

QC process for environmental documents existed.

The audit identified a general lack of understanding of the purpose of the use of the Internal Certification with respect to its role in the Pilot Program responsibilities assumed. This lack of understanding involves the overall reasoning and logic for the comprehensive progression of authorities of the reviews needed in completion of the certification form. The audit identified a lack of clear understanding among Caltrans staff that the environmental branch chief must be the final signatory. Considering these misunderstandings and the deficient finding (D2) below, the Audit team recommends that Caltrans evaluate the use of the QC Certification Forms to assess whether the intended goals of its use are being met.

#### *Findings—Deficient*

(D1) *Performance Measure*—Section 10.1.3 of the MOU requires Caltrans to collect data and monitor its progress in meeting the performance measures in section 10.2 of the MOU, including performance measure 10.2.1(C)(i): “Assess change in communication among Caltrans, Federal and State resource agencies, and the public.” Currently, Caltrans has no metric to evaluate this performance measure.

(D2) *QA/QC Certification Process*—To comply with MOU section 8.2.5 and SER Chapter 38, Caltrans requires staff to review each environmental document in accordance with the policy memo titled “Environmental Document Quality Control Program under the NEPA Pilot Program” (July 2, 2007). The audit team observed the following deficiencies through Caltrans staff interviews and project file reviews:

(a) SER Chapter 38 section, “Quality Control Program,” requires the environmental branch chief’s “quality control review,” to always constitute the last review. In six instances identified by the audit team, the environmental branch chief was not the final reviewer based on the dates indicated on the forms.

(b) The SER Chapter 38 requires that the Caltrans’ independent review of the environmental document not begin until the External QC Certification form has been completed. It was observed in three instances that the completion of the Internal Certification QC form predated the completion of the External Certification QC form.

(D3) *Submission of Environmental Documents for Legal Review*—Three of the four environmental documents the audit team identified as having undergone legal review prior to the July

2008 audit were not submitted in accordance with the procedures specified in the Division of Environmental Affairs (DEA) memorandum dated July 2, 2007, “Environmental Document Quality Control Program under the NEPA Pilot Program” (nor, by reference, the then-operative October 15, 2007, Caltrans Legal Division memorandum, “Procedures for Determining Legal Sufficiency for Environmental Documents under the NEPA Pilot Program”). The procedural deviations identified are as follows:

(a) One NEPA environmental assessment, meeting Caltrans’ criteria for a “Complex EA” per the July 2, 2007, DEA memorandum (public controversy and controversy over project purpose), underwent legal review prior to approval without the program office having provided the reviewing attorney any of the supporting documentation for “Complex EAs” required by the July 2, 2007, and October 15, 2007, memoranda.

(b) Two other transmittals were sent to request the initiation of the formal Legal Sufficiency review without the reviewing attorney having been provided all six items required by the July 2, 2007, and the October 15, 2007, memoranda. In those cases, however, the attorney did eventually receive all required items.

(c) It was observed that a District’s transmittal of a Final EIS for Legal Sufficiency review predated the Environmental Branch Chief’s certification on the Internal Certification form. The SER Chapter 38 requires that the transmittal to the Legal Division will include the completed and signed Internal and External QC certification forms.

(D4) *Environmental Document Process—Class of Action Determinations*—The audit team found an inconsistent understanding and implementation of the process for documentation of class of action determinations and concurrences. The NEPA process, dictates that the thought process and analysis necessary for the determination of the class of action for a project should be documented as part of the project’s record keeping. Sections 771.111(a) and (b) of Title 23, Code of Federal Regulations discuss the determination and identification of the class of action for a project and to verify compliance with these regulations requires some documentation.

Additionally, Chapter 38 of the SER provides a means of documenting class of action determinations via the Preliminary Environmental Analysis

Report for State Highway System projects or via the Preliminary Environmental Study form for Local Assistance projects. The procedures also require class of action determinations for all EAs (including Complex EAs) and EISs to be made with the concurrence of the Headquarters Environmental Coordinator. The SER states that, “obtaining the concurrence of the Headquarters Environmental Coordinator may be done through an e-mail which includes the project description, proposed class of action, and rationale. The Coordinator’s e-mail response will provide concurrence.”

The audit team observed through project file review in the 3 Districts visited, the process described in the SER was not consistently followed. In more than six instances, project files did not contain any record of a class of action determination or concurrence. This area was cited as *Needs Improvement* in the January 2008 audit. Interviews with Caltrans staff and review of project files showed varying understanding and compliance with the SER and with Caltrans Application section 773.106 (b)(3)(ii) and MOU section 5.1.1 regarding procedural and substantive requirements.

#### **Response to Comments and Finalization of Report**

Only one comment was received by FHWA during the 30-day comment period for the draft audit report. An anonymous comment was submitted that questions the cost and time saving benefits of this Pilot Program. In considering this comment, it appears that this comment relates more to the need for the Pilot Program as opposed to the results of the audit, especially since the comment was submitted prior to the audit report being publicly available. As such, the FHWA feels that there is no need to revise the draft audit report findings to be responsive to this comment, with the exception of the addition of this section.

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

[Docket No. FRA–2009–0001–N–3]

#### **Notice and Request for Comments**

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded

to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 10, 2008 (73 FR 75169).

**DATES:** Comments must be submitted on or before March 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 10, 2008, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 73 FR 75169. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5

CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

**Title:** Railroad Rehabilitation and Improvement Financing Program.

**OMB Control Number:** 2130-0548.

**Type of Request:** Extension of a currently approved collection.

**Affected Public:** Railroads, State and Local Governments, Other Interested Eligible Parties.

**Abstract:** Prior to the enactment of the Transportation Equity Act of the 21st Century ("TEA 21"), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "Act"), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR 260. Section 7203 of TEA 21, Public Law 105-178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the eligibility of applicants for a loan regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed \$3.5 billion at any one time and not less than \$1 billion is to be available solely for projects benefitting railroads other than Class I carriers.

**Annual Estimated Burden Hours:** 2,163 hours.

**Addresses:** Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, **Attention:** FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address:

*oira\_submissions@omb.eop.gov.*

**Comments are invited on the following:** Whether the proposed collection of information is necessary for the proper performance of the

functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501-3520.

Issued in Washington, DC, on February 10, 2009.

**Kimberly Orben,**

*Director, Office of Financial Management, Federal Railroad Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety; Application for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of special permits from the Department of Transportation Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before March 19, 2009.

**Address Comments To:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-