

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket No. FRA-2009-0045]**

High-Speed Intercity Passenger Rail (HSIPR) Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Notice of funding availability; issuance of interim program guidance.

SUMMARY: On April 16, 2009, President Obama, together with Vice President Biden and Secretary of Transportation LaHood, announced a new vision for developing high-speed rail in America. They called for a collaborative effort among the Federal Government, States, railroads, and other key stakeholders to help transform America's transportation system through a national network of high-speed rail corridors. This notice builds on this "Vision for High-Speed Rail" (available on FRA's website) by detailing the application requirements and procedures for obtaining funding for high-speed rail projects under the American Recovery and Reinvestment Act of 2009 (ARRA) and the Department of Transportation Appropriations Acts of 2008 and 2009 (FY 2008/2009 DOT Appropriations Acts), while laying the foundation for a longer-term program to establish a network of high-speed rail corridors.

The evaluation and selection criteria in this notice are intended to prioritize projects that deliver transportation, economic recovery and other public benefits, including energy independence, environmental quality, and livable communities; ensure project success through effective project management, financial planning and stakeholder commitments; and emphasize a balanced approach to project types, locations, innovation, and timing.

This notice describes multiple funding paths to accommodate projects at different stages of development, while also rationalizing the variety of statutory and administrative requirements underpinning the program. FRA recognizes the unique challenges and opportunities presented, and will seek, to the maximum extent permitted under law and administrative procedures, to work collaboratively with applicants and stakeholders throughout the process.

DATES:

Public comments. Public comments on this notice are due no later than July 10, 2009.

Preapplications. Preapplications for all funding Tracks are due no later than July 10, 2009. (FRA encourages earlier submission of preapplications).

Applications. Applications for funding for Track 1 (Projects), Track 3 (Planning), and Track 4 (FY2009 Appropriations Projects) are due no later than August 24, 2009; applications for funding Track 2 (Service Development Programs) are due no later than October 2, 2009. (See Section 1.6 in the Supplementary Information section of this notice for descriptions of each funding Track, and Section 4.3.6 in the Supplementary Information section of this notice for

additional information on deadlines for both preapplications and applications.) FRA reserves the right to modify these deadlines, based on comments received on this notice.

ADDRESSES:

Public comments. To ensure that comments are not entered into the docket more than once, please submit comments, identified by docket number [FRA-2009-0045], by only one of the following methods:

- Website: The U.S. Government electronic docket site is www.regulations.gov. Go to this website and follow the instructions for submitting comments into docket number [FRA-2009-0045];
- Mail: Mail comments to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, MS-30, Room W12-140, Washington, DC 20590;
- Hand delivery or courier: Bring comments to the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Fax: Telefax comments to 202-493-6330

Instructions for submitting public comments: The agency name (Federal Railroad Administration) and the docket number [FRA-2009-0045] for this notice must be submitted with any comments. If comments are submitted by mail or by hand, please submit two copies of the comments. For confirmation that the Federal Railroad Administration has received the comments, a self-addressed stamped postcard must be included. Note that all comments received by any method will be posted without change to www.regulations.gov, including any personal information provided, and will be available to Internet users. The Department's complete Privacy Act Statement is available for review in the Federal Register published April 11, 2000, (65 FR 19477), or by visiting www.regulations.gov.

Preapplications. Preapplications must be submitted to the HSIPR Program Manager electronically via e-mail at HSIPR@dot.gov. Pre-applicants should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission.

Only preapplications received via e-mail as provided above shall be deemed properly filed.

Applications. Applications and supporting documentation must be submitted through www.grantsolutions.gov. If problems with www.grantsolutions.gov are encountered, applications and supporting documentation may be submitted to the HSIPR Program Manager electronically via e-mail at HSIPR@dot.gov. Supporting materials that cannot be submitted electronically may be mailed or hand delivered to: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, MS-20, Room W38-202, S.E., Washington, DC, 20590 Attn. HSIPR Program. Applicants are encouraged to use special courier services to avoid shipping delays. Pre-application and application forms are available at <http://www.fra.dot.gov/us/content/2243>.

FOR FURTHER INFORMATION CONTACT:

For further information regarding this notice and the grants program, please contact the FRA HSIPR Program Manager via e-mail at HSIPR@dot.gov, or by mail: U.S. Department

of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, MS-20, S.E., Washington, DC, 20590 Attn. HSIPR Program.

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Overview

FRA is soliciting public comment on this document through Docket Number FRA-2009-0045 (www.regulations.gov). While the interim guidance in this document does not constitute a rulemaking, FRA will consider all comments received by July 10, 2009 and will publish any resultant clarifications or revisions to this document in the Federal Register and on FRA's website (www.fra.dot.gov). FRA began this comment process during its outreach sessions in May and June, in which over 1,100 stakeholders attended seven sessions around the country; in addition, a public docket was established for comment, and 110 comments were received as of June 15, 2009. FRA has already adjusted the approach contained herein based on this initial feedback.

Preapplications are required and the deadline for submissions (for all Tracks) is July 10, 2009. Applications may not be considered if preapplications are received after July 10, 2009; FRA encourages submission of preapplications earlier than the July 10 deadline. FRA will work with pre-applicants if necessary during the period prior to the application deadlines to ensure eligibility, appropriateness of application Track, and structure of project or program; applicants should work on completing full grant applications concurrent with preparation and review of preapplications.

Deadlines for submission of full grant applications under the four Tracks (see Section 1.6 for track descriptions) are: Track 1 (Projects), Track 3 (Planning), and Track 4 (FY2009 Appropriations Projects) – August 24, 2009; Track 2 (High-Speed Rail/Intercity Passenger Rail Service Development Programs) – October 2, 2009. To give prospective applicants adequate time to complete their applications (while incorporating any guidance clarifications or revisions), FRA may adjust application dates to allow for a minimum of 30 days for application submission following any material changes to guidance that arise from comments. For full details on these deadlines and how to satisfy them, prospective applicants should consult Section 4.3.6 of this guidance.

SECTION 1: FUNDING OPPORTUNITY DESCRIPTION

1.1 Authority

This program guidance and financial assistance announcement pertains to FRA's new High-Speed Intercity Passenger Rail Program ("HSIPR"), which consolidates the following recently-authorized and closely-related programs:

- The High-Speed Rail Corridor Development program, authorized under Section 501 of the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA," Division B of Pub. L. 110-432, October 16, 2008, codified at 49 U.S.C. 26106);
- The Intercity Passenger Rail Service Corridor Capital Assistance program, authorized under Section 301 of PRIIA (codified at 49 U.S.C. chapter 244);
- The Congestion Grants program, authorized under Section 302 of PRIIA (codified at 49 U.S.C. 24105);
- The Fiscal Year (FY) 2009 Capital Assistance to States – Intercity Passenger Rail Service program, authorized and funded under the Department of Transportation Appropriations Act, 2009 ("FY 2009 DOT Appropriations Act," Title I of Division I of Pub. L. 111-8, March 11, 2009); and
- The FY 2008 Capital Assistance to States – Intercity Passenger Rail Service program, authorized and funded under the Department of Transportation Appropriations Act, 2008 ("FY 2008 DOT Appropriations Act," Title I of Division K of Pub. L. 110-161, December 26, 2007).

This document incorporates both (i) interim guidance required for this program pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA," Pub. L. 111-5, February 17, 2009); and (ii) interim guidance required pursuant to 49 U.S.C. 24402(a)(2). The funding made available under this financial assistance announcement was appropriated under ARRA, and the FY 2008/2009 DOT Appropriations Act. The funding opportunities described in this guidance are available under Catalog of Federal Domestic Assistance (CFDA) numbers 20.317 and 20.319.

1.2 Program Description and Legislative History

This program guidance and funding opportunity announcement represents the second major milestone in the implementation of the new HSIPR Program. It follows and builds upon Vision for High-Speed Rail in America, the Administration's April 2009 high-speed rail strategic plan for the implementation of this program (available at <http://www.fra.dot.gov/us/content/31>).

As one of President Obama's foremost transportation priorities, the HSIPR Program helps to address the nation's transportation challenges by investing in an efficient High-Speed Rail/ Intercity Passenger Rail network that connects communities across America.

Congress established the framework for the program through the passage of three key pieces of legislation:

- **Capital Assistance to States – Intercity Passenger Rail Service** – In the FY 2008 DOT Appropriations Act, Congress established a new pilot program for joint Federal-State intercity passenger rail capital investment, known as Capital Assistance to

States – Intercity Passenger Rail Service. Under this program, \$30 million in Federal funding was made available to States on a competitive basis to fund up to 50 percent of the capital cost of improving Intercity Passenger Rail service; up to 10 percent of the \$30 million was available for rail corridor planning grants. An additional \$90 million was appropriated under similar terms as part of the FY 2009 DOT Appropriations Act.

- **Passenger Rail Investment and Improvement Act of 2008 (PRIIA)** – Enacted in October 2008, PRIIA represents the most sweeping Congressional action on intercity passenger rail since those that created the National Railroad Passenger Corporation (Amtrak) and the Northeast Corridor Improvement Project during the 1970s. In addition to reauthorizing Amtrak, PRIIA established three new competitive grant programs for funding high-speed and intercity passenger rail capital improvements, each of which, as authorized, require a 20 percent non-Federal match:
 - **Intercity Passenger Rail Service Corridor Capital Assistance (Section 301)** – Under this section, the broadest of PRIIA’s three new funding programs, States (including the District of Columbia), groups of States, interstate compacts, and public Intercity Passenger Rail agencies established by one or more State(s) may apply for grants for capital improvements to benefit all types of Intercity Passenger Rail service, including high-speed service. Amtrak may participate through a cooperative agreement with a State(s). To be eligible for funding under this program, proposed projects must meet a number of requirements (e.g., inclusion in a State Rail Plan).
 - **High-Speed Rail Corridor Development (Section 501)** – Although similar in structure, criteria, and conditions to Section 301, eligibility for this program is restricted to projects intended to develop Federally-designated high-speed rail corridors for Intercity Passenger Rail services that may reasonably be expected to reach speeds of at least 110 miles per hour (mph). Applicant eligibility under Section 501 is broadened from Section 301 to include Amtrak as well.
 - **Congestion Grants (Section 302)** – This program authorizes grants to States or to Amtrak (in cooperation with States) for facilities, infrastructure, and equipment for high-priority rail corridor projects to reduce congestion or facilitate Intercity Passenger Rail ridership growth.
- **American Recovery and Reinvestment Act of 2009 (ARRA)** – The \$8 billion in High-Speed Rail/ Intercity Passenger Rail funding under ARRA “jump starts” the widespread improvement of High-Speed Rail/Intercity Passenger Rail service in the United States. The appropriation references the authorities included in Sections 301, 302, and 501 of PRIIA but states the “Federal share of the costs for which a grant is made... shall be, at the option of the recipient, up to 100 percent.” It also does not require that proposed projects be included in a State Rail Plan (and it excludes the costs of preparing such plans from eligibility for ARRA funding).

1.3 Selection Process and Priorities

The application process begins with a preapplication. The preapplication is a simple form intended to give FRA an early assessment of the universe of projects and programs, and to provide pre-applicants with any feedback necessary to complete their applications (e.g., eligibility issues, most appropriate application Track to pursue, etc.). It also allows FRA and preapplicants to start a collaborative process for ensuring early program success. Preapplications should be submitted as early as possible, but no later than July 10, 2009; applicants should not wait for submission of, or any comments on, a preapplication before preparing their full applications. In recognition of a variety of considerations, including the urgency of project implementation as reflected in ARRA and the complexities of launching a new HSIPR program, FRA considers the preapplication to be an essential component of the application submission and decision making processes. As a result, FRA will only consider applications that were not supported by a timely filed preapplication only if there are special, compelling circumstances. Complete applications for Tracks 1, 3 and 4 are due on August 24, 2009 and for Track 2 on October 2, 2009. Once an application is received, it will proceed through a three-step process.

- Screening for completeness and eligibility (both applicant and project eligibility);
- Evaluation panel review process, applying “evaluation criteria;” and
- Final review and selection, applying “selection criteria.”

See Section 5 for a full description of the review process and criteria.

1.3.1 Application Screening

Screening will confirm applicant and project eligibility, and ensure that the application provides complete and sufficient information for the evaluation process.

1.3.2 Evaluation Criteria

Eligible applications in all Tracks will be individually reviewed and assessed against seven evaluation criteria – organized into three categories – detailed below. For each of the applicable criteria, the application will be assigned a rating of between one and five points, based on the application’s fulfillment of the objectives of each criterion. These individual criterion ratings will then be accounted according to priority of criteria (which vary by Track, as described in Section 5), to arrive at an overall rating for the application.

FRA will require a rigorous analysis of benefits and costs of proposed projects, with a focus on the transportation service and output measures that are fundamental to estimating other public benefits. Applicants must provide requested benefit and cost information the best available tools in order to ensure adequate assessment of business cases for projects.

EVALUATION CRITERIA

Public Return on Investment

Evaluation Criteria ¹	Example Factors	Key Documentation
1. Transportation Benefits	<ul style="list-style-type: none"> ▪ Improved Intercity Passenger Rail service ▪ Transportation network integration (including intermodal connections) ▪ Transportation safety benefits 	<ul style="list-style-type: none"> ▪ Service Development Plan (including business case; assessment of benefits and public investment) ▪ Quantitative output measures (<u>service</u> – reliability, schedule, capacity; and <u>transportation</u> – passenger-miles, including sources – aviation, highway, induced)
2. Economic Recovery	<ul style="list-style-type: none"> ▪ Preserving and creating jobs – particularly in economically-distressed areas 	
3. Other Public Benefits	<ul style="list-style-type: none"> ▪ Environmental quality ▪ Energy efficiency ▪ Livable communities 	

Project Success Factors

Evaluation Criteria	Example Factors	Key Documentation
1. Project Management Approach	<ul style="list-style-type: none"> ▪ Organizational capacity ▪ Track record of comparable projects ▪ Adequacy of engineering ▪ Reasonableness of schedule ▪ Progress toward NEPA compliance ▪ Thoroughness of management plan ▪ Sufficiency of safety and security planning ▪ Sufficiency of stakeholder agreements ▪ Reasonableness of financial estimates ▪ Availability of operating financial support ▪ Quality of planning process 	<ul style="list-style-type: none"> ▪ Project management plan
2. Sustainability of Benefits		<ul style="list-style-type: none"> ▪ Financial plan (capital and operating) ▪ Stakeholder agreements

Other Attributes

Evaluation Criteria	Example Factors	Key Documentation
1. Timeliness of Project Completion	<ul style="list-style-type: none"> ▪ Project readiness ▪ Reasonableness of completion schedule 	<ul style="list-style-type: none"> ▪ Project schedule

¹ See Section 4 for a detailed summary of submission requirements, and Section 5 for additional detail on evaluation and selection criteria.

1.3.3 Selection Criteria

After being assessed against the evaluation criteria, applications for each Track will collectively be reviewed to ensure consistency and to balance projects against national priorities and schedules. For this review, the FRA Administrator may consider several cross-cutting comparative criteria before final award determinations are made. The table below summarizes these additional selection criteria.

SELECTION CRITERIA

Selection Criteria (Balance and Diversity)	Example Factors
1. Region/location 2. Innovation 3. Partnerships 4. Tracks and round timing	<ul style="list-style-type: none">▪ Geography and economic conditions▪ Technology and industrial/capacity development▪ Multi-State agreements▪ Project costs and schedules

1.4 Program Implementation Opportunities and Challenges

In addition to the fiscal constraints currently affecting States, local governments, and businesses, the development of a comprehensive High-Speed Rail/Intercity Passenger Rail network faces challenges specific to this program and the rail industry. For instance, FRA recognizes the challenges associated with the need for agreements among multiple States and with private railroad companies, as well as the shortage of engineering professionals, planners, and managers with experience in High-Speed Rail/ Intercity Passenger Rail development with project implementation in the United States.

The intent to establish a pipeline of future High-Speed Rail/Intercity Passenger Rail programs and projects poses a further challenge. The traditional pipeline for major transportation investments progresses from alternatives analysis to investment planning, preliminary engineering (PE) and environmental clearance, final design (FD), construction, and operations. With very narrow exceptions, States have historically lacked a Federal funding partner in High-Speed Rail/ Intercity Passenger Rail development; thus, many States have no High-Speed Rail/Intercity Passenger Rail program at all, and others find their limited High-Speed Rail/Intercity Passenger Rail development efforts stalled at various points along the typical progression.

This situation necessitates a Federal funding approach that is flexible enough to support the High-Speed Rail/ Intercity Passenger Rail development efforts of each State – whether, for example, the State has just initiated High-Speed Rail/Intercity Passenger Rail planning, or has prepared for capital investments to enhance existing services, or has readied itself to construct new infrastructure to accommodate new High-Speed Rail/Intercity Passenger Rail service. With such disparate situations among the States, the Federal funding approach must accommodate different situations, offering an array of possibilities to dovetail with the States’ diverse aspirations, capabilities, and resources.

1.5 Environmental Review and Approval

Central to High-Speed Rail/Intercity Passenger Rail Program implementation – and crucial to each applicant’s choice of Track for a proposal – is the environmental review process required by the National Environmental Policy Act (NEPA) and related laws and regulations.² NEPA applies to all federal grant programs and requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. Agencies must also make information on these impacts and alternatives publicly available before decisions are made and actions occur. NEPA also mandates that all reasonable alternatives be considered, and to that end, an alternatives analysis is typically conducted during the environmental review process.

FRA – as the Federal sponsoring agency – has primary responsibility for assuring NEPA compliance while accomplishing the purposes, priorities, and requirements of the HSIPR Program. While NEPA compliance is a Federal agency responsibility and the ultimate decisions remain with the Federal sponsoring agency, FRA encourages applicants to take a leadership role in NEPA documentation development, consistent with existing law and regulations. In the varied and flexible HSIPR Program, with its four Tracks and multiple authorizations, no single approach to NEPA compliance will work for every proposal and applicant. Therefore, FRA will work closely with applicants to assist in the timely and effective completion of the NEPA process in the manner most pertinent to the applicant’s proposal.

NEPA reviews should focus on the issues that are ripe for decision at each stage of project or program development. To help focus environmental reviews, the Council on Environmental Quality encourages agencies to tier their environmental reviews, whereby general matters or broader programs are covered in a Tier I NEPA document, such as a corridor-wide (or “service”) environmental impact statement (EIS) or environmental assessment (EA); and narrower more site-specific projects or actions are addressed in site-specific EISs, EAs or categorical exclusion (CE) documents.

1.6 Funding Approach

In order to accommodate the variety of potential applicant goals and stages of project development, while meeting the statutory and program constraints, this guidance provides four funding “tracks” in which applications may be submitted. FRA has adopted this four-Track approach to aid in near-term economic recovery efforts and to establish the path to realize a fully-developed national High-Speed Rail/ Intercity Passenger Rail network. The deadlines for FRA obligation and project(s) completion for each Track reflect the imperatives of ARRA, balanced with the longer-term development goals. (See “Dates” above.)

²The National Historic Preservation Act, Clean Water Act, 49 U.S.C. 303 relating to parks, wildlife refuges and historic sites (commonly referred to as Section 4(f)), and the Endangered Species Act are examples.

1.6.1 Track 1 – Intercity Passenger Rail Projects funded under ARRA (“Track 1 – Projects”)

This track is aimed at chiefly addressing the economic recovery goals of ARRA through – (a) FD/construction of “ready-to-go” projects – i.e., those with completed site-specific NEPA documentation (project-level final EIS, final EA or CE documentation) along with PE; and (b) completion of project-level NEPA and PE to prepare projects for FD/construction grants that may be available under future solicitations. Track 1 projects should be completed within two years of award. These projects are funded through either Section 301 (Intercity Passenger Rail Corridor Capital Assistance) or Section 302 (Congestion Grants) of PRIIA, for the benefit of existing services, including those that support development of High-Speed Rail. Eligible projects include infrastructure, facilities, and equipment, and must have independent utility.³ The Federal funding share can be up to 100 percent, although evaluation criteria favor projects that leverage federal funding with non-federal investments.

1.6.2 Track 2 – High-Speed Rail/ Intercity Passenger Rail Service Development Programs (“Track 2 – Programs”)

This track is aimed at developing new High-Speed Rail corridor and Intercity Passenger Rail services, or substantial upgrades to existing corridor services, eligible under Section 501 (High-Speed Rail Corridor Development) and Section 301 (Intercity Passenger Rail Corridor Capital Assistance) of PRIIA. It is intended to fund development of a set of inter-related projects that constitute the entirety or a distinct phase (or geographic section) of a long-range service development plan – projects which collectively produce benefits greater than the sum of each individual project.⁴ Under this Track, not all projects need to be ready-to-go; the Federal Government provides a commitment to fund the entire program, generally through a Letter of Intent (LOI), and obligates funds for FD/construction projects through cooperative agreements as soon as they are deemed ready-to-go. Track 2 LOIs and cooperative agreements must include specific milestone deadlines for completion of environmental, engineering, design and other work.

To be eligible for awards under Track 2, Service Development Programs (“SDP” – defined in Section 2.2) must include completed: (a) a corridor-wide “service” NEPA study, such as a programmatic or Tier I EIS; and (b) a High-Speed Rail/ Intercity Passenger Rail SDP, or an equivalent approach that provides a business and investment justification with sufficient project cost and benefit estimates. Key elements of an SDP or equivalent business case include: (i) an overview of program rationale (including purpose and need); (ii) a service and operations plan, and a prioritized capital investment plan for infrastructure, fleet and stations/facilities; and (iii) an implementation approach, including schedule, project management plan, stakeholder agreements, and a financial plan for funding both capital and operations. See Appendix 2.1 for a summary of expectations for a SDP.

³ While ARRA-funded projects are exempt from State Rail Plan requirements, evaluation preference is given to those that are part of a planning process that includes a prioritized list of capital projects supporting a corridor service development plan; equipment projects should be consistent with Section 305 of PRIIA, which calls for the establishment of a standardized next-generation rail corridor equipment pool (see Section 3.6.3).

⁴ A group of projects that collectively advance the entirety, or a “phase” or “geographic section,” of a corridor service development plan are referred to here as a “program.”

Track 2 programs will generally address infrastructure, equipment and stations/facilities investments in a comprehensive fashion. While these programs are the most complicated and need a particularly rigorous project management approach, Track 2 programs represent the long-term emphasis of the HSIPR Program, and thus FRA expects to focus its collaborative efforts on this Track. The Federal funding share can be up to 100 percent, although evaluation criteria favor projects that leverage federal funding with non-federal investments.

1.6.3 Track 3 – Service Planning Activities funded under the FY 2009 and FY 2008 DOT Appropriations Acts (“Track 3 – Planning”)

This track is aimed at helping establish a pipeline of future High-Speed Rail/ Intercity Passenger Rail projects and service development programs by advancing planning activities for applicants at an earlier stage of the development process. Under Track 3, FRA will enter into cooperative agreements for preparation of SDPs, State Rail Plans and service-level environmental documents.⁵ This Track provides States an opportunity to complete the prerequisite work needed to submit applications under Tracks 1 and 2, so that applicants may be ready for potential future solicitations. Under the terms of the FY 2008/2009 DOT Appropriations acts, planning activities funded under this Track require a 50 percent non-Federal match.

1.6.4 Track 4 – FY2009 Appropriations-Funded Projects (“Track 4 – FY2009 Appropriations Projects”)⁶

Track 4 provides an alternative for projects that would otherwise fit under Track 1, but for State applicants offering at least a 50 percent non-Federal share of financing. This Track offers applicants simplified grant agreement terms, and up to five years to complete projects (vs. two years under Track 1). Applicants providing at least a 50-percent project match are strongly encouraged to submit project applications under Track 4 (those submitting project application(s) under Track 4 may also request concurrent consideration of such application(s) under Track 1).

1.7 Opportunity for Public Comment

FRA is soliciting public comment on this document through Docket Number FRA-2009-0045 (at www.regulations.gov). While the interim guidance in this document does not constitute a rulemaking, FRA will consider all comments received no later than July 10, 2009 and will publish any resultant clarifications or revisions to this document in the Federal Register and on FRA’s website (www.fra.dot.gov). FRA began this comment process during its outreach sessions in May and June, in which over 1,100 stakeholders attended seven sessions around the country; in addition, a public docket was established for comment, and

⁵ Project-level NEPA documents are eligible for funding under Tracks 1 and 2.

⁶ A total of \$90 million was appropriated under the FY 2009 DOT Appropriations Act under the heading of Capital Assistance to States – Intercity Passenger Service, of which no more than ten percent, or \$9 million, may be made available for planning activities. In addition, a total of \$540,500 in planning funding, and at least \$1,352,573 in FD/construction funding also remained available until expended following the award of grants under the FY 2008 Capital Assistance to States – Intercity Passenger Service program.

110 comments were received as of June 15, 2009. FRA has already revised the approach contained herein based on this initial feedback. To give prospective applicants adequate time to complete their applications (while incorporating any guidance clarifications or revisions), FRA may adjust application dates to allow for a minimum of 30 days for application submission following any material changes to this guidance that arise from comments.

SECTION 2: AWARD INFORMATION

2.1 General Award Information

ARRA appropriated a total of \$8 billion under three Intercity Passenger Rail capital investment programs authorized by the PRIIA: Section 501 (High-Speed Rail Corridor Development), Section 301 (Intercity Passenger Rail Service Corridor Capital Assistance), and Section 302 (Congestion Grants). ARRA left the mix of funding among the three PRIIA programs to the discretion of the Secretary of Transportation. As described in the Department's April 2009 strategic plan for high-speed rail, Vision for High-Speed Rail in America, FRA will not allocate funding among the three PRIIA programs in advance, but will cumulate the amounts under each PRIIA section from the funding sources identified in the selected applications, subject to the overall \$8 billion ARRA limit. In addition to the ARRA appropriation for High-Speed Rail/Intercity Passenger Rail, this funding opportunity announcement also solicits applications for up to \$9,540,500 for Intercity Passenger Rail planning activities, and at least \$82,352,573 in FD/construction funding appropriated under the FY 2008/2009 DOT Appropriations Acts.⁷

This funding and announcement solicits applications for funding appropriated through ARRA, the FY 2008/2009 DOT Appropriations Acts under the four distinct Tracks described above:

- Track 1 – Projects (ARRA funds);
- Track 2 – Programs (ARRA funds);
- Track 3 – Planning (annual appropriations funds for Interstate Passenger Rail planning from FY 2009 and remaining from FY 2008); and
- Track 4 – FY2009 Appropriations Projects (annual appropriations funds for Interstate Passenger Rail non-planning from FY 2009 and remaining from FY 2008).

FRA anticipates making multiple awards under each of the four Tracks. While the entire \$9,540,500 under Track 3 and at least \$82,352,573 under Track 4 may be awarded, FRA may choose not to award through this solicitation the full amount available for Tracks 1 and 2, to allow for potential future rounds of solicitations and awards which occur after 2009. There is no predetermined allocation between Tracks 1 and 2 or between this and any future solicitations; all such distributions will cumulatively reflect the nature and timing of the selected applications (as referenced in Section 5, selection criteria).

⁷ A total of \$90 million was appropriated under the FY 2009 DOT Appropriations Act to remain available and unexpended under the heading of Capital Assistance to States – Intercity Passenger Service, of which no more than 10 percent, or \$9 million, may be made available for planning activities. In addition, a total of \$540,500 in planning funding, and at least \$1,352,573 in FD/construction funding also remained available until expended following the award of grants under the FY 2008 Capital Assistance to States – Intercity Passenger Service program.

2.2 Definitions of Key Terms, Concepts, and Milestones for Track Selection

A prospective applicant under this solicitation should first determine into which Track the applicant's proposal would most appropriately fit. The choice of Track largely reflects the scope of the proposed undertaking and the proposed effort's achievement of key milestones within the project development process. Below are definitions of key terms, concepts, and milestones for the HSIPR Program that affect the selection of a Track. Section 2.3 is then intended to assist an applicant in selecting a Track based on the proposed investment's relationship to these terms, concepts, and milestones.

Corridor –For the specific purposes of the HSIPR Program, a corridor is an existing or proposed Intercity Passenger Rail route of approximately 100-600 miles in total length, linking population centers at its endpoints and typically points in between. Corridors may cross State or national boundaries and thus require a regional, multi-jurisdictional approach to planning and development.⁸

Final Design – The last phase of project development, including: right-of-way acquisition, utility relocation, the preparation of final design plans, construction management plans, system safety plans for construction management & operations, safety certification, any required collision hazard analysis, final construction cost estimates, and detailed specifications, as well as procurement of construction services and equipment. During this phase, any remaining uncertainties or risks associated with minor changes to design scope and the procurement processes are fully addressed, and plans for financing the project or program would be updated and refined to reflect accurately the expected year-of-expenditure costs and cash flow projections.

Financial Plan – The financial plan documents the recent and forecasted financial condition of the applicant agency and other key partners that will provide capital or operating funding for project development and/or implementation. The Financial Plan describes the current financial health of the aforementioned agencies, documents projected capital and operating costs and revenues, and details key assumptions and methodologies. A financial plan also details the sources, reliability and feasibility of funding for both capital and operating expenses and provides an overview of the project sponsor's strategies to address potential project cost increases.

FRA Obligation – Commitment of Federal funding made through execution of a grant agreement or cooperative agreement.

High-Speed Rail –Intercity Passenger Rail service that “is reasonably expected to reach speeds of at least 110 mph” (49 U.S.C. 26106(b)(4)).

Independent Utility – A project, group of projects, or Service Development Program (or phase of a Service Development Program) is considered to have independent utility if it will result, upon completion, in the creation of new or substantially improved High-Speed Rail/Intercity Passenger Rail service, and will provide tangible and measurable benefits even if no additional investments in the same High-Speed Rail/Intercity Passenger Rail service are made. Typical examples of these benefits would include on-time performance

⁸ Federal investment in corridor projects may be limited to the United States.

improvements, travel-time reductions, and higher service frequencies resulting in increased ridership.

Intercity Passenger Rail – Defined in statute as “rail passenger transportation except commuter rail passenger transportation” (49 U.S.C. 24102(4)); it subsumes both High-Speed Rail and conventional intercity passenger services. Commuter rail is defined as “short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations” (49 U.S.C. 24102(3)); Federal funding for commuter rail projects is available from Federal Transit Administration programs.

Intercity Passenger Rail Service – An Intercity Passenger Rail service consists of a group of one or more scheduled trains (roundtrips) that provide Intercity Passenger Rail transportation between bona fide travel markets (not constrained by State or jurisdictional boundaries), generally with similar quality and level-of-service specifications, within a common (but not necessarily exclusive or identical) set of identifiable geographic markets. An Intercity Passenger Rail service is considered “substantially changed” when its inherent nature or market focus is altered, or when its operating frequencies (roundtrips per day) are increased significantly; a substantial change in service may include adding short-distance corridor-type trains where only long-distance service operates, or service restoration where trains ceased to operate several years before. See Appendix 1.3 for further discussion of the definition of Intercity Passenger Rail.

Letter of Intent (LOI) – Represents a contingent financial commitment by FRA to provide up to a prescribed amount of funding to fully implement a service development program (or specific phases of such a program), with defined milestones for completion of work necessary to ensure successful and timely program development.

National Environmental Policy Act (NEPA) Documentation – Includes four principal levels (with respect to the HSIPR Program):

- **Tier I, “programmatic,” or service-level environmental impact statement (Tier I EIS)** – Addresses actions at a broad level, such as a program concept for an entire corridor, and typically does not lead directly to project construction.
- **Site-specific, or project EIS** – Addresses specific environmental issues associated with a site or project, and is intended to lead directly to construction once applicable permits are secured.
- **Environmental assessment (EA)** – May be programmatic or site-specific, and concisely provides sufficient evidence and analysis of the proposal to determine whether to prepare an EIS or a finding of no significant impact (FONSI).
- **Categorical exclusion (CE)** – Documentation that shows how a proposal fits a category of predefined actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an EIS nor an environmental assessment are required.

Planning – Activities that support the case for investing in project(s) or program(s), such as: identification of purpose and need; analysis comparing the costs, benefits, and impacts of a range of transportation alternatives; studies that assess different levels of rail service and investment; service-level, programmatic, or Tier I NEPA studies; Service Development Plans; and State Rail Plans.

Preliminary Engineering (PE) – Sufficient engineering design to define a project, including identification of all environmental impacts, design of all critical project elements at a level

sufficient to assure reliable cost estimates and schedules (in turn sufficient to complete project management and financial plans), and definition of procurement requirements and strategies. The PE development process starts with specific project design alternatives that allow for assessment of a range of rail improvements, specific alignments, and project designs – sufficient to support subsequent NEPA analysis. PE is prerequisite to final design (FD) and construction. Appendix 2.2 contains additional information about PE.

Project – A High-Speed Rail/Intercity Passenger Rail project is a discrete action that has a distinct purpose, such as adding track to an existing railroad line, or the purchase of one or more pieces of rolling stock.

Project Management Plan – Approach for ensuring successful implementation of a project or program, including: (i) identification of a manager accountable for project or program delivery; (ii) an organization/resource plan that describes (e.g., through an organization chart) the relationships among entities involved in the proposed program and a description of the relationships among the entities responsible for the financing, design, construction, operation, and maintenance of the proposed program; (iii) any new legal entities required, how they would be structured, and their relationship to existing entities; (iv) stakeholder agreements with owners of right-of-way, operators, or other entities critical to successful project/program delivery; (v) required governmental actions and approvals; and, (vi) an appropriate system safety plan for the entire project lifecycle consistent with FTA guidance for safety and security management plans. The project management plan should address the safety certification process and any required collision hazard analysis consistent with the FRA guidance. A project management plan generally should also include metrics by which the success of the project is defined.

Right-of-Way – Railroad infrastructure within the property lines of an existing, or within the presumed property lines of a proposed, railroad useful for Intercity Passenger Rail service.

Service Development Plan (SDP) – A plan for developing High-Speed Rail/ Intercity Passenger Rail service, either initiating new service or improving existing service (e.g., adding train frequencies and/or reducing trip times) – typically developed around distinct phases and/or geographic sections of service improvement. A High-Speed Rail/Intercity Passenger Rail SDP or equivalent covers three general topics: (i) rationale (including purpose and need), (ii) service/operating plan and prioritized capital plan, and (iii) implementation plan (including project management approach, stakeholder agreements and financial plan). The precise structure of an SDP can vary, but these elements must be covered in some fashion. (See Appendix 2.1 for additional explanation).

Service Development Program (“Program”) – Implementation of a High-Speed Rail/Intercity Passenger Rail SDP, generally broken into discrete phases or geographic sections. Such programs may be for new service on an existing or new railroad alignment, or for improved service on an existing railroad alignment.

2.3 Guide to Track Selection

The table below should be used by applicants as a guide for determining the appropriate Track for application submissions.

TRACK SELECTION GUIDE

Funding Track Determination Questions	Response (Yes/No)	Funding Track
Has new or improved Intercity Passenger Rail service been selected as a promising alternative in the transportation corridor where the project is located?	No	Track 3 – Service Planning
	Yes	Proceed to Next Question
Does the project(s) lead to – introduction of High-Speed Rail/Intercity Passenger Rail service within a corridor where no service of that type currently exists, or to a substantial change in an existing service?	No	Proceed to Next Question
	Yes	Track 2 - Programs
Does the project(s) include the rerouting of an existing Intercity Passenger Rail service onto a new, expanded, or previously abandoned right-of-way?	No	Proceed to Next Question
	Yes	Track 2 - Programs
Does the investment encompass multiple dispersed projects intended to produce a significant benefit to one or more Intercity Passenger Rail services?	No	Proceed to Next Question
	Yes	Track 2 - Programs
Even if no Service Development Plan exists, have specific Intercity Passenger Rail investment projects been identified for implementation?	No	Track 3 – Service Planning
	Yes	Proceed to Next Question
Have preliminary engineering (PE) and a project-level NEPA document been completed for the proposed project?	No	Track 1 – PE/NEPA only
	Yes	Proceed to Next Question
If PE and project-level NEPA documentation is complete, is a 50 percent (or greater) non-Federal match available?	No	Track 1 – FD/ Construction
	Yes	Track 4 – FY 2008/2009 Appropriations Projects (or Track 1 – Projects)

After selecting the appropriate application Track, prospective applicants should consult the relevant Track-specific and general information contained in the balance of this document.

2.4 Anticipated Award Amounts

Tracks 1 and 2 – Awards under Tracks 1 and 2 will be made using a portion of the \$8 billion appropriated through ARRA. FRA anticipates making multiple awards under Track 1 as a result of this solicitation; however, FRA will not award all of the available \$8 billion to Track 1 applicants. Funds will be reserved for award to Track 2 applications under this solicitation, and likely to Tracks 1 and 2 in potential future rounds of solicitations – as described in Section 5. As the authorizations underlying Tracks 1 and 2 are new, the FRA cannot provide an average amount of funding per award in previous years.

Tracks 3 and 4 – Awards under Tracks 3 and 4 will be made using the \$90 million dedicated to Capital Grants to States – Intercity Passenger Rail Service in the FY 2009 DOT Appropriations Act, plus the remaining funds appropriated for the same purpose in the Capital Assistance to States – Intercity Passenger Service Program in the FY 2008 DOT Appropriations Act (currently estimated at \$1,893,073). In accordance with the provisions of the Appropriations Acts, no more than 10 percent of appropriated amounts in each fiscal year (\$9,540,500 of the available funds) may be allocated to Track 3 – Planning, with the balance available for Track 4 – FY2009 Appropriations Projects. These funds require a non-Federal match of at least 50 percent of total project cost.

2.5 Types of Awards

The table below summarizes the characteristics of funding awards by Track. For specific grant conditions, refer to section 6 and appendix 3.

AWARD CHARACTERISTICS

	Track 1 – Projects	Track 2 – Programs	Track 3 – Planning	Track 4 – FY 2009 Appropriations Projects
Legislative Funding Source	<ul style="list-style-type: none"> • ARRA 	<ul style="list-style-type: none"> • ARRA 	<ul style="list-style-type: none"> • FY 2009, 2008 DOT Appropriations Act 	<ul style="list-style-type: none"> • FY 2009, 2008 DOT Appropriations Act
Available Funding	<ul style="list-style-type: none"> • Portion of \$8 B 	<ul style="list-style-type: none"> • Portion of \$8 B 	<ul style="list-style-type: none"> • Up to \$9.54 M 	<ul style="list-style-type: none"> • No less than \$82.3 M
Instrument of Commitment	<ul style="list-style-type: none"> • Final Design/ Construction Grants • PE/NEPA Cooperative Agreements 	<ul style="list-style-type: none"> • Letters of Intent • Cooperative Agreements 	<ul style="list-style-type: none"> • Cooperative Agreements 	<ul style="list-style-type: none"> • Final Design/ Construction Grants
Match Requirement	<ul style="list-style-type: none"> • Up to 100% Federal share 	<ul style="list-style-type: none"> • Up to 100% Federal share 	<ul style="list-style-type: none"> • At least 50% non-Federal match 	<ul style="list-style-type: none"> • At least 50% non-Federal match

2.5.1 Track 1

The FRA will make awards under Track 1 through either: (a) grant agreements supporting FD and project construction; or (b) cooperative agreements for completion of PE and/or project-level NEPA documentation. Construction grants will fund both FD (if not already completed) and construction of projects for which PE and project-level NEPA documentation is complete at the time of application.⁹ FD/construction grant recipients will be required to obtain FRA approval prior to the commencement of construction activities (the process will be set out in the grant agreement). The grant agreement can also be structured to cover alternative construction scenarios, such as through a design-build type approach. Applicants under Track 1 will be considered for funding under either Intercity Passenger Rail Corridor Capital Assistance Grants (Section 301 of PRIIA), or Congestion Grants (Section 302 of PRIIA). Eligible projects intended to reduce congestion by alleviating major rail capacity bottlenecks, particularly those that benefit multiple railroad operators (e.g. Intercity Passenger Rail, rail freight, and commuter rail) in a congested corridor, will likely be considered for funding under the Congestion Grant program. Note that where multiple railroad operations benefit from project(s), FRA will expect the costs for such project(s) to be shared proportional to the benefit each operator accrues from the investment.

Under Track PE/NEPA cooperative agreements, FRA will be more involved in the project through collaborative work with the recipient. In addition to providing technical assistance to the recipient, FRA will participate in key project meetings, and will assist in the preparation of engineering and environmental documents. FRA will also be responsible for approving project deliverables at key milestones, and providing authorization for progressing with subsequent stages of the project.

2.5.2 Track 2

Under Track 2, FRA may issue Letters of Intent (LOI) for Service Development Programs, and make subsequent awards for program components through cooperative agreements.

The issuance of a LOI represents the expression of FRA's full support of a Service Development Program, and the funding contingently committed through an LOI will be reserved for that Service Development Program from the \$8 billion in available ARRA funding. An LOI will include milestones for completion of work needed to advance the program into obligation and completion; if milestone deadlines are not met, funding reserved under an LOI will be returned to the pool of funds available for future solicitations.

As milestones under an LOI are reached, FRA will obligate funding to implement approved portions of the program through a cooperative agreement. Funding to complete remaining PE and project-level NEPA would be awarded immediately following the issuance of the LOI. Funding for FD/construction would be awarded through a grant or cooperative agreement as milestones are reached (e.g., completion of PE and NEPA for project(s) with

⁹ If substantial progress on NEPA documentation has been made on NEPA documentation, application may be reviewed for FD/Construction grant funding; in any case, project-level NEPA documentation must be complete at time of grant agreement.

independent utility. Even after funds are converted from LOI into a cooperative/grant agreement (i.e., obligated), grantees will be required to obtain FRA approval prior to the commencement of construction activities. This process will be included in the grant agreement (which could also be structured to address options such as a design-build implementation approach).

Recognizing the unique challenges posed by complex new corridor programs, a higher level of Federal oversight and support will be involved than under standard grant agreements. The substantial Federal involvement of FRA will extend across all aspects of Service Development Programs and will include technical assistance, review of interim work products, support for environmental reviews, review of PE and FD, and continuous program oversight.

2.5.3 Track 3

FRA will make awards under Track 3 using the \$9,540,500 available under the FY 2008/2009 DOT Appropriations Acts through cooperative agreements. The substantial Federal involvement for Intercity Passenger Rail planning activities would include agreement on the scope of study, review of draft studies, and acceptance of final deliverables. Recognizing the importance of planning to the long-term success of the HSIPR Program and the limited funding available under existing appropriations, FRA will favorably consider applicant expenditures for High-Speed Rail/Intercity Passenger Rail project planning when evaluating the State share or matching contributions component of an evaluation under subsequent solicitations.

2.5.4 Track 4

Awards under Track 4 will be made using \$82 million available under the FY 2009 DOT Appropriations Act for non-planning Intercity Passenger Rail Capital Assistance to States, as well as remaining non-planning funding under the analogous FY 2008 DOT Appropriations Act funding. FRA anticipates making one or more awards, and awarding the entire \$82 million under Track 4 as a result of this solicitation.

Funding under Track 4 cannot exceed 50 percent of a project's total cost. States are the only eligible applicants under Track 4, and must be able to certify in their applications as to the availability of the matching funds. As the source of the Federal funds is a regular annual appropriation rather than ARRA, requirements specific to ARRA (e.g., job retention and creation as an evaluation factor, and various reporting requirements) need not be met, although States are encouraged to do so.

The average amount of Federal funding per non-planning award in the analogous FY 2008 program was \$2.75 million.

SECTION 3: ELIGIBILITY INFORMATION

Applications will be required to meet minimum requirements for each Track in terms of applicant eligibility, project eligibility, and the fulfillment of other Track-specific application prerequisites.

To the extent that an application’s substance exceeds the minimum eligibility requirements described below, such qualifications will be considered in evaluating the merits of an application.

3.1 Eligible Applicant Types

Eligibility of different types of applicants varies by Track and authorization, as summarized below.

APPLICANT ELIGIBILITY

	Track 1 – Projects		Track 2 – Programs		Track 3– Planning	Track 4 – FY 2008/2009 Appropriation s Projects
	PRIIA Section 301	PRIIA Section 302	PRIIA Section 301	PRIIA Section 501	FY2008/ 2009 Appropriation s Acts	FY2008/2009 Appropriation s Acts
States	✓	✓	✓	✓	✓	✓
Groups of States	✓		✓	✓		
Interstate Compacts	✓		✓	✓		
Public agencies established by one or more States and having responsibility for providing Intercity Passenger Rail service	✓		✓			

Public agencies established by one or more States and having responsibility for providing High-speed Passenger Rail service				✓		
Amtrak	✓ *	✓ **		✓		

* Amtrak may enter into a cooperative agreement with one or more States to carry out an eligible project

** Amtrak is eligible in cooperation with States

Further detail on the definitions of “eligible applicants” is available in Appendix 3 under “Applicant Types.”

3.1.1 Track 1

An entity seeking assistance under Track 1 must meet the definition of an “applicant” under the funding authorization that would pertain to its proposal(s) – either Section 301 (Intercity Passenger Rail Corridor Capital Assistance) or Section 302 (Congestion Grants) of PRIIA. Eligible applicant entities under those sections are as follows:

- **Intercity Passenger Rail Corridor Capital Assistance (Section 301)** – States (including the District of Columbia), groups of States, Interstate Compacts, and public agencies established by one or more States and having responsibility for providing intercity passenger rail service.
- **Congestion Grants (Section 302)** – States (including the District of Columbia), or Amtrak (in cooperation with States).

3.1.2 Track 2

An entity seeking assistance under Track 2 must meet the definition of an “applicant” under the funding authorization that would pertain to its proposal(s) – either Section 301 (Intercity Passenger Rail Corridor Capital Assistance) or Section 501 (High-Speed Rail Corridor Development) of PRIIA. Eligible applicant entities under those sections are as follows:

- **Intercity Passenger Rail Corridor Capital Assistance (Section 301)** – States (including the District of Columbia), groups of States, interstate compacts, and public agencies established by one or more States and having responsibility for providing Intercity Passenger Rail service.
- **High-Speed Rail Corridor Development (Section 501)** – States (including the District of Columbia), groups of States, interstate compacts, and public agencies

established by one or more States and having responsibility for providing High-Speed Rail service, or Amtrak.

3.1.3 Tracks 3 and 4

Only States, including District of Columbia, are eligible to apply under Tracks 3 and 4.

3.2 Applicant and Key Partner Qualifications

For an application submitted by an eligible entity to be considered under any Track, it must affirmatively demonstrate that the applicant has or will have the legal, financial, and technical capacity to carry out the proposal. In addition, for FD/construction applications under Tracks 1, 2, and 4, the applicant must demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, and the capability and willingness to maintain such equipment or facilities. Further discussion of how applicants can demonstrate compliance with these minimum qualifications appears in Appendix 1.2.

Entities other than States must submit information and documentation demonstrating the fulfillment of the minimum applicant qualifications described in this section as part of a preapplication (see Section 4.3. for complete preapplication information and documentation requirements). On the basis of such information, FRA will issue a written decision on the entity's eligibility as an applicant.

3.3 Cost Sharing and Matching

3.3.1 Treatment of Applicant Cost Sharing

3.3.1.1 Track 1

Pursuant to the provisions of the ARRA appropriation for High-Speed Rail/Intercity Passenger Rail, the Federal share of the costs of projects issued grants under Track 1 of this solicitation will be, at the option of the recipient, up to 100 percent.

The evaluation criteria provide preference to applicants, should the applicant choose the option of leveraging federal funds with contributions from its own project partners' resources toward the costs of its proposed project. These contributions may be considered in evaluating the merit of its application (See section 5 for a complete description of evaluation and selection criteria).

3.3.1.2 Track 2

As in the case for Track 1, the Federal share of the costs of projects issued grants under Track 2 of this solicitation shall be, at the option of the recipient, up to 100 percent.

Again, the evaluation criteria provide preference to applicants that leverage federal funding with non-Federal investment. Applicants for Service Development Programs who do not choose to contribute their own or their project partners' resources toward the costs of the proposed project, and who (i) have not demonstrated continuous, sustained support to the

proposed program, and (ii) do not have a demonstrable history of capital investment in intercity passenger rail, may, as a condition of the obligation of funding for FD/construction activities, be required to establish a Capital Reserve Account funded by their own dedicated financial resources. Funds deposited by recipients into a Capital Reserve Account would be used to pay for any project cost overruns.

3.3.1.3 Tracks 3 and 4

Pursuant to the provisions of the FY 2008/2009 DOT Appropriations Acts, the Federal share of the costs of projects issued grants under Tracks 3 and 4 of this solicitation may not exceed 50 percent.

If an applicant chooses the option of contributing, from its own or its partner project stakeholders' resources, more than 50 percent of the costs of its proposed project, such additional contributions will be considered in evaluating the merit of its application (See Section 5 for a complete description of evaluation and selection criteria).

3.3.2 Requirements for Applicant Cost Sharing

Whether optional (under Tracks 1 and 2) or mandatory (under Tracks 3 and 4), an applicant's contribution toward the cost of its proposed project may be in the form of cash or, with FRA approval, in-kind contributions of services, supplies, equipment, or real estate. As part of its application, an applicant offering an in-kind contribution must provide a documented estimate of the monetary value of any such contribution, and its eligibility under 49 CFR 18.24.

The applicant must provide as part of its application documentation that demonstrates that it has committed and will be able to fulfill any pledged contribution, including committing any required financial resources that are budgeted or planned at the time the application is submitted. Furthermore, any applicant under Tracks 1 and 2 who seeks to contribute toward its proposed project funds from another Federal financial assistance program that itself requires a match, should be aware of the prohibition in many such programs of using any Federal funding (such as that being applied for under this program) as a matching share (See 49 CFR 18.24(b)(3)). Funds from other Federal financial assistance programs may not be used to satisfy the 50 percent match requirement under Tracks 3 and 4.

3.4 Grantee Responsibility for Project Delivery, Cost Overruns, and Contributions Due from States under PRIIA Section 209

All applicants will be required to demonstrate the ability to:

- Absorb any cost overruns and deliver the proposed project with no Federal funding or financial assistance beyond that provided in grant or cooperative agreement; and
- Cover all future cash needs associated with the service benefiting from the proposed program/project and allocated to States as a result of the costing methodology to be developed under Section 209 of the PRIIA.

3.5 Eligible Projects

3.5.1 Track 1

Track 1 consists of two sub-Tracks: Track 1 FD/construction and Track 1 PE/NEPA work in support of construction projects. To be eligible under either Track 1 FD/construction or Track 1 PE/NEPA a project for which construction or PE/NEPA funding is sought must be eligible under Section 301 (Intercity Passenger Rail Corridor Capital Assistance) and/or Section 302 (Congestion Grants) of PRIIA.

3.5.1.1 Intercity Passenger Rail Corridor Capital Assistance (PRIIA Section 301) Eligible Projects

Eligible projects for Intercity Passenger Rail Corridor Capital Assistance funding under Track 1 include:

- Acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service, including High-Speed Rail; expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, inspecting, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to Intercity Passenger Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;
- Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service; and
- Projects to provide access to Intercity Passenger Rail service rolling stock for nonmotorized transportation, including bicycles and recreational equipment, and to provide storage capacity in intercity passenger trains for such transportation, equipment, and other luggage, to ensure passenger safety.

3.5.1.2 Congestion Grants (PRIIA Section 302) Eligible Projects

Eligible projects for Congestion Grants funding under Track 1 include facilities, infrastructure, and equipment for high-priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in Intercity Passenger Rail transportation, including High-Speed Rail, as mandated in PRIIA Section 302.

To be eligible for Congestion Grant program funding in Track 1, an applicant must demonstrate that the proposed project:

- Has been identified by Amtrak as necessary to reduce congestion or facilitate ridership growth in Intercity Passenger Rail transportation along heavily traveled rail corridors; or
- Is sufficiently advanced to fulfill the PRIIA Section 302 purposes on an expedited schedule.

Applicants should give particular consideration to applying for Congestion Grants funding under circumstances in which the proposed project meets the eligibility requirements described above and:

- Is anticipated to result in significant joint benefits for multiple railroad operators (e.g., Intercity Passenger Rail, rail freight, and commuter rail) in a congested corridor, with proportional cost sharing among the operators;
- Involves the construction or improvement of infrastructure that will significantly benefit, but which will not be directly used by, Intercity Passenger Rail service (e.g., freight bypasses); and/or
- Will benefit service within one State, but will be physically located within another State – under such circumstances, the benefiting State may choose to cooperate with Amtrak or through a regional compact to put forward an application for the proposed project.

3.5.2 Track 2

Service Development Programs and phases of such programs, that are applied for under Track 2 must consist of a coordinated and comprehensive grouping of projects intended to result in the introduction of new services or significant improvements to existing services that are eligible under PRIIA Section 301 and/or Section 501.

3.5.2.1 Intercity Passenger Rail Corridor Capital Assistance (PRIIA Section 301)

Eligible Projects

These are listed under Track 1, above.

3.5.2.2 High-Speed Rail Corridor Development (PRIIA Section 501 Eligible Projects)

Eligible projects for High-Speed Rail Corridor funding under Track 2 include:

- Acquiring, constructing, improving or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of High-Speed Rail service; expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to High-Speed Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing. Projects must be located on a high-speed rail corridor designated by the Secretary pursuant to 23 U.S.C. 104(d)(2).

3.5.3 Track 3

Eligible planning studies are those that:

- Lead to the completion of a SDP to support future applications under Track 2 – Programs;
- Identify and compare the costs, benefits, and impacts of a range of transportation alternatives, including High-Speed Rail and/or Intercity Passenger Rail, as a means of

- providing decision makers with the information necessary to implement appropriate transportation solutions;
- Support the preparation of environmental documents that are prerequisite to the fulfillment of Service NEPA; and
 - Consist of operational analyses and simulations, and projections of future service requirements, leading to systematic and rational priority lists of projects that could be eligible for PRIIA Section 301 or 302 funding, and could ultimately contribute to SDPs.

3.5.4 Track 4

To be eligible for funding under Track 4, a proposed project must be specifically included in the applicant State's Statewide Transportation Improvement Plan (STIP) at the time of application. Eligible types of projects under Track 4 include (1) acquiring, constructing, or improving equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service including High-Speed Rail service, (2) expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), (3) highway-rail grade crossing improvements related to Intercity Passenger Rail service, (4) mitigating environmental impacts, (5) communication and signalization improvements, and (6) rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service.

3.5.5 Rail Operating Expenses

In no cases are Federal funds eligible to be used for rail operating expenses.

3.6 Other Prerequisites

3.6.1 General Prerequisites

In general, proposals under all Tracks must meet the following additional prerequisites:

- Applications must be complete, as defined in this notice;
- The complete application must demonstrate that the project has been identified through a rational planning process (ideally a High-Speed Rail/Intercity Passenger Rail SDP);
- The project (except for a planning project under Track 3) must be consistent with an overall plan for developing the benefiting High-Speed Rail/ Intercity Passenger Rail service; and
- The project (except for a planning project under Track 3) must result in independent utility, as defined under Section 2.2 of this notice.

3.6.2 Prerequisites for Construction Grants

If the applicant is seeking a construction grant, then the application must demonstrate all of the following:

- That PE (as defined under Section 2.2 of this notice) has been completed for the proposed project, resulting in project designs that are reasonably expected to conform to all regulatory, safety, security, and other design requirements, including those under the Americans with Disabilities Act (ADA);
- That a Project NEPA document (e.g., a CE exclusion worksheet, a completed EA, or a completed final EIS, as defined under Section 2.2 of this notice) has been completed for the proposed project;
- That the applicant has reached, at a minimum, agreements in principle with key project partners, including but not limited to infrastructure-owning railroads and the railroad that operates or will operate the benefiting High-Speed Rail/Intercity Passenger Rail service, as to the scope of the proposed project and the realization of the operating benefits (e.g., those reflected in changes to schedules) it is intended to generate; and
- That the applicant has developed a project management plan for managing the implementation of the proposed project, including the management and mitigation of project risks; and
- That the applicant has developed a Financial Plan - for each phase of service that details the "sources and uses" of both capital and operating funding.

3.6.3 Prerequisites for Equipment Procurement or Design Grants

If the applicant is seeking a grant for the procurement or design of railroad equipment, the proposed equipment should be consistent with Section 305 of PRIIA, which calls for the establishment of a standardized next-generation rail corridor equipment pool. Compliance with Section 305 of PRIIA will assist in creating the economies of scale necessary to achieve the Administration's goal, as outlined in FRA's Strategic Plan, of developing a sustainable railroad equipment manufacturing base in the United States.

3.6.4 Selection of Proposed Operator (Tracks 1 and 2 only)

If the applicant has not selected the proposed operator of the benefiting High-Speed Rail/Intercity Passenger Rail service competitively, then the application must demonstrate why the proposed operator is the best choice, taking into account all relevant quantitative and qualitative factors, and that use of the proposed operator will not needlessly increase the cost of the project or of the operations that it enables or improves.

3.6.5 Service Development Plan (Track 2 Only; Desirable for Other Tracks)

All applicants under Track 2 are required to have completed all the components of an High Speed Rail/Intercity Passenger Rail SDP, as defined in Appendix 2.1 of this guidance.

3.6.6 Positive Train Control (PTC)

If the project involves improvements to railroad signaling/control systems, then the application must demonstrate that the proposed improvements are consistent with a comprehensive plan for complying with the requirements for PTC implementation under

Section 104 of the Rail Safety Improvement Act of 2008 (“RSIA,” Division A of Pub. L. 110-432, October 16, 2008, codified at 49 U.S.C. 20147).

3.6.7 Inclusion in STIP (Tracks 3 and 4 only)

Proposed projects must be specifically included in the applicant State’s STIP at the time of application to be eligible.

3.7 Eligibility Restrictions

Pursuant to the provisions of PRIIA and ARRA, and the funding approach described in Section 1.6 of this notice, certain types of applications would be subject to various eligibility restrictions. The following table shows ineligible types of applications by Track.

ELIGIBILITY RESTRICTIONS

	Ineligible Under Track			
	1	2	3	4
Applications submitted by private entities other than Amtrak. Amtrak’s eligibility as an applicant is restricted to PRIIA Section 302 (in cooperation with a State) and Section 501.	x	x	x	x
For projects for which commuter rail passenger transportation is the primary intended beneficiary;	x	x	x	x
For projects involving the development of State Rail Plans or High-Speed Rail/Intercity Passenger Rail SDPs;	x	x		x
For projects intended to support the introduction of a new Intercity Passenger Rail service (as defined under Section 2.2 of this notice);	x			x
For projects involving significant construction of railroad infrastructure on a new (e.g., greenfield, outside of existing railroad rights-of-way) or previously abandoned alignment;	x			x
For multiple discrete projects that would collectively yield a significant benefit to Intercity Passenger Rail services operating in one or more corridors. FRA will consider the magnitude of the service improvement (e.g., travel-time savings and frequency increases), the total cost of the investment, and the geographic scope of the proposed projects (e.g., at multiple versus contiguous sites within the corridor) in determining whether an application (or group of applications) falls within the scope of this restriction; or	x			x
For projects in which the physical improvements are located outside of the United States. However, in the	x			x

	Ineligible Under Track			
	1	2	3	4
case of a joint project of a State or group of States and a foreign government, in which construction of all physical improvements outside the United States will be paid for by the foreign participants, planning, PE and NEPA work applicable to both the U.S. and foreign portions of the project is eligible if funded on a proportional basis.				
For any expenses associated with passenger rail operating costs of rail operators.	x	x	x	x

Additional restrictions are fully described in Section 4.3.8 of this notice.

SECTION 4: APPLICATION AND SUBMISSION INFORMATION

4.1 Applying Online

FRA participates in the Grants Management Line of Business (GMLoB) E-Gov initiative. As part of that initiative, FRA uses the Administration for Children and Families’ (ACF) GrantSolutions (GS) Grants Management System. All applications must be submitted to FRA through GrantSolutions. To access the system, go to <https://www.grantsolutions.gov>. If you have any problems accessing GS, please contact the Custom Applications Support and Training Unit (CAST) helpdesk at 1-800-618-0223 or help@grantsolutions.gov.

- Applicants must register in GS, obtain a Data Universal Number System (DUNS) number and register their organization with the Central Contractor Registration (CCR) database prior to applying in GS. Applicants should begin the process immediately to meet the application submission deadlines.
- Standard application forms (identified in Section 4.3.3.3), will be available electronically on the Funding Opportunity page at www.GrantSolutions.gov. The Funding Opportunity screen provides applicants with general announcement information and access to all application kit materials in order to view and print application forms and information. In addition, applicants can apply online through this screen.
- Program-specific preapplication and application forms (also identified in Sections 4.3 and 4.4 below) may be downloaded from FRA’s website at http://www.fra.dot.gov/HSR_IPR_Program.

4.2 Address to Request Application Package

If Internet access is unavailable, please write to FRA at the following address to request a paper application:

U.S. Department of Transportation
 Federal Railroad Administration
 Attn. HSIPR Program Information (RDV-10)

Mail Stop 20
1200 New Jersey Ave SE
Washington, DC 20590

4.3 Content and Form of Application

4.3.1 Preapplication

All prospective applicants for all Tracks must submit a preapplication in order to establish communication with FRA, and to afford FRA an opportunity to provide feedback to the prospective applicant as to the suitability of their proposed project under the Track that the applicant proposes to use. Preapplications should be submitted as early as possible, but no later than July 10, 2009, and applicants should not wait for submission of, or any comments on, a preapplication before preparing their full applications. Prospective applicants for potential future funding rounds of solicitations are not required to submit a preapplication at this time. FRA will announce any corresponding application as needed.

Preapplications consist of the following components:

- **Project Description** – A brief overview of the project’s main features, type of proposed improvement, location, purpose, expected outcome, cost, ownership arrangements and the Intercity Passenger Rail service(s) that will benefit from the project;
- **Project Development Status** – The status of key project development elements, such as completion of the planning documents through which the project was identified, engineering work, and NEPA documentation; and
- **Applicant Eligibility** – Answers to questions regarding cost sharing, and applicant and key partners’ legal, financial, and technical capacity to carry out their proposed project.

Prospective applicants that do not fall within the definition of a State will also be required to provide copies of documentation (or references (URLs) to such documentation that is located on the Internet) that supports the answers provided in the preapplication form. Such supporting documentation should include (to the extent available), but need not be limited to, copies of laws that established the applicant as a legal entity, contractual agreements between States (either as a group of States or an interstate compact), financial statements and audit reports, and technical reports demonstrating the applicant’s technical capacity and experience in carrying out projects similar to that proposed.

In an effort to focus application efforts and remedy concerns, FRA may contact potential applicants if there are any questions that arise from the information submitted in a preapplication, or if the information raises questions as to the eligibility of the proposed project or its proper classification by Track. For preapplications submitted by applicants that do not fall within the definition of a State, and for preapplications under Track 2, FRA will contact the prospective applicants to kick-off discussions for the preparation of the application.

4.3.2 Application Administrative Requirements

Prior to submitting an application, prospective applicants must have completed two administrative requirements: establishment of a DUNS (Data Universal Numbering System) number, and registration in the Central Contractor Registration (CCR) database. These requirements need not be completed prior to submitting a preapplication, but FRA encourages applicants to begin the process immediately to meet the application submission deadlines.

All applicants must include a DUNS number in their application. Applications without a DUNS number are incomplete. A DUNS number is a unique nine-digit number recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients and subrecipients. The DUNS number will be used throughout the grant lifecycle. Obtaining a DUNS number is a free, simple, one-time activity. Obtain a number by calling 1-866-705-5177 or by applying online at <http://fedgov.dnb.com/webform/displayHomePage.do>.

FRA also requires that all applicants (other than individuals) for Federal financial assistance maintain current registrations in the CCR database. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients and subrecipients. Organizations that have previously submitted applications via www.grants.gov are already registered with CCR, as it is a requirement for www.grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status. Information about registration procedures can be accessed at www.ccr.gov.

4.3.3 Application Package Components

The application package for the HSIPR Program consists of three components – (1) program-specific application forms – Narrative and Templates Form- available from FRA’s website at: <http://www.fra.dot.gov/us/content/2243>, (2) supporting documentation, and (3) standard application forms available through www.GrantSolutions.gov. Applicants must complete all three components of the application package as required by Track and listed in the section 4.2.5 application checklist; failure to do so may result in the application being removed from consideration for award. Both the standard application forms and the Narrative and Templates Form must be submitted through www.GrantSolutions.gov – with standard forms submitted directly as electronic forms, and program-specific forms submitted as attachments to the application.

4.3.3.1 Narrative and Templates Form

The most significant component of the application package is the Narrative and Templates Forms, forms into which the applicant enters specific information about the proposed project. The forms include templates that have been developed by FRA to capture pertinent qualitative and quantitative program-specific information needed for FRA to confirm applicant and project’s eligibility for the HSIPR Program, and information needed for evaluation and selection of applications. These forms will be used to conduct a comprehensive benefit cost analysis. The forms allow for the applicant to make quantitative and qualitative arguments of the public return on investment. In order to conduct this

analysis FRA requires specific quantitative data relating to service outputs (delay reduction, schedule improvement, or capacity increases), and transportation outputs (increases in passenger-miles traveled on Intercity Passenger Rail services, including shifts from other modes of transportation).

The information entered into the Narrative and Templates Form falls into two categories: (1) narrative information, provided in response to specific application questions, with length limitations for each response; and (2) structured and/or quantitative information, which is entered into tables contained in the Forms. Applicants may track and submit the Narrative and Templates Forms through GrantSolutions. Separate Track-specific Narrative and Template Forms are tailored to corresponding tracks.

Information requested in the Narrative and Templates Form includes information on project overview, planning, purpose and need, project development status, project benefits – economic recovery, transportation, environmental and livable communities-, project estimate/budget, applicant qualifications, stakeholder agreements and financial and operation information. Completing the FRA-developed forms is expected to facilitate information input for required OMB standard forms described in section 4.3.3.3 below.

4.3.3.2 Application Supporting Documentation

In order to provide information referenced in the Narrative and Templates Form, applicants must submit additional documentation supporting their entries on the forms and confirming their eligibility under the proposed Track. The supporting documentation should largely include information that applicants developed during project planning activities thus, the format and structure of supporting documents is at the discretion of the applicant. Supporting documentation may be provided one of three ways – 1) as attachments to the application; 2) as Internet references (URLs) to documentation that is available online; or 3) in hard copy for materials that cannot otherwise be provided (such as oversized engineering drawings). Applicants should provide any URL references for supporting documentation, along with notifications of any documentation being submitted in hard copy, in the appropriate section of the narrative and templates form. The supporting documentation includes items as specified below:

- **PE Materials** – Applicants should provide any documents that demonstrate the PE status (or FD, if completed) of the proposed project. The PE requirements are detailed in Section 2.2 and Appendix 2.2. The submission of PE Materials is required for Track 1 FD/ construction, Track 2 and Track 4. PE Materials should be submitted as attachments to the application in GrantSolutions. If large-format materials cannot be submitted electronically, they should be mailed to FRA as described in Section 4.3.9
- **NEPA Documentation** – Applicants should provide any documents that demonstrate the NEPA status of the proposed project. The NEPA requirements are defined in Appendix 3.2.9 and detailed by track in Section 1.6. The submission of NEPA documentation is required for Track 1 FD/construction, Track 2 and Track 4.
- **Project Management Plan** – Applicants should provide a project management plan (or equivalent) that documents assumptions and decisions regarding the communication, management processes, execution and overall project control. The project management plan shall be submitted by applicants to Tracks 1

FD/construction, Track 2 and Track 4. The form and structure of the project management plan (or equivalent) is at the discretion of the applicant.

- **Stakeholder Agreements** – Applicants should provide documents that demonstrate the status of all stakeholder agreements including agreements with interstate partners, host railroads, right-of-way owners and contract railroad operator providing service. The form and structure of the stakeholder agreements are at the discretion of the applicant however, agreements should satisfy the eligibility and award requirements listed in Appendix 1.1 and 1.2. Stakeholder agreements should be submitted for applicants to Track 1 FD/construction, Track 2 and Track 4.
- **Financial Plan** – Applicants should provide a financial plan (or equivalent) as per the description of the Financial Plan in Section 2.2. A financial plan (or equivalent) shall be submitted for applications to Track 1 FD/ construction, Track 2 and Track 4.
- **Service Development Plan** - Applicant should provide a Service Development Plan (or equivalent) that covers three general topics regarding the underlying Service Development Program: its rationale, its operating strategy, and its path to implementation. The Service Development Plan (or equivalent) is required for Track 2 applicants only, and is described in more detail in Appendix 2.1.
- **Economic Stimulus** – Consistent with ARRA, the Office of Management and Budget (OMB) Updated ARRA Implementing Guidance (April 3, 2009), and Federal laws guaranteeing equal opportunity, applicants are encouraged to provide information to assist FRA in assessing (1) whether the applicant’s proposal will promote the creating of job opportunities for low-income workers through the use of best practice hiring programs and apprenticeship (including pre-apprenticeship) programs; (2) whether the project will provide maximum practicable opportunities for small businesses and disadvantaged business enterprises, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) whether the project will make effective use of community-based organizations in connecting disadvantaged workers with economic opportunities; (4) whether the project will support entities that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) whether the project implements best practices, consistent with the civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from ARRA.
- **Job Creation** – Applicants should provide information indicating whether the applicant’s proposal promotes the short- or long-term creation or preservation of jobs and new or expanded business opportunities during construction of the project and thereafter, including the total amount of funds that will be expended on construction and construction-related activities by all of the entities participating in the project and, to the extent measurable, the number and type of jobs to be created and/or preserved by the project during construction and thereafter, and an identification of any business enterprises to be created or benefited by the project during its construction and once it becomes operational. To the extent possible, applicants should indicate whether the populations most likely to benefit from the creation or preservation of jobs or new or expanded business opportunities are from Economically Distressed Areas. In addition, to the extent possible, applicants should indicate whether the project’s procurement plan is likely to create follow-on jobs and

economic stimulus for manufacturers and suppliers that support the construction industry.

4.3.3.3 Standard Forms

The Standard Forms are developed by OMB and are required of all grant applicants. These forms are available on www.forms.gov and should be submitted as attachments to the application in GrantSolutions. Some of the information required for these form will be in provided with the Narrative and Template Form.

- **Standard Form 424, Application for Federal Assistance** – This form should be scanned and submitted as an attachment to the application in GrantSolutions. This form should be completed by all applicants.
- **Standard Form 424A, Budget Information – Non-Construction Programs** – This form should be scanned and submitted as an attachment to the application in GrantSolutions. This form should be completed by applicants where applicable.
- **Standard Form 424B, Assurances – Non-Construction Programs** – This form should be scanned and submitted as an attachment to the application in GrantSolutions. This form should be completed by applicants to Track 1 PE/NEPA and Track 3.
- **Standard Form 424C, Budget Information – Construction Programs** – This form should be scanned and submitted as an attachment to the application in GrantSolutions. This form should be completed by applicants where applicable.
- **Standard Form 424D, Assurances – Construction Programs** – This form should be scanned and submitted as an attachment to the application in GrantSolutions. This form should be completed by applicants to Track 1 FD/construction, Track 2 and Track 4.
- **FRA Assurances Document** – This form can be obtained from FRA’s website at <http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf>. The document should be signed by an authorized certifying official for the applicant, scanned into electronic format, and submitted as an attachment to the application in GrantSolutions. This form should be completed by all applicants.

4.3.4 Additional Information Required Prior to Award

4.3.4.1 For Construction Grants (Tracks 1, where applicable, and Track 4)

A project NEPA determination document (a Record of Decision, Finding of No Significant Impact, or CE determination) must have been issued by FRA prior to award of a construction grant. In addition to the supporting documentation required to be included with an application, applicants will also be required to submit the following documentation prior to their receipt of an award under Track 1.

4.3.4.2 For all Tracks

Comprehensive executed partnership agreements, fulfilling all requirements for such agreements as set forth in Appendix 1.2.

4.3.4.3 For Tracks 1 and 2

As a condition of award, to the extent applicable, grant recipients must comply with the certification requirements of ARRA. These include Section 1201 (Maintenance of Effort); Section 1511 (Transparency and Oversight); and Section 1607 (Additional Funding Distribution and Assurance of Appropriate Use of Funds). On February 27, 2009, Secretary of Transportation LaHood sent a letter to the Governors of each State providing guidance and a template for the certifications required by ARRA, a copy of which is available on DOT's ARRA website, at <http://www.dot.gov/recovery/>. All applicable certifications must be submitted to the DOT at TigerTeam.Leads@dot.gov. Certifications may be submitted via email as electronic, scanned copies, with original signed versions to follow via U.S. mail. Additional guidance regarding these certifications is included in Appendix 3.2.4.

4.3.5 Application Package Requirements Checklist

The following application requirements checklist can be used by applicants to verify the documents necessary for submission under each Track:

APPLICATION CHECKLIST

Required Document		Format	Applicable Track				
			Track 1 Projects		Track 2 Programs	Track 3 Planning	Track 4 FY09 Funding
			FD/ construction	PE/ NEPA			
Program Forms	<input type="checkbox"/> Preapplication	Template	✓	✓	✓	✓	✓
	<input type="checkbox"/> Narratives and Templates Workbook (includes information on Project Benefits and Cost)	Template	✓	✓	✓	✓	✓
Supporting Documentation	<input type="checkbox"/> Service Development Plan (SDP) (or equivalent)	No Specified Format			✓		
	<input type="checkbox"/> Preliminary Engineering (PE) Materials	No Specified Format	✓		✓		✓
	<input type="checkbox"/> NEPA Documentation	No Specified Format	✓		✓		✓
	<input type="checkbox"/> Project Management Plan (or equivalent)	No Specified Format	✓		✓		✓
	<input type="checkbox"/> Stakeholder Agreements	No	✓		✓		✓

Required Document		Format	Applicable Track				
			Track 1 Projects		Track 2 Programs	Track 3 Planning	Track 4 FY09 Funding
			FD/ construction	PE/ NEPA			
		Specified Format					
	<input type="checkbox"/> Financial Plan (or equivalent)	No Specified Format	✓		✓		✓
Standard Forms	<input type="checkbox"/> SF 424: Application for Federal Assistance	Form	✓	✓	✓	✓	✓
	<input type="checkbox"/> SF 424A: Budget Information-Non Construction	Form		✓		✓	
	<input type="checkbox"/> SF 424B: Assurances-Non Construction	Form		✓		✓	
	<input type="checkbox"/> SF 424C: Budget Information-Construction	Form	✓		✓		✓
	<input type="checkbox"/> SF 424D: Assurances-Construction	Form	✓		✓		✓
	<input type="checkbox"/> FRA Assurances Document	Form	✓	✓	✓	✓	✓

4.3.6 Submission Dates and Times

4.3.6.1 For Tracks 1, 3, and 4

- Preapplications must be submitted to FRA via email HSIPR@dot.gov (as specified in Section 4.3.9) no later than 11:59 p.m. EDT, Friday, July 10, 2009.
- The submission date and time will be determined based on email header information. FRA will email the applicant to confirm receipt of preapplication submissions.
- Full applications must be submitted to GrantSolutions (also as specified in 4.1) no later than 11:59 p.m. EDT, Friday, August 24, 2009. GrantSolutions will send the applicant an automated email confirming receipt of the application.
- Supporting documentation that cannot be submitted electronically through GrantSolutions may be sent by courier service with a waybill receipt stamped no later than 11:59 p.m. EDT, Friday, August 24, 2009. FRA will email the applicant to confirm receipt of supporting documentation sent by courier service.

4.3.6.2 For Track 2

- Preapplications must be submitted to FRA via email HSIPR@dot.gov (as specified in Section 4.3.9) no later than 11:59 p.m. EDT, Friday, July 10, 2009.
- The submission date and time will be determined based on email header information. FRA will email the applicant to confirm receipt of preapplication submissions.

- Full applications must be submitted to GrantSolutions (also as specified in Section 4.1) no later than 11:59 p.m. EDT, Friday, October 2, 2009 GrantSolutions will send the applicant an automated email confirming receipt of the application.
- Supporting documentation that cannot be submitted electronically may be sent by courier service with a waybill receipt stamped no later than 11:59 p.m. EDT, Friday, October 2, 2009. FRA will email the applicant to confirm receipt of supporting documentation sent by courier service.

TRACK DEADLINES

	Track 1 - Projects	Track 2 – Programs	Track 3 – Planning	Track 4 – FY2009 Appropriations Projects
Preapplication	July 10, 2009	July 10, 2009	July 10, 2009	July 10, 2009
Application	August 24, 2009	October 2, 2009	August 24, 2009	August 24, 2009
FRA Obligation	ASAP after selection (No later than September 30, 2010)	No later than September 30, 2011	ASAP after selection	ASAP after selection
Project(s) Completion	Within 2 years of obligation	September 30, 2017*	Within 2 years of obligation	Within 5 years of obligation

*The FRA account shall be closed on that date and any remaining balance (whether obligated or unobligated) in the account shall be cancelled and no funds shall thereafter be available for obligation or expenditure for any purpose (31 U.S.C. 1552).

4.3.6.3 For all Tracks

- FRA will make individual arrangements with applicants for the submission of other information required prior to award.
- Subject to demonstration of unanticipated extenuating circumstances, FRA may consider application materials submitted after the deadlines prescribed above.

4.3.7 Intergovernmental Review

This program has not been designated as subject to Executive Order 12372 pursuant to 49 CFR part 17.

4.3.8 Funding Restrictions

In general, only those costs considered allowable pursuant to OMB Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments” (codified at 2 CFR part 225) will be considered for funding. Additionally, the following funding restrictions will apply to

grants awarded under all Tracks, and must be taken into consideration in the development of budget information submitted as part of applications.

- Funding may not be used to fund expenses associated with the operation of Intercity Passenger Rail service;
- Funding may not be used for first-dollar liability costs for insurance related to the provision of Intercity Passenger Rail service;
- Funding may not be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool; this restriction will be applied generally in this program, regardless of the source of funds, and;
- While there is no cap on grant recipient's use of grant funds for management and administrative costs, such costs must be allowable, reasonable, allocable, and in accordance with applicable OMB cost principles cited above.

For Tracks funded under ARRA, FRA will also consider reimbursement of pre-award costs incurred as early as the enactment of ARRA (February 17, 2009). However, such costs will only be considered for reimbursement to the extent they are otherwise appropriate under allowable costs principles, are directly related to the award, and involve either pre-construction activities (e.g. PE, NEPA, or FD), or construction activities that were subject to an environmental determination under NEPA made by FRA prior to the commencement of such construction activities. Projects for which construction activities commenced prior to receipt of an FRA environmental determination under NEPA will not be eligible for funding.

For Tracks funded under the FY 2008/2009 DOT Appropriations, FRA will also consider reimbursement of pre-award costs incurred as early as the enactment of the FY 2009 DOT Appropriations Act (March 11, 2009). However, such costs will only be considered for reimbursement to the extent they are otherwise appropriate under allowable cost principles, are directly related to the award, and involve either pre-construction activities (e.g. PE, NEPA, or FD), or construction activities that were subject to an environmental determination under NEPA made by FRA prior to the commencement of such construction activities. Projects for which construction activities commenced prior to receipt of an FRA environmental determination under NEPA will not be eligible for funding.

4.3.9 Other Submission Requirements

Preapplications should be submitted by email to HSIPR@dot.gov. As detailed in Section 4.1 of this guidance, applications, including supporting documentation, should be submitted through GrantSolutions. Should an applicant encounter technical difficulties using the GrantSolutions system that may cause the applicant to miss the application deadline, the application may be submitted by email to HSIPR@dot.gov. For applications submitted by email, the applicant should print, sign, scan into electronic format (preferably Adobe Portable Document Format (.pdf)), and attach to the submission email copies of all application forms requiring the applicant's signature.

For supporting documentation (described in Section 4.3.3 2 of this) that an applicant is unable to submit electronically (such as oversized engineering drawings), applicants may submit an original and two copies to the following address:

U.S. Department of Transportation
 Federal Railroad Administration
 Attn. HSIPR Program Information (RDV-10)
 Mail Stop 20, Room W38-202
 1200 New Jersey Ave, SE
 Washington, DC 20590

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

SECTION 5: APPLICATION REVIEW INFORMATION

5.1 Review Criteria

Once an application is screened for completeness and eligibility (both applicant and project eligibility), it will go through a review process. This process will involve two steps (detailed further in Section 5.2): (i) evaluation and (ii) selection. For evaluation, applications in all Tracks will be individually reviewed and assessed against up to seven evaluation criteria – organized into three categories – outlined below.¹⁰ For each of the applicable criteria, the application will be assigned a rating of between one and five points, based on the application’s fulfillment of the objectives of each criterion. The ratings will be assigned by professional staff employed by FRA and other DOT modal administration staff as needed. Experts outside of DOT may also be considered.¹¹

These individual criterion ratings will then be combined according to priority of criteria (which vary by Track), to arrive at an overall rating for the application. The comparative priorities appear in the table below.

EVALUATION CRITERIA PRIORITIES

Evaluation Criteria	Priority			
	Track 1	Track 2	Track 3 ¹²	Track 4
Public Return on Investment				
1. Transportation Benefits	2	1	1	1
2. Economic Recovery Benefits	1	5	n/a	n/a
3. Other Public Benefits	6	2	n/a	5
Project Success Factors				
1. Project Management Approach	3	3	2	2
2. Sustainability of Benefits	5	4	n/a	3
Other Attributes				
1. Timeliness of Project Completion	4	6	3	4

¹⁰ Tracks for which the sources of funding antedated the ARRA (i.e., Tracks 3 and 4) will not be rated on Criterion A.2, Economic Recovery Benefits

¹¹ Experts will be selected based on relevant qualifications and assurance of lack of conflict of interest.

¹² The specifics of the relevant Track 3 Planning evaluation criteria will vary somewhat from those of Tracks 1, 2 and 4 to reflect the unique character of planning activities.

5.1.1 Public Return on Investment

Applications will be evaluated against the following three criteria to assess the proposed project's ability to produce a public return on investment, taking into account both forecasted benefits, the overall cost of the proposed project, and the amount of Federal funding requested. Evaluation against these criteria will consider the qualitative factors outlined below, as supported by key quantitative metrics. As described in Section 4, applicants for Tracks 1, 2, and 4 must provide information quantifying the anticipated benefits of the proposed project; for Tracks 1 and 4, using service output data (delay reduction, schedule improvement, or capacity increases), and for Track 2, using transportation output data (increases in passenger-miles traveled on Intercity Passenger Rail services, including shifts from other modes of transportation). For Track 3, public return on investment criteria are limited to transportation benefits.

Careful economic analysis that quantifies and demonstrates the monetary value of user benefits and, if available, public benefits will be particularly useful to FRA in evaluating the applications. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments. FRA will consider benefits and costs using standard data provided by applicants and seek to evaluate applications in a manner consistent with Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

5.1.1.1 Transportation Benefits

Each application will be assessed based on its demonstration of the proposed project's potential to meet the purpose and need and to achieve transportation benefits in a cost-effective manner, as set forth through the President's strategic transportation goals and the objectives of PRIIA. Factors to be considered in assigning a rating will include the contribution the proposed project would make to:

- Supporting the development of intercity high-speed rail service;
- Generating improvements to Intercity Passenger Rail service, as reflected by estimated increases in ridership (as measured in passenger-miles), increased on-time performance (as measured in reductions in delays), reduced trip time, additional service frequency to meet anticipated or existing demand, and other factors;
- Generating cross-modal benefits, including anticipated favorable impacts on air or highway traffic congestion, capacity, or safety, and cost avoidance or deferral of planned investments in aviation and highway systems;
- Creating an integrated Intercity Passenger Rail network, including integration with existing Intercity Passenger Rail services, allowance for and support of future network expansion, and promotion of technical interoperability and standardization (including standardizing operations, equipment and signaling);
- Encouragement of intermodal integration through provision of direct, efficient transfers among intercity transportation and local transit networks at train stations, including connections at airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

- Enhancing intercity travel options;
- Ensuring a state of good repair of key Intercity Passenger Rail assets;
- Promoting standardized equipment (or rolling stock), signaling, communications and power;
- Improved freight or commuter rail operations, in relation to proportional cost-sharing (including donated property) by those other benefiting rail users;
- Equitable financial participation in the project's financing, including, but not limited to, consideration of donated property interests or services; financial contributions by freight and commuter rail carriers commensurate with the benefit expected to their operations; and financial commitments from host railroads, non-Federal governmental entities, nongovernmental entities, and others; and
- The overall safety of the transportation system, including the encouragement of the use of PTC technologies, and commitments by States or railroads of financial resources to improve the safety of highway/rail grade crossings over which intercity passenger rail service operates.

5.1.1.2 Economic Recovery Benefits

Each application will be assessed based on its demonstration of the proposed project's anticipated positive economic and employment impacts and potential to promote economic recovery in a cost-effective manner, consistent with the purposes and principles of ARRA. Factors to be considered in assigning a rating will include the contribution the proposed project would make to:

- Rapidly promoting new or expanding business opportunities including the short and long term creation and preservation of jobs, during construction and thereafter;
- Increasing efficiency by promoting technological advances;
- Providing long-term economic benefits; and
- Avoiding reductions in State-provided essential services.

5.1.1.3 Other Public Benefits

Each application will be assessed based on its demonstration of the proposed project's potential to achieve other public benefits in a cost-effective manner. Factors to be considered in assigning a rating will include the contribution the proposed project would make to:

- Environmental quality and energy efficiency and reduction in dependence on foreign oil, including use of renewable energy sources, energy savings from traffic diversions from other modes, employment of green building and manufacturing methods, reductions in key emissions types, and the purchase and use of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment; and
- Promoting livable communities, including integration with existing high-density, livable development (e.g., central business districts with public transportation, pedestrian, and bicycle distribution networks, and incorporation of transit-oriented development).

5.1.1.4 Public Return on Investment for Track 3 – Planning

Planning projects will be evaluated based on the extent to which they meet the President’s strategic transportation goals by leading to benefits to the public, including transportation accessibility and interconnectivity. Planning projects for Intercity Passenger Rail service will be evaluated for the extent that they: (1) lead to benefits for Intercity Passenger Rail including travel time reductions, increased frequencies, and enhanced service quality; (2) resolve safety issues; (3) resolve intercity passenger rail reliability issues; (4) are integrated and complementary to the relevant comprehensive planning process (23 U.S.C. 135); and (4) support livable communities. Proposed planning projects will also be evaluated for their effectiveness in: (1) directly leading to project and/or Service Development Program applications and (2) leading to NEPA for route selection; and leading to completion of a SDP.

5.1.2 Project Success Factors

Applications will be evaluated against the following two criteria to assess the proposed project’s likelihood of successful implementation and realization of benefits. Evaluation against these criteria will consider the factors outlined below, which take into account the thoroughness and quality of the supporting documentation – the project management plan, financing plan, and SDP (or equivalent project planning and programming documents) – submitted with the application.

5.1.2.1 Project Management Approach

While prioritizing projects that will generate tangible transportation and economic benefits, each application will also be assessed to determine the risk associated with the project’s delivery within budget, on time, and as designed. Factors to be considered in assigning a rating will include:

- The applicant’s financial, legal, and technical capacity to implement the project including whether the application depends upon receipt of any waiver(s) of Federal railroad safety regulations that have not been obtained;
- The applicant’s experience in administering similar grants and projects;
- The soundness and thoroughness of the cost methodologies and assumptions, and estimates for the proposed project;
- The adequacy of any completed engineering work to assess and manage/mitigate the proposed project’s engineering and constructability risks;
- The reasonableness of the schedule for project implementation;
- The thoroughness and quality of the project management plan;
- The sufficiency of system safety and security planning;
- The timing and amount of the project's future noncommitted investments;
- The project's progress, at the time of application, towards compliance with environmental protection requirements; and

- The comprehensiveness and sufficiency, at the time of application, of agreements with key partners (particularly infrastructure owning railroads) that will be involved in implementing the project; and
- The overall completeness and quality of the application, including the comprehensiveness of its supporting documentation.

5.1.2.2 Sustainability of Benefits

Each application will be assessed based on the risk associated with the proposed project's capacity to generate, as planned, its anticipated transportation and economic benefits.

Factors to be considered in assigning a rating will include:

- The presence and quality of a Financial plan that analyzes the financial viability of the proposed rail service
- The quality and reasonableness of revenue and operating and maintenance cost forecasts for the benefiting Intercity Passenger Rail service(s);
- The availability of any required operating financial support preferably from dedicated funding sources for the benefiting Intercity Passenger Rail service(s);
- The quality and adequacy of project identification and planning;
- The reasonableness of estimates for user and non-user benefits for the project;
- The reasonableness of the operating service plan, including its provisions for protecting the future quality of other services sharing the facilities to be improved; and
- The comprehensiveness and sufficiency, at the time of application, of agreements with key partners (including the railroad operating the Intercity Passenger Rail service as well as infrastructure-owning railroads) that will be involved in the operation of the benefiting Intercity Passenger Rail service, including the commitment of any affected host-rail carrier to ensure the realization of the anticipated benefits, preferably through a commitment by the affected host-rail carrier(s) to an enforceable on-time performance of passenger trains of 80 percent or greater.

5.1.3 Other Attributes

Applications will also be evaluated against the following two additional criteria.

5.1.3.1 Timeliness of Project Completion

Each application will be assessed based on the timeliness of its implementation schedule, including:

- The readiness of the project to be commenced; and
- The timeliness of project completion and the realization of the project's anticipated benefits.

5.2 Review and Selection Process

5.2.1 Application Evaluation Process

Submitted applications will be screened for eligibility and completeness. Applications determined to be both complete and eligible will be referred to a technical evaluation panel consisting of subject-matter experts for assignment of ratings, as described in Section 5.1. Panel members will use a merit-based approach to review applications based on the above evaluation criteria. Ratings assigned by the evaluation panels will serve as the basis for a presentation of applications to the FRA Administrator, who will determine the final selection of applications for awards.

5.2.2 Additional Selection Criteria

In addition to the ratings against evaluation criteria assigned by the technical evaluation panels, the FRA Administrator may take into account several cross-cutting and comparative selection criteria to determine awards of funding. The Administrator will review the preliminary results to ensure that the scoring has been applied consistently, and that the collective results meet several key priorities essential to the success and sustainability of the program as detailed below.

SELECTION CRITERIA

Selection Criteria (Balance and Diversity)	Example Factors
1. Region/location	▪ Geography and economic conditions
2. Innovation	▪ Technology and industrial/capacity development
3. Partnerships	▪ Multi-State agreements
4. Tracks and round timing	▪ Project costs and schedules

Following evaluation of each application by review panels, the Administrator will review the preliminary results to ensure that the scoring has been applied consistently, and that the collective results meet several key priorities essential to the success and sustainability of the program. To ensure a balanced national program, this review will include:

5.2.2.1 Region/Location

- Ensuring appropriate level of regional balance across the country
- Ensuring appropriate level of balance among large and small population centers
- Ensuring integration and augmentation of the nationwide transportation network
- Addressing the ARRA requirement to provide assistance to economically-distressed regions most impacted by the recession.

5.2.2.2 Innovation

- Pursuing new technology and innovation where the public return on investment is favorable, while ensuring delivery of near-term transportation, public and recovery benefits
- Promoting domestic manufacturing, supply and industrial development, including U.S.-based equipment manufacturing and supply industries
- Developing professional railroad engineering, operating, planning and management capacity needed for sustainable Intercity Passenger Rail development

5.2.2.3 Partnerships

- Where corridors span multiple States, emphasizing those that have organized multi-State partnerships with joint planning and prioritization of investments.
- Employing creative approaches to ensure workforce diversity and use of disadvantaged and minority business enterprises.

5.2.2.4 Preservation of Funding for Track 2 Program and Future Award Rounds

- While ready-to-go projects are critical for delivering early program benefits, the longer-term future of the program depends on strong Track 2 corridor program development. Sufficient funds will be set aside for Track 2 and, if possible, for future rounds of funding.

SECTION 6: AWARD ADMINISTRATION INFORMATION

6.1 Award Notices

Upon approval of an application, notification will be sent to the grant recipient through GS that the award is waiting acceptance.

FRA will publicly announce selected projects and funding levels. For projects that were not selected, FRA will notify the applicant of their decision and provide the following:

- Suggestions on application revisions for any subsequent resubmission rounds (if desired by applicant); and
- Guidance regarding subsequent rounds (e.g., new / revised guidance, application due dates)

6.2 Administrative and National Policy Requirements

Grant recipients must follow all administrative and national policy requirements including: procurement standards, compliance with federal civil rights laws and regulations, disadvantaged business enterprises (DBE), FRA's and OMB's Assurances and Certifications, ADA, and NEPA. For a complete list of all administrative and national policy requirements, refer to Appendix 3.2.

6.3 ARRA Specific Grant Requirements

Grant recipients receiving ARRA-funded grants must comply with all requirements detailed in ARRA including: the prohibition on using funds for certain activities, signage requirements, and certification requirements. For a complete list of all ARRA-specific grant requirements, refer to Appendix 3.3.

6.4 Program Specific Grant Requirements

Grant recipients receiving PRIIA-authorized grants must comply with all requirements set forth in PRIIA, including adhering to: Buy America, Labor Protection, and Davis-Bacon Act. For a complete list of all PRIIA-specific grant requirements, refer to Appendix 3.4.

6.5 General Requirements

Grant recipients must comply with reporting requirements and, where applicable, ARRA-specific reporting requirements. All post-award information pertaining to reporting, auditing, monitoring, and the close-out process is detailed in Appendix 3.5.

SECTION 7: QUESTIONS AND CLARIFICATIONS

Questions about this guidance and the application process should be submitted to the HSIPR Program Manager via email at HSIPR@dot.gov.

LIST OF ACRONYMS

Acronym	Meaning
ACF	Administration for Children and Families
ADA	Americans with Disabilities Act
April 2009 Strategic Plan	U.S. Department of Transportation, Federal Railroad Administration, Vision for High-Speed Rail in America, High-Speed Rail Strategic Plan [under] the American Recovery and Reinvestment Act of 2009, April 16, 2009; available at: http://www.fra.dot.gov/Downloads/Finalpercent20FRAPERcent20HSRpercent20Stratpercent20Plan.pdf
ARRA	American Recovery and Reinvestment Act of 2009 (Public Law 111-5)
CAST	Custom Applications Support and Training Unit (GrantSolutions)
CCR	Central Contractor Registration database
CE	Categorical Exclusion—a class of action for the NEPA process
CFS report	Federal Railroad Administration, High-Speed Ground Transportation for America, September 1997; available at: http://www.fra.dot.gov/us/content/515
Department	The U.S. Department of Transportation
DUNS	Data Universal Number System
EA	Environmental Assessment—a NEPA document
EIS	Environmental Impact Statement—the most extensive type of NEPA document
FD	Final Design
FONSI	Finding of No Significant Impact—a possible decision concluding the NEPA process

FRA	Federal Railroad Administration—an Operating Administration of the U.S. Department of Transportation
FTA	Federal Transit Administration
FY	Fiscal Year
FY 2008 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 —Title I of Division K of Public Law 110-161, December 26, 2007
FY 2009 DOT Appropriations Act	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 —Title I of Division I of Public Law 111-8, March 11, 2009
GS	GrantSolutions Grants Management System
ICC	Interstate Commerce Commission
LOI	Letter of Intent
mph	miles per hour
NEPA	National Environmental Policy Act
NTD	National Transit Database
OTP	On-time performance
PE	Preliminary engineering
PRIIA	Passenger Rail Investment and Improvement Act of 2008 (Division B of Public Law 110-432)
PTC	Positive Train Control
ROD	Record of Decision—a possible decision concluding of the NEPA process
RSIA	Rail Safety Improvement Act of 2008 (Division A of Pub. L. 110-432, October 16, 2008)
State DOT	State Department of Transportation
State Grant Program	Capital Assistance to States – Intercity Passenger Rail Service program—established in FY 2008 DOT Appropriations Act and continued in the FY 2009 DOT Appropriations Act

APPENDIX 1: ADDITIONAL INFORMATION ON ELIGIBILITY

Appendix 1.1 Applicant Types

State – A State department of transportation (State DOT) which is the State-wide instrumentality or agency of a State, in the form of a department, commission, board, or official of any State, charged by its laws with the responsibility for transportation-related matters within the State, including high-speed rail/intercity passenger rail.

Group of States – A group of two or more States in which an agreement has been established to work in coordination to build and operate rail projects within specified boundaries and within the duration of agreement. The agreement should specify the commitments (financial and otherwise) of all parties to developing and maintaining rail operations for a specified corridor. This type of agreement requires the backing of several political and administrative entities within each State. Such agreement should include but not be limited to the following: identification of all parties involved, the duration of the

agreement, governance arrangements, commitment of partners, risk and benefits sharing arrangements, liabilities, level of service per partner or client, services to be provided, dispute resolution, substandard performance, termination, signatories). A group of States wishing to submit an application must designate one State within the group to serve as the lead State for the application. This lead State would be responsible for submitting the application and administering any grant that is awarded to the group of States.

Interstate Compact – An entity created through an agreement between two or more States. Frequently, these compacts create a new governmental agency that is responsible for administering or improving some shared resource, such as public transportation infrastructure. In some cases, a compact serves simply as a coordination mechanism between independent authorities in the member States. Article I, Section 10 of the United States Constitution provides that no State shall enter into an agreement or compact with another State without the consent of Congress. Interstate compacts for the purpose of Intercity Passenger Rail development have been established previously, based on the implied general consent of Congress expressed through Pub. L. 98-358, in which Congress explicitly granted consent to the creation of an interstate compact between the States of Ohio, Indiana, Michigan, Pennsylvania, Illinois, West Virginia, and Kentucky for the purpose of developing Intercity Passenger Rail.

Public Agencies, established by one or more States (Having responsibility for providing Intercity Passenger Rail service) – A publicly created and owned, not-for-profit agency, other than direct instrumentalities of States or agencies created under an interstate compact, having responsibility for providing or developing Intercity Passenger Rail service. Such agencies would include public authorities and joint powers authorities created and authorized under State law, and may have responsibilities over a limited geographic scope (such as a region within a State), or related to a specific service, project, or development effort (such as the construction of a specific infrastructure project).

Amtrak, in cooperation with States – The National Railroad Passenger Corporation undertaking a project subject to an agreement with one or more States (as defined above).

Appendix 1.2 Minimum Qualifications for Applicant Eligibility

An applicant must, in addition to demonstrating that it is of an eligible type for the track and funding source under which it is applying, affirmatively demonstrate that it has or will have the legal, financial, and technical capacity to carry out the proposal. In addition, for non-planning applications under Track 1, Track 2, and Track 4, the applicant must demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, and the capability and willingness to maintain such equipment or facilities.

In the following discussion of the means by which applicants can satisfy these minimum requirements, the term “project” refers generally to the substance of the applicant’s proposal, regardless of the Track under which it is being advanced.

For an applicant to demonstrate the legal, financial, and technical capacity to carry out its proposed project, it will be required to address the following qualifications:

- For an entity other than a State, its legal authority to undertake the proposed project and apply for Federal financial assistance;
- The applicant's ability to absorb potential cost overruns or financial shortfalls. For entities other than States, the demonstration of such ability should include a description of the entity's own financial resources, its ability to raise revenue through taxation, dedicated funding sources, or other means, and/or explicit financial backing by one or more State governments;
- The applicant's experience in effectively administering grants of similar scope and value (including timely completion of grant deliverables, compliance with grant conditions, and quality and cost controls); and
- The applicant's experience in managing railroad investment projects of a nature similar to that for which funding is being requested.

For an applicant to demonstrate that it has or will have satisfactory continuing control over the use of equipment or facilities acquired, constructed, or improved by the project, it will be required to show either:

- That the applicant has or will have direct ownership of the equipment or facilities acquired, constructed, or improved by the project; or
- That the applicant has secured or has made progress towards securing and will have contractual agreements in place with the entity or entities (e.g., a local government, or one or more private railroads) that have or will have direct ownership of such assets.

For an applicant to demonstrate that it has or will have the capability and willingness to maintain the equipment or facilities acquired, constructed, or improved by the project, it will be required to show:

- That it has made progress towards, and will have contractual agreements in place with, any entity or entities (e.g., a local government, or one or more private railroads) that have or will have direct ownership of the equipment or facilities acquired, constructed, or improved by the project, which address financial and operational responsibility for asset maintenance;
- That to the extent financial responsibility will fall to the applicant, the applicant has the ability to cover maintenance costs. For entities other than States, the demonstration of such ability should include a description of the entity's own financial resources, ability to raise revenue through taxation, and/or explicit financial backing by one or more State governments; and
- The applicant's experience in maintaining assets with similar financial and operational maintenance requirements as those for the assets for which funding is being requested.

Information and documentation demonstrating the fulfillment of the minimum qualifications described above will be required to be submitted as part of full application (see Section 4.3.3.2).

Appendix 1.3 Definition of Intercity Passenger Rail

“Intercity rail passenger transportation” is defined at 49 U.S.C. 24102(4) as “rail passenger transportation except commuter rail passenger transportation.” Likewise, “commuter rail passenger transportation” is defined at 49 U.S.C. 24102(3) as “short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations.” In common use, the general definition of “rail passenger transportation” excludes types of local or regional rail transit such as light rail, streetcars, and heavy rail. Similarly, both Intercity Passenger Rail transportation and commuter rail passenger transportation exclude single-purpose scenic or tourist railroad operations.

The since-terminated Interstate Commerce Commission (ICC) established six features to aid in classifying a service as “commuter” rather than “intercity” rail passenger transportation¹³:

- The passenger service is primarily being used by patrons traveling on a regular basis either within a metropolitan area or between a metropolitan area and its suburbs;
- The service is usually characterized by operation performed at morning and peak periods of travel;
- The service usually honors commutation or multiple-ride tickets at a fare reduced below the ordinary coach fare and carries the majority of its patrons on such a reduced fare basis;
- The service makes several stops at short intervals either within a zone or along the entire route;
- The equipment used may consist of little more than ordinary coaches; and
- The service should not extend more than 100 miles at the most, except in rare instances; although service over shorter distances may not be commuter or short haul within the meaning of this exclusion.

FTA further refined the definition of commuter rail in the glossary for its National Transit Database (NTD)¹⁴ Reporting Manual. In particular, FTA refined the ICC’s third “feature” by specifying that “predominantly commuter [rail passenger] service means that for any given trip segment (i.e., distance between any two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week.”

In judging the eligibility of an application under this solicitation, FRA will determine whether the rail passenger service that is primarily intended to benefit from the proposal constitutes “intercity passenger rail transportation” under the statutory definition and ICC and FTA interpretations. FRA may also take into account whether the primary intended benefiting service has been or is currently the direct and intended beneficiary of funding provided by another Federal agency (e.g., FTA) for the purpose of improving commuter rail passenger transportation and whether the service in question is or will be operated by or on

¹³ Penn Central Transportation Company Discontinuance or Change in Service of 22 Trains between Boston, Mass, and Providence R.I., February 10, 1971, I.C.C. 338, 318-333.

¹⁴ In addition to serving as a reference database, the NTD captures data that serve as the basis for apportioning and allocating funding to eligible grantees under FTA’s formula grant programs.

behalf of a local, regional, or State entity whose primary rail transportation mission is the provision of commuter or transit service.

APPENDIX 2: ADDITIONAL INFORMATION ON PLANNING AND ENGINEERING

Appendix 2.1 Service Development Plan (or equivalent)

A Service Development Plan (SDP) is a plan for developing High-Speed Rail/ Intercity Passenger Rail service, either initiating new service or improving existing service (e.g., adding train frequencies and/or reducing trip times) – typically focused on distinct phases and/or geographic sections of service improvement. A SDP or equivalent covers three general topics: (i) rationale (including purpose and need), (ii) service/operating plan and prioritized capital plan, and (iii) implementation plan (including project management approach, stakeholder agreements and financial plan).

The completion of a SDP is a pre-requisite for eligibility for applications for Track 2-Programs. FRA acknowledges the inherent complexity of the planning efforts required to develop a SDP. The precise structure of a SDP can vary at the discretion of the applicant; FRA does not pre-determine SDP form and structure. Only certain illustrative topics need to be included in a SDP – thus the applicant has the flexibility to tailor the SDP to the needs of their program.

After receiving the preapplications for Track 2, subject to available resources, FRA will be available for a kick-off discussion with the prospective applicant that will include a review of the contents of the SDP. FRA will provide assistance to Track 2 applicants in clarifying whether the information necessary for the SDP is complete. FRA will also discuss submission requirements with prospective applicants.

A complete SDP is a planning approach that would need to address such topics as the following:

- **Illustrative topics dealing with program rationale** – The SDP includes a description of the corridor’s transportation challenges and opportunities based on current and forecasted travel demand and capacity conditions. Through the SDP, the applicant has the opportunity to show FRA and its constituents how the proposed HSIPR Service Development Program can cost-effectively address transportation and other needs considering system alternatives (highway, air, other, as applicable). Qualitative and quantitative assessments of the costs, benefits and impacts and risks of the alternatives will provide decision makers with sufficient information. The SDP might also explore synergies between the High-Speed Rail/Intercity Passenger Rail proposal and large-scale goals and development plans within its service region and communities.
- **Illustrative topics dealing with operations** – The SDP describes the train service to be provided for each phase of new or improved Intercity Passenger Rail service including: the service frequency, timetable (including time-distance “stringline” diagrams), general station locations, intermodal connections, and train consists. The SDP would describe the underlying operational analyses, including railroad operation simulations and equipment and crew scheduling analyses, which in turn reflect such variables as travel demand and rolling stock configuration. The planning horizon

should be consistent with the anticipated useful lives of the improvements to be introduced.

- **Illustrative topics dealing with capital needs** – The SDP describes the rail equipment and infrastructure improvements for each discrete phase of service implementation. If applicable, the SDP would prioritize improvements for each phase. The SDP presents estimated capital costs for projects and project groups, with documentation of assumptions and methods. Initial capital expenditures estimates to bring the service to its full operating capability, accommodation of future traffic growth and ongoing expenditures for replacement of system components should be included.
- **Illustrative topics dealing with operating and financial results** – The SDP includes operating and financial projections for each phase of the planned intercity passenger rail service. The SDP will address the methods, assumptions and outputs for travel demand forecasts, the expected revenue from the service, and all operating expenses for the train service including maintenance of way, maintenance of equipment, transportation (train movement), passenger traffic and services (marketing, reservations/information, station, and on-board services), and general/administrative expenses. Cost-sharing arrangements with infrastructure owners and rail operators should also be included.
- **Illustrative topics dealing with public benefits** – The SDP includes a description of user and non-user benefits and, to the extent readily quantifiable, the estimated economic value of those benefits, with particular attention to topics prominent in ARRA, i.e., job creation and retention and potential energy savings.
- **Illustrative topics dealing with program implementation** – The SDP presents a Service Development Program schedule for carrying out each phase; a preliminary description of the intended techniques of project management that will assure quality, cost, and budget control; and the financing and organizational plans for carrying out the proposed strategy.

If the High-Speed Rail/Intercity Passenger Rail service contemplated under the SDP makes use of facilities that would be shared with freight, commuter rail, or other Intercity Passenger Rail services, the existing and future characteristics of those services—as developed cooperatively with freight, commuter, and Intercity Passenger Rail partners—would need to be integral to the High-Speed Rail/Intercity Passenger Rail SDP. In particular, the SDP needs to show how the proposed Service Development Program will protect the quality of those other services through a planning horizon year and under assumptions mutually agreed to with the other partners.

Appendix 2.2 Preliminary Engineering (PE)

PE completion is a prerequisite for projects submitted under Track 1 – FD/Construction projects, Track 2 –Programs, and Track 4. PE entails sufficient engineering design to define a project, including identification of all environmental impacts, design of all critical project elements at a level sufficient to assure reliable cost estimates and schedules (in turn sufficient to complete project management and financial plans), and definition of procurement requirements and strategies.

The PE development process starts with the evaluation of project design alternatives (a range of rail improvements, specific alignments, and project designs) sufficient to support subsequent NEPA analysis. The NEPA environmental determination is a prerequisite for FRA to obligate construction funds. As with the SDP, FRA acknowledges the complexity of the work required for PE, and that it will vary depending on the project scope. Thus, FRA does not pre-determine the form and structure of the PE work. FRA has opted to specify the illustrative contents of PE – thus allowing the applicant discretion to pursue the most workable approach tailored to its needs and suitable for the proposed project.

PE results in detailed estimates of project costs, benefits, and impacts of the preferred alternative that merit a higher degree of confidence than those prepared in earlier stages of planning. FRA considers that PE for a major capital investment project is complete when:

- The signed environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI) signals that the NEPA process has been completed;
- The project scope, capital cost estimates, and financial plan are finalized;
- The project sponsor has adequately demonstrated its technical capability to advance the project into FD and construction;
- The project sponsor has adequately demonstrated its process and schedule for filing any safety regulatory waivers necessary to implement the project; and
- The project sponsor has provided an adequate system safety program plan and any necessary collision/derailment hazard analysis.

The products of PE will include: engineering designs; a detailed project description, including provisions for compliance with the ADA; a highly accurate project cost estimate (including a description of methodologies and assumptions employed in developing the estimate) that identifies major components and that includes contingencies that are reduced from previous estimates and are broken down by phase and functional area, a thorough project management plan suitable for this phase of project development; and a solid project financial plan that includes Federal and non-Federal funding committed to the project.

PE documentation will typically include: (1) scale maps or scale aerial photography of existing conditions at a scale of one inch = 100 to 500 feet depending on location (built-up vs. undeveloped areas); and (2) design plan drawings overlaid on the maps/photography. These design drawings will typically show: (i) Existing railroad right-of-way limits along with the railroad ownership; (ii) Proposed track changes including track removals and track installations showing track centers, turnout sizes, curve and spiral data, etc.; (iii) Vertical profiles and grades of existing and proposed construction; (iv) Public and private at-grade highway crossings; and (v) Passenger stations, building(s), platforms, parking, access to the primary highway system in the area, and public transit services and facilities.

The detailed project description developed in the PE typically includes an assessment of the physical condition and location of the existing project area (generally two to three miles beyond the project construction limits) and elements associated with the design(s). These elements may include: bridges (rail and highway); track including the number and location of previously existing railroad tracks on a roadbed; buildings (stations and maintenance facilities, etc.); signal systems and interlocked detectors, switches, derails, and snow melters; utility systems on, over, adjacent to or under the rail line and agreements concerning them; electrification systems, if any; description of highway crossing warning systems (if any) and

daily traffic counts at public and private at-grade highway crossings; existing and proposed railroad operations and routes of freight, commuter and intercity trains with train daily numbers of trains by type; a safety and security management plan; and STRACNET routes and/or moves for commercial high and wide loads. For maintenance facilities, the PE outputs will describe and provide drawings that show the location, track and facility layout, specialized equipment (if any), office and employee welfare facilities, etc.

FRA will be available, subject to available resources, to assist applicants in clarifying whether the PE is complete and encourages applicants to contact FRA to discuss PE.

APPENDIX 3: ADDITIONAL INFORMATION ON AWARD ADMINISTRATION AND GRANT CONDITIONS

Appendix 3.1 Award Notices

Upon approval of an application, notification will be sent to the grant recipient through GrantSolutions that the award is waiting acceptance.

FRA will publicly announce selected projects and funding levels. For projects that were not selected, FRA will notify the applicant of its decision and provide the following:

- Suggestions on application revisions for any subsequent resubmission rounds (if desired by applicant); and
- Guidance regarding subsequent rounds (i.e., new / revised guidance, application due dates)

Appendix 3.2 Administrative and National Policy Requirements

FRA will make funds available to the grant recipient through a grant or cooperative agreement. FRA will decide which vehicle to use based upon the level of anticipated FRA involvement in the project. FRA will use a grant agreement where limited Federal involvement is anticipated and a cooperative agreement in those situations involving greater Federal participation.

Below is a discussion of some of the more important specific requirements that are a feature of FRA's typical grant agreement and will likely be included in every grant agreement under this program (FRA's use of the term grant herein is intended to encompass both grant and cooperative agreements):

Appendix 3.2.1 Contracting Information

A grant recipient's procurement of goods and services must comply with the Procurement Standards requirements set forth at 49 CFR 18.36 or 49 CFR 19.40 through 19.48, whichever is applicable depending on the type of grantee (part 18 covers State and local governments and part 19 covers non-profit and for-profit entities), and with applicable supplementary U.S. DOT or FRA directives or regulations.

Appendix 3.2.2 Compliance with Federal Civil Rights Laws and Regulations

The grant recipient must comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 CFR part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) 49 U.S.C. 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the grant recipient. Grant recipients must comply with all regulations, guidelines, and standards adopted under the above statutes. The grant recipient is also required to submit information, as required, to the FRA Office of Civil Rights concerning its compliance with these laws and implementing regulations, and its activities implementing a grant award.

Appendix 3.2.3 Disadvantaged Business Enterprises (DBE)

The FRA encourages its grant recipients to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT operating administrations at 49 CFR part 26) in carrying out projects funded under ARRA, although FRA grant recipients are not required to do so. The DOT DBE regulation (49 CFR part 26) only applies to certain categories of Federal highway, Federal transit, and airport funds. The FRA is not covered under the DOT DBE regulations. The procurement standards applicable to grant recipients require grant recipients and subgrantees to take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible (see 49 CFR 18.36(e) and 19.44(b)). The grant recipient is also required to submit information as required to the FRA Office of Civil Rights concerning its activities with respect to DBEs in implementing a grant award.

Appendix 3.2.4 Assurances and Certifications

Upon acceptance of the grant by the FRA all certifications and assurances provided by the grant recipient through the application process are incorporated in and become part of the grant agreement. Applicable Assurance and Certification forms include SF 424(A)/(B),

SF424(C)/(D) and FRA's Assurances and Certification form. The OMB Standard Forms can be accessed at www.forms.gov. The FRA Assurances and Certifications Document is available at <http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf>.

Appendix 3.2.5 Debarment and Suspension; and Drug-Free Workplace

Grant recipients must obtain certifications on debarment and suspension for all third party contractors and subgrantees and comply with all DOT regulations, "Nonprocurement Suspension and Debarment" (2 CFR part 1200) and "Governmentwide Requirements for Drug-Free Workplace (Grants)," (49 CFR part 32).

Appendix 3.2.6 Safety Oversight

Grant recipients must comply with any Federal regulations, laws, policy and other guidance that FRA or DOT may issue pertaining to safety oversight in general, and in the performance of any grant award, in particular. FRA has in place a comprehensive system of railroad safety oversight (see 49 CFR part 209 et seq.) that is applicable to railroad operations generally.

Appendix 3.2.7 Americans with Disabilities Act (ADA)

Grant recipients must agree to use funds provided under the grant agreement in a manner consistent with the requirements of Title II of the Americans with Disabilities Act (ADA) of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and both statutes' implementing regulations at 49 CFR parts 27, 37, and 38. DOT (through its delegate FRA) has responsibility to offer technical assistance for the provisions of the ADA about which it issues regulations. 42 U.S.C. 12206(c)(1) reads: "Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapters of this chapter for which such agency has responsibility." Grant recipients are strongly encouraged to seek FRA's technical assistance with regard to the accessible features of passenger rail systems, to include accessibility at stations and on railcars. FRA believes such technical assistance is essential where interpretation of DOT's regulatory requirements is necessary and/or before the creation of any new rail system.

Appendix 3.2.8 Environmental Protection

All facilities that will be used to perform work under an award shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, State and Federal standards.

Grant recipients will conduct work under an award, and will require that work that is conducted as a result of an award be in compliance with the following provisions, as modified from time to time: Section 114 of the Clean Air Act, 42 U.S.C. 7414, and Section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. Through the grant agreement, grant recipients will certify that no facilities that will be used to perform work under an award are listed on the List of Violating Facilities

maintained by the Environmental Protection Agency (EPA). Grant recipients will be required to notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to an award is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the grant recipient's duty of notification shall extend only to those communications of which it is aware, or should reasonably have been aware. Grant recipients will need to include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to an award, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the grant recipient upon the receipt of a communication from the EPA concerning the matters set forth herein.

Appendix 3.2.9 National Environmental Policy Act (NEPA)

Specific NEPA-related guidance is included in Section 1.6 of this guidance. The following is a description of FRA's general or standard grant provision on NEPA compliance.

Generally, grant recipients may not expend any of the funds provided in an award on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FRA has provided the grant recipient with a written notice authorizing them to proceed.

In instances where NEPA approval has not been secured at the time of grant award, grant recipients are required to assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 CFR part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under an award, grant recipients may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact Statements).

No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State or local significance as so determined by such officials shall be used by grant recipients without the prior written concurrence of FRA. Grant recipients shall assist the FRA in complying with these requirements of 49 U.S.C. 303(c).

Appendix 3.2.10 Environmental Justice

The grant recipient will be required to agree to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations,” 42 U.S.C. 4321 note, except to the extent that FRA determines otherwise in writing.

Appendix 3.2.11 Operating and Access Agreements

As discussed in the guidance, grant recipients will be required to reach a written agreement, approved by FRA, with each of the railroads or other entity on whose property the project will be located. Among other things, such railroad/owner agreements shall specify terms and conditions regarding the following issues: responsibility for project design and implementation, project property ownership, maintenance responsibilities, and disposition responsibilities, and the owning entity’s commitment to helping to achieve, to the extent it is capable, the anticipated project benefits. If an agreement between the grant recipient and the owner which substantially addresses the above-referenced issues is already in place as of the date of execution of the grant agreement, the grant recipient will be required to submit it to FRA for FRA’s review and determination of adequacy. However, if either no agreement is in place as of the date of execution of this Agreement, or if an existing agreement has been determined by FRA to be inadequate, the grant recipient shall, prior to the grant recipient’s execution of an agreement with the owner, submit the final draft of such an agreement to FRA for FRA’s review and approval. A finding by FRA that the required approved railroad/owner agreement(s) are in place is a prerequisite for reimbursement of construction-related project expenses.

Appendix 3.2.12 Real Property and Equipment Management, Discontinuance of Service, and Disposition Requirements

The grant recipient will be required to ensure the maintenance of project property to the level of utility (including applicable FRA track safety standards) which existed when the project improvements were placed in service for a period of a minimum of 20 years from the date such project property was placed in service. In the event that all Intercity Passenger Rail service making use of the project property is discontinued during the 20-year period, the grant recipient will be required to continue to ensure the maintenance of the project property, as set forth above, for a period of one year to allow for the possible reintroduction of Intercity Passenger Rail service. In the event the grant recipient should fail to ensure the maintenance of project property, as set forth above, for a period of time in excess of six months, the grant recipient will be required to refund to FRA a pro-rata share of the Federal contribution, based upon the percentage of the 20-year period remaining at the time of such original default.

The grant recipient will also be required to acknowledge that the purpose of the project is to benefit Intercity Passenger Rail service. In the event that all Intercity Passenger Rail service making use of the project property is discontinued (for any reason) at any time during a period of 20 years from the date such project property was placed in service, as set forth above, and if such Intercity Passenger Rail service is not reintroduced during a one-year period following the date of such discontinuance, the grant recipient will be required to refund to FRA, no later than 18 months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the 20-year period remaining at the time of such discontinuance.

Appendix 3.3 ARRA-Specific Grant Requirements (Apply to ARRA-funded grants only)

ARRA contains several specific requirements associated with funding provided in that statute. These include:

Appendix 3.3.1 Prohibited Activities

None of the funds appropriated or otherwise made available in the grant agreement may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

Appendix 3.3.2 Recovery Act Funding Announcement

The grant recipient will be required to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated rail cars announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

Appendix 3.3.3 Certifications

As a condition of award, to the extent applicable, grant recipients must comply with the Certification requirements of ARRA. These include Section 1201 (Maintenance of Effort); Section 1511 (Transparency and Oversight); and Section 1607 (Additional Funding Distribution and Assurance of Appropriate Use of Funds). These Certifications are described in following sections.

Section 1201(a): Maintenance of Effort

By March 19, 2009, State Governors were required to certify to the Secretary of Transportation that the State would maintain its effort with regard to State funding for the types of projects funded by the appropriation, for each amount distributed to a State or a State agency under this program. As part of this Certification, the Governor was required to submit to the Secretary a statement identifying the amount of funds the State planned to expend from State sources as of February 17, 2009, during the period between February 17, 2009 and September 30, 2010, for the types of projects funded by the appropriation. The maintenance of effort requirement in section 1201(a) applies to any grant recipient that is a State government (or agency thereof) that planned, as of February 17, 2009, to expend State funds on the project receiving a High-Speed Rail/Intercity Passenger Rail grant under this guidance during the period between February 17, 2009, and September 30, 2010.

Section 1511: Transparency and Oversight

For grant funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment (1) received the full review and vetting required by law; and (2) that the chief executive accepts responsibility that it is an appropriate use of taxpayer dollars. This certification must be executed and posted on a website and linked to www.recovery.gov prior to the recipient of a High-Speed Rail/ Intercity Passenger Rail grant receiving grant funds. If the project is not included in the STIP, a separate certification for the potential High-Speed Rail/Intercity Passenger Rail project must be executed, attaching the relevant information or linking to a public website where the information may be obtained. This certification must include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and must be posted online and linked to the website www.recovery.gov. The certification must also state that the projects have been properly reviewed and vetted and are an appropriate use of taxpayer dollars.

Section 1607: Additional Funding Distribution and Assurance of Appropriate Use of Funds

Section 1607 required that Governors of States receiving funding under the Recovery Act certify by April 3, 2009, that, for grant funds provided to any State or State agency, the State would request and use the funds provided in the Recovery Act and that such funds would be used to create jobs and promote economic growth. Alternatively, the State legislature could have acted to accept such funds by the adoption of a concurrent resolution. States or State agencies ultimately receiving High-Speed Rail/Intercity Passenger Rail grant funds must ensure that this certification has been completed.

Submission of Certifications under Sections 1201, 1511, and 1607

All Certifications, once executed, shall be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary for Transportation Policy, at TigerTeam.Leads@dot.gov. Certifications may be submitted via email as electronic, scanned copies, with original signed versions to follow via U.S. mail. As required by ARRA, certifications under Section 1511 shall be immediately posted on a website and linked to the website www.recovery.gov.

Appendix 3.3.4 Whistleblower Protections

The grant recipient will be required to provide the whistleblower protections required by Section 1553 of ARRA.

Appendix 3.3.5 False Claims Act

The grant recipient and sub-recipients will be required to promptly refer to the DOT's Inspector General credible evidence that a principal, employee, agency, contractor, sub-contractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

Appendix 3.3.6 Contracting Provisions

To the maximum extent possible, contracts funded under ARRA shall be awarded as fixed-price contracts through the use of competitive procedures. Grant recipients will be required to provide a summary of any contract awarded with ARRA funds that is not fixed-price and not awarded using competitive procedures for posting on the Recovery Accountability and Transparency Board's website.

Appendix 3.4 Program Specific Grant Requirements

These apply to PRIIA-authorized grants, including ARRA grants only, and do not necessarily pertain to grants under Track 3 and Track 4 ARRA funding is provided through several existing FRA programs principally based on programs authorized in PRIIA, and PRIIA includes a number of additional program-specific grant requirements, including:

Appendix 3.4.1 Buy America

Grant recipients must comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) which specifically provide that the Secretary of Transportation may obligate ARRA funds for a High-Speed Rail/Intercity Passenger Rail or congestion project only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary (or the Secretary's delegate, the FRA Administrator) may waive this requirement if the Secretary finds that applying this requirement would be inconsistent with the public interest; the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material will increase the cost of the overall project by more than 25 percent. For purposes of implementing these requirements, in calculating the components' costs, labor costs involved in final assembly shall not be included in the calculation. If the Secretary determines that it is necessary to waive the application of the Buy America requirements, the Secretary is required before the date on which such finding takes effect to publish in the Federal Register a detailed written justification as to why the waiver is needed; and provide notice of such finding and an opportunity for public comment on such finding, for a reasonable period of time, not to exceed 15 days. The Secretary may not make a waiver for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection, and the government of that foreign country has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies. The Buy America requirements described in this section shall only apply to projects for which the costs exceed \$100,000.

Appendix 3.4.2 Operators Deemed Rail Carriers

A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this program shall be considered a rail carrier as defined in Section 49 U.S.C. 10102(5) for purposes of title 49 of the United States Code and any other statute that adopts the definition found in 49 U.S.C. 10102(5) including the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); the Railway Labor Act (43 U.S.C. 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)(see 49 U.S.C. 24405(b))

Appendix 3.4.3 Railroad Agreements

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient shall have in place a written agreement between the grant recipient and the railroad regarding such use and ownership, including any compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the grant recipient complies with liability requirements consistent with 49 U.S.C. 28103. Grant recipients that use rights-of-way owned by a railroad must comply with FRA guidance regarding how to establish a written agreement between the applicant and the railroad regarding use and ownership as discussed in Appendix 3.2.11. (See 49 U.S.C. 24405(c)).

Appendix 3.4.4 Labor Protection

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient must agree to comply with the standards of 49 U.S.C. 24312, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. 24308(a) and the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this program. (see 49 U.S.C. 24405(c)).

Appendix 3.4.5 Davis-Bacon Act

Projects funded through ARRA are required to comply with the Davis-Bacon Act (40 U.S.C. 3141 et seq.). The Davis-Bacon Act is a measure that fixes a floor under wages on Federal government projects and provides, in pertinent part, that the minimum wages to be paid for classes of workers under a contract for the construction, alteration, and/or repair of a Federal public building or public work, must be based upon wage rates determined by the Secretary of Labor to be prevailing for corresponding classes of workers employed on

projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed.

Two provisos related to the Davis Bacon Act are included in ARRA related to HSIPR service. The first requires that funded projects must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code. The second provides that 49 U.S.C. 24405 shall also apply to the funded projects. The first proviso mandates compliance with the Davis-Bacon Act generally since it is included in subchapter IV of Chapter 31 of title 40. The second proviso also mandates compliance the Davis-Bacon Act through subsection 24405(c) which provides that the Secretary shall require as a condition of making any grant that uses rights-of-way owned by a railroad that the applicant agree to comply with the standards of Section 24312 of title 49 with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. 24308(a). Section 24312 provides that Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under Section 24308 will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under Sections 3141-3144, 3146 and 3147 of title 40 and that wages in a collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with Sections 3141-3144, 3146, and 3147 of title 40. Section 24308 authorizes Amtrak to enter into agreements with rail carriers or regional transportation authorities to use facilities of and have services provided by the carrier or authority under terms on which the parties agree.

FRA has concluded that the two Davis-Bacon requirements can be reconciled in a manner that allows the HSIPR Program to be implemented in a way that is both reasonable and consistent with current practices. For projects that use or propose to use rights-of-way owned by a railroad, the specific provisions of 24405(c) would apply and applicants would be required to comply with the standards of 49 U.S.C. 24312 (prevailing wages) in the same manner that Amtrak is required to comply with those standards for construction projects it might undertake. It follows that wages in a collective bargaining agreement negotiated under the Railway Labor Act would be deemed to comply with Davis-Bacon Act requirements for these projects. For projects that do not propose to use rights-of-way owned by a railroad, normal Davis-Bacon Act requirements would apply and there would be no specific exemption for wages arrived at through a collective bargaining agreement negotiated under the Railway Labor Act. Wage rates on these projects would have to meet the Secretary of Labor's prevailing wage standards as described above.

Appendix 3.4.6 Project Labor Agreements

Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects, issued by President Obama on February 6, 2009, authorizes Federal agencies in awarding any contract in connection with a large-scale Federal government construction projects to, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law. At this time, the Executive Order does not apply

directly to recipients of financial assistance to either require or preclude the use of a project labor agreement. Rather, the Order directs the Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, to provide the President within 180 days of the date of the Order (August 5, 2009) with recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects. FRA will issue additional guidance to applicants following submission of the required report and any further action by the President or OMB.

Appendix 3.4.7 Replacement of Existing Intercity Passenger Rail Service

Grant recipients providing Intercity Passenger Rail transportation that begins operations after October 16, 2008 on a project funded in whole or in part by grants made under this program, that replaces Intercity Passenger Rail service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity as of such date, are required to enter into a series of agreements with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider. (see 49 U.S.C. 24405(d)).

Appendix 3.5 General Requirements

Appendix 3.5.1 Standard Reporting Requirements

- **Progress Reports** – Progress reports must accompany each request for payment, and at a minimum are to be submitted quarterly. These reports shall relate the state of completion of items in the scope of work to expenditures of the relevant budget elements. The grant recipient shall furnish the quarterly progress report to the FRA on or before the 30th calendar day of the month following the end of the quarter being reported. Each quarterly report shall set forth concise statements concerning activities relevant to the project, and shall include, but not be limited to, the following: (a) an account of significant progress (findings, events, trends, etc.) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in this agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.
- **Quarterly Financial Status Report. (SF 269)** – Grant recipients must report obligations and expenditures on a quarterly basis using the SF-269, which is due within 30 days of the end of each calendar quarter (e.g., for quarter ending March 31, the SF-269 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. The final SF-269 is due 90 days after the end date of the period of performance. Financial Status Reports (SF-269) must be filed online through GrantSolutions.

- **Quarterly Federal Cash Transactions Report** – Grant recipients will be required to submit a SF 272, Federal Cash Transaction Report (and when necessary the continuation sheet SF 272a), for grants paid by Treasury Check Advances, or Electronic Transfer of Funds. FRA will use this report to monitor cash advanced to the Grantee and to obtain disbursement or outlay information. Forecasts of Federal cash outlays are required in the "Remarks" section of the report. Grantees will furnish the quarterly Federal cash transaction report to the FRA on or before the 30th calendar day of the month following the end of the quarter being reported.
- **Interim and/or Final Report(s)** – Upon project completion, grant recipients will be required to furnish to the FRA a Summary Project Report detailing the results and benefits of the grant recipient's improvement efforts due by the expiration date of the grant.

Appendix 3.5.2 ARRA-Specific Reporting Requirements

- **ARRA Section 1201 Report - Periodic Reports** – Each grant recipient will be required to submit periodic reports to the FRA as described in this paragraph not later than February 17, 2010, February 17, 2011, and February 17, 2012. The Periodic Reports shall include information describing: (1) the amount of Federal funds appropriated, allocated, obligated, and outlaid under the grant agreement; (2) the number of projects that have been put out to bid under the grant agreement and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded under the grant agreement and the amount of Federal funds associated with such contracts; (4) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts; (5) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; (6) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the grant agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment since February 17, 2009; and (7) information tracking the actual aggregate expenditures by the grant recipient from its own sources for projects eligible for funding under this agreement during the period beginning on February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of February 17, 2009. DOT or FRA may issue additional guidance on the preparation and submission of Periodic Reports.
- **Section 1512(c) - Jobs Accountability Reports** – Not later than 10 days after the end of each quarter, each grant recipient will be required to submit a Jobs Accountability Report to the FRA that contains: (1) the total amount of ARRA funds received pursuant to this agreement; (2) the amount of ARRA funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which ARRA funds were expended or obligated, including—(A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

- (E) detailed information on any subcontracts or subgrants awarded by the grant recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB. OMB may issue additional guidance on the preparation and submission of Jobs Accountability Reports. The grant recipient must also register with the CCR database or complete other registration requirements as determined by the Director of OMB.
- **Section 1609: Environmental Reporting** – Section 1609(c) of ARRA requires that Federal agencies report via the President (specifically, to the White House Council on Environmental Quality) every 90 days following enactment of ARRA on the status of projects funded under ARRA with respect to compliance with NEPA. Grant recipients may be requested to submit information to assist FRA in completing this report.
 - **Additional Information** – To satisfy the purposes of the ARRA, grant recipients may be required to provide additional information in response to requests from OMB, the Congressional Budget Office, the Government Accountability Office, or the Department’s Inspector General. FRA will inform grant recipients if and when such additional reports or information are required.

Appendix 3.5.3 Audit Requirements

Grant recipients that expend \$500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. General Accountability Office, Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, located at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Audit reports are currently to be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient’s fiscal year. In addition, FRA and the Comptroller General of the United States shall have access to any books, documents, and records of grant recipients for audit and examination purposes. The grant recipient will also give FRA or the Comptroller, through any authorized representative, access to, and the right to examine all records, books, papers or documents related to the grant. Grant recipients shall require that sub-grantees comply with the audit requirements set forth in OMB Circular A-133. Grant recipients are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Appendix 3.5.4 Monitoring Requirements

Grant recipients will be monitored periodically by FRA, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where

technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, to include sub-awards, to provide reasonable assurance that the Federal award is administered in compliance with requirements. Responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

Appendix 3.5.5 Closeout Process

Project closeout occurs when all required project work and all administrative procedures described in 49 CFR part 18, or 49 CFR part 19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by an award or by the FRA's final notification or acknowledgment. Within 90 days of the Project completion date or termination by FRA, Grantees agree to submit a final Financial Status Report (Standard Form 269), a certification or summary of project expenses, and third party audit reports, as applicable.

Appendix 3.6 Freedom of Information Act (FOIA)

As a Federal agency, the FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applications and related materials submitted by applicants pursuant to this guidance would become agency records and thus subject to the FOIA and to public release through individual FOIA requests. ARRA also mandates broad public dissemination of information related to the expenditure of funds through reporting requirements and website postings that are addressed in other sections of this guidance. President Obama's March 20, 2009 Memorandum for the Heads of Executive Departments and Agencies on Ensuring Responsible Spending of Recovery Act Funds mandates the strongest possible efforts to ensure public transparency and accountability of ARRA expenditures. Consistent with these mandates, it is FRA's intention to employ a transparent process in distributing and overseeing the expenditure of ARRA funds. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this guidance could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions, most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (see *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying their request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 CFR 209.11. As noted in the Department's FOIA implementing regulation (49 CFR part 7),

the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (see 49 CFR 7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with the FRA.

6/17/09

Issued in Washington, DC, on _____.

/s/ Joseph C. Szabo

Joseph C. Szabo
Administrator