



Texas Department of Transportation Application for Assumption of Federal Railroad Administration Responsibilities

Pursuant to the Surface Transportation Project
Delivery Program, 23 United States Code 327

October 2026

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Governor's signature approving the application

As required by the Federal Railroad Administration's regulations at 23 CFR 773.109(a)(10), with my signature below I approve the Texas Department of Transportation's Application for Assumption of Federal Railroad Administration Responsibilities Pursuant to the Surface Transportation Project Delivery Program, 23 United States Code 327.

Governor, State of Texas

Date



Figure 1. Image of excavators and a person standing next to railroad tracks

Introduction

The Texas Department of Transportation (TxDOT) is seeking to assume the responsibilities of the Federal Railroad Administration (FRA) for the National Environmental Policy Act (NEPA) and related laws through applying to participate in the Surface Transportation Project Delivery Assignment Program (NEPA Assignment Program) pursuant to 23 United States Code (U.S.C.) 327. In this application, TxDOT is applying to assume all of FRA responsibilities for compliance with NEPA and all other Federal environmental laws (allowable under 23 U.S.C. 327 and as listed in Appendix A) pertaining to the approval of Categorical Exclusion (CE), Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects directly sponsored, managed, or controlled by TxDOT for which TxDOT will seek funding from FRA. FRA and TxDOT may

identify other railroad projects in the State of Texas and determine, by mutual agreement, that TxDOT act as the lead federal agency under Rail NEPA Assignment.

In submitting its application, TxDOT expresses our strong commitment to successfully implementing the responsibilities requested that are assigned to TxDOT under the Rail NEPA Assignment Program. This application follows the requirements established in the Final Rule for the Assignment Program application issued in the Federal Register (Vol. 72, No. 28) on February 12, 2007, and as amended in the Federal Register December 28, 2020 (85 FR 84226).

In accordance with 23 U.S.C. 327, TxDOT has previously entered into a 23 U.S.C. 327 Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA) for the FHWA NEPA Assignment program in Texas. The NEPA Assignment MOU between TxDOT and FHWA was executed December 16, 2014, and was most recently renewed on July 17, 2025. Since being accepted into the FHWA NEPA Assignment program, TxDOT has been compliant with the requirements under the MOU as shown by the required audits, self-assessments, monitoring events, and having been granted its first renewal in 2019 and second renewal in 2025. TxDOT is appreciative of the opportunity provided under the FHWA NEPA Assignment MOU and continues to hold its environmental program up to the high standard expected under the assignment responsibility. TxDOT looks forward to continuing this path of excellence with FRA through the expansion of TxDOT's NEPA Assignment program to include FRA NEPA decision authority.

The TxDOT Rail Division (RRD) and Environmental Affairs Division (ENV) will share responsibility for fulfilling the requirements of the FRA NEPA Assignment Program as explained further in this application under "773.109(a)(3)(ii): Changes to be Made for Assumption of Responsibilities."

Overview of TxDOT's Rail Division

RRD interfaces with railroad companies as a primary function. RRD is comprised of administration and four main sections: Planning and Programming, Rail Safety and Compliance, Rail Letting, and Rail Grade Crossing. An organization chart for RRD is

included in Appendix B. RRD has specific responsibilities for the following rail functions in Texas:

- Performing infrastructure and operational analysis of both state- and privately-owned rail facilities to develop needs assessments as part of the project development process.
- Planning for potential intercity and high-speed passenger rail corridors and services.
- Monitoring potential rail line abandonments in Texas, as well as coordinating the state's involvement and response to abandonment filings.
- Administering lease and operating agreements on state-owned facilities and managing construction contracts for state or federally funded projects on those facilities, as well as private facilities.
- Implementing rail improvements by entering into public-private partnership agreements to provide investments in freight rail relocation projects, rail facility improvements, rail line consolidations, or new passenger rail developments.
- Analyzing local, state, and national railroad and multimodal trends, policies, and legislation.
- Performing research to develop more efficient use of the state's rail network.
- Acting as the departmental liaison to railroad companies, intermodal interests, the FRA, local governments, and the public regarding rail planning and project development.
- Administering the state rail safety inspection program in conjunction with the FRA, including accident and complaint investigations.
- Improving highway-rail grade crossings to reduce accidents.

TxDOT has developed a state rail plan to guide rail transportation planning activities and rail investment plans in Texas over the next 20 years. The [2024 Texas Rail Plan](#) is available on TxDOT's RRD website.

TxDOT's overall approach towards environmental compliance

TxDOT integrates environmental considerations into department activities, including RRD activities, to achieve compliance with applicable laws, regulations, and standards. TxDOT is focused on delivering safe, efficient transportation projects and making sound decisions based on a balanced consideration of transportation needs and of the social, economic, and environmental impacts of proposed transportation improvements.

TxDOT's policy of balanced decision-making is similar to the philosophy underlying NEPA and FRA's NEPA policy expressed in 23 Code of Federal Regulations (CFR) 771.105.

TxDOT complies with NEPA and all other state and federal environmental requirements on its projects requiring federal funding or approval. State-only funded projects comply with TxDOT-specific state environmental requirements, found at 43 Texas Administrative Code (TAC) 2. Where there are differences between federal and state requirements, TxDOT follows federal requirements for projects requiring federal approval.

NEPA documentation and compliance with related laws is an essential component of the project development process. During this phase TxDOT provides for disclosure to the public; allows others an opportunity to provide input and comment on proposals, alternatives, and environmental impacts; and develops information to make an informed decision, as appropriate.

Once FRA and TxDOT execute an MOU that assigns NEPA responsibilities, TxDOT will be solely responsible and liable for NEPA decisions on railroad projects in the state assigned to TxDOT pursuant to the MOU with FRA, without any project-level involvement by FRA. TxDOT will be subject to and will comply with the same laws and regulations that would apply to FRA if FRA were the lead federal agency, and will continue to work cooperatively with local governments, regional transportation planning agencies, resource and regulatory agencies, and Tribal Governments under the FRA NEPA assignment authority. Certain NEPA-related responsibilities are ineligible for assignment to a state including, where projects cross state or international boundaries, Air Quality Conformity, and

government-to-government Tribal Consultation (although routine communications with tribes on specific projects can be delegated).

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As required by 23 CFR 773.107(a), “Coordination meeting,” on April 9, 2025, TxDOT first met with FRA to participate in a pre-application coordination meeting.

Pursuant to 773.107(b)(1) and (2), “Public comment,” TxDOT’s draft application was publicly noticed in the Texas Register on [this date will be filled in by the time TxDOT formally submits its application to FRA], 2026 for a 30-day comment period. On [this date will be filled in by the time TxDOT formally submits its application to FRA], 2026 TxDOT also sent notice of the application with request for comment by email to federal and state resource agencies and federally recognized tribal governments. Appendix D is reserved for documentation of these notices. Appendix E is reserved for copies of the comments received. Appendix F is reserved for a summary of comments received and responses to substantive comments.

Per 23 CFR 773.107(c), “Sovereign immunity waiver,” and 23 CFR 773.107(d), “Comparable state laws,” Appendix C contains Texas’s Waiver of Sovereign Immunity and Texas’s determination that the State of Texas Public Information Act is comparable to the Freedom of Information Act.

In the sections below, TxDOT has provided the information required for our application organized by relevant Part 773 rule subsection. This application also contains the following appendices:

- **Appendix A.** Other Federal Environmental Laws and Executive Orders for which TxDOT is Requesting Responsibility
- **Appendix B.** TxDOT Rail Division Organizational Chart, TxDOT Environmental Affairs Division Organizational Chart, and TxDOT Agency Organizational Chart
- **Appendix C.** Certifications for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and the State of Texas’ Public Records Act is Comparable to the Federal Freedom of Information Act

- **Appendix D.** Evidence of Required Notice and Solicitation of Public Comment by TxDOT
- **Appendix E.** Copies of Comments Received on TxDOT's Draft FRA NEPA Assignment Application
- **Appendix F.** Summary of Comments Received on TxDOT's Draft FRA NEPA Assignment Application and Responses to Substantive Comments

773.109(a)(1) and (c): Classes of Railroad Projects for which TxDOT is Requesting NEPA Responsibility

TxDOT is requesting to assume FRA's responsibilities under NEPA for the following classes of railroad projects upon execution of the NEPA assignment program MOU with FRA.

- EIS-level railroad projects directly sponsored, managed, or controlled by TxDOT for which TxDOT will seek funding from FRA.
- EA-level railroad projects directly sponsored, managed, or controlled by TxDOT for which TxDOT will seek funding from FRA.
- CE-level railroad projects directly sponsored, managed, or controlled by TxDOT for which TxDOT will seek funding from FRA.
- Any other railroad project which FRA and TxDOT may identify and determine, by mutual agreement, that TxDOT will act as the lead federal agency under NEPA.

For projects jointly funded by FRA and FHWA, TxDOT requests to assume FRA's NEPA responsibilities for those components of the project that are subject to railroad-specific environmental review requirements.

For projects jointly funded by FRA and another Federal agency that is not FHWA, TxDOT requests to assume only FRA's NEPA responsibilities; the request does not include assuming the NEPA responsibilities of the other federal agencies.

773.109(a)(2): Federal Environmental Laws Other than NEPA for which TxDOT is Requesting Responsibility

TxDOT requests to assume all FRA's responsibilities for environmental review (that are eligible per 23 CFR 773), interagency consultation, and other regulatory compliance-related actions pertaining to the review or approval of projects for which TxDOT is requesting assumption of responsibilities under NEPA. TxDOT requests to assume these responsibilities under relevant Executive Orders and all applicable federal environmental laws listed in Appendix A of this application.

773.109(a)(3)(i): Summary of State Procedures for Environmental Review

TxDOT's current approach for environmental review of FRA projects is discussed in this section. For a discussion of the changes RRD and ENV intend to implement in the future under FRA NEPA assignment, see the following section labeled, "773.109(a)(3)(ii): Changes to be Made for Assumption of Responsibilities."

The RRD project management and transportation decision-making process oversees project development from concept through completion. Each step is timed to facilitate informed decision making based on an appropriate level of project development and risk management. The process encourages communication among disciplines, requires documentation of the reasoning behind project related decisions, eliminates duplicated effort among disciplines, and provides for early identification of potential issues. Involvement of all disciplines during the preliminary stages of project development ensures that issues affecting project type, scope, development schedule, and costs can be correctly evaluated and anticipated. The process adheres to FRA's [*Guidance on Development and Implementation of Railroad Capital Projects*](#).

FRA-funded projects undertaken by RRD vary in type, size, complexity, and potential to affect the environment. Effects from proposed projects can vary from minor to significant impacts on the human environment, although the types of railroad projects RRD has traditionally overseen have been railroad crossing improvements with only minor environmental impacts. To account for the variability of project impacts, the

beginning of the NEPA process involves the classification of the action into either one of three basic "classes of action" that determine how compliance with NEPA will be conducted and documented.

- **Categorical Exclusion (CE).** A CE is a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which neither an EA nor an EIS is required. FRA CEs are listed in 23 CFR 771.116.
- **Environmental Assessment (EA).** FRA, in coordination with Project Sponsors, will prepare an EA for actions that do not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. Should environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment, a finding of no significant impact (FONSI) is issued. If significant impacts are found, then FRA must complete an EIS. FRA EA requirements are listed in 23 CFR 771.119 and 771.121.
- **Environmental Impact Statement (EIS).** NEPA requires Federal agencies to prepare EISs for major Federal actions that significantly affect the quality of the human environment. The EIS process is completed in the following ordered steps: notice of intent (NOI), Draft EIS, Final EIS (FEIS), and Record of Decision (ROD). An EIS is the most extensive form of documentation and incorporates considerable public outreach and input and follows FRA implementing regulations in 23 CFR 771.123-127.

Historically, a majority of RRD's projects qualify for a CE determination. Once the NEPA class of action is decided, the documentation and procedures follow the respective regulations to complete the NEPA review and approval. As explained below, FRA follows different processes depending on whether the project is a joint FHWA-FRA project (in other words, a project that will be funded by both FHWA and FRA) or an FRA-exclusive project (in other words, a project that will be funded by FRA but not FHWA).

Joint FHWA-FRA projects

As noted earlier, TxDOT already has FHWA NEPA assignment, and has been successfully issuing its own NEPA approvals for FHWA assigned highway projects for over ten years.

For projects that involve funding by both FHWA and FRA, RRD typically relies on the FHWA NEPA approval issued by TxDOT under the FHWA NEPA assignment program as allowed by Federal regulations at 23 CFR 771.141. TxDOT's procedures for conducting reviews under the FHWA NEPA assignment program are detailed in ENV's [environmental compliance toolkits](#). These guidance documents contain detailed procedures for developing a project work plan for the project, conducting various technical studies (for example, species analysis, archeological survey, etcetera), review and approval of deliverables by ENV subject matter experts, public involvement, coordination with external entities such as federal resource agencies and routine communication with Indian tribes on specific projects, and preparation of EAs and EISs. They also contain forms, templates, and technical guidance for performing various analyses. All work and reviews are stored in TxDOT's Environmental Compliance Oversight System (ECOS).

The process starts out with developing a "project work plan," which is essentially a to-do list of different types of analyses and tasks that must be done for the project to be environmentally cleared. There are around 100 different "Activities" that might apply to a given project. Examples of "Activities" are "Perform Species Analysis," "Perform Public Meeting," or "Obtain Section 4(f) Approval." ENV has very detailed instructions for determining which Activities need to be done for a given project based on its location, project type, nearby resources, etcetera. Essentially, environmental staff answers a series of 29 technical questions in ECOS, and this generates the list of needed Activities which comprise the "project work plan." Then, district environmental staff (and consultants) prepare deliverables for those Activities using our various templates, checklists, etcetera. The guidance specifies certain deliverables that must be reviewed and approved by ENV subject matter experts. For example, an archeology background study must be reviewed and approved by an ENV archeologist, a noise report predicting noise impacts must be reviewed and approved by an ENV noise expert, etcetera. The subject matter expert (SME)'s comments are typically recorded in a comment-response matrix or made directly on the electronic version of the document being reviewed. Once the deliverable has been revised, the SME reviews again and backchecks the comment responses to make sure all issues have been addressed. Only then is the deliverable

considered “approved.” ENV also has dedicated staff that provides file reviews of projects after they have been cleared to look for any deviations from procedure or other issues that may need corrective action.

Once all required technical analyses, public involvement, and coordination with third parties has been completed and documented according to ENV’s documentation standards, TxDOT environmentally clears the project. For a CE, district environmental staff clears the project by completing a CE determination form in ECOS. For an EA or EIS, the ENV Director or ENV Deputy Director signs the FONSI or ROD. All relevant documentation is stored in ECOS in perpetuity.

After a joint FHWA-FRA project has been environmentally cleared under the FHWA NEPA assignment program, RRD staff coordinates FRA staff’s review of that clearance by email. In some cases, FRA staff asks for some additional information or clarification, which RRD provides. FRA may conduct additional environmental review to meet compliance requirements specific to railroad projects. In RRD’s experience FRA staff generally accepts the environmental review conducted by TxDOT under the FHWA NEPA assignment program and adopts it for FRA’s use.

FRA-exclusive projects

For FRA-exclusive projects (in other words, projects that will be funded by FRA but not FHWA), RRD typically utilizes its contracting ability to procure a consultant to prepare the NEPA documentation and related technical studies. RRD manages the consultant work. ENV staff is available to provide technical expertise to RRD if needed.

Early in project development, the RRD Project Manager (PM) assembles the project team to coordinate and complete the environmental process. The team, inclusive of the RRD PM, engineering support staff, and environmental consultants as needed, gather preliminary environmental information and perform constraints analyses. During this early stage of project development, design engineers, the project team, and other RRD staff bring forward key issues for consideration in development of the project. The information gathered during this stage is used to develop an environmental project

scope (hereafter, "project scope" or "scope"). The scoping process also helps scale the environmental effort to the context and intensity of a project's anticipated impacts.

RRD has yet to undertake an EIS project but if an EIS were to be applicable the process would start with scoping, as required by FRA NEPA regulations (23 CFR 771.123(b)).

NEPA scoping is an early and collaborative process for determining the scope of issues to be addressed and for identifying the critical issues related to a proposed project. The EIS scoping process stresses early consultation with federal and state resource agencies, other state and local agencies, tribal governments, and any federal agency from whom project approval or funding will be required. Scoping is a mechanism to bring together and resolve the concerns of agencies, tribes, and the public. After scoping, a draft EIS would be prepared and circulated for public review and comment. There may also be a public hearing on the draft EIS. Then TxDOT would address any comments received from the public or agencies by preparing a comment-response matrix. Then TxDOT would prepare a combined final EIS-record of decision including the comment-response matrix and publish it for public review. The record of decision would identify the selected alternative and explain why it was selected. In certain circumstances it may be necessary to prepare and publish the final EIS and record of decision as separate documents separated by a 30-day waiting period.

Regardless of NEPA classification, technical studies (for example, archeological surveys, species analyses, surface water analyses, community impacts assessments, historic resources surveys, noise analyses, etcetera) are prepared by consultants under RRD's supervision as needed to address specific issues identified during scoping or at any other point in the process. Public involvement and coordination are documented along with completion of technical studies as appropriate. At the discretion of the RRD PM, a SME (for example, ENV archeologist, biologist, historian, etcetera) may review technical studies to ensure their accuracy. If studies, public involvement, or agency coordination identify potential impacts, the environmental team may work with project designers to discuss ways to avoid or minimize those impacts.

For the FHWA NEPA assignment program, TxDOT has developed a broad assortment of [policy and guidance materials](#) that guide environmental document development and provide specific requirements for individual technical subject areas. These tools and guidance ensure that FHWA environmental documents and technical reports meet quality standards and are consistent with FHWA and state requirements. They include a compilation of environmental procedures and processes related to environmental, cultural, historic, and social resources. Developed by ENV, this on-line reference material is intended for use by project sponsors and environmental consultants who conduct environmental work on behalf of TxDOT for highway projects under the FHWA NEPA assignment program. The policies and guidance work in conjunction with online toolkits comprised of standards, procedures, and guidance documents (including handbooks and field guides) that are regularly evaluated and are updated as the need arises in response to changing environmental requirements, standards, and policies.

Some aspects of the policies, procedures, and guidance developed by ENV are specific to the FHWA NEPA assignment program. However, the policies, procedures, and guidance developed by ENV for the FHWA program contain useful technical information about how to prepare various studies and reports for compliance with NEPA and other environmental laws, regardless of the funding agency. RRD and its contractors use these policies and guidance as a resource for preparing their own studies and reports as appropriate.

In addition to TxDOT's own guidance, RRD and its consultants use the wealth of [FRA NEPA resources and guidance](#) in developing environmental documents and studies. In following FRA's NEPA process, RRD conducts environmental reviews according to the revised NEPA legislation and regulations contained in 23 CFR Part 771 Environmental Impact and Related Procedures, and 23 CFR Part 774, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) for transportation projects.

RRD has access to ENV subject matter experts (SMEs) and technical staff as resources for technical advice as needed. ENV employs several SMEs, including specialists in air quality (2), archeology (9), biology (8), hazardous materials (6), historical resources

(7), NEPA (7), noise (2), community impacts (1), and water quality (4). An organization chart for ENV is included in Appendix B. In RRD's experience, most of the FRA-exclusive railroad projects it oversees do not require substantial assistance from technical ENV SMEs given the scale of the projects.

The TxDOT public involvement process is a critical part of the project development process. TxDOT implements its public involvement program, based on 23 CFR Part 771.111, 23 U.S.C. 139 (h), 43 TAC Part 1, Chapter 2, Subchapter E, with the use of its [Public Involvement toolkit](#). There are four formal types of public involvement: (1) notice and opportunity to comment, (2) public meetings, (3) opportunities for public hearing, and (4) public hearings, each with their own triggers and procedural requirements as explained in the Toolkit. TxDOT has dedicated staff in the Transportation Planning and Programming Division's Public Involvement Section to assist with conducting high-quality public involvement on individual projects as appropriate. TxDOT's public involvement program encourages opportunities for public input and provides guidance for interagency coordination and public participation during various stages of project development. Planning and conducting comprehensive public involvement provide decision-makers with an understanding of community needs and promotes meaningful dialogue to take place to develop viable transportation solutions. RRD uses the [Public Involvement toolkit](#) as a resource in conducting appropriate public involvement for railroad projects. Although most of the projects RRD has traditionally processed are relatively small scale and have not required substantial public involvement.

RRD presents the environmental review-related documentation it prepares with the assistance of consultants to FRA staff, and FRA staff issues the final environmental clearance, which has typically been a CE determination.

773.109(a)(3)(ii): Changes to be Made for Assumption of Responsibilities

RRD intends to leverage the expertise and experience that ENV has developed under the FHWA NEPA assignment program by incorporating ENV personnel into the process under

the FRA NEPA assignment program as explained below. The process includes the following:

Project intake and screening; class of action determination; scope development; determination of required technical studies, consultation, and public involvement; preparation of environmental documentation; detailed review by ENV personnel and SMEs; quality assurance (QA)- quality control (QC); comment resolution; legal sufficiency review (final EISs and individual Section 4(f) determinations only); categorical exclusion, Finding of No Significant Impact, Record of Decision approval; environmental commitments documentation; administrative record filing (if applicable) and retention.

RRD staff will maintain an Excel spreadsheet of all FRA projects needing environmental review under FRA NEPA assignment ("Master FRA NEPA Spreadsheet"). The Master FRA NEPA Spreadsheet will contain basic information for each project, such as the project name, brief description, project limits, etcetera. Towards the beginning of each month, RRD staff will email a copy of the Master FRA NEPA Spreadsheet to FRA. This will be how TxDOT communicates to FRA which projects it has environmentally cleared and which projects remain pending. RRD will ensure that no construction contracts or construction activities will commence prior to environmental clearance.

ENV staff will make all final NEPA decisions. ENV will discuss the process for FRA projects at a statewide monthly "NEPA Chat" meeting. If at any time ENV determines that there is a need to provide rail-specific training to TxDOT staff or consultants then ENV will provide such training.

RRD and ENV will follow different processes depending on whether the project is a joint FHWA-FRA project (in other words, a project that will be funded by both FHWA and FRA) or an FRA-exclusive project (in other words, a project that will be funded by FRA but not FHWA), as explained below.

Joint FHWA-FRA projects

For a joint FHWA-FRA project (in other words, a project that will be funded by both FHWA and FRA), RRD staff will partially fill in the Master FRA NEPA Spreadsheet. District environmental staff will set up and clear the project in TxDOT's Environmental Compliance Oversight System (ECOS) according to the TxDOT process for FHWA projects described in ENV's [*Environmental Guide Volume 1: Process and Environmental Guide Volume 2: Activity Instructions*](#). This process includes preparation of studies and analyses by district environmental staff or local governments and their consultants, prescribed document standards, and reviews of key deliverables by ENV SMEs (in other words, ENV biologists, archeologists, historians, air quality experts, NEPA specialists, water experts, noise experts, and hazardous materials experts). CEs are approved in ECOS by district environmental staff. EAs and EISs are approved by the ENV Director or Deputy Director and then cleared in ECOS by ENV Project Delivery staff.

In the event that FRA-specific differences in regulations are triggered because changes are being made to the rail line itself, district environmental staff will demonstrate compliance with those requirements as part of the particular analysis for the project. RRD staff will check to make sure compliance with these regulations is documented for those projects to which they apply.

Once all required technical analyses, public involvement, and agency coordination has been conducted and the project has been cleared in ECOS according to the process for FHWA projects, RRD staff will fill in the remaining fields on the Master FRA NEPA Spreadsheet. The date for NEPA clearance will be provided in the monthly spreadsheet to FRA.

FRA-exclusive projects

For an FRA-exclusive project (in other words, a project that will be funded by FRA but not FHWA), district environmental staff will not set up and clear the project in ECOS per the procedures in ENV's [*Environmental Guide Volume 1: Process and Environmental Guide*](#)

[*Volume 2: Activity Instructions*](#). Instead, RRD and ENV envision processing an FRA-exclusive project as follows.

RRD staff will partially fill in information about the project on the Master FRA NEPA Spreadsheet. RRD staff will create an electronic file folder on a private server to store environmental documentation for the project. RRD staff will upload to this electronic file folder documentation such as grant applications or other project descriptions, schematics, environmental reports prepared by consultants, consultation correspondence and documents, and public involvement materials, as this documentation becomes available.

ENV Project Delivery staff will discuss the project with RRD staff (or the third-party project sponsor) and determine which environmental review tasks will be needed using ENV's [environmental compliance toolkits](#) as a guideline. There are certain environmental review tasks in ENV's guidance that are specific to FHWA projects and therefore need not be followed for an FRA project. One example is planning consistency documentation to satisfy FHWA's 2008 and 2011 guidance. Also, in the event that FRA-specific differences in regulations are triggered because changes are being made to the rail line itself (for example, general conformity instead of transportation conformity, noise and or vibration), additional analysis will be required. ENV Project Delivery staff will fill in the needed environmental review tasks for the project on the Master FRA NEPA Spreadsheet.

RRD staff (or the third-party project sponsor) will prepare any deliverables needed to complete the environmental review tasks using applicable portions of ENV's [environmental compliance toolkits](#) such as templates, checklists, and forms as guidelines, as well as any additional templates, checklists and forms developed by ENV to ensure compliance with environmental review requirements specific to railroad projects (if ENV determines that such templates, checklists, and forms are needed). RRD staff (or the third-party project sponsor) will use consultants as needed. ENV Project Delivery staff will coordinate review of RRD's (or the third-party project sponsor's) key deliverables by ENV SMEs (in other words, ENV biologists, archeologists, historians, air quality experts, NEPA specialists, water experts, noise experts, and hazardous material experts) via email.

RRD staff (or the third-party project sponsor) will conduct any needed public involvement using ENV's [Public Involvement toolkit](#) as a guideline. RRD staff (or the third-party project sponsor) will use consultants as needed.

If the project triggers the need for coordination with a resource agency (for example, United States Fish and Wildlife Service, Texas Parks and Wildlife Department, or Texas Commission on Environmental Quality) or routine communications with tribes, ENV staff will conduct the coordination using documentation provided by RRD staff (or third-party project sponsor) or its consultants. TxDOT has voluntarily entered into a number of programmatic agreements with federal resources agencies and tribes to facilitate project coordination and routine communications. Some of those agreements are written specifically for FHWA projects, although it may be possible to still use them or adapt them for an FRA project with the other party's consent. ENV will evaluate the need to use or adapt these agreements for an FRA project on a case-by-case basis as the need arises. If ENV determines that a programmatic agreement cannot easily be used or adapted for an FRA project, ENV may choose to fulfill its coordination obligations without the benefit of a programmatic agreement.

Once ENV Project Delivery staff determines that all applicable environmental review requirements have been satisfied and the project is ready for clearance, ENV Project Delivery staff will fill-in the "Date of environmental clearance" and "Final environmental clearance type" columns on the Master FRA NEPA Spreadsheet. For categorical exclusions (CEs), ENV Project Delivery staff's completion of these fields in the Master FRA NEPA Spreadsheet will serve as the final NEPA approval. For environmental assessments (EAs) and environmental impact statements (EISs), the ENV Director or ENV Deputy Director's execution of the Finding of No Significant Impact (FONSI) or the Record of Decision (ROD) will serve as the final NEPA approval. RRD will post the environmental clearance information for the project in the monthly spreadsheet it sends to FRA.

The process described above represents how RRD and ENV envision clearing FRA-exclusive projects under FRA NEPA Assignment in the future. RRD and ENV will refine this process as TxDOT develops written guidance and begins processing FRA reviews. We envision

having a single FRA NEPA Assignment guidance document with step-by-step instructions for processing both joint FHWA-FRA projects and FRA-exclusive projects and discussions of any differences between FHWA and FRA environmental review requirements. We intend to have the guidance document written by or around the time of MOU execution. Regardless of how the above-described process is refined in the future, RRD and ENV will ensure that all FRA reviews are completed in compliance with all applicable laws and regulations.

773.109(a)(3)(iii): Legal Sufficiency

TxDOT's Office of General Counsel will conduct legal sufficiency reviews of any FEISs, combined FEIS-RODs, and Individual Section 4(f) evaluations, which are the only document types for which FRA is required to conduct legal sufficiency reviews under Federal regulation (23 CFR 771.125(b), 771.124(a)(4), and 23 CFR 774.7(d), respectively). These reviews will be conducted by the TxDOT Office of General Counsel or by TxDOT's outside environmental counsel which are hired and supervised by a TxDOT environmental attorney. The primary goal of this review will be to assess the document from the perspective of legal standards, litigation risk, and legal defensibility. RRD or ENV staff will coordinate legal sufficiency reviews by emailing documents to TxDOT's Office of General Counsel after they have been reviewed and approved by RRD staff and ENV SMEs.

773.109(a)(3)(iv): Prior Concurrence

For joint FHWA-FRA projects, all final EISs will be subject to review and approval by the ENV Director and TxDOT Office of General Counsel, regardless of whether they would or would not involve any of the conditions listed at 23 CFR 771.125(c)(1) or (2) that would have required FHWA Headquarters' prior concurrence.

FRA does not have a requirement or process for prior concurrence for FRA-funded projects. Therefore, for FRA-exclusive projects, this subsection of 773.109 does not apply. However, for FRA-exclusive projects, all final EISs will similarly be subject to review and approval by the ENV Director and TxDOT Office of General Counsel,

regardless of whether they would or would not involve any of the conditions listed at 23 CFR 771.125(c)(1) or (2).

773.109(a)(3)(v): Project Delivery Methods

TxDOT may consider a variety of delivery mechanisms for projects. The majority will fall into either Design-Bid-Build, Design-Build, or Public-Private-Partnership. Through various agreement structures, TxDOT will assign the design, construction, management, and operation responsibilities to best serve the public interest within the context of any project.

Regardless of which project delivery methods TxDOT uses, ENV will ensure that the objectivity and integrity requirements of NEPA will be met by conducting an objective, independent review of all environmental documentation prepared by contractors as we have done for many years under the FHWA program. The method ultimately used to deliver the project will not influence the environmental review. TxDOT will ensure that the timing requirements at 771.113 are met by not proceeding to construction until the project is cleared on the Master FRA NEPA Spreadsheet.

773.109(a)(4)(i): Existing Organization

TxDOT is the legally authorized transportation department for the State of Texas, with responsibility for roadways, general aviation, the Gulf Intracoastal Waterway and certain public transportation projects. TxDOT is overseen by the Texas Transportation Commission, a five-member board with one of the board members serving as the chair. The commissioners are appointed by the Governor with the advice and consent of the Texas Senate and serve staggered six-year terms. The TxDOT executive director leads TxDOT under the direction of the commission. TxDOT is comprised of twenty-five districts and a headquarters divided into divisions and offices (see organizational chart in Appendix B).

As previously mentioned, RRD is the lead division for railroad-related activities. TxDOT RRD develops and directs policy and strategies related to a broad range of railroad-related environmental issues, including development and review of all environmental documentation and supporting materials. The Director of RRD makes recommendations

and approvals on TxDOT's behalf, as applicable, regarding environmental documentation and permitting decisions and enforces environmental compliance during project development and delivery. RRD is also responsible for coordinating with the FRA to ensure that the environmental reviews are consistent with NEPA and other related federal environmental laws.

ENV provides policy, procedure, training, guidance, and technical assistance for NEPA compliance and other related regulatory compliance and coordination for highway projects. All district environmental staff are required to take a mandatory "New District Environmental Staff Orientation" training class within one year of being hired and then complete 8 hours of continuing education each year after that. This requirement can be met by attending monthly statewide "NEPA Chats," attending the annual TxDOT Environmental Conference, or taking certain training classes provided by ENV or other TxDOT divisions. ENV develops and provides various optional training classes on a variety of subjects including air quality, hazardous materials management, biology, and water. TxDOT's Human Resources Division maintains electronic records of training taken by TxDOT staff. ENV provides monthly email announcements on revisions and updates to guidance to all environmental staff and external subscribers.

ENV has a staff of 81 full-time employees (as of May 2026), including environmental managers, specialists, planners and a variety of subject matter experts, including biologists, geologists, water quality experts, noise specialists, air quality experts, archeologists, architectural historians, and a historical architect; all cultural resource management staff meet the Secretary of Interior's standards as qualified professionals. It is this office that has implemented and been responsible for TxDOT's FHWA NEPA Assignment Program for the past 10+ years.

TxDOT's General Counsel Division provides legal counsel to the Texas Transportation Commission and TxDOT administration, districts, and divisions. The General Counsel Division provides legal expertise related to administrative law including NEPA compliance for EISs and the broader environmental review process and assists the State Attorney General's office in litigation, among other responsibilities.

773.109(a)(4)(ii): Additional Staff Required

TxDOT does not expect participation in the FRA NEPA assignment program to require additional staff.

773.109(a)(4)(ii): Changes to the Organizational Structure

TxDOT does not anticipate any changes in the organization of RRD or TxDOT overall because of the additional responsibilities from participating in the FRA NEPA assignment program.

773.109(a)(4)(iii): Use of Outside Consultants for the Assignment Program

There will be no change in TxDOT's general approach to using consultants because of participation in the FRA NEPA assignment program. Consultants may be utilized for environmental analysis, technical studies, environmental document preparation, review services, administrative record development, and general staff support. RRD recognizes that it is responsible for procedural compliance with environmental laws, orders, and regulations, and cannot delegate this responsibility to consultants. RRD and ENV shall make their own evaluation of the environmental issues raised by the proposed action and shall review any assessments performed and any documents prepared by a consultant to ensure that they satisfy the requirements of the applicable procedures.

TxDOT offers various training classes to consultants and provides monthly email announcements on revisions and updates to guidance so that consultants can be kept up to date on TxDOT's environmental review requirements.

773.109(a)(5): Financial Resources under the Assignment Program

RRD's current annual budget for fiscal year (FY) 2025 is \$46.88 million. \$3.5 million of this budget is for consultant resources, which provides RRD with sufficient flexibility in meeting its project and program environmental compliance needs.

ENV's current annual budget for FY 2026 is approximately \$10.2 million.

TxDOT commits to making adequate financial resources available to meet the FRA NEPA Assignment Program responsibilities it is assuming and the staff resources necessary to successfully execute those responsibilities.

773.109(a)(6): Certification for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity

The certification is attached in Appendix C.

773.109(a)(7): Certification that the State of Texas' Public Records Act is Comparable to the Federal Freedom of Information Act

The certification is attached in Appendix C.

773.109(a)(8): Evidence of required notice and solicitation of public comment and TxDOT's responses to public comments

A copy of the Texas Register notice, screen shot of TxDOT's NEPA assignment documentation website, and the email notice to federal and state resource agencies and federally recognized tribal governments are attached in Appendix D. A summary of comments received and responses to substantive comments are attached in Appendix F.

773.109(a)(9): Point of contact

Doug Booher, Director of Environmental Affairs Division, Doug.Booher@txdot.gov.

773.109(a)(10): The State Governor's signature approving the application.

See page v (5). [The Governor's signature will be provided with the formal transmittal of the application to FRA after the State public comment period.]

Appendix A. Other Federal Environmental Laws and Executive Orders for which TxDOT is Requesting Responsibility

TxDOT is requesting to assume all FRA responsibilities for environmental review, interagency consultation, and other environmental-related actions under relevant Executive Orders and the federal environmental laws listed below. TxDOT will be responsible for complying with the requirements of any applicable federal environmental law regardless of its inclusion on this list:

Environmental Review Process

- Efficient environmental reviews for project decision-making, 23 U.S.C. 139
- Efficient environmental reviews, 49 U.S.C. 24201

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401-7671q, except for any conformity determinations

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918

Biology

- Endangered Species Act of 1973, 16 U.S.C. 1531-1544
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Migratory Bird Treaty Act, 16 U.S.C. 703-712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d et sequential, with Essential Fish Habitat requirements at 16 U.S.C. 1855(b)(1)(B)

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 300101, et seq, except to the extent 23 CFR 773.105(b)(4) requires FRA to retain responsibility for government-to-government consultation with Indian tribes
- Section 4(f), 49 U.S.C. 303, and implementing regulations at 23 CFR part 774
- Archeological Resources Protection Act, 16 U.S.C. 470aa-mm
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Section 401, 402, 404, 408, and Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466
- Safe Drinking Water Act, 42 U.S.C. 300f-300j-26
- General Bridge Act of 1946, 33 U.S.C. 525-533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401-406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133(b)
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130

Parklands and Other Special Land Uses

- Section 4(f), 23 U.S.C. 138 and 49 U.S.C. 303
- Land and Water Conservation Fund Act, 54 U.S.C. §200301 et seq.

Note:

Under these laws and Executive Orders, FRA will retain responsibility for conducting formal government-to-government consultations with federally recognized Indian tribes. TxDOT will continue to manage routine consultations with the tribes and understands that a tribe has the right to direct consultation with FRA upon request. FRA's retention of formal consultation responsibilities under NAGPRA will not limit TxDOT's existing activities under this law.

Appendix B. TxDOT Rail Division Organizational Chart, TxDOT Environmental Affairs Organizational Chart, and TxDOT Agency Organizational Chart

Rail Division Organizational Chart

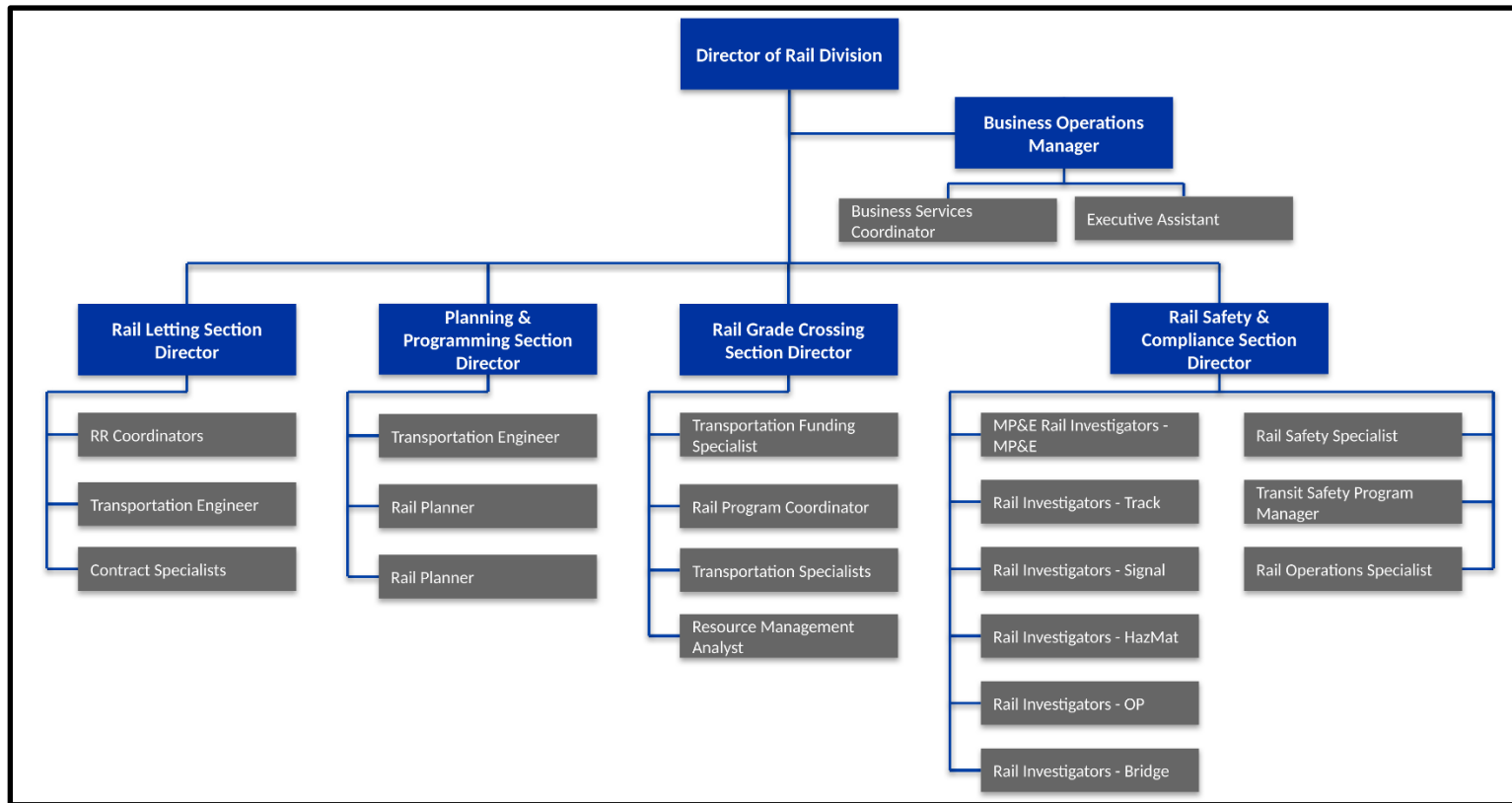


Figure 2. Image of the Rail Division Organizational Chart

Environmental Affairs Division Organizational Chart

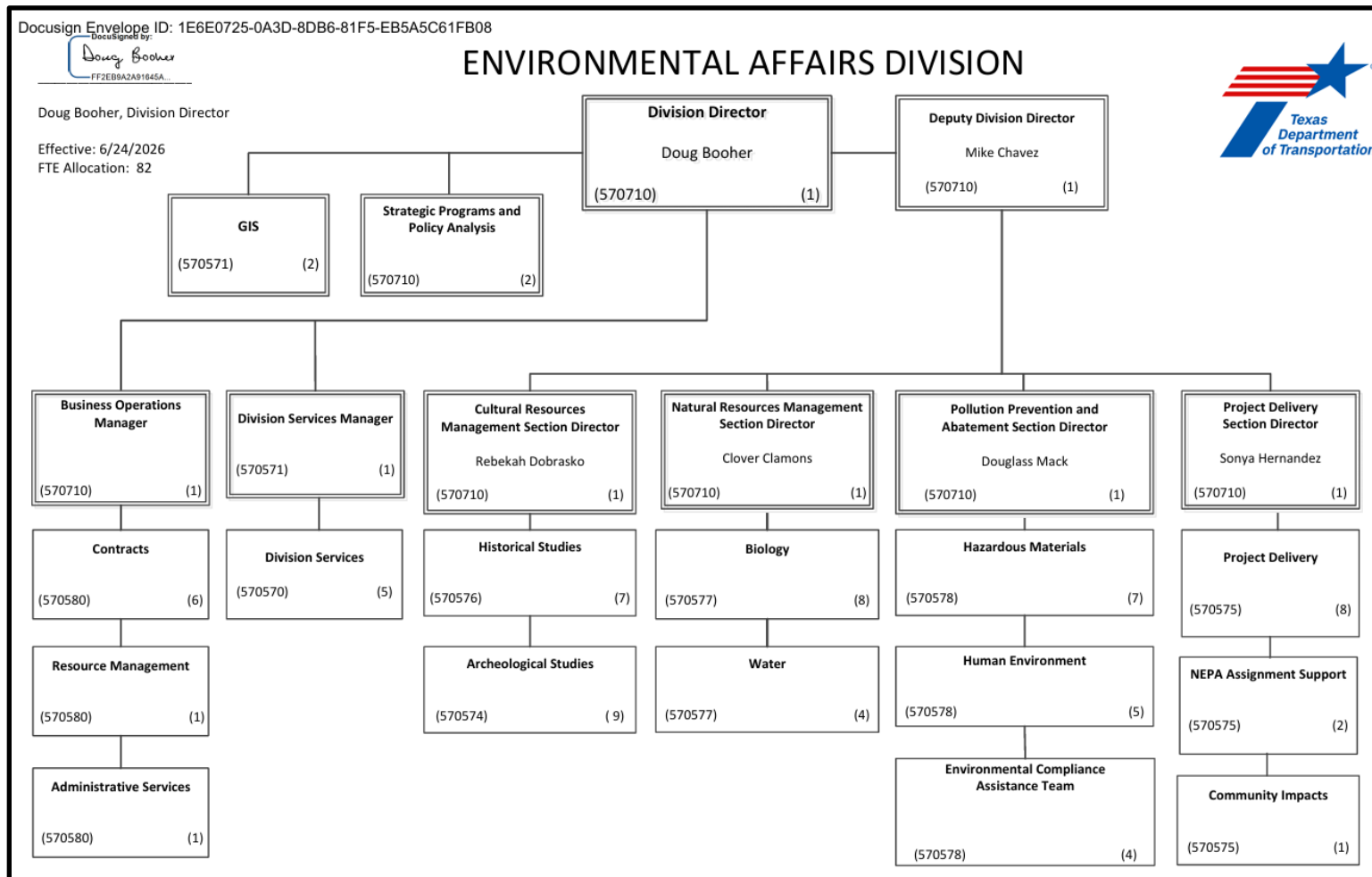


Figure 3. Image of the Environmental Affairs Division Organizational Chart

TxDOT Agency Organizational Chart

Visit TxDOT's website to see the full [TxDOT agency organizational chart](#).

Appendix C. Certifications for Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and the State of Texas' Public Records Act is Comparable to the Federal Freedom of Information Act



October 30, 2013

Mr. Victor M. Mendez
Federal Highway Administrator
1200 New Jersey Ave. S.E.
Washington, DC 20590-9898

RE: Certification required by FHWA for delegation of NEPA and other responsibilities to
TxDOT

Dear Administrator Mendez,

Pursuant to the authority provided by the Moving Ahead for Progress in the 21st Century Act or "MAP-21," and specifically, 23 U.S.C. §327 as amended by MAP-21, the Texas Department of Transportation ("TxDOT") is submitting an application to FHWA for delegation of responsibility for compliance with the National Environmental Policy Act ("NEPA") and other Federal environmental laws ("NEPA delegation"). On August 30, 2013, FHWA published proposed rules setting forth the requirements for such applications (Docket No. FHWA-2013-0022). FHWA's proposed rules specify that a State's application for NEPA delegation must include certain certifications by the State's Attorney General or other State official legally empowered by State law (*see* proposed 23 C.F.R. §§773.109(a)(6) & (7)). The purpose of this letter is to provide the certifications required by FHWA to accompany TxDOT's application for NEPA delegation.

Under Texas Government Code §402.001, if the attorney general is absent or unable to act, the attorney general's first office assistant shall perform the duties of the attorney general that are prescribed by law. In my official capacity as the First Assistant Attorney General of the State of Texas, I certify the following:

- As stated in Texas Transportation Code, §201.6035(a), TxDOT is legally authorized by State law to assume the responsibilities of the United States Department of Transportation with respect to duties under NEPA and other Federal environmental laws.
- As provided for by Texas Transportation Code, §201.6035(c), the State of Texas expressly consents to exclusive Federal court jurisdiction with respect to the compliance, discharge, and enforcement of any responsibility of the United States Department of Transportation assumed by TxDOT.

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Figure 4. Image of Certification for delegation of NEPA letter from First Assistant Attorney General of Texas, page 1

Mr. Victor M. Mendez
October 30, 2013
Page 2

- The Texas Public Information Act (Texas Government Code, Chapter 552) is comparable to 5 U.S.C. 552 (Freedom of Information Act), including providing that any decision regarding the public availability of a document under that State law is reviewable by a court of competent jurisdiction.

Sincerely,



Daniel T. Hodge
First Assistant Attorney General

DTH/jlh

Figure 5. Image of Certification for delegation of NEPA letter from First Assistant Attorney General of Texas, page 2

Appendix D. Evidence of Required Notice and Solicitation of Public Comment by TxDOT

[This appendix will include a copy of the Texas Register notice, screen shot of TxDOT's NEPA assignment documentation website, and the email notice to federal and state resource agencies and federally recognized tribal governments are attached in Appendix D.]

Appendix E. Copies of Comments Received on TxDOT's Draft FRA NEPA Assignment Application

[This appendix will include copies of timely comments received on the draft application.]

Appendix F. Summary of Comments Received on TxDOT's Draft FRA NEPA Assignment Application and Responses to Substantive Comments

[This appendix will include a summary of comments received and TxDOT's responses to substantive comments.]

Abbreviations and Acronyms

Table 1. Abbreviations and acronym definitions

Abbreviation or Acronym	Definition
CAA	Clean Air Act
CE	Categorical Exclusion
CFR	Code of Federal Regulations
EA	Environmental Assessment
ECOS	Environmental Compliance Oversight System
EIS	Environmental Impact Statement
ENV	Environmental Affairs Division of TxDOT
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FRA	Federal Railroad Administration
FY	fiscal year
MOU	Memorandum of Understanding
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act
NOI	Notice of Intent

Abbreviation or Acronym	Definition
PM	project manager
QA	quality assurance
QC	quality control
ROD	Record of Decision
RRD	Railroad Division of TxDOT
SME	subject matter expert
TAC	Texas Administrative Code
TxDOT	Texas Department of Transportation
U.S.C.	United States Code