

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

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

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

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

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

*Rehabilitation or improvement assistance* means funds granted to a State under section 5(f)(3) of the Act (49 U.S.C. 1654(f)(3)) to cover the cost of replacing or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a line.

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

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

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

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

### § 266.3 Rail Service Assistance Program.

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

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

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

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

### § 266.5 State eligibility.

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

(1) The State has certified pursuant to section 5(j)(4) of the Act that it has or will adopt and maintain adequate procedures for financial control, accounting and performance evaluation in order to assure proper use of Federal funds;

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

(3) For any other assistance,

(i) The State has established an adequate plan for rail services in the State which (A) meets the requirements of § 266.15 of this part; (B) is part of an

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overall planning process for all transportation services in the State; (C) includes a suitable procedure for updating, revising, and amending such plan; and (D) as updated, revised, or amended has been approved by the Administrator;

(ii) Such State Rail Plan (A) is administered or coordinated by a designated State agency; (B) provides for the equitable distribution of resources; and (C) includes a methodology for determining the ratio of benefits to costs of projects for which acquisition assistance, rehabilitation or improvement assistance, substitute service assistance, and rail facility construction assistance is sought;

(iii) The State agency:

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

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

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

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

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

### § 266.7 Project eligibility.

(a) *Rail service continuation assistance, acquisition assistance and substitute service assistance.* A project is eligible for assistance under § 266.3(a) (1), (2), and (4) of this part, respectively, if:

(1) The Commission pursuant to 49 U.S.C. 10903 has found since February 5, 1976, that the public convenience and necessity permit the abandonment and discontinuance of rail service on the line related to the project, except that any such line or related project eligible prior to October 1, 1978, is eligible only until September 30, 1981 and any such line eligible for rail service continuation assistance shall receive such as-

sistance for no more than 36 months after October 1, 1978;

(2) The line related to the project was eligible for assistance under section 402 of the Rail Act (45 U.S.C. 762), except that any such line or related project is eligible only until September 30, 1981; or

(3) For purposes of acquisition assistance, the line related to the project is listed for possible inclusion in a rail bank in Part III, Section C of the Final System Plan.

(b) *Rehabilitation and improvement assistance and rail facility construction assistance.* A project is eligible for assistance under § 266.3(a) (3) and (5) of this part, respectively, if:

(1)(i) The Commission has not made a finding that the public convenience and necessity would require or permit abandonment or discontinuance of rail service on the line related to the project;

(ii) Any pending application for a certificate of abandonment or discontinuance of rail service on the line related to the project is withdrawn within a reasonable period (as determined by the Administrator) following the execution of the grant agreement and before Federal funds are disbursed for the project; and

(iii)(A) The line related to the project is certified by the railroad as having carried three million gross ton miles per mile or less during the prior year; or

(B) The line related to the project is certified by the railroad in a written statement which identifies the name of the line, the State or States in which it is located, its length, termini, and termini mile posts as having carried between three and five million gross ton miles per mile during the prior year, and the Administrator has determined that the project is consistent with proposals made under the authority of subsections 5 (a) through (e) of the Act (49 U.S.C. 1654 (a)-(e));

(2)(i) An application for a certificate of abandonment or discontinuance of rail service on the line related to the project has been filed with the Commission during the period February 5, 1976 through December 31, 1978, whether or not such application has been granted; or