§ 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


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


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


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


Farmland Protection Policy Act (FPPA), 7 U.S.C. 2201-2209

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. 6601-6604

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

§ 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 § 774.9, 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;

(iv) The views of the official(s) with jurisdiction over each Section 4(f) property;

(v) The degree to which each alternative meets the purpose and need for the project;

(vi) After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and

(vii) Substantial differences in costs among the alternatives.

(2) The alternative selected must include all possible planning, as defined in §774.17, to minimize harm to Section 4(f) property.

(d) Programmatic Section 4(f) evaluations are a time-saving procedural alternative to preparing individual Section 4(f) evaluations under paragraph (a) of this section for certain minor uses of Section 4(f) property. Programmatic Section 4(f) evaluations are developed by the Administration based on experience with a specific set of conditions that includes project type, degree of use and impact, and evaluation of avoidance alternatives.1

1FHWA has issued five programmatic Section 4(f) evaluations: (1) Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a...