Proposed Regulation: In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The Authority citation for Part 110 continues to read as follows:

Authority: 93 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Revise paragraph (b) of § 110.183 to read as follows:

§ 110.183 St. Johns River, Florida.

* * * * *

(b) *The regulations.* (1) Except in cases of emergency, only vessels meeting the conditions and restrictions of this subsection will be authorized by the Captain of the Port to anchor in the St. Johns River, as depicted on NOAA chart 11491, between the entrance buoy (STJ) and the Main Street Bridge (in approximate position 30–19.20N, 81–39–32W). Vessels unable to meet any of the following conditions and restrictions must obtain specific authorization from the Captain of the Port prior to anchoring in Anchorage A or B.

(2) All vessels intending to enter and anchor in Anchorage A or B shall notify the Captain of the Port prior to entering.

(3) Anchorages A and B are temporary anchorages. Additionally, Anchorage B is used as a turning basin. Vessels may not anchor for more than 24 hours in either anchorage without specific written authorization from the Captain of the Port.

(4) All vessels at anchor must maintain a watch on VHF–FM channels 13 and 16 by a person fluent in English, and shall make a security broadcast on channel 13 upon anchoring and every 4 hours thereafter.

(5) Anchorage A is restricted to vessels less than 250 feet in length.

(6) Anchorage B is restricted to vessels with a draft of 24 feet or less, regardless of length.

(7) Any vessel transferring petroleum products within Anchorage B shall have a pilot or Docking Master abroad, and employ sufficient assist tugs to assure the safety of the vessel at anchor and any vessels transiting the area.

(8) Any vessel over 300 feet in length within Anchorage B shall have a Pilot or Docking Master aboard, and employ sufficient assist tugs to assure the safety of the vessel at anchor and any vessels transiting the area.

Dated: April 29, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District, Acting.

[FR Doc. 99–11682 Filed 5–19–99; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA 1999–5663]

RIN 2130–AB26

Railroad Rehabilitation and Improvement Financing Program; Proposed Revisions

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Section 7203 of the Transportation Equity Act for the 21st Century (''TEA 21'') amends Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (''Act'') by replacing the railroad financing programs (the purchase of preference shares and the issuance of loan guarantees) with a new loan and loan guarantee program. Section 7203 authorizes the Secretary of Transportation (''Secretary'') to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. The Secretary has delegated his authority to the FRA Administrator. The following types of projects are eligible for financing under Title V, as revised: acquisition, improvement or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops), refinancing outstanding debt incurred for these purposes, or development or establishment of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations cannot exceed $3.5 billion at any one time and not less that $1 billion is to be available solely for projects benefiting freight railroads other than Class I carriers.

The NPRM would strike the language in existing part 260 (the Title V loan guarantee program), and replace it with new procedures and requirements to cover applications of financial assistance in the form of direct loans and loan guarantees consistent with the changes in Title V made by section 7203.

DATES: (1) *Written comments:* Written comments must be received no later than June 21, 1999. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Hearing:* Because the NPRM tracks the statutory language, FRA does not intend to schedule a public hearing.

(3) *Proposed effective date:* The revisions to part 260 are proposed to become effective thirty days after date of publication of the final rule.

ADDRESSES: The public is invited to submit written comments on the NPRM. The proposals contained in the NPRM may be changed in light of the comments received. Written comments should refer to the docket number of this notice and be submitted in duplicate to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material will be available for inspection at this address and on the Internet at *http://dms.dot.gov*. Docket hours at the Nassif Building are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: JoAnne M. McGowan, Chief of Freight Programs Division, RDV–12, Office of Passenger and Freight Services, FRA, 1120 Vermont Avenue, NW, Mailstop 20, Washington, D.C. 20590 (telephone 202–493–6336), or Joseph R. Pomponio, Senior Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mailstop 10, Washington, D.C. 20590 (telephone 202–493–6336).

SUPPLEMENTARY INFORMATION:

Background

Prior to the enactment of TEA 21, Title V of the Act, 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR Part 260.

Section 7203 of TEA 21, Pub. L. No. 105–178 (June 9, 1998), replaces the existing Title V financing programs.

This NPRM strikes the language in existing part 260 and replaces it with new procedures and requirements to cover applications of financial assistance in the form of direct loans and loan guarantees consistent with the changes made to Title V of the Act by section 7203 of TEA 21.

The revised program is referred to in TEA 21 as the Railroad Rehabilitation and Improvement Financing (''RRIF Program''). The RRIF Program authorizes the Secretary to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. The following type of projects are eligible for financing: (1) Acquisition, improvement or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops), (2) refinancing outstanding debt incurred for these purposes; or (3) development or establishment of new intermodal or railroad facilities. The term ''intermodal'' means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made. Loans and loan guarantees cannot be used for railroad operating expenses. The aggregate unpaid principal amounts of obligations cannot exceed $3.5 billion at any one time, and not less that $1 billion is to be available solely for projects benefitting freight railroads (e.g., other than Class I carriers).

The Secretary has delegated his authority under the RRIF Program to the FRA Administrator. In granting applications, FRA is required to give priority to projects that: (1) Enhance public safety; (2) enhance the environment; (3) promote economic development; (4) enable United States companies to be more competitive in international markets; (5) are endorsed by plans prepared under 23 U.S.C. 135 by the State or States in which they are located; or (6) preserve or enhance rail or intermodal service to small communities or rural areas.

Prerequisites to granting financial assistance under the RRIF Program include:

(1) The financial assistance is required to be repaid within a term of not more than 25 years;

(2) The financial assistance is justified by the present and probable future demand for rail services or intermodal facilities;

(3) The applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the financial assistance will be economically and efficiently utilized;

(4) The obligation can reasonably be repaid, using an appropriate combination of credit risk premiums, and collateral offered by the applicant to protect the Federal Government; and

(5) The purposes of the direct loan or loan guarantee are consistent with the eligible purposes for which funding can be provided under the RRIF Program.

The RRIF Program is intended to be a lender of last resort for railroad applicants. Therefore, all railroad applicants must provide evidence that financing for the proposed project is not available to them from lenders in the private sector. This will be done by the applicants submitting two letters of refusal of financing for the proposal from commercial lenders and any other lending institution that has provided credit to the applicant in the past five years.

The Federal Credit Reform Act of 1990, 2 U.S.C. 661 (''Reform Act''), requires that before making any loan or loan guarantee, agencies of the Federal Government must have received an appropriation of funds from Congress adequate to cover the cost to the Government of making that loan or loan guarantee. Section 502(f) provides that a source of the subsidy cost may be either appropriated Federal funds, funds from a non-Federal source, or any combination thereof. For Fiscal Year 1999, the Administration has not requested, and Congress has not appropriated funds to provide the subsidy cost for borrowers, and in the absence of such an appropriation, the Credit Risk Premium associated with any direct loan or loan guarantee must be provided by the project applicant or infrastructure partner, which includes any participant in the project. The Administration has also not requested appropriated funds to provide the subsidy cost for Fiscal Year 2000.

If an appropriation is ever received for this program, funding decisions, including the split between appropriations and credit risk premiums, will be based on the repayability as well as the statutory priorities. Section 502(c) directs the Secretary to give priority to projects that: (1) Enhance public safety; (2) enhance the environment; (3) promote economic development; (4) enable United States companies to be more competitive in international markets; (5) are endorsed by the plans prepared under section 134 of title 23, United States code, by the State or States in which they are located; or preserve or enhance rail or intermodal service to small communities or rural areas. FRA will evaluate each project request and allocate appropriated funds based on the contribution of a project to the statutory priorities.

Under the RRIF Program, FRA is to determine the amount of the Credit Risk Premium on the basis of: (1) The circumstances of the applicant, including the amount of collateral offered; (2) the proposed schedule of loan disbursements; (3) historical data on the repayment history of similar borrowers; (4) consultation with the Congressional Budget Office; and (5) any other factors FRA considers relevant. The Credit Risk Premium must be paid before disbursement of any loan or loan guarantee proceeds. FRA has determined that it will require collateral, to the extent available, in connection with any loan or loan guarantee.

Under the provisions of the RRIF Program and of the Office of Management and Budget (OMB) Circular A–11, FRA is required to group its direct loans and loan guarantees into cohorts and periodically prepare an evaluation of loan performance by cohort and a re-estimation of the funds needed to cover the estimated losses of a cohort. Consistent with Circular A–11, FRA will establish a separate cohort of loans for each fiscal year, and each loan or guarantee obligated during the fiscal year will be placed in that year's cohort. When all obligations in a cohort have been satisfied or liquidated, the amount of Credit Risk Premiums remaining in the cohort, after deductions made to mitigate losses from any loan or loan guarantee in the cohort, together with interest accrued thereon, will be repaid on a pro rata basis to each original payor of a Credit Risk Premium for any obligation which was fully satisfied. The Credit Risk Premium for each direct loan or loan guarantee is established by estimating the total long-term cost to the Government of that direct loan or loan guarantee. Therefore, if the estimates are accurate, all the Credit Risk Premiums in each cohort will be used to cover losses and none will remain to be returned. Should losses exceed the total amount of credit risk premiums paid for each cohort, the losses will be covered by the Government as provided in the Reform Act.

The RRIF Program provides that FRA must, before granting financial assistance, require the applicant to agree to such terms and conditions as are sufficient, in FRA's judgment, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or

railroad partner for whose benefit the assistance is intended—

(1) Will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under the RRIF Program;

(2) Will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

(3) Will not make any discretionary dividend payments that unreasonably conflict with the eligible purposes for which loan or loan guarantees can be made under the RRIF Program.

As can be seen from the foregoing discussion, the RRIF Program provides for loan and loan guarantees for a wide variety of projects, including safety improvements such as the rehabilitation of rail freight lines and bridges as well as the elimination of grade crossings.

While any railroad is eligible for financial assistance for a project under the RRIF Program, a key component of the program is the $1 billion dollars reserved for railroad projects benefitting non-Class I freight railroads. The more than 650 shortline and regional railroads connect rural and small communities to the economic mainstream of North America. Collectively, these railroads operate more than 47,000 miles of track. Their mileage exceeds the 46,000 mile Interstate Highway System. Congress directed the RRIF program to make available loans and loan guarantees to support these small railroads.

From 1986 through 1991, small railroads experienced over 3 track-related accidents for every million miles operated. During the same period, major railroads had only 1.45 track-related accidents for every million miles operated. Since 1991, the situation has worsened. From 1992 through 1996, shortline and regional railroads experienced more than 5 track-related accidents per million miles operated while major railroads had only 1.28.

A recent survey by the American Short Line and Regional Rail Association found that 100 small railroads need $950 million in external financing to upgrade their track to safely accommodate the 286,000 pound cars that major carriers are now using. Shortline and regional railroads that cannot safely handle these heavier cars will lose traffic critical to their viability and continued operation. Moreover, if these railroads cease to exist, rail traffic will be diverted to highways accelerating their deterioration and increasing their reconstruction costs, and adversely affecting the environment. Without this financing, some track operated by small railroads may be abandoned and the freight traffic moved by less energy efficient trucks. This will result in additional air pollution and fuel consumption, as well as significantly increased highway maintenance costs. RRIF funding will strengthen the linkage between transportation and environmental policy by helping to ensure the continuation of energy efficient rail freight service. In addition to their track needs, small railroads require financing for equipment. Approximately, 87 percent of the locomotives used by shortline and regional railroads are more than 20 years old and only 1 percent is less than 10 years old. In comparison, 31 percent of the locomotives used by major railroads are less than 10 years old. Only 32 percent are more than 20 years old.

A 1993 study conducted by FRA entitled ''Small Railroad Investment Goals and Financial Options'' (''FRA Study'') found that small railroads face unique problems and difficulties in securing private financing: ''According to the banking industry, it takes an inordinate amount of work to prepare a small railroad loan package, compared to a similar-sized loan for other businesses. Unlike many similar-sized businesses that need short-term loans for inventory or working-capital, small railroads need long-term financing for long-lived assets such as track materials and equipment. Even when private financing could be obtained, these railroads felt that the terms offered were unsatisfactory. In particular, loans were usually offered for not more than 8 years, too short a term for railroad investments that have a much longer productive life.'' (FRA Study at pg. iii and iv.) The study also confirmed that because differences in bankruptcy law treatment of railroads make it more difficult to recover the proceeds of a railroad loan after a bankruptcy or default than a debt owed by a non-railroad borrower, lending to small railroads has been more restrictive than to Class I railroads or similarly sized entities in other industries. FRA Study at page v.

Shortline and regional railroad access to private financing has not improved since FRA's 1993 study. The small railroad's lack of access to private financing is reflected in their increasing rate of track-related derailments and the age of their equipment.

Tax Status of Loan Guarantees

TEA–21 did not amend the provisions in section 149(b) of the Internal Revenue Code that prohibits the use of direct or indirect Federal guarantees of tax-exempt obligations. Accordingly, the interest income on any project loan that is directly or indirectly Federally guaranteed under section 502 of the Act shall not be exempt from Federal income taxation.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This NPRM has been evaluated in accordance with existing regulatory policies and is considered to be significant within the meaning of Executive Order 12866 and is a significant rule under the DOT regulatory policies and procedures (44 FR, February 26, 1979). This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more until the outstanding principal cap of $3.5 billion is reached.

The financing being made available through the regulatory action will provide economic, safety, and environmental benefits. Of the $3.5 billion, $1 billion is reserved for projects benefitting small railroads. Shortline and regional railroads are one of the transportation modes that connect rural America and small communities to the national railroad system.

Prospective borrowers will normally have available the information needed to prepare applications for funding so these costs also will be minimal. While successful applicants will be required to provide Credit Risk Premiums, the amount of financing obtained will substantially exceed the costs of the Credit Risk Premiums.

On this basis, the DOT has concluded that the RRIF program will generate both direct and indirect benefits, including reduced congestion, improved safety, an enhanced environment, and greater economic growth. These benefits are anticipated to far surpass the minimal combined direct costs to the Federal Government and to the entities that elect to participate in the program. Because of the voluntary nature of participation in the RRIF program, this regulatory action is not anticipated to impose any direct costs upon non-participants.

The DOT requests comments, information, and data from the public and potential users concerning the

economic impact of implementing this rule and the RRIF program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA is not able to certify that this proposed rule would not have a significant impact on a substantial number of small entities and seeks comments from the public. FRA has conducted a regulatory flexibility assessment of this rule's impact on small entities and has found that this action benefits small entities such as governments and railroads. The financing being made available through this rule will provide economic, safety, and environmental benefits. Moreover, participation in the RRIF program is voluntary.

For government entities the definition of small entities is based on population served. As defined by the Small Business Administration (SBA) this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. It is not possible to determine the number of small government entities that may be involved in applications seeking financial assistance under the RRIF program.

However, it is not likely that small governmental entities will seek financial assistance under the RRIF Program. In response to a public notice on the enactment of the Program, only large metropolitan areas, like the City of Indianapolis and the Memphis and Shelby County Port Commission, indicated an interest in RRIF financing. At the same time, small governmental entities will likely benefit from the economic opportunities resulting from infrastructure improvements to small railroads that connect small governmental entities to the national railroad system. The cost to governmental entities of applying for the program would be minimal since borrowers will normally have available the information needed to prepare applications for funding.

In addition to small governmental entities, the small entities directly affected by this rule are class III railroads. ''Small entity,'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The SBA considers a railroad to be small if it has fewer than 1,500 employees of ''line-Haul Operating'' Railroads, and 500 employees for ''Switching and Terminal Establishment.'' Table of Size Standards,'' U.S. Small Business Administration, January 31, 1996, 13 CFR part 121.

Because FRA does not have information regarding the number of people employed by the railroads, it cannot determine exactly how many small railroads, by SBA definition, are in operation within the United States.

Prior to the SBA regulations establishing size categories, the Interstate Commerce Commission (ICC), developed a classification system for freight railroads as class I, II, or III, based on annual operating revenues. A class II railroad has annual operating revenues greater than or equal to $40 million but less than $255.9 million and a class III railroad has annual operating revenues less than $40 million. The Department of Transportation's Surface Transportation Board, which succeeded the ICC, has not changed these classifications. The ICC classification system has been used pervasively by FRA and the railroad industry to identify railroads by size. After consultation with the Office of Advocacy of the SBA and as explained in detail in the ''Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws,'' published August 11, 1997 at 62 FR 43024, FRA has decided to define ''small entity'' on an interim basis to include only those entities whose revenues would bring them within the class III definition. As this is still an alternative definition, FRA requests comments from interested parties on its use.

About 550 of the approximately 700 railroads in the United States are probably Class III railroads and would be considered small businesses by FRA. Small railroads that would be affected by the proposed rule provide less than 10 percent of the industry's employment, own about 10 percent of the track, and operate less than 10 percent of the ton-miles.

A recent survey by the American Short Line and Regional Railroad Association found that 100 small railroads need $950 million in external financing to upgrade their track to safely handle the 286,000 pound cars that the Class I carriers are now using. The amount of need identified is consistent with the statutory reserve of $1 billion for non-class I railroads.

While these 100 railroads may seek RRIF financing, the cost will be minimal since the information needed to complete applications will normally be available. Moreover, participation in the RRIF Program is strictly voluntary.

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

Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The DOT has not yet determined the exact burden-hour impact of the information collection requirements that will be an integral part of the program application process. The PRA approval request to OMB will include our estimate of the information collection burden associated with the requirements in this proposed rule. The Department expects to submit a paperwork package to OMB and provide notice in the **Federal Register** shortly. DOT is committed to minimizing any paperwork burden imposed on program applicants. An OMB control number, when assigned, will be published in the **Federal Register**. FRA is not authorized to impose a penalty on persons for violating information requirements which do not display a current OMB control number.

Environmental Impact

FRA has evaluated this regulation 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.*), other environmental statutes, Executive Orders, and related directives. This regulation meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

List of Subjects in 49 CFR Part 260

Federal Railroad Administration, Grant programs—transportation, Railroads.

The Proposed Rule

In consideration of the foregoing, FRA proposes revising part 260 of title 49, Code of Federal Regulations, to read as follows:

PART 260—REGULATIONS GOVERNING LOANS AND LOAN GUARANTEES UNDER THE RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

Subpart A—Overview

Sec.
260.1 Program authority.
260.3 Definitions.
260.5 Eligible purposes.
260.7 Priority consideration.
260.9 Loan terms.
260.11 Investigation charge.
260.13 Credit reform.
260.15 Credit risk premium.

Subpart B—FRA Policies and Procedures for Evaluating Applications for Financial Assistance

260.17 Credit risk premium analysis.
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Subpart C—Applications for Financial Assistance

260.21 Eligibility.
260.23 Form and content of application generally.
260.25 Additional information for applicants not having a credit rating.
260.27 Additional information for loan guarantees.
260.29 Required exhibits.
260.31 Execution and filing of application.
260.33 Information requests.
260.35 Environmental assessment.
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Subpart D—Standards for Maintenance of Facilities Involved in the Project

260.39 Applicability.
260.41 Maintenance standards.
260.43 Inspection and reporting.
260.45 Impact on other laws.

Subpart E—Procedures To Be Followed in the Event of Default

260.47 Events of default for guaranteed loans.
260.49 Events of default for direct loans.
260.51 Avoiding defaults.

Subpart F—Loan Guarantees—Lenders

260.53 Conditions of guarantees.
260.55 Lender's functions and responsibilities.
260.57 Lender's loan servicing.

Authority: 45 U.S.C. 821, 822, 823; 49 CFR 1.49.

Subpart A—Overview

§ 260.1 Program authority.

Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.*, authorizes the Secretary of Transportation to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. The Secretary's authority has been delegated to the Administrator of the Federal Railroad Administration, an agency of the Department of Transportation.

§ 260.3 Definitions.

As used in this part—

(a) *Act* means the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.*

(b) *Administrator* means the Federal Railroad Administrator, or her or his representative.

(c) *Applicant* means any State or local government, government sponsored authority or corporation, railroad, or group of two or more entities, at least one of which is a railroad, participating in a joint venture, that submits an application to the Administrator for a direct loan or the guarantee of an existing obligation under which it is an obligor or for a commitment to guarantee a new obligation.

(d) *Borrower* means an Applicant that has been approved for, and has received, financial assistance under this part.

(e) *Credit risk premium* means that portion of the total subsidy cost to the Government of a direct loan or loan guarantee that is not covered by Federal appropriations and which must be paid by Applicant or its non-Federal infrastructure partner before that direct loan can be disbursed or loan guarantee can be issued.

(f) *Direct loan* means a disbursement of funds by the Government to a non-federal borrower under a contract that requires the repayment of such funds.

(g) *FRA* means the Federal Railroad Administration.

(h) *Financial assistance* means a direct loan, or a guarantee of a new loan issued under this part.

(i) *Holder* means the current owner of an obligation or the entity retained by the owner to service and collect an obligation which is guaranteed under the provisions of this part.

(j) *Including* means including but not limited to.

(k) *Infrastructure partner* means any non-Federal source of the Credit Risk Premium which must be paid to the Administrator in lieu of, or in combination with, an appropriation in connection with financial assistance provided under this part.

(l) *Intermodal* means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(m) *Lender* means the non-Federal entity making a loan to an Applicant for which a loan guarantee under this part is sought.

(n) *Loan guarantee* means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(o) *Obligation* means a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation.

(p) *Obligor* means the debtor under an obligation, including the original obligor and any successor or assignee of such obligor.

(q) *Project* means the purpose for which financial assistance is provided.

(r) *Railroad* means an entity providing common carrier railroad transportation for compensation, including the National Railroad Passenger Corporation, but not including street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.

(s) *Subsidy cost of a direct loan* means the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(1) Loan disbursements;

(2) Repayments of principal; and

(3) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries; including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(t) *Subsidy cost of a loan guarantee* means the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(1) Payments by the Government to cover defaults and delinquencies,

interest subsidies, or other payments; and

(2) The payments to the Government including origination and other fees, penalties and recoveries.

§ 260.5 Eligible purposes.

(a) Financial assistance under this part is available solely to:

(1) Acquire, improve, or rehabilitate intermodal or rail freight or passenger equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(2) Refinance outstanding debt incurred for purposes described in paragraph (a)(1) of this section; or

(3) Develop or establish new intermodal or railroad facilities.

(b) Financial assistance under this part cannot be used for railroad operating expenses.

§ 260.7 Priority consideration.

When evaluating applications, the Administrator will give priority consideration (but not necessarily in the following order) to projects that:

(a) Enhance public safety;

(b) Enhance the environment;

(c) Promote economic development;

(d) Enable United States companies to be more competitive in international markets;

(e) Are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located; or

(f) Preserve or enhance rail or intermodal service to small communities or rural areas.

§ 260.9 Loan terms.

The maximum repayment period for direct loans and guaranteed loans under this part is 25 years from the date of initial disbursement. In general, the financial assistance provided will be required to be repaid prior to the end of the useful life of the project it is used to fund.

§ 260.11 Investigation charge.

(a) Applicants for financial assistance under this part may be required to pay an investigation charge of one-half of one percent of the principal amount of the direct loan or the loan to be guaranteed.

(b) When an investigation charge is assessed, one-half of the investigation charge shall be paid by Applicant at the time a formal application is submitted to FRA.

(c) Within 60 days after the date of filing of the application, Applicant shall pay to the Administrator the balance of the investigation charge.

§ 260.13 Credit reform.

(a) The Federal Credit Reform Act of 1990, 2 U.S.C. 661, requires Federal agencies to set aside the subsidy cost of new credit assistance provided in the form of direct loans or loan guarantees. The subsidy cost will be the estimated long term cost to the Government of the loan or loan guarantee. The subsidy cost associated with each direct loan or loan guarantee, which the Administrator must set aside, may be funded by Federal appropriations, direct payment of a Credit Risk Premium by the Applicant or a non-Federal infrastructure partner on behalf of the Applicant, or any combination thereof.

§ 260.15 Credit risk premium.

(a) Where available Federal appropriations are inadequate to cover the subsidy cost, a non-Federal infrastructure partner may pay to the Administrator a Credit Risk Premium adequate to cover that portion of the subsidy cost not covered by Federal appropriations. Where there is no Federal appropriation, the Credit Risk Premium must cover the entire subsidy cost.

(b) The amount of the Credit Risk Premium required for each direct loan or loan guarantee, if any, shall be established by the Administrator. The Credit Risk Premium shall be determined based on the credit risk and anticipated recovery in the event of default, including the recovery of collateral.

(c) The Credit Risk Premium must be paid before the disbursement of a direct or guaranteed loan. Where the borrower draws down the direct or guaranteed loan in several increments, the borrower may pay a portion of the total Credit Risk Premium for each increment equal to the proportion of that increment to the total amount of the direct or guaranteed loan.

(d) Each direct loan and loan guarantee made by the Administrator will be included in the single cohort of direct loans and loan guarantees made during that same fiscal year. When all obligations in a cohort have been satisfied or liquidated, the amount of Credit Risk Premiums, paid by applicants or infrastructure partners, remaining in the cohort, after deductions made to mitigate losses from any loan or loan guarantee in the cohort, together with interest accrued thereon, will be repaid on a pro rata basis to each original payor of a Credit Risk Premium for any obligation which was fully satisfied. If the Administrator's estimate of the default risk cost of each loan is accurate, the aggregate of Credit Risk Premiums associated with each cohort of loans will fully offset all losses in the cohort and none will remain to be returned to the payees.

Subpart B—FRA Policies and Procedures for Evaluating Applications for Financial Assistance

§ 260.17 Credit Risk Premium analysis.

(a) When Federal appropriations are not available to cover the total subsidy cost, the Administrator will determine the Credit Risk Premium necessary for each direct loan or loan guarantee by estimating the credit risk and the potential recovery in the event of a default of each project evaluating the factors described in paragraphs (b) and (c) of this section.

(b) Establishing the credit risk. (1) Where an Applicant has received a recent credit rating from one or more nationally recognized rating agencies, that rating will be used to estimate the credit risk.

(2) Where Applicant has not received a credit rating from a credit rating agency, the Administrator will determine the credit risk based on an evaluation of the following factors:

(i) Business risk, based on Applicant's:

(A) Industry outlook;

(B) Market position;

(C) Management and financial policies;

(D) Capital expenditures; and

(E) Operating efficiency.

(ii) Financial risk, based on Applicant's past and projected:

(A) Profitability;

(B) Liquidity;

(C) Financial strength;

(D) Size; and

(E) Level of capital expenditures; and

(iii) Project risk, based on the proposed project's:

(A) Potential for improving revenues, profitability and cash flow from operations; and

(B) Reliance on third parties for success;

(c) The potential recovery in the event of a default will be based on:

(1) Nature of the Applicant's assets; and

(2) Liquidation value of the collateral offered, including the terms and conditions of the lien securing the collateral.

§ 260.19 Preapplication meeting.

Potential Applicants may request a meeting with the FRA Assistant Administrator for Railroad Development to discuss the nature of the project being considered. Applicants must be prepared to provide at least the following information:

(a) Applicant's name, address, and contact person;

(b) Name of the proposed infrastructure partner(s), if any, including the identification of potential amounts of funding from each;

(c) Amount of the direct loan or loan guarantee request, and a description of the technical aspects of the project including a map of the existing railroad lines with the location of the project indicated;

(d) Brief description and estimate of the economic impact, including future demand for service, improvements that can be achieved, the project's relation to the priorities listed in § 260.5, along with any feasibility, market or other studies that may have been done as attachments;

(e) Amount of Applicant's equity and a description of collateral offered, with estimated values, including the basis of such, to be offered as security for the loan;

(f) If applicable, the names and addresses of the Applicant's parent, affiliates, and subsidiary corporations, if any, and a description of the ownership relationship and the level of guarantee, if any, to be offered;

(g) For existing companies, a current balance sheet and an income statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the four most recent years; and

(h) Information relevant to the potential environmental impacts of the project in the context of applicable Federal law.

Subpart C—Applications for Financial Assistance

§ 260.21 Eligibility.

(a) The Administrator may make a direct loan to an Applicant, or guarantee the payment of the principal balance and any interest of an obligation of an Applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such direct loan or obligation shall be, or have been, used by the Applicant for the eligible purposes listed in § 260.3(a) (1) and (2).

(b) The Administrator may also make a direct loan to an Applicant, or guarantee a new obligation of an Applicant prior to, or on the date of execution of such obligation, if the proceeds shall be used for the eligible purposes listed in § 260.3(b).

§ 260.23 Form and content of application generally.

Each application shall include, in the order indicated and identified by applicable paragraph numbers and letters corresponding to those used in this section, the following information:

(a) Full and correct name and principal business address of the Applicant;

(b) Date of Applicant's incorporation, or organization if not a corporation, and name of the government, State or territory under the laws of which it was incorporated or organized. If Applicant is a partnership, association, or other form of organization other than a corporation, a full description of the organization should be furnished;

(c) Name, title, and address of the person to whom correspondence regarding the application should be addressed;

(d) A statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise; if so, description of the relative participation of Applicant and such other railroad or participant, including financial statements (if applicable) and financing arrangements of each participant, portion of the work to be performed by each participant, and anticipated level of usage of the equipment or facility of each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(e) A detailed description of the amount and timing of the financial assistance that is being requested and its purpose or purposes, including:

(1) Detailed description of the project and its purpose or purposes;

(2) A description of all facilities or equipment and the physical condition of such facilities or equipment included in or directly affected by the proposed project;

(3) Each part or sub-part into which the project may reasonably be divided and the priority and schedule of expenditure for each part or sub-part; and

(4) Proposed dates of commencement and completion of the project and estimated timing of the expenditure of the proceeds of the obligation;

(f) A listing and description of the collateral to be offered the Administrator in connection with any financial assistance provided; Applicant's opinion of the value of this security and the basis for such opinion; in the case of leased equipment to be rehabilitated or improved with the proceeds of the obligation proposed to be guaranteed, Applicant shall State, in addition to the above, whether the lease provides for, or the lessor will permit, encumbrance of the leasehold or subordination of the lessor's interest in the equipment to the Administrator;

(g) A statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by Applicant or any affiliated corporate entity of the Applicant or the Applicant's parent as of the date of the application, including:

(1) Status of any claims under litigation; and

(2) Any other debits or credits existing between the Applicant and the United States, showing the department or agency involved in such loans, claims and other debts;

(h) An analysis that includes:

(1) A statement, together with supporting evidence including copies of all market analyses and studies that have been performed to determine present and future demand for rail services or facilities, that the financing is justified by present and future probable demand for rail services or facilities, will meet existing needs for such services or facilities, and will provide shippers or passengers with improved service;

(2) Description of the impact of the project upon the projected freight or passenger traffic to be originated, terminated, or carried by the Applicant for at least the five years immediately following completion of the project;

(3) Explanation of the manner in which the project will increase the economical and efficient utilization of equipment and facilities; and

(4) Description of cost savings or any other benefit which would accrue to the Applicant from the project;

(i) A statement as to how the project will contribute to, or enhance, the safe operation of the railroad, considering such factors as the occupational safety and health of the employees and the improvement of the physical and other conditions that have caused or may cause serious injury or loss of life to the public;

(j) A statement of Applicant's maintenance program for its entire rail system and planned maintenance program for the equipment or facilities financed by the proceeds of the financial assistance;

(k) A certified statement in the form contained in § 260.31(a) that Applicant will pay to the Administrator, in accordance with § 260.11, the investigation charge with respect to the application;

(l) Information relevant to the potential environmental impacts of the project in the context of applicable Federal laws;

(m) Any additional information that the Applicant deems appropriate to convey a full and complete understanding of the project, the project's relations to the priorities listed in § 260.5, and its impact or to assist the Administrator in making the statutorily prescribed findings; and

(n) Any other information which the Administrator may deem necessary concerning an application filed under this part;

(o) Railroad applicants must also submit copies of applications for financing for the project in the private sector, including terms requested, from at least two commercial lenders who regularly provide funding to U.S. corporations and any lending institution that has provided credit to the railroad applicant within 5 years prior to the date the application is submitted, and their responses refusing to provide such financing.

§ 260.25 Additional information for Applicants not having a credit rating.

Each application submitted by Applicants not having a recent credit rating from one or more nationally recognized rating agencies shall include, in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) A narrative statement detailing management's business plan to enhance Applicant's ability to provide rail services including a discussion of the following:

(1) Applicant's current and prospective traffic base, including by commodity and geographic region, major markets served, major interchange points, and market development plans;

(2) Applicant's current operating patterns, and plans, if any, to enhance its ability to serve its current and prospective traffic base;

(3) System-wide plans to maintain equipment and rights-of-way at current or improved levels; and

(4) Specific plans for rationalization of marginal or uneconomic services;

(b) Detailed financial information, including:

(1) Audited financial statements, certified by Applicant's independent public accountants, for the four calendar years immediately preceding the date of filing of the application, including:

(i) A copy of Applicant's most recent year-end general balance sheet and a copy of Applicant's most recent unaudited general balance sheet as of a date no less recent than the end of the third month preceding the date of filing of the application; and

(ii) Applicant's most recent annual income statement certified by Applicant's independent public accountants and a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed. For those months preceding the date of the application, the income statement data shall be reported on an actual basis and so noted. For those months between the date of the application and the end of the year, the income statement data shall be presented on a forecasted basis and so noted and shall be submitted in conjunction with a forecasted balance sheet as of the year end;

(2) Projected financial statements, including:

(i) Spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application:

(A) Forecasted annual income statement;

(B) Forecasted year-end balance sheets. These spread sheets shall be accompanied by a statement setting forth the bases for such forecasts; and

(C) A spread sheet showing changes in financial position for the year in which the application is filed, including the period ending on the date of the application based upon actual data and the period from the date of the application to the end of the year, based upon estimated and forecasted data;

(c) A narrative description of Applicant's operations, management's financial policies, and financial performance goals;

(d) Capital spending plans for the next five years;

(e) Cash flow projections;

(f) Contingency plans for termination of the project before completion, if necessary; and

(g) A narrative description of Applicant's management team, including:

(1) Rail experience of top management;

(2) Management's plans for achieving growth and its long-term capital spending plan; and

(3) A narrative description of Applicant's workforce and the historical rate of employee turnover.

§ 260.27 Additional information for loan guarantees.

Applications for a loan guarantee shall also include in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) With respect to each existing obligation to be refinanced or proposed obligation:

(1) A certified copy of proposed or executed obligation agreements;

(2) A detailed description of the obligation, and a description of the series or issue of which the obligation is, or will be a part, including:

(i) Effective date, or anticipated effective date;

(ii) Where a guarantee is sought for an outstanding obligation being refinanced, actual effective rate of interest; or where the obligation is new, the terms of the proposed obligation including the proposed effective rate of interest; and

(iii) All related documents, whether executed or proposed; and

(b) With respect to each existing holder or prospective lender, a statement as to:

(1) Full and correct name and principal business address;

(2) Reference to applicable provisions of law and the charter or other governing instruments conferring authority on the holder of the obligation or prospective lender;

(3) Brief statement of the circumstances and negotiations leading to the agreement by the holder or prospective lender to make the loan;

(4) Brief statement of the nature and extent of any affiliation or business relationship between the holder or prospective lender and the Applicant or any of Applicant's directors, partners, or principal executive officers; and

(5) Full and complete statement of all sums to be provided by the holder or to be provided by the prospective lender in connection with the proposed obligation including:

(i) Name and address of each person to whom the payment has been made or will be made and nature of any affiliation, association, or prior business relationship between any person named in this paragraph and the holder or prospective lender or any of its directors, partners, or officers; and

(ii) Amount of the cash payment, or the nature and value of other consideration.

§ 260.29 Required exhibits.

There shall be filed with and made a part of each application and copy thereof the following exhibits. While the application is pending, when actual data become available in place of the estimated or forecasted data required in the exhibits under this part, such actual data must be reported promptly to the Administrator in the form required in the appropriate exhibit. All forecasted data required in the exhibits under this part must be based on the assumption that the project will be funded on the January 1 next following the date of the application.

(a) *Exhibit A.* Map of Applicant's existing railroad with location of project indicated, if appropriate;

(b) *Exhibit B.* With respect to equipment proposed to be rehabilitated, improved, maintained, or acquired in the application, a statement indicating number of units and in-service or out-of-service status and, as appropriate:

(1) For locomotives, service type, age, size, horsepower, name of builder, description of work, and unit cost of proposed work; and

(2) For freight and passenger cars or intermodal equipment, information as to service type (box, gondola, flat, etc.), age, capacity, description of work, and unit costs of proposed work; and

(c) *Exhibit C.* With respect to the maintenance, rehabilitation, improvement, acquisition, or construction of facilities proposed in the application, a statement showing the track class, as defined by the FRA Track Safety Standards in part 213 of this chapter, and maximum allowable speed under which each line on which maintenance, rehabilitation, improvement, acquisition or construction is proposed has been and is being operated and the reasons therefor, the track class, maximum allowable speed, and signal requirements necessary in the judgment of the railroad to provide safe, reliable and competitive rail services over such lines, and the highest track class and maximum allowable speed at which each such line will be designated when the proposed project is completed.

§ 260.31 Execution and filing of the application.

(a) The original application shall bear the date of execution, be signed in ink by or on behalf of the Applicant, and shall bear the corporate seal in the case of an Applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the Applicant shall also sign a certificate in form as follows:

(Name of official) certifies that he or she is the (Title of official) of the (Name of Applicant); that he or she is authorized on the part of the Applicant to sign and file with the Administrator this application and exhibits attached thereto; that the consent of all parties whose consent is required, by law or by binding commitment of the Applicant, in order to make this application has been given; that he or she has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid (Name of Applicant); that he or she has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his or her knowledge, information, and belief; and that Applicant will pay the balance of the investigation charge in accordance with § 260.11.

(Name of official)
(Date)

(b) There shall be made a part of the original application the following certificate by the Chief Financial Officer or equivalent officer of the Applicant:

(Name of officer) certifies that he or she is (Title of officer) of (Name of Applicant); that he or she has supervision over the books of accounts and other financial records of the affected Applicant and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting practices; that such accounts are adequate to assure that proceeds from the financing being requested will be used solely and specifically for the purposes authorized; that he or she has examined the financial statements and supporting schedules included in this application and to the best of his or her knowledge and belief those statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, those financial statements and supporting schedules represent a true and complete statement of the financial position of the Applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the Applicant.

(Name of official)
(Date)

(c) The Applicant shall pay the investigation charge in accordance with § 260.11.

(d) The application shall be accompanied by a transmittal letter in the following form:

Re Application for financial assistance under the Railroad Rehabilitation and Improvement Financing.

Federal Railroad Administrator,
c/o the Associate Administrator for Railroad Development of the Federal Railroad Administration, Department of Transportation, Washington, D.C.

Dear Sir or Madam: Being duly authorized by (jointly and severally/if more than one) (the ''Applicant'') to convey the understandings hereinafter set forth, I respectfully submit this application and remit its investigation fee in the amount equal to one-quarter of one percent of the principal amount of the (direct loan/loan guarantee) sought. By this filing, Applicant requests the Administrator to investigate the application and make the necessary findings upon which Applicant's eligibility for a direct loan or loan guarantee may be determined.

Applicant understands that neither the acceptance of this filing, the deposit of the investigation charge, nor the commencement of an investigation acknowledges the sufficiency of the application's form, content or merit. Furthermore, Applicant understands that the Administrator will incur numerous expenses by this filing with respect to the investigation of the application, the appraisal of security being offered, and the making of the necessary determinations and findings, and promises to pay, within 60 days, an additional investigation fee in the amount equal to one-quarter of one percent of the principal amount of the direct loan or guarantee sought.

Applicant understands that the Administrator will establish the amount of Credit Risk Premium due from Applicant, if any, as provided in § 260.15. Applicant agrees to pay such Credit Risk Premium prior to the disbursement of direct or guaranteed loan, as appropriate. Such Credit Risk Premium may be refunded as provided in § 260.15.

Respectfully submitted.
Applicant(s)
Seal(s)
by Its (Their).

(e) The original application and supporting papers, and five copies thereof for the use of the Administrator, shall be filed with the Associate Administrator for Railroad Development of the Federal Railroad Administration, 1120 Vermont Ave., N.W., Stop 21, Washington, D.C. 20590. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed.

§ 260.33 Information requests.

If an Applicant desires that any information submitted in its application or any supplement thereto not be released by the Administrator upon request from a member of the public, the Applicant must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential to the extent permitted by law.

§ 260.35 Environmental assessment.

(a) The provision of financial assistance by the Administrator under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including 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)), the Coastal Zone Management Act (16 U.S.C. 1451), and the Endangered Species Act (16 U.S.C. 1531). Appropriate environmental/historic preservation documentation must be completed and approved by the Administrator prior to a decision by the Administrator on the applicant's financial assistance request. FRA's ''Procedures for Considering Environmental Impacts'' (''FRA's Environmental Procedures'') (45 FR 40854 (June 16, 1980)) or any replacement environmental review procedures that the FRA may later issue and the NEPA regulation of the Council on Environmental Quality (''CEQ Regulation'') (40 CFR 1500) will govern the FRA's compliance with applicable environmental/historic preservation review requirements.

(b) The Administrator, in cooperation with the applicant, has the responsibility to mange the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administrator in accordance with the CEQ regulations and section 7 of FRA's environmental procedures.

(c) Depending on the type, size and potential environmental impact of the project for which the applicant is seeking financial assistance, FRA will need to (1) prepare an Environmental Impact Statement (EIS) or (2) prepare or have prepared an Environmental Assessment leading to a Finding of No Significant Impact or (3) conclude that the project is categorically excluded from detailed environmental review under section 4 of FRA's environmental procedures. At the discretion of the Administrator, Applicants may be required to prepare and submit an environmental assessment of the proposed project or to submit adequate documentation to support a finding that the project is categorically excluded from detailed environmental review. If the applicant is a public agency that has statewide jurisdiction or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may be requested to prepare the EIS and other environmental documents under the Administrator's guidance.

(d) Applicants are strongly urged to consult with the Associate Administrator for Railroad Development at the earliest possible stage in project development in order to assure that the environmental/historic preservation review process can be completed in a timely manner.

(e) Applicants may not initiate any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives in advance of the completion of the environmental review process. This does not preclude development by applicants of plans or designs or performance of other work necessary to support the application for financial assistance.

§ 260.37 Waivers and modifications.

The Administrator may, upon good cause shown, waive or modify any requirement of this part not required by law or make any additional requirements the Administrator deems necessary.

Subpart D—Standards for Maintenance of Facilities Involved in the Project

§ 260.39 Applicability.

This subpart prescribes standards governing the maintenance of facilities that are being, or have been, acquired, rehabilitated, improved, or constructed with the proceeds of a direct loan or a guaranteed loan issued under this part for the period during which any portion of the principal or interest of such obligation remains unpaid.

§ 260.41 Maintenance standards.

(a) When the proceeds of a direct loan or an obligation guaranteed by the Administrator under this part are, or were, used to acquire, rehabilitate, improve or construct track, roadbed, and related structures, Borrower shall, as long as any portion of the principal or interest of such obligation remains unpaid, maintain such facilities in at least the highest track class, as defined by FRA Track Safety Standards in part 213 of this chapter, specified in the Application at which the rehabilitated, improved, acquired, or constructed track is to be operated upon completion of the project unless a waiver is granted in accordance with § 260.37.

(b) When the proceeds of a direct loan or an obligation guaranteed by the Administrator under this part are, or were, used for equipment or facilities, the Borrower shall, during the period in which any portion of the principal or interest in such obligation remains unpaid, maintain such equipment or facilities in a manner consistent with sound engineering and maintenance practices and in a condition that will permit the level of use that existed upon completion of the acquisition, rehabilitation, improvement or construction of such equipment or facilities unless a waiver is granted in accordance with § 260.37.

§ 260.43 Inspection and reporting.

(a) Equipment or facilities subject to the provisions of this subpart may be inspected at such times as the Administrator deems necessary to assure compliance with the standards set forth in § 260.41. Each Borrower shall permit representatives of the FRA to enter upon its property to inspect and examine such facilities at reasonable times and in a reasonable manner. Such representatives shall be permitted to use such testing devices as the Administrator deems necessary to insure that the maintenance standards imposed by this subpart are being followed.

(b) Each Borrower shall submit to the Administrator annually financial records and other documents detailing the maintenance performed and the inspections conducted which demonstrate that the Borrower has complied with the standards in § 260.41.

§ 260.45 Impact on other laws.

Standards issued under this subpart shall not be construed to relieve the Borrower of any obligation to comply with any other Federal, State, or local law or regulation.

Subpart E—Procedures To Be Followed in the Event of Default

§ 260.47 Events of default for guaranteed loans.

(a) If the Borrower is more than 30 days past due on a payment or is in violation of any covenant or condition of the loan documents and such violation constitutes a default under the provisions of the loan documents, Lender must notify the Administrator in writing and must continue to submit this information to the Administrator each month until such time as the loan is no longer in default; and the Administrator will pay the holder of the obligation, or the holders's agent, an amount equal to the past due interest on the guaranteed portion of the defaulted loan. This payment will in no way reduce the Borrower's obligation to the holder to make all payments of principal and interest in accordance with the note. If the loan is brought current, the holder will repay to the Agency any interest payments made by the Agency, plus accrued interest at the note rate.

(b) If the default has continued for more than 90 days, the Administrator will pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal. If,

subsequent to this payment being made, the default is cured and liquidation is no longer appropriate, the holder will repay such funds to the Administrator, plus interest at the note rate.

(c) After the default has continued for more than 90 days, the holder shall expeditiously submit to the Administrator, in writing, its proposed detailed plan to resolve the default by liquidating the collateral or by any other means.

If the resolution will require the liquidation of the collateral, then the holder's plan shall include:

(1) Proof adequate to establish that the holder is legally in possession of the obligation and a statement of the current loan balance and accrued interest to date and the method of computing the interest;

(2) A full and complete list of all collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from any guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the Borrower's latest available financial statements;

(6) Copies of any guarantor's latest available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation;

(9) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as appropriate;

(12) The holder will obtain an independent appraisal on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan that maximizes recovery, the appraisal shall consider the presence of hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral; and

(13) The anticipated expenses associated with the liquidation will be considered a cost of liquidation.

(d) The Administrator will inform the lender in writing whether the Administrator concurs in the lender's liquidation plan. Should the Administrator and the lender not agree on the liquidation plan, negotiations will take place between the Administrator and the lender to resolve the disagreement. When the liquidation plan is approved by the Administrator, the lender will proceed expeditiously with liquidation. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Administrator prior to implementation.

(e) Lender will account for funds during the period of liquidation and will provide the Administrator with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(f) Within 30 days after final liquidation of all collateral, the lender will prepare and submit to the Administrator a final report in which the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Administrator may audit all applicable documentation to confirm the final loss. The lender will make its records available and otherwise assist the Administrator in making any investigation.

(g) The Administrator shall be subrogated to all the rights of the holder with respect to the Borrower to the extent of the Administrator's payment to the holder under this section.

(h) When the Administrator finds the final report to be proper in all respects:

(1) All amounts recovered in liquidation shall be paid to the Administrator; and

(2) The remaining obligation of the Administrator to the holder under the guarantee, if any, will be paid directly to holder by the Administrator.

(i) The Administrator shall not be required to make any payment under paragraphs (a) and (b) of this section if the Administrator finds, before the expiration of the periods described in such subsections, that the default has been remedied.

(j) The Administrator shall have the right to charge Borrower interest, penalties and administrative costs, including all of the United States' legally assessed or reasonably incurred expenses of its counsel and court costs in connection with any proceeding brought or threatened to enforce payment or performance under applicable loan documents, in accordance with OMB Circular A–129, as it may be revised from time to time.

§ 260.49 Events of default for direct loans.

(a) Upon the Borrower's failure to make a scheduled payment, or upon the Borrower's violation of any covenant or condition of the loan documents which constitutes a default under the provisions of the loan documents, the Administrator, at the Administrator's discretion may:

(1) Exercise any and all remedies available under the provisions of the loan agreement and other loan documents, including any guarantees, or inherent in law or equity;

(2) Terminate further borrowing of funds;

(3) Take possession of assets pledged as collateral; and

(4) Liquidate pledged collateral.

(b) The Administrator shall have the right to charge Borrower interest, penalties and administrative costs, including all of the United States' legally assessed or reasonably incurred expenses of its counsel and court costs in connection with any proceeding brought or threatened to enforce payment or performance under applicable loan documents, in accordance with OMB Circular A–129, as it may be revised from time to time.

§ 260.51 Avoiding defaults.

Borrowers are encouraged to contact the Administrator prior to the occurrence of an event of default to explore possible avenues for avoiding such an occurrence.

Subpart F—Loan Guarantees—Lenders

§ 260.53 Conditions of guarantee.

(a) The percentage of the obligation for which Applicant seeks a guarantee is a matter of negotiation between the Lender and the Applicant, subject to the Administrator's approval. The maximum percentage of the total obligation that the Administrator will guarantee is 80 percent. The amount of guarantee allowed will depend on the total credit quality of the transaction and the level of risk believed to be assumed by the Administrator.

(b) A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. In addition,

the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Administrator acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FRA in its guarantee.

(c) The Administrator may guarantee an Applicant's obligation to any lender provided such lender can establish to the satisfaction of the Administrator that it has the legal authority and sufficient expertise and financial strength to operate a successful lending program. Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect the loans.

(d) The lender may sell all of the guaranteed portion of the loan on the secondary market, provided the loan is not in default, or retain the entire loan.

(e) When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the loan guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the loan guarantee and the provisions of this part. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

§ 260.55 Lenders' functions and responsibilities.

Lenders have the primary responsibility for the successful delivery of the program consistent with the policies and procedures outlined in this part. All lenders obtaining or requesting a loan guarantee from the Administrator are responsible for:

(a) *Loan processing.* Lender shall be responsible for all aspects of loan processing, including:

(1) Processing applications for the loan to be guaranteed;

(2) Developing and maintaining adequately documented loan files;

(3) Recommending only loan proposals that are eligible and financially feasible;

(4) Obtaining valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervising construction, where appropriate;

(6) Distributing loan funds;

(7) Servicing guaranteed loans in a prudent manner, including liquidation if necessary; and

(8) Obtaining the Administrator's approval or concurrence as required in the loan guarantee documentation;

(b) *Credit evaluation*. Lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures;

(c) *Environmental responsibilities*. Lender has a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lender must alert the Administrator to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lender must assist borrowers as necessary to comply with the environmental requirements outlined in this part. Additionally, lender will assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems;

(d) *Loan closing.* The lender will conduct or arrange for loan closings; and

(e) *Fees and Charges*. The lender may establish charges and fees for the loan provided they are similar to those normally charged other Applicants for the same type of loan in the ordinary course of business.

§ 260.57 Lender's loan servicing.

(a) The lender is responsible for servicing the entire loan and for taking all servicing actions that are prudent. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the loan documents, obtaining and analyzing financial statements, verification of tax payments, and insurance premiums, and maintaining liens on collateral.

(b) The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually.

(c) At the Administrator's request, the lender will periodically meet with the Administrator to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan documents are being enforced.

(d) The lender must obtain and forward to the Administrator the Borrower's annual financial statements within 120 days after the end of the Borrower's fiscal year and the due date of other reports as required by the loan documents. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the Borrower.

(e) Neither the lender nor the holder shall alter, nor approve any amendments of, any loan instrument without the prior written approval of the Administrator.

Issued in Washington, D.C. on May 13, 1999.

Donald M. Itzkoff,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 568

[Docket No. NHTSA–99–5673]

RIN 2127–AE27

Vehicles Built in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: NHTSA proposes to establish a Negotiated Rulemaking Committee to develop recommended amendments to the existing NHTSA regulations governing the certification of vehicles built in two or more stages (49 CFR Part 567, 568), so that certification responsibilities can be more equitably assigned among the various participants in the multi-stage vehicle manufacturing process. The Committee would develop its recommendations through a negotiation process. The Committee would consist of persons who represent the interests affected by the proposed rule, such as first-stage, intermediate and final-stage manufacturers of motor vehicles, equipment manufacturers, vehicle converters, trade associations that represent various manufacturing groups, as well as consumers. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the