocations and/or improvements. The statute has set out what costs are to be allowable and these criteria will be incorporated into any grant agreement. While 23 CFR 140, Subpart 1 is helpful as a reference and reminder of the different costs associated with a project, FRA has determined that it will be more in keeping with the statutory directions to craft grant agreements that are specifically geared to the statutory criteria and the project being funded.

One commenter (Charlotte Area Transit System) wants to ensure that a rail line, even though it may be currently out-of-service, would potentially be eligible for the program. Specifically, the commenter proposes to revise ''mitigating adverse effects'' in subsection 262.7(a)(1) to ''mitigating current or anticipated adverse effects.'' Additionally the commenter proposes to add the following language to the end of subsection 262.7(a)(2): ''whether or not currently in use.'' Both of these subsections incorporate the statutory language and FRA cannot make changes to Congressional mandates where it has not been given discretion to do so. In the case of out-of-service rail lines, however, the current language of subsection 262.7 appears to be broad enough to support such a project if it meets other requirements of the program as set out in the statute and regulation. NC DOT offered a very similar concern requesting that the final rule authorize projects that make use of both active and out-of-service rail rights of way and programmed service expansions.

One commenter (Sacramento Regional Transit) wanted FRA to expand the eligibility of projects that can be funded under the program to include facilities that are already in use as passenger rail stations under subsection 262.7 In the case of facilities already in use as passenger rail stations, the current language of subsection 262.7 appears to be broad enough to support such a project if it meets the other requirements of the program as set out in the statute and regulation. Additionally, as previously discussed in the FRA response to comments under subsection 262.3, the statute's mandate is clear: The purpose of the capital grants program is for the ''improvement of the route or structure of a rail line.'' The statute also states that one of the considerations in approval of a project is the ''effects of the rail line on the freight and passenger rail operations on the line.'' FRA believes that these mandates are broad enough to support consideration of passenger rail facilities or stations if they are a part of a project that meets all the criteria under subsections 262.7 and 262.9. It is not necessary to specifically refer to ''facilities already in use as passenger rail stations'' as a potential ''improvement'' under subsection 262.3.

One commenter (Gateway Rural Improvement Pilot Association (VT)) criticized the exclusion of public authorities and special-purpose non-profit corporations as eligible applicants for the program. FRA again emphasizes that the eligibility criteria were established by Congress and the statutory language directed that only States or political subdivisions of States are eligible applicants. FRA cannot make changes to Congressional mandates where it has not been given discretion to do so.

One commenter (the National Capital Planning Commission) thought that subsection 262.7(b) should be clarified as it relates to NEPA requirements to state that only NEPA costs associated with construction of a particular project be considered ''allowable costs.'' FRA agrees that some clarification is needed in this regard and adopts NCPC's comment to include ''as defined in section 262.3'' in section 262.7(b), which now reads ''(b) Only costs associated with construction, as defined in § 262.3, will be considered allowable costs.'' This is the only revision made to subsection 262.7 from the NPRM.

Section 262.9 Criteria for Selection of Rail Lines

This section is based extensively on 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. The statute specifies that in determining whether to award a grant to an eligible State (as defined in this Part) under this section, the Secretary shall consider the following factors:

- 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.

Although the listed factors are fairly comprehensive, FRA sought to retain the flexibility to consider other factors that may not be readily apparent, but may be critical in evaluating the effectiveness of expending funds to achieve the expected benefits of a project. Accordingly, FRA included an additional ''catchall'' criterion in its NPRM subsection 262.9(f). This additional criterion would allow FRA to consider 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 and the anticipated public and private benefits.

FRA's NPRM solicited comments on this addition and any other potential factors that the FRA may consider in determining whether to award a grant.

The South Dakota Department of Transportation commented:

''We are not opposed to the FRA having some flexibility in weighing applications, but note that neither the statute not{r} the proposed rule includes a statement of the 'goals of the national program.' We are concerned that this approach implies that FRA could develop 'national' program goals on its own, with no notice and comment process, and then apply them in weighing the merits of applications. Because the NPRM does not identify the national goals that would receive weight under subsection (f) we cannot support the proposed additional language. Again, we are not against all flexibility for FRA but, with the exception of one factor, discussed below [the level of commitment of non-Federal and or private funds to a project] subsection (f) is too open-ended and vague to warrant our support.''

In response to comments received, FRA believes that additional clarification is needed regarding how it will select from eligible projects. FRA as well as the federal government, believes that one of the national goals is to select projects that are cost effective in that the benefits exceed the cost. States, the FRA and the federal government have an interest in maximizing the benefits derived from the investment of Federal, State, local or private funding in rail line relocation projects and in proposing and selecting projects that are cost effective in terms of the benefits achieved in relation to the funds expended. Statutory criteria in subsections 262.9(d) and (e) each require an assessment of the benefits to be derived from a project. The criterion in subsection 262.9(f) seeks to expand the universe of factors the FRA will consider in assessing effectiveness and efficiency of the project. To be clear, in evaluating applicant projects for funding, FRA will examine the evidence of the project's cost effectiveness. While we will consider all the statutory criteria in evaluating applications, we intend to approve only those projects where the benefits can reasonably be expected to exceed the costs. FRA will attempt to target funds to projects that produce the greatest net benefits.

Therefore, the rule language has been clarified to require applicants to submit evidence sufficient for the FRA to determine whether projects proposed for Federal investment are cost-effective in terms of the benefits achieved in relation to the funds expended. In addition, as provided for in subsection 262.11 a State must submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in subsections 262.7(a)(1) and (2) and the State's assessment of how those benefits outweigh the costs of the proposed project. The determination of such benefits should 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 shall also identify any financial contributions or commitments it has secured from private entities that are expected to benefit from the proposed project. Project applications that include a realistic projection of and detailed analysis of the project's costs and benefits will be considered most favorably. The FRA does not intend to impose a rigid list of data elements that applicants could address in demonstrating cost effectiveness, and we will consider all relevant information, consistent with our statutory obligation. However, the following are among the considerations that might be relevant factors.

- Vehicle counts at highway crossings; distinguishing among passenger, heavy truck, emergency, etc., vehicles would strengthen an application.
- Pedestrian counts.
- Trains per day (passenger and freight). Average train length and for freights the frequency of hazmat in train consists.
- Train horn frequency (passenger and freight). Average number (and volume) of train horns daily near populated areas that a relocation or improvement project could potentially reduce.
- Class of track under FRA's track safety standards for both the existing and the proposed relocated rail line.
- Average train speeds (passenger and freight) and length of time any crossing is blocked.
- Proximity of switching yards to a crossing and length of time any crossing is blocked by freight switching moves.
- Movement of emergency vehicles through a crossing and distance of the crossing from a hospital, nursing home, fire station, military base, power plant, school or similar facility where time lost waiting for a crossing to clear could contribute to injury or death.
- Relocation/closing of a grade crossing so that volunteer firefighters can travel more quickly from their office/home to the fire station, potentially resulting in better time to emergency calls.
- Number of crossings in a particular community/segment and the impact of frequent crossings on a community (e.g., traffic congestion, train whistles/horns).
- Amount of railroad-owned land in a town/city/political jurisdiction that might be abandoned, leading to the loss of property tax receipts, resulting from a relocation.
- With respect to local industries served by the line proposed for relocation, identify transport alternatives that would be available if the relocation is approved; identify industries that would be newly served by the relocated rail line; and identify economic impacts on the community from the project such as jobs created/lost, tax revenues, etc.
- Documented incursions of vehicles on to rail right-of-way. Number of accidents per year, severity (fatalities), dollar value (current dollars) of each accident, and any findings of fault by police, railroads, FRA, National Transportation Safety Board.
- Any pertinent information taken from FRA's on-line safety data base *www.fra.gov/safetydata.* (e.g., number of grade crossing or trespasser accidents/incidents, injuries, fatalities, ranking in the FRA Highway Rail Grade Crossing Web Accident Prediction System.)
- Environmental impacts from the existing rail line (noise, vibration, air pollution) that would be eliminated by the relocation; environmental impacts from the relocated rail line (positive and negative).

As noted above, this list presents examples of the types of data that would support an assessment of cost effectiveness, but is not all inclusive. FRA invites applicants to submit analysis of alternate or additional data, appropriate to the specific project under consideration for funding.

One commenter (North Carolina Railroad Company) indicated that while it agreed with the FRA that the criteria for selection in subsection 262.9 should ensure equitable treatment of various regions of the United States, it suggested that FRA clarify how high priority projects (see subsection 262.5) will be recognized within those regions. It is the agency's view that the presence of designated high priority projects in a particular region of the country would be a factor to be considered by FRA in evaluating whether to award a grant to another project in that same area of the country as the agency seeks to ensure

equitable treatment of various regions of the United States.

North Carolina Railroad Company additionally requests that FRA clarify the language, ''the capability of the State to fund the rail line relocation without Federal grant requirement'' criterion under subsection 262.9(a). Specifically, the commenter questions whether the above criterion means that FRA will provide greater support to poorer States, to States with larger projects that are more difficult to fund, or to States that have or are likely to have significant matching funds from non-Federal entities. The language found in subsection 262.9(a) tracks the statutory language as set out in 49 U.S.C. 20154(c)(1), which reads: ''[t]he capability of a State to fund the rail line relocation project without Federal grant funding.'' This factor as set out in the statute is one of five criteria that FRA must consider and was not assigned any greater weight than any of the other four factors. Congress' inclusion of this factor does suggest to the FRA that the rail line relocation and improvement program should not be used to fund a project that the State is fully capable of funding on its own. FRA included a discussion of some of the considerations that might be relevant to the agency in evaluating this factor in the NPRM section-by-section discussion related to this section. On the other hand, a State or other non-Federal entity is required to provide at least 10 percent of the shared costs of a project funded under this program. Logically, the program can support more improvements to the extent that States or other non-Federal entities cover a percentage of the shared costs that is in excess of 10% and this would be relevant to the agency in evaluating the proposed projects.

One commenter (South Dakota DOT) is concerned that FRA's intention to divide the country along the lines of FRA's eight regions in interpreting the language in subsection 262.9(c) may put rural areas at a disadvantage. South Dakota DOT wants FRA to add ''including equitable treatment of rural and metropolitan areas'' to the end of the subsection. The language found in subsection 262.9(c) tracks the statutory language as set out in 49 U.S.C. 20154(c)(3), which reads: ''[e]quitable treatment of the various regions of the United States.'' This factor as set out in the statute is one of five criteria that FRA must consider and there is no indication that it is to have any greater weight than any of the other four factors. Whether the consideration of this factor along with the other four factors as set out by Congress will disadvantage (or advantage) ''rural areas'' would have to be evaluated on a case-by-case basis. FRA does not have the discretion to change the language set out in the statute. At this point, FRA does not believe that its intention to use the agency's current regional breakdown will have an adverse impact on rural or metropolitan areas. FRA did not receive any suggestions for alternative ways of dividing up the country. The Idaho Transportation Department and the Spokane Regional Transportation Council urged their support for subsection 262.9(c) as drafted.

South Dakota DOT raises a concern about the interplay between subsections 262.9(a) and (f). While it recognizes the statutory basis for subsection 262.9(a), it is concerned that FRA's addition of the non-statutory language in subsection 262.9(f), and specifically the language relating to the level of commitment of non-Federal or private sector funds to a project, may potentially disadvantage those most in need of federal assistance as they would be least able to make a commitment to the project beyond the minimum required match. FRA notes that this is but one of six factors that must be evaluated before deciding whether to approve funding for a particular project. FRA included this language for several reasons.

First, the statute clearly indicates that the required non-Federal match is not set at a certain percentage as it is with some other funding programs but provides for FRA to secure *at least* 10 percent from non-Federal sources. This suggests to the agency a goal of achieving the maximum benefit from the available Federal funds. Second, the statute 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 to such private entities. Again, this requirement reinforces the concept of securing the maximum public benefit from the program funds. Leveraging the Federal funds along with state, local and private funds can produce the most benefit for Federal dollar expended.

Several commenters (City of Sacramento DOT, Sacramento Regional Transit, County of Sacramento, Sacramento Area Council of Governments) wanted ''security risks'' or ''Homeland Security risks'' to be set forth in the selection criteria under subsection 262.9. FRA agrees that ''security risks'' or ''Homeland Security risks'' are important factors that may be relevant in assessing the effectiveness or efficiency of a grant application. However, these particular considerations are only two among the ''other factors'' that FRA may consider under subsection 262.9(f). Five of the six criteria in section 262, specifically subsections 262.9(a)–262.9(e) were mandated in the statute.

Sacramento Regional Transit also wanted FRA to provide explicit scoring of project criteria, particularly giving highest priority to community benefit and quality of life. FRA, as discussed in some of the previous comments, has determined that the statute does not provide for giving one criterion more weight than another. Similarly, because the NPRM did not identify what FRA would consider a ''good'' project, New York State DOT suggests that FRA provide additional detail on project preferences to guide project development and submittals. As the previous discussion under this subsection has highlighted, FRA does not have a preconceived notion of what constitutes a good project. The agency intends to fairly and consistently apply the selection criteria included in subsection 262.9 in determining whether to award a grant to an eligible State under this program.

One commenter (the Gateway Rural Improvement Pilot Association (VT)) recommended that FRA consider the following factors in identifying eligible projects: (1) The potential of a project to share the load for both freight and passengers in a corridor where rail lines run parallel to the route of a National Highway System in an area not served by an interstate highway; (2) the potential to address two or more projects within a single corridor; and (3) the potential of a project to support economic development and urban revitalization efforts. FRA agrees that the three factors suggested by this commenter are important factors that may be relevant in assessing the effectiveness or efficiency of a grant application. However, these factors should also be considered as one (or more) among the ''other factors'' that FRA may consider under subsection 262.9(f). The likelihood that some projects will offer public benefits not specifically foreseen by Congress or the agency underscores the importance of including subsection 262.9(f). Five of the other six criteria, specifically subsections 262.9(a)–(e) were mandated in the statute.

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 as high-priority in the appropriations statute or in the Conference Report accompanying an annual appropriation—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; Assurances and Certifications (i.e., Certification Regarding Debarment/Suspension/Ineligibility, Certification Regarding Drug-free Work Place Requirements; Certification Regarding Lobbying, Certificate of 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, and an estimate of the amount of funding available. FRA had indicated in the preamble to the NPRM that FRA's staff would develop a Source Selection Plan (SSP) to be used for evaluating applications and that the SSP would be made available to all applicants. This process was described only in the preamble and was not included as a part of the proposed rule. The agency has now concluded that it is not needed and is not included in the final rule. The agency will make project selections on the basis of the criteria described in the final rule. Applicants selected for funding will then be required to submit some of the same information described above for the non-competitive projects (i.e., standard forms, audit history, etc.).

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 final rule, Congress has not appropriated any funds for fiscal years 2006 or 2007 and has appropriated $20,040,200 for fiscal year 2008. As Congress has appropriated both competitive and non-competitive funds for specific projects under this Program, FRA will notify the potential recipient(s) of the non-competitive funds and will disburse the funds as soon as this final rule is effective. With respect to the competitive funds, FRA will publish a Notice of Funds Availability (NOFA) in the **Federal Register** and eligible applicants will be able to apply for a grant through *www.grants.gov.* FRA anticipates that the NOFA will simply indicate the amount of funds appropriated by Congress and basic information about the application deadlines for applying through *www.grants.gov.*

Subsection 262.11(b) 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 and its assessment of how those benefits outweigh the costs of the proposed 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 subsection 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 262.11(c) 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 262.11(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.

One commenter (New York DOT) suggests that FRA clarify whether an application must be filed by a state DOT. The eligible applicants are ''States, including political subdivisions of a State as defined in subsection 20154(h)(3).'' There is no requirement that applicants are limited to state Departments of Transportation. This same commenter also suggests that FRA address whether and how cost changes will be addressed. Cost changes can occur in any project and the typical grant process allows for them as long as the cost changes meet the specific criteria set out in the typical grant application and administration. The Web site, *www.grants.gov* provides general information. Specific information will be set out in each individual grant agreement.

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 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's NPRM invited comments and suggestions from commenters on how FRA can best accomplish this requirement. Because 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 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.

Several commenters (City of Sacramento DOT, Sacramento Regional Transit, County of Sacramento, Sacramento Area Council of Governments) wanted FRA to clarify whether non-Federal matches in excess of 10% will be ''rewarded'' in the selection criteria. Non-federal matches in excess of the 10% requirement will be evaluated on a case-by-case basis. As for the concept of being ''rewarded,'' the matching percentage is one of many variables that might have an effect on a particular application. FRA does not, at this time, plan to give an across-the-board advantage. Each application will judged on the entire spectrum of factors and criteria.

One commenter (the Gateway Rural Improvement Pilot Association (VT)) wanted FRA to establish a provision similar to the ''Tapered Match'' allowed under FHWA's Innovative Finance program by which projects can provide their matching share at any point during the project. As a side note, GRIP was concerned that FRA recognize the contribution of costs incurred prior to the FRA grant under subsection 262.13 and the time pressures faced by the applicants. There is currently no language in either the statute or Part 262 that calls for the match to be made by a certain time and FRA will consider these issues in evaluating individual applications.

Section 262.15 Environmental Assessment

This section clearly states 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. FRA may request that a State 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 Fed. Reg. 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.

Several commenters (City of Marceline, MO, American Public Transportation Association) commented that it may be unnecessarily restrictive to require that NEPA review be complete before FRA decides to approve the project for funding. The commenter suggested incrementally approving funding for the preliminary engineering and environmental compliance and then fully funding a project after these steps are completed and approved. Additionally, the commenter suggested that FRA provide grants that assist in the project development process, including the NEPA process.

Another commenter (the National Capital Planning Commission) wanted subsection 262.15 to include a requirement that environmental and historic documents be completed and approved by the Administrator prior to a decision by FRA to approve a project for physical construction. As FRA understands it, the commenters want the environmental assessment costs to be eligible costs before a decision is made as to whether FRA will approve actual physical construction funding for a particular project.

FRA believes that some of the confusion arose from including NEPA work in the definition of construction in subsection 262.3 and then stating in subsection 262.15 that FRA will not fund any construction until the NEPA work is completed. FRA understands that NEPA work is more properly classified as pre-construction work. Thus, the NPRM suggested that the project proponent must fund NEPA work up front and then FRA will reimburse the proponent if FRA decides to go forward with construction on the project.

FRA understands that this is a risky approach for the proponent especially if the proponent is unsure how many applications FRA has received or how their project might fit in competition with others (although the risk might be minimized if the applicants paid for the compliance work themselves and applied this cost to the 10% matching requirement if a grant is awarded). NCPC's suggestion is to clearly tie subsection 262.7(b) back to the definition of construction in subsection 262.3 to be sure NEPA costs are included (which FRA has agreed to as explained earlier) and to revise subsection 262.15 to limit the need to secure the Administrator's approval to actual physical construction with the implicit assumption that NEPA work that the statute (and FRA's implementing regulations) call ''construction'' could proceed and be reimbursed in advance of final NEPA approval. An alternative approach that FRA believes is an easier solution is to clarify in the relevant subsection(s) that FRA will in appropriate circumstances pay for NEPA work in advance of a decision to actually construct a project but with the caveat that FRA's decision to fund NEPA work does not guarantee or express any FRA decision with respect to the project generally.

Section 262.17 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. FRA did not receive any substantive comments or suggested revisions to this section though the Idaho Transportation Department and the Spokane Regional Transportation Council urged FRA to maintain this subsection as drafted. Subsection 262.17 remains unchanged from the NPRM.

Section 262.19 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.

FRA did not receive any comments on this section and it remains unchanged from the NPRM.

IV. Regulatory Impact

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

This rulemaking action is economically significant for purposes of review under U.S. Department of Transportation regulatory policies and procedures. However, it is not economically significant under E.O. 12866 and has not been submitted for OMB review.

This section summarizes the estimated economic impact of the rule. As mandated by 49 U.S.C. 20154, this rulemaking establishes the process for applying for capital grants for local rail line relocation and improvement projects. This regulation will affect only those entities that voluntarily elect to apply for the capital grants under section 20154 and those that are selected to receive a grant under the program. It will not impose any direct, involuntary, un-reimbursed costs on those entities not applying for the program. Prospective applicants will normally already have available the information needed to prepare applications for funding so these costs should be minimal.

FRA has prepared a final evaluation of the economic impact of this regulatory action. A copy of this document has been placed in the docket for this rulemaking. As noted in the NPRM, 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 and these are the costs that FRA has considered in the evaluation of economic impact.

In the NPRM, FRA requested comments, information, and data from the public and potential users concerning the economic impact of implementing this rule. Among the 28 comments received in response to the NPRM, FRA received no direct comments about the costs of the application process. Commenters did express concern about the need to provide preliminary engineering and environmental compliance documentation before FRA decides to approve a project for funding. The final rule adds options for funding these compliance tasks. Whether or not applicants pay for these costs or are reimbursed by FRA, from a national point of view real resources will be expended for performing these tasks. The NPRM regulatory evaluation accounted for these costs and they remain unchanged in the final regulatory evaluation. Note that the burden of funding these compliance tasks would be reduced for those applicants that are reimbursed under the new options in the final rule in subsection 262.15.

FRA estimates that implementation of the application requirements contained in this rule could cost approximately $714,261 (PV, 7%), if funds are appropriated for this program and government jurisdictions apply for grants. FRA believes that these application costs would be justified by the benefits associated with better allocation of grant funds to improve safety and quality of life.

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 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. In the NPRM, FRA was unable to determine whether the rule was expected to have significant economic impact on a substantial number of small entities because no funds were appropriated to the program and FRA was unable to determine what projects would be funded. In response to the NPRM, the Small Business Administration (SBA) communicated to the FRA that it needed to certify the rule as not having a significant economic impact on a substantial number of small entities, or prepare a Regulatory Flexibility Analysis (RFA). FRA has revised the regulatory flexibility determination and certifies that the final rule is not expected to have a significant economic impact on a substantial number of small entities. For this rule, the relevant definition of small entities is based on population served. As defined by the SBA, this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. 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. Out of 28 entities that expressed interest in the grant program as indicated by

comments to the docket, two were small entities. Only one small entity, the City of Marceline, MO, expressed concern regarding the impact of the application requirements. Given the fact that Congress appropriated no funding for the program in FY 2006 and FY 2007, FRA is unsure how many additional small entities might potentially apply. FRA notes that both of the small entities that did comment are working with larger governmental units or States serving populations larger than 50,000. Given these working relationships, FRA believes that is reasonable that a larger governmental unit or State would provide assistance or other resources in applying for the grants.

FRA notes that of the $20,040,200 (of the $350 million authorized) that was appropriated in FY 2008, $5,135,200 consists of non-competitive (non-discretionary) grants. Nine separate projects were identified in the Conference Report accompanying the Transportation, Housing and Urban Development and Related Agencies Appropriations Act, 2008, included as Division K of the Consolidated Appropriations Act, 2008 (Pub. L. No. 101–161). Of the nine projects identified, three of the communities are considered small entities: The cities of Pierre, SD, population 14,095, Barron, WI, population 3,162 and Adams County, CO, population 47,475. The city of Terre Haute, IN, population of 56,893 exceeds the small governmental threshold, but is near it. Similar to the small entities that commented, these two cities and one county would in all likelihood be working with larger governmental units or States serving populations larger than 50,000.

The new funding options in subsection 262.15 (discussed above) for preliminary engineering and environmental compliance potentially reduce the burden for these tasks on small entities as they may receive grant money for these tasks, if approved. The number of small entities that commented is relatively small, and FRA recognizes that there is likely to be additional interest now that funds have been appropriated to the program. The group of entities that provided comments includes several States that expressed support for the small jurisdictions they govern. These comments indicate that the State would assist with the grant application, reducing the rule's impact on small entities. Other provisions of the rule also mitigate the rule's impact on all entities, including small entities. One of these provisions is permitting the grant applicant to request a meeting with the FRA Associate Administrator for Railroad Development (or his/her designee), thus facilitating the application process. It should also be noted that 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 considered by the small entity in deciding whether to file an application under the program.

FRA views it as unlikely that a small entity such as a local government would be disproportionately impacted by the rule. The capital grants for the rail line relocation and improvement program could certainly provide benefits to small entities, such as local governments (political subdivisions of a State). The program could provide economic, safety, and environmental benefits if funding for projects is approved. A copy of the complete Regulatory Flexibility Assessment has been placed in the docket for this rulemaking.

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 final rule 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 final 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	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
262.11—Application Process	50 States	18 applications	580 hours/290 hours	7,830	[1] $0
—Requests for Meeting with FRA	50 States	5 requests	30 minutes	3	129
—Meeting Discussions	50 States	5 meetings	2 hours	10	730
262.15—Environmental Assessment	50 States	18 documents	200 hours	3,600	158,760
—Consultations with FRA before a State begins environmental or historic preservation analysis.	50 States	9 consultation	2 hours	18	1,314
262.17—Combining Grant Awards	50 States	1 agreement	10 hours	10	730
262.19—Close-Out Procedures	50 States	18 documents	6 hours	108	4,644
—Inspection of All Construction Report	50 States	18 reports	80 hours	1,440	105,120

[1] Cost incl. in RIA.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent to the Office of Information and Regulatory Affairs (OIRA) at OMB via e-mail at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final 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.

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 Fed.Reg. 28545). FRA has concluded that the issuance of this final rule, 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 undertaken in connection with individual project approvals.

E. Federalism Implications

FRA has analyzed this final rule 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 final rule 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 final rule 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 final rule directs how Federal funds will go to the States, and thus, there are no federalism implications.

F. Unfunded Mandates 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 $132,300,000 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 Mandates Reform Act of 1995. One of the purposes of the Unfunded Mandates Reform Act of 1995 is ''to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding[.]'' 2 U.S.C. 1501(2). The statute which authorizes this grant program does not fall into the category of an unfunded mandate because it does not contain any mandates (applicants freely choose whether to apply for grants) nor is the statute ''legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates[.]'' 2 U.S.C. 1501(6); 49 CFR 20154. If Congress does not appropriate funds for the program, then no grants will be made. If Congress does appropriate funds, as it has for FY 2008, then grant applications will be requested and presumably grant monies will be disbursed.

The only requirements in this final rule for funding other than grant funds provided to state and local governments is the ten percent matching requirement. That requirement, however, is specifically set forth in § 9002 of SAFETEA–LU and FRA need not assess its effect. This final rule, therefore, will not result in the expenditure by state, local, or tribal governments, in the aggregate, of $132,300,000 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 final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule 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://www.dot.gov/privacy.html*.

List of Subjects in 49 CFR Part 262

Grants and rail line relocation and improvement projects.

V. The Final Rule

■ For the reasons discussed in the preamble, the Federal Railroad Administration is adding Part 262 to Title 49, Code of Federal Regulations to read, as follows:

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

Table of Contents for Part 262

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262.1 Purpose.
262.3 Definitions.
262.5 Allocation requirements.
262.7 Eligibility.
262.9 Criteria for selection of projects.
262.11 Application process.
262.13 Matching requirements.
262.15 Environmental assessment.
262.17 Combining grant awards.
262.19 Close-out procedures.

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 49 U.S.C. 20154 requiring the Secretary of Transportation to promulgate regulations implementing a capital grants program to provide financial assistance for local rail line relocation and improvement projects.

§ 262.3 Definitions.

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 or any combination thereof.

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 as first responders' emergency response time, impact on emergency services, accessibility to the disabled as required under the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 (as amended), school access, safety, traffic delay and congestion, 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 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 as defined in § 262.3 will be considered allowable costs.

§ 262.9 Criteria for selection of projects.

Applicants must submit evidence sufficient for the FRA to determine whether projects proposed for Federal investment are cost-effective in terms of the benefits achieved in relation to the funds expended. To that end, the FRA will consider the anticipated public and private benefits associated with each rail line relocation or improvement project. In evaluating applications, FRA will consider the following factors in determining whether to grant an award to a 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 § 262.5;

(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 and the anticipated public and private benefits.

§ 262.11 Application process.

(a) All grant applications for opportunities funded under this subsection 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) and the State's assessment of how those benefits outweigh the costs of the proposed project. 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 paragraph (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 part, 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) that accrue to such entities from the project.

§ 262.15 Environmental assessment.

(a) 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 physical construction. FRA's ''Procedures for Considering Environmental Impacts,'' as posted at *http://www.fra.dot.gov/us/content/252,* the NEPA regulation of the Council on Environmental Quality (40 CFR part 1500) and the Advisory Council on Historic Preservation Protection of Historic Properties regulation (36 CFR part 800) will govern FRA's compliance with applicable environmental and historic preservation review requirements.

(b) States have two options for proceeding with environmental/historic preservation reviews. A State may file an application under subsection § 262.11 seeking funds for preliminary design and environmental/historic preservation compliance for a potentially eligible project and FRA will review and decide on the application as outlined in this Part. Alternatively, a State may proceed with and fund any costs associated with environmental/historic preservation reviews (including environmental assessments and categorical excisions, but not environmental impact statements since there are restrictions on what types of entities can manage an environmental impact statement) and seek reimbursement from FRA for these costs to the extent they otherwise qualify as allowable costs if FRA later approves the project for physical construction and enters into a grant agreement with the State. If a State pays for the compliance work itself, it may apply this cost to the 10% matching requirement if a grant is awarded. Applicants should consult with FRA before beginning any environmental or historic preservation analysis.

§ 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:

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

(2) 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 close-out 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 June 24, 2008.

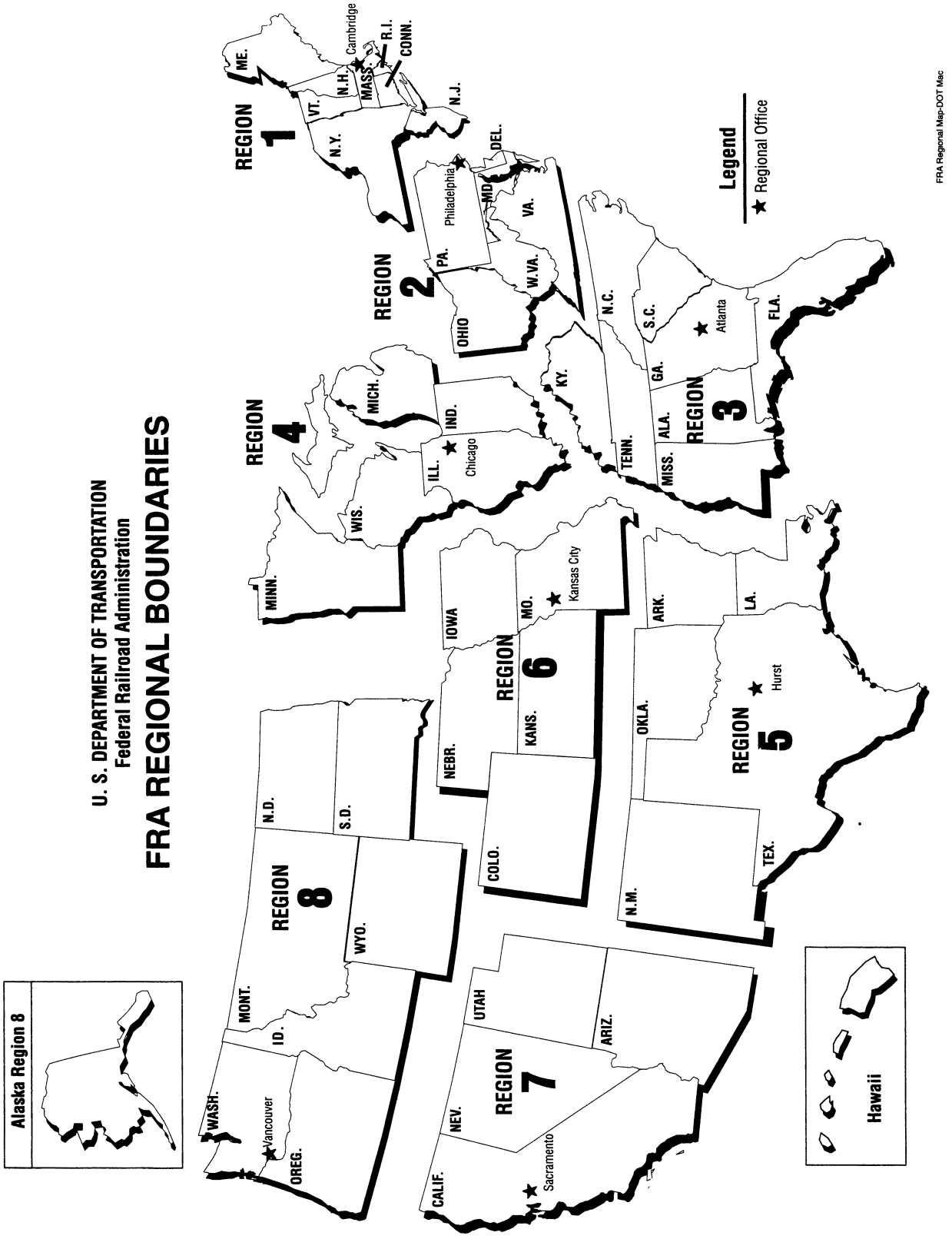
Joseph H. Boardman,

Federal Railroad Administrator.

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

BILLING CODE 4910–06–P

Appendix A to Part 262—FRA Regional Boundaries



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