

(b) *Effective Date.* This section is effective from July 3, 2008 until July 17, 2008.

\* \* \* \* \*

Dated: July 3, 2008.

**Gail P. Kulisch,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston.*

[FR Doc. E8-15947 Filed 7-10-08; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2005-0155; FRL-8691-2]

RIN 2060-A052

### National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; withdrawal; revision.

**SUMMARY:** EPA published a direct final rule and parallel proposal on April 1, 2008, to amend revisions to the national perchloroethylene air emission standards for dry cleaning facilities which EPA promulgated on July 27, 2006. Because we received adverse comment during the comment period on the direct final rule and parallel proposal, we are withdrawing the direct final rule and taking final action on the proposed rule to reflect our response to the comments.

**DATES:** This final rule revision is effective July 11, 2008; the withdrawal of the direct final rule published on April 1, 2008, at 73 FR 17252 is effective July 11, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2005-0155. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Docket ID No. EPA-HQ-OAR-2005-0155, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30

p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Johnson, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E143-03), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5124, electronic mail address [Johnson.warren@epa.gov](mailto:Johnson.warren@epa.gov).

**SUPPLEMENTARY INFORMATION:** On April 1, 2008, EPA published a direct final rule and parallel proposal for “National Perchloroethylene Air Emission Standards for Dry Cleaning” (73 FR 17252). We stated in the direct final rule and parallel proposal that if we received adverse comments by May 16, 2008, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We received adverse comments on this direct final rule and are withdrawing it. As stated in the direct final rule and parallel proposal, we will not institute a second comment period on this action.

Concurrent with the direct final rule, we published a separate notice of proposed rulemaking, to provide for the contingency of adverse comments on the direct final rule (73 FR 17292). We are now issuing a final rule based on the notice of proposed rulemaking and on comments received.

**Judicial Review.** Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 9, 2008. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), any requirements established by the final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides a mechanism for EPA to convene a proceeding for reconsideration, “if the person raising the objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the rule.” Any

person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344-A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

### I. What action is EPA taking?

In today’s final rule, EPA is adopting the regulatory revisions to 40 CFR 63.320(d) and (e); 63.323(a)(1), (a)(1)(ii), (b) and (c); and 63.324(d)(5) and (6), including some modifications from what we proposed to address the comments received. We received no adverse comments on the proposed revisions to 40 CFR 63.323(a)(1)’s introductory text, 63.323(a)(1)(ii), or 63.324(d)(5)–(6), and these revisions are being adopted exactly as proposed. Similarly, we received no adverse comments on our proposed amendment to § 63.320(d) adding cross-references to §§ 63.322(o)(3) and 63.322(o)(5)(i), or on our proposed amendment to § 63.320(e) adding a cross-reference to § 63.322(o)(3); consequently, those additions are also being adopted.

However, one commenter, the State of Delaware, submitted a comment on the April 1, 2008 direct final rule and parallel proposal objecting to the removal from § 63.320(d) and (e) of cross-references to § 63.322(o)(4), claiming that the removal of these cross-references would have exempted existing dry-to-dry machine systems from certain requirements intended to prevent the new installation of any perchloroethylene (perc) machine in a building with a residence. Specifically that removal of these cross-references would allow owners and operators of dry cleaning systems installed after December 21, 2005 to relocate old, high-emitting dry-to-dry machine systems into residential buildings and significantly increase the residents’ exposure to perc. Delaware recommended that our amendments to § 63.320(d) and (e) be revised to clarify that existing dry-to-dry machine systems “remain subject to” the requirements of § 63.322(o)(4).

We agree with the State of Delaware that our clarification would have had the unintended impact of revising requirements in the July 27, 2006 final rule. As we explained in the April 1, 2008 direct final rule (73 FR 17254), we believed that the cross-reference in

§ 63.320(d) and (e) to the new source requirements of § 63.322(o)(4) was inadvertent, and we were concerned that some might interpret it to subject small existing sources already located in residential buildings to an immediate prohibition of perc emissions or an early retirement of perc-emitting machines. Rather, under our rules, such small existing systems are subject to the same December 21, 2020, phase-out date that applies to all other existing co-residential systems that are not eligible for the partial exemptions of § 63.320(d) or (e). (73 FR 17254.)

However, Delaware's comments pointed out to us that § 63.322(o)(4) applies not only to mint-new machine systems that are constructed, re-constructed and installed in residential buildings, but also by its terms prohibits "relocation of a used machine" (i.e., new installation of an existing machine). Therefore, we agree with Delaware that it is inappropriate to remove the cross-references for § 63.320(d) and (e). This final rule will continue to include cross-references to § 63.322(o)(4), in order to avoid suggesting that any existing perc-emitting machines, no matter what size, may be newly installed in residential buildings. As we stated in the July 27, 2006, final rule, the requirement to eliminate perc emissions from dry cleaning systems installed after December 21, 2005, "applies to any newly installed dry cleaning system that is located in a building with a residence, regardless of whether the dry cleaning system is a newly fabricated system or one that is relocated from another facility." (71 FR at 42728.)

Two commenters submitted objections that relate to our proposal to amend § 63.323(b) and (c) by deleting the July 27, 2006, rule's cross-references to § 63.322(o)(2). These amendments addressed the rule's inadvertently promulgated requirement that new area sources conduct specific types of monitoring when carbon adsorbers are used. The first commenter, a private citizen, asserted that some type of performance standard is needed for new "4th generation" dry cleaning machines, and implied that the result of EPA's proposed amendments is that there would not be one. The State of Delaware submitted similar, but more detailed, comments on this proposed amendment, arguing that by proposing to eliminate monitoring requirements associated with secondary carbon adsorbers located at new area sources, neither owners/operators nor State regulatory agencies will have information necessary to demonstrate that control devices are effective and

that dry cleaning machines are being operated consistent with good air pollution control practices. Delaware claimed that eliminating monitoring requirements for these new area sources would increase perc emissions and consequently raise cancer risks, and that the monitoring requirements adopted in the July 27, 2006 rule impose minimal financial burden on dry cleaners. Delaware recommended that EPA therefore not eliminate the cross-reference to § 63.322(o)(2), or, if EPA does eliminate it, to replace it with an alternative means to demonstrate compliant operations, such as requiring desorption or carbon replacement in accordance with manufacturers' instructions or at least weekly (whichever is more stringent), or incorporating a monitoring strategy similar to that found in rules applicable for wetting agents and foam blankets that moves toward progressively less frequent monitoring until breakthrough occurs.

As we explained in the direct final rule, the July 27, 2006, rule's application of the § 63.323(b) and (c) monitoring requirements for new area sources subject to § 63.322(o)(2) was due to our failure to correct cross-references in the final rule when the proposed requirements for new area sources moved from § 63.322(o)(3) into § 63.322(o)(2). (73 FR 17253–54.) It was not our intention to impose these obligations on new area sources, nor had we proposed to impose them. (73 FR 17253–54.) We continue to believe that, as a result, the July 27, 2006, rule's promulgation of those requirements, merely by the erroneous cross-references to § 63.322(o)(2) in § 63.323(b) and (c), is not justified, and that the cross-references must be removed for that reason.

Furthermore, we disagree with the assertions that removing the cross-reference to § 63.322(o)(2) from § 63.323(b) and (c) results in there being no performance standard for machines subject to the new area source requirements. By its terms, § 63.322(o)(2) requires such area sources to route the air-perc gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and to pass the stream from inside the machine drum through a non-vented carbon adsorber or equivalent control device immediately before the door of the machine is opened. The carbon adsorber must be desorbed in accordance with manufacturers' instructions. We continue to believe that this is sufficient to ensure that new area source owners and operators conduct the work practices required by the rule

in § 63.322(o)(2). Therefore, today's final rule adopts the proposed amendments to § 63.323(b) and (c) that remove the cross-references to § 63.322(o)(2).

One other commenter raised issues that were not the subject of the April 1, 2008, direct final rule. Specifically, the St. Louis County Air Pollution Control Program, while not intending to adversely affect the rulemaking, asked (along with the Missouri Department of Natural Resources) for an additional clarification that the temperature difference monitoring requirements found in § 63.323(a)(2), which were addressed neither by the July 27, 2006, final rule nor by the April 1, 2008, direct final rule, were intended to apply only to transfer units.

While neither the April 1, 2008, direct final rule nor the July 2006 rule revisions to the 1993 rule addressed section 63.323(a)(2), we did erroneously reference § 63.323(a)(2)(ii) in the preamble to the April 1, 2008, direct final rule in stating: "In addition, due to the July 27, 2006, revisions to 40 CFR 63.323(a), one could interpret that using the monitoring method in 40 CFR 63.323(a)(2)(ii) is only an option when the dry cleaning machine is not equipped with refrigeration system pressure gauges." (73 FR at 17254.) Therefore, we would like to clarify for the St. Louis County Air Pollution Control Program that the reference to 40 CFR 63.323(a)(2)(ii) should have been a reference to 40 CFR 63.323(a)(1)(ii) which was the subject of the direct final rulemaking.

## II. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

### B. Paperwork Reduction Act

This final action does not impose any new information collection burden. Certain technical and editorial corrections that EPA is making to the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities imposes no new burdens. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 63, subpart M under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0234. The OMB control numbers for

EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Since the amendments in this final rule are simply making technical corrections and clarifications to the existing rule requirements, this final rule will not impose any new requirements on small entities

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are

inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. These final rule amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA determined not to include a Federal mandate that may result in an estimated cost of \$100 million or more (69 FR 5061, February 3, 2004). These clarifications do not change the level or cost of the standard.

In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not apply to small governments. Therefore, this final rule is not subject to the requirements of section 203 of the UMRA.

### E. Executive Order 13132: Federalism

Executive Order (EO) 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the EO to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in EO 13132. The amendments provide clarification and correct typographical errors. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to this final rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order (EO) 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in EO 13175. This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in EO 13175. Thus, EO 13175 does not apply to this rule.

### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This final rule is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

### H. Executive Order 13211: Energy Effects

This final rule is not subject to Executive Order (EO) 13211, "Actions that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under EO 12866.

### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are specified in this final rule. Therefore, the EPA is not adopting any voluntary consensus standards in the final rule.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These final rule amendments do not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 11, 2008.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 7, 2008.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I, part 63, of the Code of Federal Regulations is amended as follows:

**PART 63—[AMENDED]**

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart M—[Amended]**

■ 2. Section 63.320 is amended by revising paragraphs (d) and (e) to read as follows:

**§ 63.320 Applicability.**

\* \* \* \* \*

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991, and September 22, 1993, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), (o)(3), (o)(4) and (o)(5)(i); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total PCE consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991, and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s), is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), (o)(3) and (o)(4); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the PCE consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year.

Consumption is determined according to § 63.323(d).

\* \* \* \* \*

■ 3. Section 63.323 is amended as follows:

■ a. By revising paragraphs (a)(1) introductory text and (a)(1)(ii).

■ b. By revising paragraph (b) introductory text.

■ c. By revising paragraph (c) introductory text.

**§ 63.323 Test methods and monitoring.**

(a) \* \* \*

(1) The owner or operator shall monitor on a weekly basis the parameters in either paragraph (a)(1)(i) or (ii) of this section.

\* \* \* \* \*

(ii) The temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F) before the end of the cool-down or drying cycle while the gas-vapor stream is flowing through the condenser. The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ±1.1 °C (±2 °F).

\* \* \* \* \*

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3), the owner or operator shall measure the concentration of PCE in the exhaust of the carbon adsorber weekly with a colorimetric detector tube or PCE gas analyzer. The measurement shall be taken while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber or removal of the activated carbon to determine that the PCE concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

\* \* \* \* \*

(c) If the air-PCE gas vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3), the owner or operator of an affected facility shall measure the concentration of PCE in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube or PCE gas analyzer to determine that the PCE concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

\* \* \* \* \*

■ 4. Section 63.324 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

**§ 63.324 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(d) \* \* \*

(5) The date and monitoring results (temperature sensor or pressure gauge) as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a), (b), or (o); and

(6) The date and monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2), or (b)(3).

\* \* \* \* \*

[FR Doc. E8-15872 Filed 7-10-08; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 262**

[Docket No. FRA 2005-23774, Notice No. 2]

RIN 2130-AB74

**Implementation of Program for Capital Grants for Rail Line Relocation and Improvement Projects**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, August 10, 2005) amends chapter 201 of Title 49 of the United States Code by adding section 20154. Section 20154 authorizes—but does not appropriate—\$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. Section 20154 directs the Secretary of Transportation (Secretary) to issue regulations implementing this grant program, and the Secretary has delegated this responsibility to FRA. This final rule establishes a regulation intended to carry out that statutory mandate. As of the publication of this final rule, Congress did not appropriate any funding for the program for FY 2006 or FY 2007 but did appropriate \$20,040,200 for fiscal year 2008.

**DATES:** August 11, 2008.

**ADDRESSES:** For access to the docket to read background documents or

comments received, go to <http://www.regulations.gov> at any time or to Room W-12-140, West Building Ground Floor at the DOT's new headquarters at 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John A. Winkle, Transportation Industry Analyst, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 13, Washington, DC 20590 ([John.Winkle@dot.gov](mailto:John.Winkle@dot.gov) or 202-493-6067); or Elizabeth A. Sorrells, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 ([Betty.Sorrells@dot.gov](mailto:Betty.Sorrells@dot.gov) or 202-493-6057).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Statutory Authority*

On January 17, 2007, FRA published a notice of proposed rulemaking (NPRM) proposing to add part 262 to Title 49, Code of Federal Regulations. Part 262 would carry out the statutory mandate of section 9002 of SAFETEA-LU which amends chapter 201 of Title 49 of the United States Code by adding a new section 20154. Section 20154 authorizes—but does not appropriate—\$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. The statute requires the Secretary to implement the grant program through regulations. The Secretary has delegated this responsibility to FRA. The language and provisions of Part 262 as reflected in the NPRM and this final rule closely track the language set out in section 20154.

*B. Program Purpose*

As noted in the background section of the NPRM, state and local governments are looking for ways to eliminate the problems created by the presence of railroad infrastructure in many communities, infrastructure that at one time was critical to the development of the community but which now presents problems as well as benefits. Problems that have been identified range from community separation to blocked grade crossings to limits on economic development. Many times, the solution is to relocate or raise track vertically or move the track to an area that is better suited for it. In addition to relocation projects, many communities are eager to

improve existing rail infrastructure in an effort to mitigate the perceived negative effects of rail traffic on safety in general, motor vehicle traffic flow, economic development, or the overall quality of life of the community.

**II. SAFETEA-LU**

On August 10, 2005, President George W. Bush signed SAFETEA-LU, (Pub. L. 109-59) into law. Section 9002 of SAFETEA-LU amended chapter 201 of Title 49 of the United States Code by adding a new § 20154, which establishes the basic elements of a funding program for capital grants for local rail line relocation and improvement projects. Subsection (b) of the new § 20154 mandates that the Secretary issue “temporary regulations” to implement the capital grants program and then issue final regulations by October 1, 2006. This final rule carries out that statutory mandate.

In order to be eligible for a grant for a relocation or improvement construction project, the project must mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, including noise mitigation, or economic development, or involve a lateral or vertical relocation of any portion of the rail line, presumably to reduce the number of grade crossings and/or serve to mitigate noise, visual issues, or other externality that negatively impacts a community. A more detailed explanation of the rule text is provided below in the Section-by-Section Analysis.

In section 20154, Congress authorized, but did not appropriate, \$350 million per year for each fiscal year 2006 through 2009. At least half of the funds awarded under this program shall be provided as grant awards of not more than \$20 million each. A State or other eligible entity will be required to pay at least 10 percent of the shared costs of the project, whether in the form of a contribution of real property or tangible personal property, contribution of employee services, or previous costs spent on the project before the application was filed. The State or FRA may also seek financial contributions from private entities benefiting from the rail line relocation or improvement project.

In section 20154, Congress directed FRA to issue “temporary regulations” by April 1, 2006. As noted in the NPRM, under the Administrative Procedure Act and Executive Orders governing rulemaking, FRA could comply with Congress's deadline only by issuing a direct final rule or an interim final rule by April 1, 2006. However, the FRA