



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2024-0039]

Renewal Package from the State of California to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

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

ACTION: Notice, request for comments.

SUMMARY: This notice announces that FRA has received and reviewed a renewal package from the State of California (State) acting through the California State Transportation Agency (CalSTA) and California High-Speed Rail Authority (Authority) requesting renewed 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 (NEPA), and all or part of FRA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental laws with respect to one or more railroad projects within the State. FRA has determined the renewal package to be complete, and developed a draft renewal MOU with CalSTA and the Authority outlining how the State will implement the Program with FRA oversight. The public is invited to comment on the State's request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments related to Docket No. FRA-2024-0039 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must refer to the Federal Railroad Administration and the docket number in this notice (FRA-2024-0039). Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, *for FRA*, please contact Ms. Lana Lau, Supervisory Environmental Protection Specialist, Office of Environmental Program Management, Federal Railroad Administration, telephone (202) 923-5314, email: Lana.Lau@dot.gov. For the Authority, please contact Mr. Scott Rothenberg, NEPA Assignment Manager, Environmental Services, California High-Speed Rail Authority, telephone: (916) 403-6936; email: Scott.Rothenberg@hsr.ca.gov.

SUPPLEMENTARY INFORMATION:

Background: Section 327 of Title 23, United States Code (23 U.S.C. 327) establishes the Surface Transportation Project Delivery Program (Program). It 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 FRA is authorized to act on behalf of the Secretary with respect to these matters for railroad projects.

The State of California initially participated in the Federal Highway Administration's (FHWA) Surface Transportation Project Delivery Pilot Program (a predecessor to the Program) from July 1, 2007, through September 30, 2012. In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) amended 23 U.S.C. 327 to establish the permanent Program. As a result, on October 1, 2012, the State, acting through Caltrans, entered into a MOU with FHWA that bridged the pilot Program with the Program. Previously, MOUs under the Program included a term of 5 years. However, in 2021, the Infrastructure Investment and Jobs Act amended 23 U.S.C. 327 to require MOUs to have a term of 10 years if the state has participated in the Program (or predecessor program) for at least 10 years. The State has participated in the Program for 15 years, including the State's participation in the pilot program.

On July 23, 2019, the State of California, acting through CalSTA and the Authority, assumed FRA's responsibilities for one or more railroad projects in the state, after submitting its application to FRA, obtaining FRA's approval, and entering into an MOU in accordance with 23 U.S.C. 327 and the application regulations for the Program (23 CFR part 773). On May 22, 2023, the Secretary of CalSTA notified FRA of its intention to renew its participation in the Program. On July 21, 2023, the Authority submitted a Summary of Key Changes, which summarized the State's proposed changes to its NEPA Assignment program and requested FRA's determination on whether the

¹ The Secretary may not assign its responsibility for making any conformity determination required under section 176 of the Clean Air Act. Also not assignable is Government to Government consultation with federally recognized Indian Tribes.

proposed changes constituted changes warranting statewide notice for public comment prior to the formal submittal of the renewal application. On January 4, 2024, FRA concluded that no significant changes were proposed, or new assignment responsibilities sought, that would warrant statewide notice for public comment before the Authority formally submits a renewal application to FRA. On January 25, 2024, the State submitted the renewal package in accordance with 23 CFR 773.115. Since the State's submittal, FRA and the State have made minor changes to Section 3.3.1 of the MOU to clarify the types of projects that would be suitable for assignment, and these changes are included in the proposed renewal MOU.

Under the proposed renewal MOU, FRA would assign to the State, acting through CalSTA and the Authority, the responsibility for making decisions on railroad projects as described in the State's application and in Section 3.3 of the draft renewal MOU.

Excluded from assignment are the following:

- (1) Railroad projects that cross state boundaries or that cross or are adjacent to international boundaries. For purposes of the State's application and the proposed renewal MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or modification of an existing, Presidential Permit.
- (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 proposed renewal MOU, remains the responsibility of FRA.

Under the proposed renewal MOU, State, acting through CalSTA and CHSRA, 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 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, with the exception of any project-level general 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

Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d

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. 300101-307108, et seq.

Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469-469c

Archeological Resources Protection Act, 16 U.S.C. 470aa–470mm, 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. 401 and 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. 4001–4133

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

Wetlands Mitigation, 23 U.S.C. 119(g)

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, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species

E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

E.O. 14008, Tackling the Climate Change Crisis at Home and Abroad

E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

The proposed renewal MOU would allow the State, acting through CalSTA and the Authority, to continue 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 State, acting through CalSTA and the Authority, would continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FRA upon request. The State, acting through CalSTA and the Authority, may assist FRA with Government-to-Government consultations, with consent of a Tribe, but FRA remains responsible for the consultation.

In addition, the State, acting through CalSTA and the Authority, 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.

The MOU content reflects the State's, acting through CalSTA and the Authority, desire to continue its participation in the Program. FRA and the State, acting through CalSTA and the Authority, have agreed to modify some of the provisions in the MOU to, among other things: include an updated list of environmental laws, presidential executive

orders and related guidance, including added references to Title VI of the Civil Rights Act of 1964 and environmental justice; provide updated Program information, organization charts, and staffing structure; and provide updated policies and processes, including updates to monitoring and oversight and quality assurance and quality control (QA/QC).

The Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Pub. L. 117–58), enacted on November 15, 2021, amended 23 U.S.C. 327(c)(5) to require that MOUs have a term of 10 years if a State that has participated in the Program (or predecessor program) for at least 10 years. The State has participated in the Program for 15 years, inclusive of the State’s participation in the Program and the pilot program with FHWA. Therefore, this proposed renewal MOU will have a term of 10 years.

FRA will consider the comments submitted on the State’s application and the proposed renewal MOU. A copy of the renewal package and proposed renewal MOU may be viewed on the docket (FRA-2024-0039) at www.regulations.gov. A copy also may be viewed on the Authority's website at: <https://hsr.ca.gov/programs/>. Any final renewal MOU approved by FRA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR part 773; 40 CFR 1507.3; and 49 CFR 264.101.

Marlys Ann Osterhues,

Director, Office of Environmental Program Management, Office of Railroad Administration, Federal Railroad Administration.