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Title 49 —Transportation

Subtitle B —Other Regulations Relating to Transportation

Chapter II —Federal Railroad Administration, Department of Transportation

Part 262 Implementation of Program for Capital Grants for Rail Line Relocation and Improvement Projects

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

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

Source: 73 FR 39886, July 11, 2008, unless otherwise noted.

§ 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.