



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2018-0014]

**Application from the State of California to Participate in the Surface
Transportation Project Delivery Program for Certain Railroad Projects**

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (USDOT).

ACTION: Notice of receipt of application and request for comments.

SUMMARY: This notice announces that FRA has received and reviewed an application from the State of California (State) acting through its California State Transportation Agency (CalSTA) and California High-Speed Rail Authority (Authority) requesting participation in the Surface Transportation Project Delivery Program (Program). Under the Program, FRA may assign, and the State may assume, responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FRA's responsibilities for environmental review, consultation, or other actions required under Federal environmental laws with respect to one or more railroad projects within the State. FRA invites the public to comment on the State's request, including its application and the draft Memorandum of Understanding (MOU), which outlines how the State would implement the Program, with FRA oversight. The State's application and the draft MOU

are available for public inspection in the docket. FRA will use the public comments to inform its decision on whether to approve or deny the State's application.

DATES: Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket Number FRA-2018-0014, by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments;
- Mail: Docket Management Facility; U.S. DOT, 1200 New Jersey Ave., SE, W12-140, Washington, DC 20590;
- Hand Delivery: The Docket Management Facility is located in Room W12-140, West Building Ground Floor, U.S. DOT, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Fax: 202-493-2251.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Perez, Environmental Protection Specialist, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, telephone: (202) 493-0388, email: stephanie.perez@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the *Federal Register's* home page at <http://www.archives.gov/federal-register>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the USDOT docket, as described above, at <http://www.regulations.gov/>.

Privacy Act Statement

Anyone can search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or you may visit <https://www.regulations.gov/privacyNotice>.

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the U.S. Department of Transportation (Secretary) to assign, and a State to assume, responsibility for all or part of the Secretary's responsibilities for environmental review, consultation, or other actions required under NEPA (42 U.S.C. 4321 *et seq.*) and any Federal environmental law with respect to one or more highway projects within the State, as well as one or more railroad, public transportation, and/or multimodal projects.¹ The FRA is authorized to act on behalf of the Secretary with respect to these matters for railroad projects.

¹ The Secretary may not assign its responsibility for making any conformity determination required under section 176 of the Clean Air Act.

Under the draft MOU, FRA would assign to the State, acting through CalSTA or the Authority, the responsibility for making decisions under NEPA for railroad projects proposed as part of the California High-Speed Rail system, as further described in the State's application and the draft MOU, with the exception of the following:

- (1) Projects that cross state boundaries or that cross or are adjacent to international boundaries are excluded from the railroad projects for which FRA environmental review responsibilities are being assumed by the State. For purposes of the State's application and draft MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or modification of an existing, Presidential Permit by the U.S. Department of State.
- (2) As provided at 23 U.S.C. 327(a)(2)(D), any railroad project that is not assumed by the State as identified in the State's application and the draft MOU remains the responsibility of the FRA.

Under the draft MOU, the State would also assume the responsibility to conduct the following environmental review, consultation, and other related activities for project delivery:

Environmental Review Process

- Efficient environmental reviews for project decisionmaking, 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 to the extent 23 U.S.C. 327 requires FRA to retain responsibility for conformity determinations

Noise

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

Wildlife

- Endangered Species Act of 1973 (ESA), 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
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101, et seq., except to the extent 23 CFR part 773 requires FRA to retain responsibility for Government-to-Government consultation with Indian tribes
- Archeological Resources Protection Act, 16 U.S.C. 470aa-479mm
- Title 54, Chapter 3125 – 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 (FPPA), 7 U.S.C. 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Sections 401, 402, 404, 408, and Section 319)
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j-26
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130
- General Bridge Act of 1946, 33 U.S.C. 525-533

- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466

Parklands and Other Special Land Uses

- 49 U.S.C. 303 (Section 4(f))
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302-200310

Executive Orders

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species
- E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure

The draft MOU would allow the State to act in the place of FRA in carrying out the environmental review-related functions described above, except with respect to Government-to-Government consultations with Federally-recognized Indian tribes. The FRA would retain responsibility for conducting formal Government-to-Government consultation with Federally-recognized Indian tribes. The Authority would continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with the FRA upon request. The Authority would also be able to

assist FRA with formal consultations, with consent of a tribe, but FRA would remain responsible for the consultation.

In addition, the State would not assume FRA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506), or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the State's application and draft MOU are in the USDOT docket or may be obtained by contacting FRA at the address provided above. A copy also may be viewed on the Authority's Web site at:

http://www.hsr.ca.gov/Programs/Environmental_Planning/nepa_assignment.html.

The FRA will consider all substantive comments submitted when making its decision on the State's request. Any final MOU approved by FRA may include changes based on comments and consultations and will be made publicly available.

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 773.109-111; 40 CFR 1507.3; and 49 CFR 264.101.

Jamie Rennert,

Director,

Office of Program Delivery, Federal Railroad Administration.

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