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2000 and 2001, \$250 million for Fiscal Year 2002, and \$300 million for Fiscal Year 2003. Any decision to proceed with possible Federal funding of the construction of a Maglev system will be contingent upon the receipt of appropriations, and upon completion of appropriate environmental documentation.

(b) *Other Federal funds.* Section 322 of Title 23 provides that the portion of the Maglev project not covered by Federal Maglev Funds may be covered by any non-Federal funding sources—including private (debt and/or equity), State, local, regional, and other public or public/private entities—as well as by Federally-provided STP and CMAQ funds, and by other forms of financial assistance made available under title 23 and TEA 21, such as loans and loan guarantees.

(c) *Costs Incurred in Advance of Cooperative Agreement.* Certain costs incurred in advance of the execution of a cooperative agreement between FRA and the grantee for pre-construction planning but after enactment of TEA 21 (June 9, 1998) will be eligible for reimbursement, but such costs are allowable only to the extent that they are otherwise allowable under the terms of a fully executed cooperative agreement.

§ 268.7 Federal/State share and restrictions on the uses of Federal Maglev Funds.

(a) *Federal share.* The Federal share of Full Projects Costs shall be not more than $\frac{2}{3}$, with the remaining $\frac{1}{3}$ paid by the grant recipient using non-Federal funds. Funds made available under STP and CMAQ are considered non-Federal funds for purposes of the matching requirement.

(b) *Restrictions on the uses of Federal Maglev Funds.* (1) Federal Maglev Funds may be applied only to Eligible Project Costs;

(2) Federal Maglev Funds provided under a preconstruction planning grant may be used only for Phase II activities, and for completion of site-specific draft EIS's; see § 268.3;

(3) Federal Maglev Funds may be used to pay for only $\frac{2}{3}$ of preconstruction planning costs; grant recipients are required to pay the re-

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maining $\frac{1}{3}$ of the costs with non-Federal funds; and

(4) The “prevailing wages” requirement of the Davis Bacon Act (40 U.S.C. 276a–276a–5) applies to any construction contracts under the Maglev Deployment Program.

Subpart B—Procedures For Financial Assistance

§ 268.9 Eligible participants.

Any State, or any authority designated by one or more State(s) to carry out the preconstruction planning activities under the Maglev Deployment Program is eligible to participate in the Maglev Deployment Program.

§ 268.11 Project eligibility standards.

(a) *Project eligibility standards for preconstruction planning financing.* (1) As required by 23 U.S.C. 322(d)(4), in order to be eligible to receive financial assistance, a Maglev project shall:

(i) Involve a segment or segments of a high-speed ground transportation corridor that exhibit Partnership Potential;

(ii) Require an amount of Federal funds for project financing that will not exceed the sum of Federal Maglev Funds, and the amounts made available by States under STP and CMAQ;

(iii) Result in an operating transportation facility that provides a revenue producing service;

(iv) Be undertaken through a public and private partnership, with at least $\frac{1}{3}$ of Full Project Costs paid using non-Federal funds;

(v) Satisfy applicable statewide and metropolitan planning requirements;

(vi) Be approved by FRA based on an application submitted by a State or authority designated by one or more States;

(vii) To the extent that non-United States Maglev technology is used within the United States, be carried out as a technology transfer project; and

(viii) Be carried out using materials at least 70 percent of which are manufactured in the United States.

(2) FRA recognizes that applicants for preconstruction planning grants will not have detailed information with respect to some of the requirements of paragraph (a)(1) of this section, and

that the purpose of a preconstruction planning grant is to develop much of this information with respect to a particular Maglev project. As required by § 268.15, an applicant will need to provide whatever information it has with respect to each of the requirements of paragraph (a)(1) of this section, together with a certification that the applicant fully intends to comply with the requirements of this paragraph (a) should its project be selected by FRA for final design, engineering and construction financing.

(b) *Project eligibility standards for final design, engineering, and construction financing.* FRA will select the most promising Maglev project for final design, engineering, and construction financing. To be eligible to be considered, the project must meet each of the following requirements; these requirements restate the requirements in paragraph (a)(1) of this section, but with more detail and in a different order:

(1) *Purpose and significance of the project.* (i) The project description shall point to a Maglev facility and daily operation the primary purpose of which is the conduct of a revenue-producing passenger transportation service between distinct points, rather than a service solely for the passengers' riding pleasure.

(ii) The project description shall incorporate scheduled operation at a top speed of not less than 240 mph.

(2) *Benefits for the American economy.* The project description shall include a certification as to paragraphs (b)(2) (i) and (ii) of this section and, as appropriate, a technology acquisition/transfer plan which describes the strategy for their accomplishment.

(i) Processes will be established that will enable an American-owned and -sited firm (or firms) to gain, in the course of the project, the capability to participate in the design, manufacture, and installation of the facilities and vehicles needed for a Maglev operation, if the owner of the selected version of Maglev technology is not an American-owned and -sited firm (thus meeting the technology transfer requirement of 23 U.S.C. 322).

(ii) The 70 percent U.S. content requirement content of 23 U.S.C. 322 will be carried out.

(3) *Partnership potential.* The project shall exhibit Partnership potential by satisfying the following:

(i) A private/public partnership must be in place that is ready, willing, and able to finance, construct, operate, and maintain the project;

(ii) The private/public partnership either owns the version of Maglev technology proposed to be implemented in the project, or has an agreement with the owner which affords full cooperation to the partnership in progressing the project, including implementation of the technology acquisition/transfer plan if applicable; and

(iii) The recipient of a preconstruction planning grant or the FRA has developed and endorsed a projection of system capital costs, demand, revenues, operating expenses, and total costs and benefits, that:

(A) Covers either the entire corridor in which the Maglev project is involved ("Corridor"), or the project considered independently;

(B) Demonstrates that private enterprise would be able to run the Corridor or the project—once built and paid for—as a completely self-sustaining entity, in which revenues will cover operating expenses and continuing investment needs; and

(C) Shows total benefits equal to or exceeding total costs.

(4) *Funding Limits and Sources.* The project description shall include a financing plan that demonstrates project completion with the \$950 million in Federal Maglev Funds, funds remaining unobligated from the \$55 million in contract authority, and the funds made available under STP and CMAQ. The project that is selected will be eligible for other forms of financial assistance provided under title 23 and TEA 21, including loans, loan guarantees, and lines of credit. However, at least 1/3 of Full Project Costs must come from non-Federal Funds.

(5) *Project Management.* The State, the technology owner, and all other relevant project partners must include in the project description, an agreed upon—

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(i) *Management plan* that defines the partnership, responsibilities, and procedures for accomplishing the project;

(ii) *Project schedule* that shows how timely implementation of the project will be accomplished, including, to the extent possible, a construction plan and schedule; and

(iii) *Financial plan* that shows how funds will flow, in accordance with the other requirements of this subsection.

(6) *Planning/environmental process*—(i) *Assessment of environmental consequences of the proposed project.* Recipients of preconstruction planning grants shall conduct an EA in support of the project description; and will prepare additional environmental studies for the project. The EA shall include information to support the grantee's decision to pursue the proposed project. The grantee shall develop the information and discuss the environmental consequences of the proposed technology and route in sufficient detail for the preparation of appropriate documentation by FRA to support selection of one project. This shall include: the identification of potential positive and negative environmental effects resulting from the technology (e.g. energy consumption compared to other transportation options); generic noise emissions at various distances from the centerline of the guideway; changes in electromagnetic field levels at various distances from the centerline of the guideway; and environmental screening of the proposed route (e.g., identification of land use; identification of endangered species possibly present and location of their critical habitat; identification of navigable waterways, wetlands and other sensitive water resources; and identification of the location of parks, wildlife refuges, historic and archaeological sites of National, State or local significance and other sites protected by section 4(f) of the Department of Transportation Act). The latter information and analysis shall be submitted four months in advance of the remainder of the project description. The above list is illustrative only. Grantees will be expected to review proposed work statements with FRA at pre-application meetings or through some other means to de-

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velop the final scope of this environmental review.

(ii) The project description must also include letters of endorsement of project implementation from all the State departments of transportation involved, and from all Metropolitan Planning Organizations for metropolitan areas that would be served by the project.

§ 268.13 **Deadline for submission of applications for preconstruction planning assistance.**

Completed application packages shall be returned to FRA by December 31, 1998. Applications shall be submitted to: Administrator, Federal Railroad Administration, ATTN: Maglev Project, RDV-11, 1200 New Jersey Avenue, SE., Stop 20, Washington, DC 20590.

[65 FR 2344, Jan. 14, 2000, as amended at 74 FR 25176, May 27, 2009]

§ 268.15 **Form and contents of applications for preconstruction planning assistance.**

States, groups of States, or designated authorities that have Maglev projects are invited to submit applications in Phase I of the Maglev Deployment Program, the competition for preconstruction planning grants. The applications shall contain:

(a)(1) If submitted by a State: name, address, responsible party, telephone, fax number, and e-mail address of the State agency submitting the application; or

(2) If submitted by a designated authority: name, address, responsible party, telephone, fax number, and e-mail address of the designated authority and of the State agency or agencies on whose behalf the designated authority is submitting the application, together with letters from the State(s) evidencing all such designations;

(b) A description of the project concept, identifying its likely location, market area, length, and the transportation service that it would perform, and a preliminary estimate of the time that would be required—if funds are made available—to bring the project to the start of construction and then to the initiation of full revenue service. At its option, the applicant may include any reports already completed on