

**INFORMATION COLLECTION
FEDERAL RAILROAD ADMINISTRATION**

**SUPPORTING JUSTIFICATION
Capital Grants for Rail Line Relocation and Improvement Projects**

- 1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION. ATTACH A COPY OF THE APPROPRIATE SECTION OF EACH STATUTE AND REGULATION MANDATING OR AUTHORIZING THE COLLECTION OF INFORMATION.**

Much of the economic growth of the United States can be linked directly to the expansion of rail service. As the nation moved westward, railroads expanded to provide transportation services to growing communities. No event better illustrates this point than “golden spike” ceremonies at Promontory Point, Utah, in 1869 that ushered in transcontinental rail service. Travel times between the Atlantic and Pacific coasts were dramatically reduced, opening numerous new markets for both passenger and freight operations. Municipalities throughout the country knew that their economic success rested on being served by the railroad, and many offered incentives for the chance to be served. As a result, many communities’ land use patterns developed around the railroad lines that became an economic artery as important as “Main Street.” By 1916, rail expansion peaked as miles of road owned reached 254,251.

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

By the early years of the 21st century, the rail industry had made a significant turn around. Beginning with rate deregulation ushered in by the Staggers’ Act of 1980 and including a number of other favorable changes, railroads have introduced innovative services, incorporated modern pricing practices, become profitable, and recaptured market share. Between 1985 and 2004, revenue ton-miles nearly doubled from 876.9 billion to 1.7 trillion. Rail’s market share of intercity revenue freight is approaching 45 percent. This

growth is being accommodated on a system that shrank in response to conditions noted above. The smaller physical plant is handling greater and greater freight volumes. The clearest evidence of more intense use of the industry's plant is found in "traffic density." "Traffic density" is the millions of revenue ton-miles per owned mile of road. In 1985, this indicia stood at 6.02. By 2004, this figure had nearly tripled to 17.02 millions of revenue ton-miles per mile of road owned. This more intense use of rail infrastructure is especially challenging in communities that developed adjacent to or around rail lines, most built over a century ago on alignments appropriate to the times.

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

In many cases, however, these same communities rely heavily on rail traffic. Local industries must be served and passengers, both long distance riders and daily commuters, need convenient access to population and employment centers. Thus, the presence of the railroad is not the problem. Instead, the physical location of the tracks creates tension between the need for the railroad and the problems the physical infrastructure of the railroad creates.

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

In some situations, vertical relocation may be the best solution. For example, Nevada has

undertaken the Reno Transportation Rail Access Project (ReTRAC), the purpose of which is to “sink” 33 feet below the ground in a trench the approximately 2.25 mile segment of track that runs through Reno. Both the Union Pacific Railroad Company (UP) and Amtrack operate over this line. The project will allow for the closing of 11 grade crossings, and will generally improve both highway efficiency and safety as well as the safety and efficiency of the trains that operate through Reno. Many of these relocation projects, like the ReTRAC project, are expensive, and state and local governments lack the resources to undertake them.

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

On August 10, 2005, President George W. Bush signed SAFETEA-LU (Public Law 109-59) into law. Section 9002 of SAFETEA-LU amended chapter 201 of Title 49 of the United States Code by adding new § 20154, which establishes the basic elements of a funding program for capital grants for rail relocation and improvement projects. Subsection (b) of the new § 20154 mandates that the Secretary of Transportation issue “temporary regulations” to implement the capital grants program and then issue final regulations by October 1, 2006.

On January 17, 2007, FRA published a notice of proposed rulemaking (NPRM) proposing to add part 262 to Title 49, Code of Federal Regulations. Part 262 would carry out the statutory mandate of Section 9002 of SAFETEA-LU. Section 20154 authorizes – but does not appropriate – \$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. As noted above, the statute requires the Secretary to implement the grant program through regulations. The Secretary has delegated this responsibility to FRA. As of the publication of this final rule, Congress did not appropriate any funding for the program for FY 2006 or FY 2007 but did appropriate \$20,040,200 for fiscal year 2008. This final rule and associated information collection then are intended to carry out the Congressional mandate stipulated in § 20154 of SAFETEA-LU.

- 2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.**

This is a new collection of information. The information collected will be used by FRA to carry out a Congressional mandate, and will enable FRA to determine whether or not it is appropriate to provide financial assistance to State and local governments looking to undertake either rail relocation or rail improvement projects. Specifically, FRA will review application information submitted under § 262.11 to ensure that only eligible State and local governments apply for the Congressional grant money, and that these States and local governments meet all stipulated criteria before FRA decides to award a grant. Grant money can only be awarded to a State or other non-Federal entity that is able to pay at least 10 percent of the shared costs of a project funded under Section 9002 of SAFETEA-LU.

FRA will review the environmental assessment and historic preservation documentation required to be submitted by grantees under § 262.15 to ensure that all relevant Federal statutes are complied with. FRA will also use this additional information to determine whether it is safe and in the public interest to approve a proposed project for rail line relocation or rail improvement. Moreover, FRA will use the information submitted under this section to fulfill its legal obligations under the National Environmental Policy Act (NEPA) and other statutes so that it can evaluate the effects on the local environment of the proposed project. NEPA mandates that before any “major” Federal action can take place, the Federal entity performing the action must complete a full environmental review detailing the impacts to the environment as a result of the action. A grantee may contract with private companies to perform the NEPA review, but the FRA Administrator must issue the final environmental review document. Thus, FRA will carefully scrutinize the environmental review document because the agency needs to be certain that serious environmental harm will not result if a proposed project is given a green light to begin construction.

Additionally, under § 262.15, state and local government applicants for grants will consult with FRA before they begin any environmental or historic preservation analysis. These consultations will enable states and local governments applying for grants to fully explain to FRA officials how they plan on proceeding with the required environmental/historic preservation reviews on potentially eligible projects as well as help them to clarify any issues regarding legal requirements in this area. FRA will use the additional information obtained from these consultations as another factor in its decision to approve or disapprove a potential project for a grant.

Under § 262.17, FRA will carefully review agreements between two or more states seeking to combine grant awards to determine whether it is feasible and in the public interest to approve such a combined grant and also to determine whether the proposed project will benefit each of the states entering into the agreement as well as to assure that the agreement is not a violation of the laws of any such state.

Finally, under § 262.19, 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). FRA will review this information to ensure the state has complied with all the terms of the grant and will use this information in its close-out procedures, particularly those for reimbursement and payment.

Further, if the project is completed, within 90 days after expiration or termination of the grant, the state must 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 must submit a report detailing why the project was not completed. FRA will review these reports to ensure that construction work passes inspection, is done properly, and meets prescribed state standards. If the project is not completed, FRA will review the required reports to find out why the project was not completed and to determine agency recourse related to completion of the project, grant reimbursement, or other possible agency actions.

3. **DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.**

FRA strongly supports and highly encourages the use of advanced information technology, wherever possible, to reduce burden on respondents. FRA has championed the use of advanced information technology, particularly electronic recordkeeping, for many years now. In compliance with both the requirements of the PRA and GPEA, FRA provides for electronic submission of application information under § 262.11. In fact, all grant applications submitted under this program must be submitted to FRA through the Internet at <http://www.grants.gov>. Approximately 15 percent of all responses (67 percent of the total burden) can be submitted electronically.

It should be noted that the burden of this information collection will be very minimal.

3. **DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSES DESCRIBED IN ITEM 2 ABOVE.**

The information collection requirements to our knowledge are not duplicated anywhere.

Similar data are not available from any other source.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF OMB FORM 83-I), DESCRIBE ANY METHODS USED TO MINIMIZE BURDEN.

This collection of information is completely voluntary, and will only affect those entities that voluntarily elect to apply for capital grants under Section 9002 of SAFETEA-LU. FRA views it as unlikely that a small entity, such as a local government, would be disproportionately impacted by this rule and its associated information collection. The cost to governmental entities of applying for the program would be minimal, since applicants will normally have available most of the information needed to prepare applications for a grant under Section 9002. In the event that small entities or jurisdictions were disproportionately impacted by the cost of the application process, FRA would likely work with these entities/jurisdictions to reduce these costs. It should be noted that the cost to small entities has been minimized to the extent possible while complying with the Congressional mandate.

The capital grants for rail line relocation could certainly provide benefits to small entities, such as local governments. The funds being made available through this program could provide economic, safety, and environmental benefits. Again, participation in the local rail line relocation and improvement projects capital grants program is completely voluntary. The statute requires a state or other non-Federal entity to provide at least ten percent of the shared cost of a project funded under this program. To the extent a small entity was providing that non-Federal share, the impact would be calculated by the small entity in deciding whether to file the application under the program.

Also, it should be pointed out that the regulatory flexibility analysis accompanying this final rule has certified that this regulation is not expected to have significant economic impact on a substantial number of small entities. The factual basis for this certification is the following: (1) Out of 28 entities that expressed interest in the grant program, as indicated by the comments responding to the NPRM, two were small entities; (2) Only one small entity expressed concern regarding the impact of the application requirements; (3) The States that commented indicated that they would support local jurisdictions applying for grants; and (4) FRA intends to assist applicants that request assistance with the application process.

Furthermore, the rule also includes provisions to mitigate impacts on all entities (e.g., by allowing for a pre-application meeting with FRA's Associate Administrator for Railroad Development or his/her designee to facilitate applying for a grant), and the relationship between small and large entities (i.e., governmental jurisdictions) indicates that assistance

would be available to small entities in applying for the grant program.

Finally, none of the small governmental jurisdictions that commented on the NPRM stated that the application costs were onerous or burdensome, so it is highly unlikely that a small entity, such as local government, would be disproportionately impacted by this rule and its requirements.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

If this information were not collected or collected less frequently after Congress has appropriated necessary funding, then FRA would be unable to fulfill a Congressional mandate (Section 9002 of SAFETEA-LU). Specifically, without this collection of information, FRA would be unable to determine eligibility for Capital Grants funds and would be unable evaluate rail line relocation and improvement projects that are proposed by any of the 50 States. Without this collection of information, FRA would be unable to ensure that all requirements for Capital Grants are met, particularly the requirement that a State or other non-Federal entity pay 10 percent of the shared costs of a project.

Without this collection of information, FRA would have no way to meet with grant applicants to discuss the nature of the project being considered to obtain clarifying details to aid it in its decision to approve or disapprove the proposed project and to ensure that, if agency approval is given, state/local governments fully understand their responsibilities in meeting the terms of the grant.

If this information were not collected, FRA would have no way to ensure that all applicable Federal statutes, such as the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and the Endangered Species Act, are complied with by States seeking rail line relocation and improvement project funds. Without this collection of information, FRA would be unable to fulfill its obligations under NEPA. The use of Federal funds in a project triggers the NEPA process. A grantee may have its own personnel conduct the required environmental assessment or may contract with private parties to perform the NEPA review, but FRA's Administrator must issue the final review document. Project construction can not begin until all appropriate environmental and historic documentation has been completed and can not begin until the FRA Administrator has completed his/her review of this documentation and given his/her approval.

Without this collection of information, State/local governments would be unable to consult with FRA before beginning any environmental or historic preservation analysis for a potentially eligible project. Without such consultations, States/local governments might not fully understand and completely comply with Federal environmental and historic statutes and also might perform environmental or historic preservation analysis

that would not meet Federal/agency requirements and thus not pass FRA review. Prior consultation with FRA would ensure State/local government funds spent for environmental or historic preservation analysis meets all Federal/agency requirements and is well spent.

Without this collection of information, FRA would have no way to monitor various aspects of agency approved rail line relocation and improvement projects, including the progress and the completion or final performance of individual projects, the financial status of the project that details outlays and requests for reimbursement for physical construction, final requests for payment, patent disclosure (if applicable), and condition of Federally-owned property (if applicable) that are included in required close-out reports by States/local governments. Also, without this collection of information and the required reports mandated in the close-out procedures, FRA would have no way to determine whether States/local governments had complied with the requirement that an approved project that is completed have a full inspection of all construction work and would have no way to know, if a project were not completed, the details why the project was not completed. This monitoring and follow-up information is essential if FRA is to carry-out the Congressional mandate and ensure that Federal grant money is used appropriately and effectively.

In sum, the collection of information enables FRA to fulfill a Congressional mandate, contribute to state/local economic development, and promote and enhance safe rail transportation throughout the United States. In this, it furthers DOT's goals and objectives as well as its core agency mission.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;**
- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;**
- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT**

- CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;
REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;
- THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR
- REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.

All the information collection requirements contained in the rule are in compliance with this section.

8. **IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THOSE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS--EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

FRA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on January 17, 2007 (See 72 FR 1965), soliciting public and rail industry comment on the proposed regulation and the information collection requirements associated with it. In response to the NPRM, FRA received approximately 28 written comments, including comments from state and local governments, the railroad industry and trade organizations, as well as members of the public.

All of the comments were in favor of the capital grants program. Many of the commenters had specific project that they were interested in obtaining funding for under this program. Several of the commenters observed that environmental compliance costs constitute the great majority of the project costs, particularly in the early stages. The NPRM had suggested that the grant applicant must fund these compliance tasks/costs prior to filing an application. In response to these comments, the final rule clarifies the need for compliance and provides three alternatives for grant applicants. Applicants can either seek funds under § 262.11 to complete the compliance work, or alternatively they can pay for the compliance work themselves and seek reimbursement from FRA for these costs to the extent they otherwise qualify as allowable costs should FRA later approve the project, or they can pay for the compliance work themselves and apply this cost to the 10% matching requirement if a grant is awarded.

None of the 28 comments specifically addressed burden hour time and cost estimates associated with the NPRM's collection of information.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN ENUMERATION OF CONTRACTORS OR GRANTEES.

There are no monetary payments provided or gifts made to respondents in connection with this information collection.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE

INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.

There are no questions or information of a sensitive nature or data that would normally be considered private contained in this information collection.

12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:

- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCES IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOUR FOR CUSTOMARY AND USUAL BUSINESS PRACTICES.**
- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEMS 13 OF OMB FORM 83-I.**
- **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.**

*Note: As mentioned earlier and as of the publication of this final rule in the **Federal Register**, \$20,040,200 has been appropriated to fulfill Section 9002 of SAFETEA-LU. Based on the 2006 edition of the Association of American Railroads (AAR) publication titled Railroad Facts, FRA has used the following labor rate for railroad hourly wages in its cost calculations: \$73 per hour for railroad executives/officials; \$43 per hour for professional/administrative employees. Wage rates are burdened 40% to include fringe benefits and overhead. Only the burden costs not included in the Regulatory Impact Analysis (RIA) accompanying this rule are included below.*

§ 262.9 Criteria for Selection of Projects

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

(a) The capability of the State to fund the rail line relocation project without Federal grant funding; (b) The requirement and limitation relating to allocation of grant funds provided in § 262.7; (c) Equitable treatment of various regions of the United States; (d) The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce; (e) The effects of the rail line, relocated as proposed, on the freight rail and passenger rail operations on the line; and (f) Any other factors that FRA determines to be relevant to assessing the effectiveness and/or efficiency of the grant application in achieving the goals of the national program, including the level of commitment of non-Federal and/or private funds to a project and to the anticipated public and private benefits.

The burden for this requirement is included in that of § 262.11 below. Consequently, there is no additional burden associated with this requirement.

§ 262.11 Application Process

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

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

Congress has appropriated \$20,040,200 for this grant program, and has included nine (9) earmarks in the legislation for which FRA expects grant applications. Additionally, FRA estimates that it will receive an additional nine (9) applications with supporting

documentation (a total of 18 applications) under the above requirement. It is estimated that it will take approximately 580 hours to prepare and electronically transmit each grant application to the agency for the non-earmarked candidates and approximately 290 hours to prepare and electronically transmit each grant application to the agency for the earmarked candidates. Total annual burden for this requirement is 7,830 hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

580
hours/2
90
hours

Frequency of Response:

On occasion

Annual number of Responses: 18 grant applications
Annual Burden: 7,830 hours

Annual Cost: \$0 (Cost included in RIA)

Calculation: 9 grant applications x 580 hrs. + 9 grant applications x 290 hrs. =
7,830 hours
\$0 (Cost included in RIA)

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

FRA estimates that approximately five (5) of the States/local governments submitting applications will request a meeting with the FRA Associate Administrator for Railroad Development or his designee under the above requirement. It is estimated that it will take approximately 30 minutes to complete each request/letter for a meeting. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

30
minute
s

Frequency of Response:

On occasion

Annual number of Responses:

5 requests/letters

Annual Burden:

3 hours

Annual Cost:

\$129

Calculation: 5 requests/letters x 30 min. = 3 hours
3 hrs. x \$43 = \$129

Additionally, FRA estimates that each of the five (5) face-to-face meetings with the FRA Associate Administrator for Railroad Development or his designee will take approximately two (2) hours to complete. Total annual burden for this requirement is ten (10) hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

2 hours

Frequency of Response: On occasion

Annual number of Responses: 5 project meetings
Annual Burden: 10 hours

Annual Cost: \$730

Calculation: 5 project meetings x 2 hrs. = 10 hours
10 hrs. x \$73 = \$730

Total annual burden for this entire requirement is 7,843 hours (7,830 + 3 + 10).

§ 262.15 Environmental Assessment

(a.) The provision of grant funds by FRA under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including, but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. § 4332 et. seq.), Section 4(f) of the Department of Transportation Act (49 U.S. C. § 303(c)), the National Historic Preservation Act (16 U.S.C. § 470(f)), and the Endangered Species Act (16 U.S.C. § 1531). Appropriate environmental and historic documentation must be completed and approved by the Administrator prior to a decision by FRA to approve a project for construction.

FRA estimates that approximately 18 environmental and historic documents will be submitted to the agency under the above requirement. Depending on the type and complexity of the project, the environmental and historic documentation required will vary. On average, it is estimated that it will take approximately 200 hours to complete the required documentation and send it to FRA. Total annual burden for this requirement is 3,600 hours. (*Note: Since the Regulatory Impact Analysis (RIA) accompanying this final rule only accounts partially (i.e., 60 hours for each of the 200 hours necessary to complete the required environmental documentation), the balance or 140 hours for each of the 18 expected environmental documents or total of 2,520 hours is accounted for here. The estimated hourly wage rate to complete this documentation is \$63.*)

Respondent Universe: 50 States/Local governments
Burden time per response:

200

hours

Frequency of Response: On occasion

Annual number of Responses: 18 environmental documents
Annual Burden: 3,600 hours
Annual Cost: \$158,760

Calculation: 18 environmental documents x 200 hrs. = 3,600 hours
2,520 hours x \$63 = \$158,760

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

For those projects that are not earmarked, FRA estimates that approximately nine (9) consultations with FRA will take place before a State begins any environmental or historic preservation analysis. It is estimated that it will take approximately two (2) hours to complete the necessary consultation with FRA. Total annual burden for this requirement is 18 hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

2 hours

Frequency of Response:

On occasion

Annual number of Responses: 9 consultations

Annual Burden: 18 hours

Annual Cost: \$1,314

Calculation: 9 consultations x 2 hrs. = 18 hours
18 hrs. x \$73 = \$1,314

Total annual burden for this entire requirement is 3,618 hours (3,600 + 18).

§ 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; (2) The agreement is not a violation of the law of any such State. **(New Requirement)**

FRA estimates that all two (2) states will enter into one (1) agreement under the above requirement. It is estimated that it will take approximately 10 hours to complete each agreement. Total annual burden for this requirement is 10 hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

10
hours

Frequency of Response: On occasion

Annual number of Responses: 1 agreement
Annual Burden: 10 hours
Annual Cost: \$730

Calculation: 1 agreements x 10 hrs. = 10 hours
10 hrs. x \$73 = \$730

§ 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).

FRA estimates that all 18 States/local governments will complete the necessary close-out documents stipulated under the above requirement. It is estimated that it will take approximately six (6) hours to complete all (each set) of the prescribed forms/reports. Total annual burden for this requirement is 108 hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

6 hours

Frequency of Response:

On occasion

Annual number of Responses:	18 sets of close-out documents
Annual Burden:	108 hours
Annual Cost:	\$4,644

Calculation: 18 sets of close-out documents x 6 hrs. = 108 hours
 108 hrs. x \$43 = \$4,644

- B. If the project is completed, within 90 days after the expiration or termination of the grant, the State must 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 must submit a report detailing why the project was not completed.

FRA estimates that all 18 States/local governments will complete the reports prescribed under the above requirement. It is estimated that it will take approximately 80 hours to complete the construction and necessary report. Total annual burden for this requirement is 1,440 hours.

Respondent Universe:

50
States/
Local
govern
ments

Burden time per response:

80
hours

Frequency of Response: On occasion

Annual number of Responses: 18 reports
Annual Burden: 1,440 hours
Annual Cost: \$105,120

Calculation: 18 reports x 80 hrs. = 1,440 hours
1,440 hrs. x \$73 = \$105,120

Total burden for this information collection requirement is 1,548 hours (108 + 1,440).

The total burden for this entire information collection is 13,019 hours.

13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COSTS OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

- **THE COST ESTIMATES SHOULD BE SPLIT INTO TWO COMPONENTS: (A) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER IT EXPECTED USEFUL LIFE); AND (B) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COSTS FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION**

PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEP RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

There are no additional costs to respondents other than the cost above and the costs included in the Regulatory Impact Analysis (RIA) accompanying this final rule.

- 14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COSTS, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATIONAL EXPENSES SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF, AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

The cost to the Federal government to review 18 grant applications is already included in the Regulatory Impact Analysis accompanying this final rule. Consequently, there is no additional cost to the Federal government.

- 15. EXPLAIN THE REASONS FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.**

The information collection requirements listed above are new (since Congressional funding will be appropriated as of the publication date of this rule in the **Federal Register**). The total burden for the proposed collection of information has increased by 6,944 *hours* from the submission for the earlier NPRM. This increase results from two **program changes** and from several **adjustments**. Specifically, two new provisions were added to the final rule:

- 1.) **Under § 262.15, Environmental Assessment** (of a rail line relocation or improvement project), States/local governments are urged to consult with FRA before beginning any environmental or historic preservation analysis. FRA estimates that there will be

approximately nine (9) consultations with the agency. This program change *increased* the burden by *18 hours*.

2.) Under § 262.17, Combining Grant Awards, FRA estimates that there will be one (1) agreement between two or more states looking to combine a grant award. This program change increased the burden by *10 hours*.

Thus, **program changes** *increased* the burden by a total of *28 hours*.

There were also **adjustments** that increased the burden. Specifically, estimates for the following requirements were revised (increased):

- 1.) Under § 262.11, Application Process, FRA revised the number of grant applications (from seven (7) to 18). This *increased* the burden by *3,770 hours* (from 4,060 hours to 7,830 hours).
- 2.) Under § 262.15, Environmental Assessment, FRA revised the number of environmental documents (from seven (7) to 18). This *increased* the burden by *2,200 hours* (from 1,400 hours to 3,600 hours).
- 3.) Under § 262.19, Close-Out Procedures, FRA revised the number of Close-Out documents (from seven (7) to 18). This *increased* the burden by *66 hours* (from 42 hours to 108 hours).
- 4.) Under § 262.19, Close-Out Procedures, FRA revised the number of reports (from seven (7) to 18). This *increased* the burden by *880 hours* (from 560 hours to 1,440 hours).

Thus, **adjustments** *increased* the burden by *6,916 hours*. Overall, burden increases (program changes and adjustments) amount to *6,944 hours*.

The current OMB inventory shows 6,075 hours, while the present submission reflects a burden total of 13,019 hours. Hence, there is an increase of *6,944 hours*.

There is no change in cost to respondents from the previous submission.

16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.

There are no plans for publication of this submission. The information will be used exclusively for purposes of determining compliance with U.S. laws and FRA safety regulations.

17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-I.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports several of DOT's strategic goals. First, it supports

transportation safety. Now that Congress is appropriating funds, this collection of information will promote safety by allowing states/local governments to submit applications for grants for rail line relocation and improvement projects. Thus, for example, under a grant approved by FRA, dangerous railroad crossings or other poorly situated track that presents a hazard to motorists for a particular state/local government can be moved to an area better suited for it. This could significantly reduce and possibly eliminate serious injuries and fatalities at such crossings and thereby improve overall rail/motorist safety.

This information collection also supports the DOT goal of fostering economic growth and trade. Moving rail lines to a more suitable location can theoretically free up commerce in towns where a waterfront is blocked by rail lines or where the flow of commerce to a downtown section is cut off from residential communities by rail lines. Moving rail lines can also conceivably improve railroad operations – and thus commerce – by relieving congestion or allowing more efficient operation of the railroad.

Finally, this collection of information supports the DOT goal of human and natural environment. This collection of information requires an environmental assessment. Thus, it provides a means to ensure that all applicable Federal statutes, such as the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and the Endangered Species Act, are complied with by States/local governments seeking rail line relocation and improvement project funds. Compliance by States/local governments will enhance their natural environment and increase the desirability to live in the affected communities. Without this collection of information, FRA would be unable to fulfill its obligations under NEPA. The use of Federal funds in a project triggers the NEPA process. A grantee may have its own personnel conduct the required environmental assessment or may contract with private parties to perform the NEPA review, but FRA's Administrator must issue the final review document. FRA will carefully scrutinize the environmental review document because the agency needs to be certain that severe environmental harm will not result if the proposed project is given the green light.

In this information collection, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.

