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PART II

DEPARTMENT OF TRANSPORTATION

**Federal Railroad
Administration**



CONTINUATION OF LOCAL RAIL SERVICE

**Procedures and Requirements Regarding
Applications and Disbursement**

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Economic Docket No. 3, Notice No. 2]

PART 255—ASSISTANCE TO STATES AND LOCAL AND REGIONAL TRANSPORTATION AUTHORITIES IN THE REGION FOR CONTINUATION OF LOCAL RAIL SERVICES UNDER SECTION 402 OF TITLE IV OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Procedures and Requirements Regarding Applications and Disbursement

Proposed procedures and requirements regarding the filing of applications for and disbursement of rail service continuation subsidies under section 402 of the Regional Rail Reorganization Act of 1973 ("Act") (45 U.S.C. § 701 et. seq.) were published in the FEDERAL REGISTER on April 5, 1974 (39 FR 12528). Section 402 of the Act establishes a transitional program, whereby the Secretary of Transportation ("Secretary") or his delegate, in accordance with the regulations issued by the Department of Transportation shall provide financial assistance to a State or a local or regional transportation authority in the northeast and midwest region of the United States for the continuation of local rail services.

Section 402 of the Act provides that a State in the region is eligible to receive assistance if:

1. The State has established a State Rail Plan for rail transportation and local rail services which is administered or coordinated by a designated State agency and such plan provides for the equitable distribution of such subsidies among State, local, and regional transportation authorities;

2. The State agency has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services; employs or will employ, directly or indirectly, sufficient trained and qualified personnel; and maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

3. The State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under Title IV of the Act to the State; and

4. The State complies with the regulations of the Secretary issued under this section.

The section 402 assistance program under the Act is meant to facilitate the transition from the existing rail system in the region to a more efficient system. During this period of transition, interim assistance will enable States and localities to continue local rail services which are not designated for preservation in the Final System Plan, but should be continued at least on an interim basis due to the excessive cost of abandonment of these services in terms of lost

jobs, energy shortages, and degradation of the environment.

To facilitate this transition, the Congress provided for basic entitlement funds and discretionary funds, under section 402 of the Act, as a source of assistance for the continuation of local rail services in the region. Basic entitlement funds are to be applied first to those eligible rail services to be discontinued as a result of the implementation of the Final System Plan and which the State determines should be continued.

In addition to meeting any deficiencies in the basic entitlement funds as provided in subsection 402(b)(1) of the Act, discretionary funds will be available for the following purposes:

1. To assist an eligible applicant to pay allowable planning costs expended in developing its State Rail Plan, provided that the Final System Plan is approved by the Congress and the State Rail Plan is approved by the Administrator and provided further that this assistance in the aggregate shall be limited to five percent of the total Federal funds otherwise provided to the State under section 402 of the Act. The Federal share of an applicant's allowable planning costs may not exceed 70 percent of these costs. An applicant may expend additional funds for planning other than its matching share.

2. To assist the States in providing rail service continuation subsidies to those rail services to be discontinued as a result of the implementation of the Final System Plan in instances where basic entitlement funds are used to the maximum extent available but are insufficient to provide for the continuation of these services;

3. To assist an eligible applicant in a State contiguous to a State in the region having a portion of its territory located in the region, which is not eligible for basic entitlement funds under subsection 402(b)(1) of the Act in providing rail service continuation subsidies;

4. To assist an eligible applicant in the acquisition and modernization of rail properties as provided in sections 402(b)(2) and 403 of the Act; and

5. To assist an eligible applicant in providing rail service continuation subsidies to the remaining rail services in the region which are eligible under section 255.3 of the regulations, other than those discontinued in response to the Final System Plan, and which have been identified in the State Rail Plan as candidates for subsidy, in instances where basic entitlement funds under subsection 402(b)(1) of the Act are insufficient to ensure continuation of these services.

In reviewing requests for discretionary funds, the Federal Railroad Administration ("FRA") will give consideration to this general set of priorities.

As previously noted, proposed procedures and requirements regarding the filing of applications for and disbursement of rail service continuation subsidies under section 402 of the Act were published in the FEDERAL REGISTER on April 5, 1974. Numerous persons, organi-

zations, and governmental entities filed comments in response to this publication, and each comment was given due consideration by FRA. As a result of the comments received, and the passage of Pub. L. 93-488 (October 26, 1974) which amended the Act, several substantive changes are being made in the regulations.

The following issues were the subject of the comments: (1) Eligibility of rail services for Title IV assistance under the Act; (2) funding for State rail planning; (3) definitive criteria which FRA will apply in accepting or rejecting the State Rail Plan; (4) extension of the time period for the States to submit the State Rail Plan; (5) availability of data to the States which will be needed in the formulation of the State Rail Plan; (6) definitive criteria which will be used in awarding discretionary funds; (7) use of basic entitlement funds for acquisition and modernization; (8) eligibility for rail service continuation subsidies after receiving an acquisition or modernization loan or both; (9) standards for determining a designated State agency; (10) eligibility of a local or regional transportation authority to receive basic entitlement funds directly; (11) requirement that a local or regional transportation authority contribute at least a 30 percent matching share of the total program; (12) eligibility of the States of Wisconsin, Kentucky, and Missouri for basic entitlement funds; and (13) regulations for filing applications for assistance under section 403 of the Act. Each of these issues is discussed below.

There was objection to the requirement in the proposed regulations that only those local rail services proposed to be discontinued or abandoned under section 304 of the Act as a result of the adoption of the Final System Plan could be continued, acquired or modernized with section 402 assistance. The Congress has amended the Act in Pub. L. 93-488 to clarify the eligibility requirement under section 402 and § 255.3 of the regulations has been revised accordingly. The statutory amendment is as follows:

* * * Rail freight services eligible for rail service continuation subsidies pursuant to subsection (b) of * * * section [402] are—

(A) those rail services of railroads in reorganization in the region which the final system plan does not designate to be continued;

(B) those rail services in the region which have been at any time during the 5 year period prior to the date of enactment of this Act, or which are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested at any time during the 5 year period prior to the date of enactment of this Act, or invests subsequent to the date of enactment of this Act, substantial sums for improvement or maintenance of rail service; and

(C) those rail services in the region with respect to which the Commission issues a certificate of abandonment effective on or after the date of enactment of this Act.

Clarification was also sought as to whether costs incurred by a State in developing its State Rail Plan for rail transportation and local rail services would have to be borne exclusively by the State, or whether these costs were eligible for consideration as part of its share of a rail service continuation subsidy. FRA has concluded that a State may use a reasonable proportion of its Federal funds to assist in the development of the State Rail Plan, provided that the Final System Plan is approved by the Congress and the State Rail Plan is approved by the Administrator. This assistance in the aggregate shall be limited to five (5) percent of the total Federal funds otherwise provided to the State under section 402 of the Act. The Federal share of an applicant's allowable planning costs may not exceed 70 percent of these costs. An applicant may expend additional funds for planning other than its matching share.

Some States requested that FRA develop definitive criteria to be used in accepting or rejecting the State Rail Plan. The only criterion which FRA will employ in accepting or rejecting a State Rail Plan will be whether it complies with the requirements of the statute and regulations, as required under subsection 402(c) of the Act.

To assist the States in responding quickly to the Final System Plan, to facilitate a rapid review of a State Rail Plan by FRA, and to assess the States' total funding requirements, provision has been made in paragraph (b) of § 255.9 of the regulations for a two phase State planning process. Phase I and Phase II of the planning process will constitute the State Rail Plan.

Phase I of the State Rail Plan will be required to explain in detail how the State intends to conduct its assistance program. This shall include identification of the data to be acquired on the rail system in the State, the methodology to be used in determining which essential rail services should be continued, the criteria to be employed in ranking these services according to their service priority, and an explanation of the goals to be used in the development of the State Rail Plan. The States will be required to apply the Phase I methodology, criteria, and goals to Phase II of the State Rail Plan in response to and consistent with the Final System Plan.

In Phase II, the States shall identify:

1. The specific data utilized;
2. The specific services which should be continued as determined by the application of the Phase I methodology, criteria, and goals;
3. The order of funding priority of those services; and
4. The amount and form of the assistance required.

Another comment was that the requirement that a State submit its State Rail Plan to the Administrator within 45 days of the date of the submission of the Final System Plan to the Congress does not allow sufficient time for complete and comprehensive planning. FRA

has modified this submission date in the regulations to afford the States additional time to develop the State Rail Plan. Paragraph (d) of § 255.9 of the regulations provides that Phase I of the State Rail Plan shall be submitted to the Administrator by May 15, 1975. Phase II of the State Rail Plan shall be submitted to the Administrator for approval within 30 days after the date of approval of the Final System Plan by the Congress. Approval of the State Rail Plan shall be evidenced by written notification to the State. Inasmuch as the States will have knowledge of the Final System Plan during the period the Congress is considering it, sufficient time is provided for completion of Phase II of the State Rail Plan. States encountering unusual difficulties in meeting this requirement may apply to the Administrator for a waiver under § 255.17 of the regulations. However, FRA believes that the actions of the United States Railway Association ("Association") in providing the States with the data necessary for the preparation of their State Rail Plans, and in otherwise aiding a State or a local or regional transportation authority in its planning efforts, as well as the assistance of the Rail Services Planning Office, will make the need for waiver the exception rather than the rule.

Many States urged that the regulations provide that all commercial and financial data relevant to the restructuring process be made available to a State, or a local or regional transportation authority, to assist them in formulating the State Rail Plan. They further urged that definite procedures be established to guarantee that the States receive data on a timely basis. The Association is currently receiving, compiling, and making available to the States data with respect to those services of the railroads in reorganization which may be threatened with discontinuance as a result of the implementation of the Final System Plan. The Association has indicated its willingness to work with the States in analyzing the services of the other railroads in the region which are candidates for assistance. Therefore, FRA does not believe it is necessary to promulgate regulations regarding data availability.

An issue raised by the comments but not addressed in the proposed rules is whether definitive criteria would be developed and employed with respect to the availability of discretionary funds. Discretionary funds under subsection 402 (b) (2) of the Act will be available on the basis of the criteria discussed in paragraph (b) of § 255.7 of the regulations.

It was further submitted that a reading of sections 402 and 403 of the Act indicates that a State may utilize basic entitlement funds for acquisition and modernization. The FRA does not agree with this view. Only subsection 402(b) (2) of the Act specifically authorizes the Secretary to provide discretionary funds "for the purposes enumerated in section 403" which includes acquisition and modernization.

The States also inquired as to the meaning of the proviso in subsection 403(a) of the Act and its reference to section 402 of the Act, and whether an entire State would be barred from obtaining rail service continuation subsidies, if it obtained a loan for a particular rail service in the State. In Pub. L. 93-488, the Congress amended this proviso to clarify that a particular rail service for which an applicant receives a loan under section 403 of the Act is no longer eligible to receive a rail service continuation subsidy under section 402 of the Act.

Several comments expressed dissatisfaction with the manner in which the State agency has been or will be designated to administer or coordinate the State Rail Plan for rail transportation and local rail services. Citizen input to the designation or planning processes, or vigorous Federal controls, were sought to ensure that the designated State agency reflects the public interest. The Act, however, does not make any provision for FRA intervention into the designation process. Thus, FRA will accept the designation of a particular State agency if it determines that it meets the requirements under section 402(c) of the Act. In addition, paragraph (a) of § 255.9 of the regulations does require a State to provide an opportunity for public and private agencies, and other interested persons, to participate in the development of the State Rail Plan.

It was also contended that a reading of sections 402 and 403 of the Act made local or regional transportation authorities eligible to receive basic entitlement funds directly. FRA disagrees with this view because subsection 402(b) (1) of the Act provides that each State is entitled to receive these funds and does not make any reference to local or regional authorities. The only sections making local or regional authorities eligible to receive direct assistance are sections 402(b) (2) and 403 of the Act. However, local or regional transportation authorities may only be direct recipients of discretionary funds under section 402 of the Act if their projects are consistent with the State Rail Plan and they are eligible under paragraph (b) of § 255.5 of the regulations.

Similarly, it was argued that the matching share requirement under section 402 of the Act refers only to a State and not to a local or regional transportation authority. Comments cited subsection 402(a) of the Act, which refers only to Federal and State matching shares. This section, however, makes clear that with respect to basic entitlement funds the Federal share shall be 70 percent and the State share shall be 30 percent. With respect to discretionary funds, the State share shall be a minimum of 30 percent. Thus, the Federal share may not be more than 70 percent, but may be less with respect to the discretionary portion of the program. This ratio is also maintained with respect to section 403 assistance. Accordingly, FRA has concluded that it was the intent of Congress that the Federal share may not exceed 70

percent of either the basic entitlement or the discretionary programs and that all participants in these programs must provide their matching shares. However, a State or a local or regional authority may obtain its matching share from shippers or other available sources.

It was further contended that the State of Wisconsin should be eligible for basic entitlement funds, in accordance with the definition of the term "region" under subsection 102(13) of the Act. However, FRA has concluded that only those States enumerated in subsection 102(13) of the Act as existing entirely within the region, including the District of Columbia, were intended to be eligible to receive basic entitlement funds. Wisconsin, together with the States of Missouri and Kentucky, remain eligible to apply for discretionary funds, provided they comply with the requirements of subsection 402(c) of the Act and with the regulations.

There was also a request that the final regulations include a provision implementing section 403 of the Act. Regulations for section 403 of the Act will be published separately.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 255, to read as follows:

REGULATIONS GOVERNING APPLICATIONS AND DISBURSEMENTS

Sec.	
255.1	Definitions.
255.3	Applicability.
255.5	Eligibility.
255.7	Rail Service Continuation Assistance.
255.9	Requirements for State Rail Plan for Rail Transportation and Local Rail Services.
255.11	Applications.
255.13	Disbursement of Rail Service Continuation Assistance.
255.15	Record, Audit, and Explanation.
255.17	Waivers and Modifications.

AUTHORITY: Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. 701 et. seq., The Department of Transportation Act, 49 U.S.C. 1651 et. seq.

REGULATIONS GOVERNING APPLICATIONS

§ 255.1 Definitions.

As used in this part—

(a) "Act" means the Regional Rail Reorganization Act of 1973, as amended.

(b) "Administrator" means the Federal Railroad Administrator or the Deputy Administrator or his or her delegate.

(c) "Applicant" means the designated State agency of a State in the region or a local or regional transportation authority in the region meeting the requirements of § 255.5.

(d) "Association" means the United States Railway Association.

(e) "Basic entitlement funds" means each State's share of the appropriated sums allocated to the States as provided in subsections 402(b)(1) and 402(i) of the Act for each fiscal year for the continuation of local rail services.

(f) "Commission" means the Interstate Commerce Commission.

(g) "Designated State agency" means the State agency designated in the State

Rail Plan to administer or coordinate that plan as provided in subsection 402(c)(1) of the Act and paragraph (a) of § 255.5

(h) "Discretionary funds" means financial assistance, in addition to the basic entitlement funds, as provided by subsections 402(b)(2) and 402(i) of the Act.

(i) "Final System Plan" means the plan of reorganization for the restructuring, rehabilitation, and modernization of railroads in reorganization prepared under section 206 and approved under section 208 of the Act.

(j) "Office" means the Rail Services Planning Office established in the Commission under subsection 205(a) of the Act.

(k) "Rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad which are used or useful in rail transportation service; except that the term, when used in conjunction with the phrase "railroad leased, operated, or controlled by a railroad in reorganization," may not include assets or rights owned, leased, or otherwise controlled by a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization.

(l) "Railroad in reorganization" means a railroad which is subject to a bankruptcy proceeding and which has not been determined by a court to be reorganizable or not subject to reorganization under section 207(b) of the Act. A bankruptcy proceeding includes a proceeding under section 77 of the Bankruptcy Act (11 U.S.C. 205) and an equity receivership or equivalent proceeding.

(m) "Rail service continuation subsidies" means subsidies calculated in accordance with the provisions of subsection 205(d)(3) of the Act to cover the costs of operating adequate and efficient rail service in the region, including where necessary, improvement and maintenance of tracks and related facilities.

(n) "Region" means the States of Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in those jurisdictions (as determined by the Commission by order, set out in Appendix B).

(o) "State" means any State or the District of Columbia.

(p) "State in the region" means the States enumerated in subsection 102(13) of the Act.

§ 255.3 Applicability.

The provisions of this part are applicable to rail freight services as follows:

(a) Those rail services of railroads in reorganization in the region which the final system plan does not designate to be continued;

(b) Those rail services in the region which have been at any time during the 5 year period prior to the date of enactment of this Act, or which are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested at any time during the 5 year period prior to the date of enactment of this Act, or invests subsequent to the date of enactment of this Act, substantial sums for improvement or maintenance of rail service; and

(c) Those rail services in the region with respect to which the Commission issues a certificate of abandonment effective on or after the date of enactment of this Act.

§ 255.5 Eligibility.

(a) State in the Region. A State in the region is eligible to receive basic entitlement funds and discretionary funds if:

(1) The State has established a State Rail Plan for rail transportation and local rail services which meets the requirements of § 255.9 and which is administered or coordinated by a designated State agency, and such plan provides for the equitable distribution of such subsidies among State, local and regional transportation authorities;

(2) The State agency has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate and efficient local rail services; employs or will employ, directly or indirectly, sufficient trained and qualified personnel; and maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

(3) The State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this program to the State; and

(4) The State complies with the requirements of the Administrator prescribed in this part and with the terms and conditions included in the grant of assistance.

(b) Contiguous States. A State contiguous to a State in the region having a portion of its territory located in the region as determined by order of the Commission, is eligible to receive discretionary funds, provided that the approved State Rail Plan may be limited to that portion of the State which is within the region, and the designated State agency may be either a State agency if it meets the conditions of paragraph (a) of this section, or a local or regional transportation authority within the region if it meets the conditions of paragraph (c) of this section.

(c) Local or Regional Transportation Authority in the Region. A local or regional transportation authority in the

region is eligible to receive discretionary funds if:

- (1) Its application is consistent with an approved State Rail Plan;
- (2) It provides assurances that it has adequate authority and administrative jurisdiction and fiscal controls consistent with those required by paragraphs (a) (2) and (3) of this section; and
- (3) It complies with the regulations of the Administrator prescribed in this part and with terms and conditions included in the grant of assistance.

§ 255.7 Rail Service Continuation Assistance.

(a) Basic Entitlement Funds. (1) Basic entitlement funds are to be allocated to each State in the region in the ratio which the total mileage in each State measured in point to point length (exclusive of yard tracks and sidings) bears to the total rail mileage in all the States in the region. The Administrator has determined that the total track mileage of all States in the region is 61,184 miles; that the total track mileage in each State in the region and their ratio to the total track mileage in the region is as follows:

State	State mileage	Percent of total miles in region	Percent of basic entitlement
Maine.....	1,666	2.7	3
New Hampshire.....	817	1.3	3
Vermont.....	766	1.3	3
Massachusetts.....	1,430	2.3	3
Connecticut.....	664	1.1	3
District of Columbia.....	30	0	3
Rhode Island.....	146	.2	3
New York.....	5,595	9.1	9.1
New Jersey.....	1,742	2.8	3
Pennsylvania.....	8,273	13.5	10
Delaware.....	291	.5	3
Maryland.....	1,110	1.8	3
Virginia.....	3,895	6.4	6.4
West Virginia.....	3,569	5.8	5.8
Ohio.....	7,804	12.8	10
Indiana.....	6,405	10.5	10
Michigan.....	6,159	10.1	10
Illinois.....	10,822	17.7	10

(2) The Federal share of the total cost of providing rail service continuation subsidies under subsection 402(b) (1) of the Act shall be 70 percent of that cost. The balance of such cost shall be provided by the State and the State share may not be augmented by any Federal funds, directly or indirectly, unless the funds are provided through a Federal program which specifically authorizes the augmentation of a non-Federal share of a federally subsidized program with such funds.

(b) Discretionary Funds. (1) In addition to meeting deficiencies in the basic entitlement funds as provided in subsection 402(b) (1) of the Act, discretionary funds will be available for the following purposes:

(i) To assist an eligible applicant to pay allowable planning costs expended in developing its State Rail Plan, provided that the Final System Plan is approved by the Congress and the State Rail Plan is approved by the Administrator and provided further that this assistance in the aggregate shall be limited to five percent of the total Federal funds

otherwise provided to the State under section 402 of the Act. The Federal share of an applicant's allowable planning costs may not exceed 70 percent of these costs. An applicant may expend additional funds for planning other than its matching share.

(ii) To assist the States in providing rail service continuation subsidies to those rail services to be discontinued as a result of the implementation of the Final System Plan in instances where basic entitlement funds are used to the maximum extent available but are insufficient to provide for the continuation of these services;

(iii) To assist an eligible applicant in a State contiguous to a State in the region, having a portion of its territory located in the region, which is not eligible for basic entitlement funds under subsection 402(b) (1) of the Act, in providing rail service continuation subsidies;

(iv) To assist an eligible applicant in the acquisition and modernization of rail properties as provided in sections 402(b) (2) and 403 of the Act; and

(v) To assist an eligible applicant in providing rail service continuation subsidies to the remaining rail services in the region which are eligible under § 255.3, other than those discontinued in response to the Final System Plan, and which have been identified in the State Rail Plan as candidates for subsidy, in instances where basic entitlement funds under subsection 402(b) (1) of the Act are insufficient to ensure continuation of these services.

In reviewing requests for discretionary funds, the Administrator will give consideration to this general set of priorities.

(2) The Federal share of the total cost of accomplishing those purposes for which discretionary funds are provided shall not exceed 70 percent of that cost. The applicant shall provide the remainder of the cost. The applicant's share may not be augmented by any Federal funds, directly or indirectly, unless the funds are provided through a Federal program which specifically authorizes the augmentation of a non-Federal share of a federally subsidized program with these funds.

(c) Term of Rail Service Continuation Subsidies. Rail Service continuation subsidies between a State or a local or regional transportation authority, and the Corporation or other responsible person (including a Government entity) may not exceed a term of two years.

(d) Return of excess funds. Basic entitlement funds which are not expended or committed by a State for rail service continuation subsidies as provided in subsection 402(b) (1) of the Act during the ensuing fiscal year shall be returned to the Administrator who may use these funds as provided in subsection 402 (b) (2) of the Act.

(e) Ineligibility for subsidy after receipt of a section 403 loan. Any rail service for which a State or a local or regional transportation authority receives a loan under section 403 of the Act is

no longer eligible for a rail service continuation subsidy under section 402 of the Act.

§ 255.9 Requirements for State Rail Plan for Rail Transportation and Local Rail Services.

(a) State planning process. Consistent with the purposes of the Act, the State Rail Plan required under § 255.5(a) shall be based upon a comprehensive and coordinated planning process for the provision of rail transportation services in the State, which are essential to meet the economic, environmental and energy needs of the citizens of that State, and to provide for the development of a coordinated and balanced transportation system within the State or the affected portion thereof. This plan shall be developed with opportunity for participation by public and private agencies having authority and responsibility for rail activity in the State and adjacent States where appropriate. Provision shall be made for affording interested persons, such as users of rail transportation, labor organizations, local governments, environmental groups and the public generally, timely opportunity to express their views in the development of the State Rail Plan. As part of the planning process, the designated State agency shall establish procedures whereby local and regional transportation authorities may review and comment on appropriate elements of the State Rail Plan.

(b) Contents of the State Rail Plan. The State Rail Plan for rail transportation and local rail services shall be submitted to the Administrator in two phases.

(1) As Phase I of the State Rail Plan, a State shall submit a design of the State planning process which is consistent with the purposes of the Act and shall include:

(i) An identification of the data to be acquired on the rail network and rail services in the State (see paragraph (b) (2) (iv) of 255.9), the sources of this data, and the methodology to be employed in data collection. In considering the scope of data collection activities and subsequent analysis, it is anticipated that time constraints and limitations of the state-of-the-art will require that the State provide a broad overview of all rail services in the State while concentrating most of its efforts on the services for which it expects to require assistance in the immediate future.

(ii) Methodology to be used in the planning process, including that to be used in selecting essential lines to be considered for assistance, and indicating consideration of the advisory criteria published by the Office under subsection 205(d) (4) of the Act.

(iii) Criteria for setting priorities for rail service to be considered for assistance. In determining which rail services will receive assistance, a State should give first consideration to eligible rail freight services to be discontinued as a result of implementation of the Final System Plan.

(iv) An explanation of the goals or philosophical framework to be used in guiding the development of the State Rail Plan. Part of this explanation should be specifically devoted to the expectations of the State for the future of rail services which receive a subsidy subsequent to the expiration of the rail service continuation subsidy under the Act, including such considerations as likelihood of profitability, continued State or local subsidy, assistance under section 403 of the Act, substitution of alternate modes, and other long-term alternatives.

(v) Description of the methods by which the State will involve local and regional transportation authorities in its rail planning process, including its methods of providing for the equitable distribution of subsidies among State, local, and regional transportation authorities.

(vi) A management plan for the development of the State Rail Plan which shall include an identification of responsible individuals and a flow chart of activities with milestones.

(2) Phase II of the State Rail Plan shall:

(i) Contain general information with respect to the physical plant, traffic, and service characteristics of the existing rail system within the State;

(ii) Describe the planning process utilized in the development of the State Rail Plan, specifying the particulars as to data sources, assumptions, and special problems or conditions which may be essential to the understanding of the setting in which the State Rail Plan was developed;

(iii) Classify the rail system within the State into the following categories:

(A) Rail services in the Final System Plan;

(B) Rail services of railroads which are not railroads in reorganization which are continuing in operation;

(C) Rail services of railroads in reorganization which are not included in the Final System Plan;

(D) Rail services of railroads in reorganization for which a State does not wish to receive assistance; and

(E) Rail services for which a State wishes to receive assistance (subsidy, acquisition, or modernization) ranked in descending order of service priority as determined by the specific application of the methodology, criteria, and goals described in Phase I of the State Rail Plan and the relevant social, economic, environmental, and energy considerations, including an estimate of the amount of the Federal share of the assistance required for these services, designated as basic entitlement funds or discretionary funds;

(iv) Contain detailed and specific knowledge of the services for which assistance is requested, including: traffic density of the line; pertinent costs and revenues; a survey of the condition of the plant, equipment, and facilities; an economic and operational analysis of present and future rail freight service needs; the potential for moving rail traffic by alternate modes; the relative eco-

nomical, social, and environmental costs and benefits involved in the use of alternate modes, including costs resulting from lost jobs, energy shortages, and the degradation of the environment; the competitive or other effects on or by profitable railroads; methods of achieving economies in the cost of rail system operations including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; analysis of the potentials for rehabilitation and modernization of equipment, track, and other facilities; and an analysis of the effects of abandonment with respect to the transportation needs of the State;

(v) Include a statement of the long-term strategy that the State will apply to those rail services to receive assistance, including such considerations as: continuing subsidy; acquisition and modernization; termination; and the provision of substitute services; and

(vi) Include a statement for those services to be acquired which describes the conditions and requirements of these services, such as the rolling stock and the track improvements needed to provide minimum service.

(c) Adoption of State Rail Plan. An original and nine (9) copies of each Phase of the State Rail Plan, and any amendments thereto, shall be submitted with a certification by the Governor, or by his or her delegate, that the submission constitutes the State Rail Plan or portion thereof established by the State as provided in section 402(c) (1) of the Act.

(d) Submission and Review of State Rail Plan. Phase I shall be submitted by May 15, 1975, to the Administrator for review. Phase II shall be submitted to the Administrator for review within 30 days after the date of approval of the Final System Plan by Congress. To approve the State Rail Plan the Administrator must notify the State in writing. If the Administrator determines that the State Rail Plan is not in accordance with this part, he will notify the State setting forth his reasons for such determination, and afford the State an opportunity for a hearing and to amend its State Rail Plan to bring it into compliance with the Act and this part. Where hearings in accordance with subsection 402(h) of the Act are necessary, they shall be conducted on an expedited basis to afford the State maximum opportunity to submit an acceptable State Rail Plan on a timely basis.

(e) Review of amendments and modifications with respect to the State Rail Plan. State Rail Plans are to be reviewed and amended to reflect any changes which would affect the determinations and classifications made under paragraph (b) (2) (iii) of § 255.9. All such amendments shall be subject to the same review and approval procedures as the original State Rail Plan.

§ 255.11 Applications.

(a) Coordination and clearance. To ensure coordination with appropriate

State agencies and to ensure that local and regional proposals are consistent with the State Rail Plan, applications for assistance shall be submitted by or under the coordination of the designated State agency. All applications for assistance, whether by the designated State agency or a local or regional transportation authority, shall be consistent with the approved State Rail Plan.

(b) Contents. Each application for assistance shall include:

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

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

(3) Detailed description of the services for which assistance is sought, together with a map of those rail services, and certification as to their inclusion in the State Rail Plan;

(4) Evidence of review and coordination within the State in accordance with the applicable sections of the approved State Rail Plan as provided in paragraphs (a) and (b) of § 255.9;

(5) Estimate of the total amount of assistance required to continue each service and the Federal share of such assistance, designated as basic entitlement funds or discretionary funds. Where applicable, this amount shall be calculated utilizing the standards for determining "revenue attributable to the rail properties", "avoidable costs of providing service", and "reasonable return on the value", as established by the Office under subsection 205(d) (3) of the Act. (These standards are set out in §§ 1125.4, 1125.5, and 1125.7 of 49 CFR Part 1125.)

(6) Evidence of applicant's ability and intent to furnish its share of the total assistance;

(7) Description of the arrangements which the applicant has made for operation of the rail services to be subsidized including copies of the proposed operating agreements, leases or other compensation agreements under which the service is to be provided;

(8) Assurance by the applicant that the Federal funds provided under the Act will be used solely for the purpose for which the assistance is sought;

(9) Evidence that the applicant has established such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under Title IV of the Act;

(10) Evidence that the applicant has the statutory authority and administrative jurisdiction to develop, promote, supervise and support safe, adequate, and efficient rail services; that it employs or will employ, directly or indirectly, sufficient trained and qualified personnel; that it maintains or will maintain adequate programs of investigation, research, promotion and development with provision for public participation; and that it has the statutory and other authority to perform its obligations under

the Act and the regulations under this part;

(11) An opinion of the counsel for applicant showing that he or she is familiar with the corporate or other organizational powers of the applicant, that the applicant is authorized to make the application, and that the applicant has the requisite authority to carry out actions proposed in the application and to assume the responsibilities and obligations created thereby;

(12) Certification that the applicant is in compliance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d et seq. ("Civil Rights Act"), and all requirements imposed by Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation ("Civil Rights Regulations"), and other pertinent directives, and that, in accordance with the Civil Rights Act, the Civil Rights Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives assistance from the Federal Railroad Administration, and the applicant will promptly take any measures necessary to effectuate this agreement; and

(13) Such other information as the Administrator may require.

(c) Execution and Filing of Application. (1) Each original application shall bear the date of execution and be signed by the Chief Executive Officer of the applicant. Each person required to execute the application will execute a certificate in the form of Appendix A to this Part.

(2) Each original application and certificate, and nine copies thereof, shall be filed with the Federal Railroad Administrator, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590. Each copy shall show the dates and signatures that appear in the original and shall be complete in itself.

(d) Review and Approval of Applications. Applications for rail service continuation assistance are to be submitted to the Administrator for review and approval. In order for an application to be approved, the Administrator must notify the applicant in writing. If the Administrator disapproves all or part of an application, he will advise that applicant in writing of his reasons for such disapproval. These reasons may include insufficiency of the application, inconsistency with the approved State Rail Plan, or insufficiency in the amount of appropriated funds available to the Administrator. With respect to applications for

discretionary funds, the Administrator shall determine whether sufficient appropriated funds are available for a particular service in view of the general set of priorities set forth in paragraph (b) (1) of § 255.7.

§ 255.13 Disbursement of Rail Service Continuation Assistance.

(a) Rail Service Continuation Subsidies. After receipt, review and approval of an application meeting the requirements of § 255.11, the Administrator will enter into a grant agreement with an applicant for the Federal share of the estimated amount of subsidy necessary to continue the service described in the application. The Federal share of this amount shall be payable pro rata at the end of each quarter of any fiscal year during the term of the grant agreement; provided that:

(1) After nine months from the date of the execution of the grant agreement, the estimate may be revised to reflect the actual revenues, costs, and rate of return over that period; and

(2) The final payment under the grant agreement shall only be made on the basis of an audit which has determined the actual revenues, costs, and rate of return over the entire term of the agreement;

Provided, however, That the amount of Federal assistance may not be increased unless the Administrator determines that the applicant has fulfilled its responsibilities for ensuring the proper and efficient administration of its subsidy program, the required State or local matching funds are available, and the necessary Federal funds are available.

(b) Rail Service Acquisition and Modernization Assistance. After receipt, review and approval of an application for acquisition or modernization assistance under 402(b) (2) of the Act which meets the requirements of § 255.11, the Administrator will enter into a grant agreement for the appropriate Federal share of the allowable costs of acquisition or modernization as determined by the Administrator. The terms of payment of the Federal share shall be set forth in the grant agreement.

§ 255.15 Record, Audit, and Examination.

(a) Each recipient of financial assistance under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that por-

tion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of 3 years after completion of the project or undertaking referred to in paragraph (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in such paragraph.

§ 255.17 Waivers and Modifications.

The Administrator may, with respect to individual requests, upon good cause shown, waive or modify any requirement of this part not required by law, or make any additional requirements he deems necessary.

This notice is issued under the authority of 49 U.S.C. 1651 et. seq.

Issued in Washington, D.C. on January 22, 1975.

ASAPH H. HALL,
Deputy Administrator.

APPENDIX A—CERTIFICATE

The following is the form of the certificate to be made by each person signing an application.

----- certifies that he is the
(Name of Person)
Chief Executive Officer of -----,
(Name of Agency)
that he is authorized to sign and file with the Federal Railroad Administrator this application; that he has carefully examined all of the statements contained in the application relating to -----; that
(Name of Agency)
he has knowledge of the matters set forth therein and that all statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

(Date) (Signature)
Subscribed and sworn to before me the
---- day of -----, 19--

APPENDIX B

By order dated January 23, and supplemental order dated May 23, 1974, [Ex Parte No. 293, and Northeastern Railroad Investigation (Definition of the Midwest and Northeast Region)] the Commission has included, in addition to the jurisdictions specifically named, the following: (1) Points in Kentucky in the Louisville, Kentucky, Standard Metropolitan Statistical Area as used in the latest national census; (2) Points in Missouri in the St. Louis, Missouri, Standard Metropolitan Statistical Area as used in the latest national census; and (3) Kewaunee and Manitowoc, and the Port of Milwaukee, Wisconsin.

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