

## § 262.17

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

## 49 CFR Ch. II (10-1-10 Edition)

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.

## PART 266—ASSISTANCE TO STATES FOR LOCAL RAIL SERVICE UNDER SECTION 5 OF THE DEPARTMENT OF TRANSPORTATION ACT

Sec.

266.1 Definitions.

266.3 Rail Service Assistance Program.

266.5 State eligibility.

266.7 Project eligibility.

266.9 Federal/State share.

266.11 Allowable costs.

266.13 Distribution of funds.

266.15 Requirements for State Rail Plan.

266.17 Applications.

266.19 Environmental impact.

266.21 Grant agreement and disbursement.

266.23 Record, audit, and examination.

266.25 Waivers and modifications.

AUTHORITY: Sec. 5 of the Department of Transportation Act (49 U.S.C. 1654), as amended by the Local Rail Service Assistance Act of 1978, Pub. L. 95-607, 92 Stat. 3059.

SOURCE: 44 FR 51129, Aug. 30, 1979, unless otherwise noted.

### § 266.1 Definitions.

As used in this part:

*Acquisition assistance* means funds granted to a State under section 5(f)(2) of the Department of Transportation Act (49 U.S.C. 1654(f)(2)) to cover the cost of acquiring by purchase, lease, or in such other manner as the State considers appropriate, a line of railroad or other rail properties, or any interest therein for existing or future rail freight service.

*Act* means the Department of Transportation Act (49 U.S.C. 1650 *et seq.*).

*Administrator* means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

*Cash* means an outlay of funds.

## Federal Railroad Administration, DOT

## § 266.1

*Commission* means the Interstate Commerce Commission or any successor Federal agency to the relevant activity.

*Common carrier* means a person providing railroad transportation for compensation who is subject to the jurisdiction of the Commission under subchapter I of chapter 105 of title 49 of the U.S.C.

*Designated State Agency* means the State agency designated under section 5(j)(2) of the Act (49 U.S.C. 1654(j)(2)).

*Entitlement* means the amount of assistance which a State is eligible to receive annually under section 5(h) of the Act (49 U.S.C. 1654(h)).

*Equipment* means rolling stock of the kind generally used by American railroads in revenue freight service.

*Facilities* means track, ties, roadbed and related structures including terminals, team tracks and appurtenances, bridges and tunnels, and other structures used or usable for rail service operations.

*FRA* means the Federal Railroad Administration.

*Federal Share* means the contribution by the Administrator under section 5(g) of the Act (49 U.S.C. 1654(g)) to a State's rail service assistance program.

*Final System Plan* means the plan approved by the Congress under section 208 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 718).

*Gross ton miles per mile* means the combined weight of locomotives and all trailing cars and their contents used in revenue freight trains multiplied by the number of route miles traveled and divided by the number of route miles of the line.

*Line* means a line of railroad.

*Maintenance* means inspection and light repairs, emergency repairs and a planned program of periodic maintenance which is necessary to keep a line at its existing condition or to comply with FRA Class 1 Safety Standards.

*Planning assistance* means funds granted to a State under section 5(i) of the Act (49 U.S.C. 1654(i)) to meet the cost of establishing (including developing a planning application), implementing, revising, and updating the State Rail Plan required by section 5(j) of the Act (49 U.S.C. 1654(j)).

*Planning Work Program* means that portion of a State's planning application which outlines the State's plan for establishing, implementing, revising, or updating a State Rail Plan which meets the requirements of section 5(i) of the Act, (49 U.S.C. 1654(i)).

*Program operation assistance* means funds granted to a State to cover those administrative costs allowable under Federal Management Circular 74-4.

*Rail Act* means the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 *et seq.*).

*Rail banking* means the acquisition of an interest in a rail right-of-way sufficient to ensure its preservation for future rail freight service.

*Rail facility construction assistance* means funds granted to a State under section 5(f)(5) of the Act (49 U.S.C. 1654(f)(5)) to cover the cost of constructing rail or rail related facilities (including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines) for the purpose of improving the quality and efficiency of rail freight service.

*Rail service continuation assistance* means funds granted to a State under section 5(f)(1) of the Act (49 U.S.C. 1654(f)(1)) to cover rail service continuation payments for the difference between the revenue attributable to a line of railroad and the avoidable costs of providing rail service on that line, together with a reasonable return on the value of the line and other rail properties related to that line, all as determined in accordance with 49 CFR part 1121 with the following exceptions:

(1) Where service was eligible to be subsidized under section 402(c)(2) (A) and (B) of the Rail Act, rail service continuation assistance means funds for payments determined in accordance with 49 CFR part 1125; and

(2) Where service was eligible to be subsidized under section 402(c)(2)(C) of the Rail Act, rail service continuation assistance means funds for payments calculated, to the greatest extent possible, in a manner consistent with 49 CFR part 1121.

*Rehabilitation or improvement assistance* means funds granted to a State under section 5(f)(3) of the Act (49

### § 266.3

### 49 CFR Ch. II (10–1–10 Edition)

U.S.C. 1654(f)(3)) to cover the cost of replacing or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a line.

*Relocation costs* means actual expenses directly incurred in moving shippers from a line to a new location.

*State* means any State or the District of Columbia in which a common carrier maintains any line.

*State Rail Plan* means the current plan, including all updates, revisions, and amendments required by section 5(j)(1) of the Act (49 U.S.C. 1654(j)(1)).

*Substitute service assistance* means funds granted to a State under section 5(f)(4) of the Act (49 U.S.C. 1654(f)(4)) to cover the cost of reducing the costs of lost rail service in a manner less expensive than continuing rail service and includes (but is not limited to) the acquisition, construction, or improvement of facilities for the provision of substitute freight transportation services and relocation costs.

#### § 266.3 Rail Service Assistance Program.

(a) *Scope of the program.* The Rail Service Assistance Program includes:

- (1) Rail service continuation assistance;
- (2) Acquisition assistance;
- (3) Rehabilitation or improvement assistance;
- (4) Substitute service assistance;
- (5) Rail facility construction assistance;
- (6) Planning assistance; and
- (7) Program operations assistance.

(b) *Special limitations on planning assistance and program operation assistance.* (1) A State is eligible to receive up to \$100,000, or 5 percent of its entitlement, whichever is greater, as planning assistance; and

(2) A State is eligible to receive up to 5 percent of the total amount of funds granted to it each fiscal year under paragraphs (a)(1) to (5) of this section as program operation assistance.

#### § 266.5 State eligibility.

(a) *General eligibility requirements under the rail service assistance program.* A State is eligible for assistance if:

(1) The State has certified pursuant to section 5(j)(4) of the Act that it has

or will adopt and maintain adequate procedures for financial control, accounting and performance evaluation in order to assure proper use of Federal funds;

(2) For purpose of establishing a State Rail Plan, the State has submitted, in accordance with § 266.17(e) of this part, a planning application; and

(3) For any other assistance,

(i) The State has established an adequate plan for rail services in the State which:

(A) Meets the requirements of § 266.15 of this part;

(B) Is part of an overall planning process for all transportation services in the State;

(C) Includes a suitable procedure for updating, revising, and amending such plan; and

(D) As updated, revised, or amended has been approved by the Administrator;

(ii) Such State Rail Plan:

(A) Is administered or coordinated by a designated State agency;

(B) Provides for the equitable distribution of resources; and

(C) Includes a methodology for determining the ratio of benefits to costs of projects for which acquisition assistance, rehabilitation or improvement assistance, substitute service assistance, and rail facility construction assistance is sought;

(iii) The State agency:

(A) Has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail transportation services;

(B) Employs or will employ, directly or indirectly, sufficient trained and qualified personnel;

(C) Maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation; and

(D) Is designated and directed solely or in cooperation with other State agencies to take all practicable steps to improve transportation safety and to reduce transportation-related energy utilization and pollution; and

(iv) The State undertakes to immediately notify the Administrator of any changes in conditions which might affect its compliance with this section.