

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description.
		(5) Reopener: (a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. (6) Notification Requirements: BWX Technologies must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will be deemed to be a violation of this exclusion and may result in a revocation of the decision.

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**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 268**

[FRA Docket No. FRA–98–4545; Notice No. 3]

RIN 2130–AB29

**Magnetic Levitation Transportation Technology Deployment Program****AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Final rule.

**SUMMARY:** FRA published an Interim final rule with request for comments on October 13, 1998 (63 FR 54600), implementing the Magnetic Levitation Technology Deployment Program. An amendment to the interim final rule was published on February 12, 1999 (64 FR 7133) extending the deadline for the submission of application packages from December 31, 1998, to February 15, 1999, and making other adjustments to various dates which flow from that extension of time.

As amended, the interim final rule establishes dates for the Timing of Major Milestones and requires FRA to select one project for final design, engineering, and construction funding at the completion of Phase III. This rulemaking revises the dates established for the Timing of Major Milestones to reflect unanticipated delays in the completion of Phase I of the program, changes the description of Phase II to eliminate the requirement for each grant recipient to initiate activities aimed at

preparing a site-specific draft Environmental Impact Statement (EIS), expands Phase III to allow down-selecting to more than one project for additional study, and shifts FRA's selection of one project for final design, engineering, and construction funding to Phase IV. It also specifies that certain expenses incurred prior to the execution of a cooperative agreement to assist in the financing of pre-construction activities, but after enactment of the Transportation Equity Act for the 21st Century (TEA 21) (June 9, 1998), are eligible for reimbursement of the Federal share of the cost.

**EFFECTIVE DATE:** This final rule is effective January 14, 2000.

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(Arnold.Kupferman@fra.dot.gov), or Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW, Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov).

**SUPPLEMENTARY INFORMATION:****I. Background***A. The Transportation Equity Act for the 21st Century (TEA 21)*

TEA 21 (Pub. L. No. 105–178) adds a new section 322 to title 23 of the United States Code. Section 322 provides a total of \$55 million for Fiscal Years 1999 through 2001 for transportation systems employing magnetic levitation (“Maglev”). Section 322 requires FRA to establish project selection criteria, to solicit applications for funding, to select one or more projects to receive financial assistance for preconstruction planning activities, and, after completion of such

activities, to select one of the projects to receive financial assistance for final design, engineering, and construction activities. Section 322 authorizes—but does not appropriate—additional Federal funds of \$950 million for final design and construction of the most promising project. Section 322 provides that the portion of the project not covered by the funds provided under section 322 may be covered by any non-Federal funding sources—including private (debt and/or equity), State, local, regional, and other public or public/private entities—as well as by Federally-provided Surface Transportation Program, and Congestion Mitigation and Air Quality Improvement Program funds, and from other forms of financial assistance under TEA 21, such as loans and loan guarantees.

*B. The Interim Final Rule*

On October 13, 1998, FRA published in the **Federal Register** an interim final rule that established, on an interim basis, the regulations governing financial assistance under the Maglev Deployment Program, including the project selection criteria. The document solicited public comments and applications for Maglev preconstruction planning grants. As noted above, the rule was amended once to extend the deadline for submission of application packages from interested States or their designated authorities. The interim final rule provides: a definition of terms used in the Interim Final Rule; a description and schedule for the various phases of the Maglev Deployment Program; identification of available funding sources for the Program; requirements for the Federal and State shares and restrictions on the uses of Federal maglev funds; identification of eligible participants; project eligibility

standards; a description of the format, content and timing of applications for preconstruction planning assistance and the criteria to be used by FRA in evaluating the applications; and a description of the criteria to be used in selecting one project for final design, engineering and construction.

## II. Discussion of Comments and Conclusions

FRA received only two timely-filed public comments on the interim final rule. Set forth below is a summary of the comments received and FRA's responses to the concerns expressed in those letters to the docket.

*Comment:* One commenter expressed concern that the process set forth in the interim final rule appears to call for project applicants to commit to proceeding with a maglev project in advance of the environmental analysis required under National Environmental Policy Act (NEPA). The commenter alleges that under NEPA any project must involve a study of alternatives, including technology alternatives which may have different environmental effects.

*Response:* Under the authorizing legislation (Section 1218 of TEA 21), the authorized funding can only be used to pay the costs of preconstruction planning activities, design, engineering and construction of "transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour." It is clear that the Congressional intent is to consider only maglev technology for the use of these funds.

*Comment:* The second commenter expressed concern that under the schedule suggested in the interim final rule, not enough time was allowed for promulgation of appropriate safety standards and testing for safety before full construction authorization is given.

*Response:* Under the changes in the schedule effected by this rulemaking, the selection of one project for final design, engineering and construction is delayed until March 2001, at the earliest. In no event will construction be authorized until FRA is fully satisfied that the system will meet appropriate safety standards.

## III. Summary of Revisions to the Interim Final Rule and Rationale for Such Changes

### Changes in Dates

Section 268.3 (b) of the interim final rule, as amended, established April 30, 1999 as the date for the completion of Phase I—Competition for Planning

Grants. However, the selection of seven of the applicants for participation in the program was not announced by the Secretary of Transportation until May 24, 1999. Additional time has been required to negotiate suitable cooperative agreements with each of the selected participants. As a consequence, it is necessary to revise many of the dates specified in the interim final rule to reflect a realistic schedule.

### Eligibility of Pre-agreement Activities

In order to continue on-going work on several projects that had been initiated prior to the execution of cooperative agreements under the Maglev Deployment Program and in response to several requests, FRA has decided to make eligible for funding certain expenses incurred subsequent to June 9, 1998 (the date of enactment of TEA 21), provided that they contributed to development of the Project Description described in Phase II. This rulemaking adds this provision to § 268.5 of the rule.

### Exclusion of Requirement for Funding for Site-specific EIS in Phase II of the Project

The interim final rule required that, "After completion of the EA [Environmental Assessment], each financial assistance recipient will initiate activities aimed at preparing a site-specific draft environmental impact statement." It was intended that these activities would be included in the scope of work to be funded by the preconstruction planning grant. Because of the constraints on the available funding, there may not be sufficient funds to pay the Federal share of the costs of activities aimed at the preparation of site-specific draft EIS's for each of the seven projects selected for pre-construction planning, as specified in § 268.3 (c). Therefore, this rulemaking eliminates that requirement from the description of Phase II—Project Description Development.

### Down-selection of One or More Projects in Phase III of the Program

The interim final rule, as amended, requires FRA to evaluate the information provided by the seven selected participants during Phase II of the Program and select a single project for final design, engineering, and construction funding as Phase III of the Program. FRA anticipates that after a year of study more than one of the projects being planned may meet all of the eligibility requirements of the law, and, without additional information from additional environmental studies, financial analysis, and detailed design,

it will not be possible to make a well-informed choice of the best project. This rulemaking changes the description of Phase III—Project Selection Process to permit the FRA to delay the selection of a single project for final design, engineering, and construction funding, and to down-select more than one eligible project for further study. Additional environmental studies, financial analysis, and detailed design would be funded for each of the down-selected projects.

### Selection of One Project

This rulemaking also changes Phase IV—Project Development and Completion of Site-Specific EIS to require FRA to select one project, if more than one project is down-selected by FRA in Phase III.

These proposed changes have been discussed with the seven participating agencies that would be affected by the proposed change, and there is agreement that such changes are desirable.

## Regulatory Analyses and Notices

This rulemaking modifies the interim final rule by:

- (1) Eliminating the requirement in § 268.3 (c) for each grant recipient to initiate activities aimed at the preparation of a site-specific EIS after completion of an Environmental Assessment (EA);
- (2) Modifying § 268.3 (d) to allow the FRA to down-select one or more projects and to finance the preparation of environmental and other additional studies for the down-selected projects before selecting one project for final design, engineering, and construction funding;
- (3) Changing § 268.3 (e) to require FRA to select one project for final design, engineering, and construction funding, if more than one project is down-selected by FRA in Phase III;
- (4) Amending the dates specified in § 268.3 to reflect a realistic schedule;
- (5) Adding paragraph (c) to § 268.5 to make some costs incurred after June 9, 1998 eligible for reimbursement; and
- (6) Amending § 268.21 to conform to the above changes.

There are no other changes to the interim final rule.

## Regulatory Analyses and Notices

### E.O. 12866 and DOT Regulatory Policies and Procedures

The agency has evaluated this Final Rule in accordance with existing regulatory policies and procedures and has concluded that it is a nonsignificant regulatory action under E.O. 12866, and

a nonsignificant rule under section 5(a)(4) of the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The Final Rule is not a significant regulatory action under E.O. 12866 because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency with an action planned or underway by another Federal agency; will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of the Executive Order. The Final Rule implements the preconstruction planning portion of a Congressionally mandated program to provide financial assistance to state and local governments in developing and implementing a transportation project involving magnetic levitation. At this time, the sum of \$55 million dollars is available to implement the program and an authorization for future appropriations totaling \$950 million is in place. However, as noted earlier, the availability of these additional funds is contingent on an appropriation by the Congress.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. Eligible applicants for the Maglev Deployment Program are limited by the enabling statute (23 U.S.C. 322(d)) to States or authorities designated by one or more States. The program implemented by the final rule has the potential to benefit some small entities who may be able to participate as consultants to States or designated authorities in the preconstruction planning activities, final design, engineering and construction activities for Maglev deployment.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local government and seeks to minimize the burdens such information collection requirements might impose. A

collection of information includes requiring answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on, ten or more persons, other than agencies, instrumentalities or employees of the United States. This final rule contains information and reporting requirements that would apply to States, groups of States or designated authorities that file applications for Federal funding for preconstruction planning activities, and to grant recipients who would conduct final design, engineering and construction activities in support of Maglev deployment. As anticipated in the interim final rule, the statutory limit on the types of entities that may apply for funding (States, groups of States, and State designated authorities), the rigorous requirements for developing a viable project, and the substantial financial and resource commitment that were required of applicants, the FRA received fewer than 10 completed applications for preconstruction planning funds from qualified applicants.

#### *Environmental Impact*

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. FRA has concluded that the issuance of this final rule, which establishes a process for receiving applications for planning activities associated with the Maglev Deployment Program, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement. The final rule includes requirements for the preparation of environmental assessments of proposed Maglev projects by successful applicants during the preconstruction planning stage and additional environmental reviews will be undertaken under the auspices of the FRA before one Maglev project is selected for final design and construction funding.

#### *Federalism Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and FRA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Maglev Deployment Program provides states with the opportunity to explore the development of a new transportation

technology in a working partnership with the Federal Government.

#### **List of Subjects in 49 CFR Part 268**

Grant programs-transportation, High speed ground transportation, Maglev, Magnetic levitation.

#### **IV. Provisions of The Final Rule**

In consideration of the foregoing, FRA revises part 268 title 49 of the Code of Federal Regulations to read as set forth below:

### **PART 268—MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM**

#### **Subpart A—Overview**

- 268.1 Definitions.
- 268.3 Different phases of the Maglev Deployment Program.
- 268.5 Federal funding sources for the Maglev Deployment Program.
- 268.7 Federal/State share and restrictions on the uses of Federal Maglev Funds.

#### **Subpart B—Procedures For Financial Assistance**

- 268.9 Eligible participants.
- 268.11 Project eligibility standards.
- 268.13 Deadline for submission of applications for preconstruction planning assistance.
- 268.15 Form and contents of applications for preconstruction planning assistance.
- 268.17 Project selection criteria.
- 268.19 Evaluation of applications for preconstruction planning assistance.
- 268.21 Down-selection of one or more Maglev projects for further study and selection of one project for final design, engineering, and construction funding.

**Authority:** 49 U.S.C. 322; 23 U.S.C. 322; 49 CFR 1.49.

#### **Subpart A—Overview**

##### **§ 268.1 Definitions.**

As used in this part—  
**CMAQ** means Congestion Mitigation and Air Quality Improvement Program (23 U.S.C. 149).

**Environmental assessment** (“EA”) means the environmental assessment in support of the project description and containing the information listed in § 268.11(b)(6)(i).

**Environmental impact statement** (“EIS”) means the environmental impact statement which is required pursuant to §§ 268.3.

**Eligible project costs** means the costs of preconstruction planning activities and the capital cost of the fixed guideway infrastructure of a Maglev project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads,

and storage, repair, and maintenance facilities, but eligible project costs do not include the cost of stations, vehicles, and equipment.

*Federal Maglev funds* means such funds as are provided under the authority of 23 U.S.C. 322 to pay for Eligible Project Costs.

*Full project costs* means the total capital costs of a Maglev project, including Eligible Project Costs and the costs of stations, vehicles, and equipment.

*Phase* means one of the five different phases of the Maglev Deployment Program; these phases are described in § 268.3.

*Maglev* means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

*Maglev Deployment Program* means the program authorized by 23 U.S.C. 322.

*Partnership potential* means the usage of the term in the commercial feasibility study of high-speed ground transportation (*High Speed Ground Transportation for America*) mandated under section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1978). Under that usage any corridor exhibiting Partnership Potential must at least meet the following two conditions:

(1) Private enterprise must be able to run on the corridor—once built and paid for—as a completely self-sustaining entity; and

(2) The total benefits of a Maglev corridor must equal or exceed its total costs.

*STP* means the Surface Transportation Program (23 U.S.C. 133).

*TEA 21* means the Transportation Equity Act for the 21st Century (Public Law No. 105-178, 112 Stat. 107).

### § 268.3 Different phases of the Maglev Deployment Program.

(a) The Maglev Deployment Program includes five phases, as described in paragraphs (b) through (f) of this section. The current projected timing for implementing these phases is indicated to assist applicants in planning their projects. All dates beyond the first date (the deadline for the submission of preconstruction planning applications) are for planning purposes only and are subject to change—including possible acceleration of deadlines—based on the progress of the Maglev Deployment Program; grantees will be notified accordingly.

(b) *Phase I—Competition for Planning Grants (Early October 1998—September 15, 1999).*

(1) *Description.* In Phase I, States will apply for funds for preconstruction planning activities. As required by § 268.13, applications must be filed with FRA by February 15, 1999. FRA will select one or more projects to receive preconstruction planning financial assistance awarded under this part to perform Phase II of the Maglev Deployment Program.

(2) *Timing of Major Milestones.*

(i) February 15, 1999—Planning grant applications due.

(ii) May 24, 1999—FRA announces grantees for planning grants.

(iii) August 31, 1999—FRA awards planning grants for the conduct of activities listed in Phase II.

(c) *Phase II—Project Description Development (July 1, 1999—June 30, 2000).*

(1) *Description.* In Phase II, each grant recipient will prepare and submit to FRA a project description, supporting preconstruction planning reports, and an EA. Supporting reports may include demand and revenue analyses, project specification, cost estimates, scheduling, financial studies, a system safety plan (including supporting analysis), and other information in support of the project description. FRA will use this information in reaching a decision on which projects to down-select for completion of site-specific environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. FRA will initiate documentation of environmental factors considered in the project selection process.

(2) *Timing of Major Milestones.*

(i) February 29, 2000—Deadline for submission of appropriate EA's needed by FRA for the down-selection of one or more projects under Phase III.

(ii) June 30, 2000—Deadline for submission of project descriptions and any related supporting reports needed by FRA for down-selection of one or more projects.

(d) *Phase III—Project Selection Process (July 1, 2000—September 30, 2000).*

(1) *Description.* FRA will evaluate the information provided by the grant recipients under Phase II and will down-select one or more projects for completion of additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction.

(2) *Timing of Major Milestones.*

September 30, 2000—FRA down-selects one or more project(s).

(e) *Phase IV—Project Development and Completion of Site-specific EIS (October 1, 2000—November 30, 2001).*

(1) *Description.* The financial assistance recipient(s) down-selected in Phase III will complete additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction, and address issues raised by FRA's review of system safety plans (including supporting analysis). They will also initiate final design and engineering work for the down-selected project(s). If more than one project is down-selected in Phase III, FRA will select one of them for final design, engineering, and construction funding. Detailed agreements for the construction and operation of the selected project will be negotiated.

(2) *Timing of Major Milestones.*

(i) March 31, 2001—If more than one project is down-selected in Phase III, FRA will select one project.

(ii) December 31, 2001—FRA will issue a Final Record of Decision on the site-specific EIS for the one selected project, confirming the project design.

(f) *Phase V—Completion of Detailed Engineering and Construction (January 1, 2002 and beyond).* In Phase V, the sponsoring State or State-designated authority will oversee the efforts of the public/private partnership formed to progress the selected project, to complete the detailed engineering designs, and finance, construct, equip, and operate the project in revenue service. Construction will be contingent upon the appropriation of Federal funds. In no event will construction be authorized until FRA is fully satisfied that the system will meet appropriate safety standards.

### § 268.5 Federal funding sources for the Maglev Deployment Program.

(a) *Federal Maglev Funds.* Section 322 of Title 23 provides for the following funds for the Maglev Deployment Program:

(1) *Contract authority.* Fifty-five million has been made available for the Maglev Deployment Program as contract authority from the Highway Trust Fund for Fiscal Years 1999 through 2001; this would be used to fund the competition in all its phases and could also be used for final design, engineering, and construction activities of the selected project. Of the \$55 million, the Congress has made available up to \$15 million for Fiscal Year 1999, up to \$15 million for Fiscal Year 2000, and \$25 million for Fiscal Year 2001.

(2) *Authorization for appropriations.* Nine hundred fifty million, also from the Highway Trust Fund, has been

authorized to be appropriated for the Maglev Deployment Program for Fiscal Years 2000 through 2003. Of the \$950 million, \$200 million is authorized to be appropriated for each of Fiscal Years 2000 and 2001, \$250 million for Fiscal Year 2002, and \$300 million for Fiscal Year 2003. Any decision to proceed with possible Federal funding of the construction of a Maglev system will be contingent upon the receipt of appropriations, and upon completion of appropriate environmental documentation.

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

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

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

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

(b) *Restrictions on the uses of Federal Maglev Funds.*

(1) Federal Maglev Funds may be applied only to Eligible Project Costs;

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

(3) Federal Maglev Funds may be used to pay for only  $\frac{2}{3}$  of preconstruction planning costs; grant recipients are required to pay the remaining  $\frac{1}{3}$  of the costs with non-Federal funds; and

(4) The "prevailing wages" requirement of the Davis Bacon Act (40 U.S.C. 276a-276a-5) applies to any

construction contracts under the Maglev Deployment Program.

#### **Subpart B—Procedures For Financial Assistance**

##### **§ 268.9 Eligible participants.**

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

##### **§ 268.11 Project eligibility standards.**

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

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

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

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

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

(v) Satisfy applicable statewide and metropolitan planning requirements;

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

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

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

(2) FRA recognizes that applicants for preconstruction planning grants will not have detailed information with respect to some of the requirements of paragraph (a)(1) of this section, and that the purpose of a preconstruction planning grant is to develop much of this information with respect to a particular Maglev project. As required by § 268.15, an applicant will need to provide whatever information it has with respect to each of the requirements of paragraph (a)(1) of this section, together with a certification that the applicant fully intends to comply with the requirements of this paragraph (a) should its project be selected by FRA for final design, engineering and construction financing.

(b) *Project eligibility standards for final design, engineering, and*

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

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

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

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

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

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

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

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

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

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

(A) Covers either the entire corridor in which the Maglev project is involved

("Corridor"), or the project considered independently;

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

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

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

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

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

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

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

(6) *Planning/environmental process.*

(i) *Assessment of environmental consequences of the proposed project.* Recipients of preconstruction planning grants shall conduct an EA in support of the project description; and will prepare additional environmental studies for the project. The EA shall include information to support the grantee's decision to pursue the proposed project. The grantee shall develop the information and discuss the environmental consequences of the proposed technology and route in sufficient detail for the preparation of appropriate documentation by FRA to support selection of one project. This shall include: the identification of potential positive and negative environmental effects resulting from the technology (e.g. energy consumption compared to other transportation options); generic noise emissions at various distances from the centerline of the guideway; changes in electromagnetic field levels at various

distances from the centerline of the guideway; and environmental screening of the proposed route (e.g., identification of land use; identification of endangered species possibly present and location of their critical habitat; identification of navigable waterways, wetlands and other sensitive water resources; and identification of the location of parks, wildlife refuges, historic and archaeological sites of National, State or local significance and other sites protected by section 4(f) of the Department of Transportation Act). The latter information and analysis shall be submitted four months in advance of the remainder of the project description. The above list is illustrative only. Grantees will be expected to review proposed work statements with FRA at pre-application meetings or through some other means to develop the final scope of this environmental review.

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

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

Completed application packages shall be returned to FRA by December 31, 1998. Applications shall be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN: Maglev Project, RDV-11, 400 Seventh Street, SW, Stop 20, Washington, DC 20590.

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

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

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

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

(b) A description of the project concept, identifying its likely location,

market area, length, and the transportation service that it would perform, and a preliminary estimate of the time that would be required—if funds are made available—to bring the project to the start of construction and then to the initiation of full revenue service. At its option, the applicant may include any reports already completed on the project as well as any additional descriptive material that would assist the FRA in evaluating the application;

(c) Whatever information the applicant has to demonstrate that the project meets the project eligibility standards in § 269.11(a), and the project selection criteria in § 268.17, together with a certification that the applicant fully intends to comply with the requirements in § 269.11 should its project be selected by FRA for final design, engineering and construction financing.

(d) A statement of work for the preconstruction planning activities to be accomplished under the planning grant. The statement shall describe the work to be performed, including but not necessarily limited to:

(1) Preconstruction planning work as is needed to develop a Maglev project, and project description that will satisfy the project eligibility standards in § 268.11(b), and the project selection criteria in § 268.17; and

(2) Preparation of EAs, as described in § 268.11(b)(6)(i);

(e) Management plan, schedule, and financial plan for accomplishing the preconstruction planning work under the planning grant;

(f) Letters supporting the application from the heads of all State departments of transportation involved, as well as from responsible officials of the Metropolitan Planning Organizations of all metropolitan areas to be served by the proposed project;

(g) A certification from the State, or from the authority designated by one or more States, that the 1/3 matching funds required for work under the planning grant are, or will be, available by the time the grants are announced. The source(s) of the matching must be shown in the financial plan under paragraph (e); and

(h) If the applicant has made a definitive choice of the particular Maglev technology proposed to be included, a description of that technology and the degree to which it has been produced and tested should be submitted. Further, if the applicant has identified organizations that would form members of the team that would implement the project, the names of those organizations and the persons

representing them should also be submitted.

#### **§ 268.17 Project selection criteria.**

Except as qualified by § 268.19, the following criteria will govern FRA's selection of projects to receive funding under the Maglev Deployment Program.

(a) *Purpose and significance of the project.*

(1) The degree to which the project description demonstrates attractiveness to travelers, as measured in passengers and passenger-miles.

(2) The extent to which implementation of the project will reduce congestion, and attendant delay costs, in other modes of transportation; will reduce emissions and/or energy consumption; or will reduce the rate of growth in needs for additional highway or airport construction. Measures for this criterion will include but not be limited to the present value of congestion reduction, pollution reduction, and/or facility cost-avoidance benefits.

(3) The degree to which the project will demonstrate the variety of operating conditions which are to be expected in the United States.

(4) The degree to which the project will augment a Maglev corridor or network that has been identified, by any State, group of States, or the FRA, as having Partnership Potential.

(b) *Timely implementation.* The speed with which the project can realistically be brought into full revenue service, based on the project description and on the current and projected development status of the Maglev technology selected by the applicant for the project.

(c) *Benefits for the American economy.* The extent to which the project is expected to create new jobs in traditional and emerging industries in the United States.

(d) *Partnership potential.* The degree to which the project description demonstrates Partnership Potential for the corridor in which it is involved, and/or for the project independently.

(e) *Funding limits and sources.*

(1) The extent and proportion to which States, regions, and localities commit to financially contributing to the project, both in terms of their own locally-raised, entirely non-Federal funds, and in terms of commitments of scarce Federal resources from non-Maglev funds; and

(2) The extent and proportion to which the private sector contributes financially to the project.

**Note to § 268.17:** FRA recognizes that applicants for preconstruction planning assistance may not have detailed information with respect to each of these criteria, and that

the purpose of the preconstruction planning assistance is to develop much of this information with respect to a particular Maglev project. The preconstruction planning application requirements of this part 268 are designed to elicit whatever information an applicant may have pertaining to these criteria.

#### **§ 268.19 Evaluation of applications for preconstruction planning assistance.**

The FRA will evaluate the applications for their completeness and responsiveness to the requirements listed in § 268.15. In addition, applicants are advised that the Maglev Deployment Program contains a number of project eligibility standards (minimum threshold standards) and project evaluation criteria that will guide the FRA's review of the project descriptions produced under the Planning Grants. The FRA's implementation of these standards and criteria appears in § 268.11 and § 268.17, respectively. Although subject to revision, the information in § 268.11 and § 268.17 should assist the States in completing their applications in the competition for planning grants, since the project descriptions will need to respond to the standards and criteria. In evaluating the applications for planning grants, FRA will consider how consistent the applicant's project is to the standards and criteria, and the application's likelihood of leading to a project that meets all the standards and criteria.

#### **§ 268.21 Down-selection of one or more Maglev projects for further study and selection of one project for final design, engineering, and construction funding.**

(a) Upon completion of Phase III of the Maglev Deployment Program, FRA will down-select one or more projects to complete additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. Final design and engineering work will also be initiated for the down-selected project(s). To be down-selected a project must appear to meet the project eligibility standards contained in § 268.11 (b), rate highly in the project selection criteria specified in § 268.17, be judged by FRA to have a good chance of being constructed with the Federal funds authorized for this program, and be successfully operated by a public/private partnership.

(b) Only one project will be selected in Phase IV of the Maglev Deployment Program and be eligible for any Federal construction funds that Congress chooses to make available. That one project must meet each and every project eligibility standard contained in

§ 268.11 (b). If more than one project down-selected in Phase III and funded through Phase IV meets all of these standards, then FRA will evaluate and compare the eligible projects according to the set of project selection criteria contained in § 268.17.

(c) In reviewing competing projects under the project eligibility standards and project selection criteria, the FRA will exercise particular vigilance regarding the following elements of the preconstruction planning process, although not to the exclusion of others:

(1) The credibility of the demand and revenue forecasts, cost estimates, and benefit/cost comparisons; and

(2) The credibility of the financial plan.

(d) FRA intends to make periodic reviews of the processes and products of grant recipients. Such reviews may include, at the FRA's option, reviews at key milestones in the preparation of project descriptions.

Issued in Washington, DC on January 4, 2000.

**Jolene M. Molitoris,**

*Federal Railroad Administrator.*

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018-AE39**

#### **Endangered and Threatened Wildlife and Plants; Final Rule To List Two Cave Animals From Kauai, Hawaii, as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two animals—the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*). These two species are found on the Hawaiian island of Kauai. The Kauai cave wolf spider is known from three populations, and the Kauai cave amphipod is known from five populations. These animals and their habitats have been variously affected or are currently threatened by the following—habitat degradation and loss through the removal of perennial vegetation, soil fill, grading, paving, quarrying, and other activities