§ 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.

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

Federal Procedures


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


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)


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)


Social and Economic Impacts


Water Resources and Wetlands

Clean Water Act, 33 U.S.C. 1251–1377
PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))

Sec. 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. 4001–4004

Hazardous Materials

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675

Superfund Amendments and Reauthorization Act of 1986 (SARA)


Executive Orders Relating to Highway Projects

E.O. 11986 Protection of Wetlands

E.O. 11988 Floodplain Management

E.O. 12866 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

E.O. 13112 Invasive Species

PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))

Sec.

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SOURCE: 73 FR 13395, Mar. 12, 2008, unless otherwise noted.

§ 774.1 Purpose.

The purpose of this part is to implement 23 U.S.C. 138 and 49 U.S.C. 303, which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as “Section 4(f).”

§ 774.3 Section 4(f) approvals.

The Administration may not approve the use, as defined in §774.17, of Section 4(f) property unless a determination is made under paragraph (a) or (b) of this section.

(a) The Administration determines that:

(1) There is no feasible and prudent avoidance alternative, as defined in §774.17, to the use of land from the property; and

(2) The action includes all possible planning, as defined in §774.17, to minimize harm to the property resulting from such use; or

(b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a de minimis impact, as defined in §774.17, on the property.

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that:

(1) Causes the least overall harm in light of the statute’s preservation purpose. The least overall harm is determined by balancing the following factors:

(i) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(ii) The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;

(iii) The relative significance of each Section 4(f) property: