

(4) A verification of the personnel necessary to carry out the authority that may be granted under the program. The verification shall contain the following information:

(i) A description of the staff positions, including management, that will be dedicated to providing the additional functions needed to accept the delegated responsibilities;

(ii) A description of any changes to the State DOT's organizational structure that are deemed necessary to provide for efficient administration of the responsibilities assumed; and

(iii) A discussion of personnel needs that may be met by the State DOTs use of outside consultants, including legal counsel provided by the State Attorney General or private counsel;

(5) A summary of financial resources showing the anticipated financial resources available to meet the activities and staffing needs identified in (b)(3) and (b)(4) of this part, and a commitment to make adequate financial resources available to meet these needs;

(6) Certification and explanation by State's Attorney General, or other State official legally empowered by State law, that the State DOT can and will assume the responsibilities of the Secretary for the Federal environmental laws and projects requested and that the State DOT will consent to exclusive Federal court jurisdiction with respect to the responsibilities being assumed. Such consent must be broad enough to include future changes in relevant Federal policies and procedures to which FHWA would be subject or such consent would be amended to include such future changes;

(7) Certification by the State's Attorney General, or other State official legally empowered by State law, that the State has laws that are comparable to the Federal Freedom of Information Act (5 U.S.C. 552), including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction; and

(8) Evidence that the required notice and solicitation of public comment by the State DOT relating to participation in the program has taken place. Requirements for notice and solicitation of public comments are as follows:

(i) not later than 30 days prior to submitting its application, a State must give notice that the State intends to participate in the program and solicit public comment by publishing the complete application of the State in accordance with the appropriate public notice law of the State. If allowed under State law, publishing a notice of availability of the application rather than the application itself may satisfy the requirements of this subparagraph so long as the complete application is made reasonably available to the public for inspection and copying, and

(ii) copies of all comments received shall be submitted with the application. The State should summarize the comments received, and note changes, if any, that were made in the application in response to public comments.

(c) The application shall be signed by the Governor or the head of the State agency having primary jurisdiction over highway matters. The application must also identify a point of contact for questions regarding the application. Applications may be submitted in electronic format.

§ 773.107 Application approval.

If a State DOT's application is approved, then the State DOT will be invited to enter into a written Memorandum of Understanding (MOU) with the FHWA, as provided in 23 U.S.C. 327. None of FHWA's responsibilities under NEPA or other environmental laws may be assumed by the State DOT prior to execution of the MOU.

§ 773.108 Application amendments.

(a) After a State DOT submits its application to the FHWA, but prior to the execution of a MOU, the State DOT may amend its application at any time to request additional highway projects, classes of highway projects, or more environmental responsibilities. However, prior to making any such amendments, the State DOT must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the State DOT must provide copies of all comments received and note the changes, if any, that were made in response to the comments.

(b) A State DOT may amend its application no earlier than one year after a MOU has been executed to request additional highway projects, classes of highway projects, or more environmental responsibilities. However, prior to making any such amendments, the State DOT must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the State DOT must provide copies of all comments received and note the changes, if any, that were made in response to the comments.

APPENDIX A TO PART 773—FHWA ENVIRONMENTAL RESPONSIBILITIES THAT MAY BE ASSIGNED UNDER SECTION 6005

Federal Procedures

National Environmental Policy Act (NEPA), 42 U.S.C. 4321–43351.
 FHWA Environmental Regulations at 23 CFR Part 771, 772 and 777
 CEQ Regulations at 40 CFR 1500–1508
 Clean Air Act, 42 U.S.C. 7401–7671(q). *Any determinations that do not involve conformity.*

Noise

Compliance with the noise regulations at 23 CFR part 772

Wildlife

Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536
 Marine Mammal Protection Act, 16 U.S.C. 1361
 Anadromous Fish Conservation Act, 16 U.S.C. 757(a)–757(g)
 Fish and Wildlife Coordination Act, 16 U.S.C. 661–667(d)
 Migratory Bird Treaty Act, 16 U.S.C. 703–712
 Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Historic and Cultural Resources

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) *et seq.*
 Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)–11
 Archeological and Historic Preservation Act, 16 U.S.C. 469–469(c)
 Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013

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. 1251–1377
 Section 404
 Section 401
 Section 319
 Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
 Coastal Zone Management Act, 16 U.S.C. 1451–1465
 Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j) (6)
 Section 10 of the 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. 3921, 3931
 TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11)
 Flood Disaster Protection Act, 42 U.S.C. 4001–4128

Parklands

Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
 Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604

Hazardous Materials

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
 Superfund Amendments and Reauthorization Act of 1986 (SARA)
 Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k)

Executive Orders Relating to Highway Projects

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

PART 777—MITIGATION OF IMPACTS TO WETLANDS AND NATURAL HABITAT

Sec.
 777.1 Purpose.
 777.2 Definitions.
 777.3 Background.
 777.5 Federal participation.
 777.7 Evaluation of impacts.
 777.9 Mitigation of impacts.
 777.11 Other considerations.

AUTHORITY: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303; 23 U.S.C. 101(a), 103, 109(h), 133(b)(1), (b)(11), and (d)(2), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).