

projects on new harmonized laws for investment securities; the anticipated completion of new standards for business insolvency law reform at UNCITRAL, the World Bank and the International Monetary Fund; a draft Convention on electronic commerce focusing on cross-border contract formation, and related treaty law issues, and implementation of the Cape Town Convention on international financing interests in mobile equipment, including aircraft.

**Time and Place:** Meetings will be held at the new facilities of the International Law Institute (ILI) at 1055 Jefferson Place, NW., in Georgetown. Meetings will begin at 9:30 a.m. Thursday and Friday and close at 5 p.m. on Thursday and 4 p.m. on Friday. The meeting is open to the public, to the extent seating capacity is available; persons planning to attend should provide their names in advance, with contact numbers, including e-mail addresses, and affiliation(s) if any, to the Office of the Assistant Legal Adviser for Private International Law by e-mail to *ReidCD@state.gov* or by fax to 202-776-8482. Persons who cannot attend but who wish to comment on any of the topics referred to above are welcome to do so.

Documents on these topics are obtainable at <http://www.Uncitral.org>; <http://www.hccl.net>; <http://www.Unidroit.org>; and <http://www.oas.org>. For further information on the topics, please contact Jeff Kovar at *KovarJD@State.gov*, Mary Helen Carlson at *CarlsonMH@State.gov*, or Hal Burman at *Halburman@aol.com*. For information on the ILI call Kiril Glavev or Don Wallace, Jr. at 202-247-6006, or email

ILI at *Wallace@ili.org* or *K-Glavev@ili.org*. For information on the Advisory Committee contact Hal Burman as noted above or by fax at 202-776-8482.

Dated: April 28, 2004.

**Harold S. Burman**,

*Advisory Committee Executive Director, Department of State.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Federal Environmental Laws and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice listing Federal environmental laws and Executive Orders applicable to the development and review of transportation infrastructure projects.

**SUMMARY:** Many Federal environmental statutes and Executive Orders establish requirements applicable to the development and review of transportation infrastructure projects that receive financial support from the Department of Transportation (DOT). DOT strives to meet these requirements in a manner that is both expeditious and environmentally sound. The goal of this notice is to contribute to this important effort by providing a brief description of the *primary* statutes and Executive Orders applicable to the development

and review of these transportation infrastructure projects.

**FOR FURTHER INFORMATION CONTACT:** Helen Serassio; U.S. Department of Transportation; 400 7th Street, SW., Room 10102; Washington, DC 20590. Telephone 202-366-1974.

**SUPPLEMENTARY INFORMATION:** Many Federal environmental statutes and Executive Orders establish requirements applicable to the development and review of transportation infrastructure projects that receive financial support from the Department of Transportation (DOT). DOT strives to meet these requirements in a manner that is both expeditious and environmentally sound. The goal of this document is to contribute to this important effort by providing a brief description of the primary statutes and Executive Orders applicable to the development and review of these transportation infrastructure projects. This summary is not, and should not be relied upon as, an official or independent interpretation or expression of policy on the matters summarized.

DOT includes 10 operating administrations and the Office of the Secretary of Transportation. The following table lists the Department's operating administrations, a citation to their National Environmental Policy Act procedures, and an Internet link or links where more information on environmental procedures may be found.<sup>1</sup> Because this document only presents a brief summary of the main statutes and Executive Orders, readers who want more complete information should contact the relevant operating administration.

Departmental organization	NEPA procedures	Environmental internet links
Federal Highway Administration .....	23 CFR Parts 771 and 650 .....	<a href="http://www.fhwa.dot.gov/environment/index.htm">http://www.fhwa.dot.gov/environment/index.htm</a> ; <a href="http://ecfr.gpoaccess.gov">http://ecfr.gpoaccess.gov</a> Title 23, Parts 771 and 650.
Federal Transit Administration .....	23 CFR Part 771 .....	<a href="http://ecfr.gpoaccess.gov">http://ecfr.gpoaccess.gov</a> Title 23, Part 771
Federal Aviation Administration .....	FAA Order 1050.1D (agency-wide), FAA Order 5050.41 (Airport Environmental Handbook).	<a href="http://www.aee.faa.gov/aee-200/Environment.htm">http://www.aee.faa.gov/aee-200/Environment.htm</a> ; <a href="http://www.faa.gov/arp/environmental">http://www.faa.gov/arp/environmental</a> .
Federal Railroad Administration .....	64 FR 28545 .....	<a href="http://www.fra.dot.gov/Content3.asp?P=25">http://www.fra.dot.gov/Content3.asp?P=25</a> <a href="http://www.gpoaccess.gov/fr/index.html">http://www.gpoaccess.gov/fr/index.html</a> 1999, page 28545.
National Highway Traffic Safety Administration.	49 CFR Part 520 .....	<a href="http://www.gpoaccess.gov/fr/index.html">http://www.gpoaccess.gov/fr/index.html</a> 2004, page 9680; <a href="http://dmses.dot.gov/docimages/p78/271575.pdf">http://dmses.dot.gov/docimages/p78/271575.pdf</a> .
Federal Motor Carrier Safety Administration.	FMCSA Order 5610.1 .....	<a href="http://199.79.179.19/OLPFiles/OST/008589.pdf">http://199.79.179.19/OLPFiles/OST/008589.pdf</a> .
Bureau of Transportation Statistics Research and Special Programs Administration.	DOT Order 5610.1C .....	<a href="http://ops.dot.gov">http://ops.dot.gov</a> ; <a href="http://hazmat.dot.gov">http://hazmat.dot.gov</a> .
Maritime Administration .....	Maritime Administration Order 600.1.	<a href="http://www.marad.dot.gov/programs/env_act.html">http://www.marad.dot.gov/programs/env_act.html</a> .
St. Lawrence Seaway Development Corporation.	SLS Order 10 5610.1C .....	
Office of the Secretary of Transportation.	DOT Order 5610.1C .....	<a href="http://199.79.179.19/OLPFiles/OST/008589.pdf">http://199.79.179.19/OLPFiles/OST/008589.pdf</a> .

<sup>1</sup> Due to the fact that the Coast Guard and Transportation Security Administration have

become part of the Department of Homeland

Security, they have not been included in this document.

## A. Air Quality

*Clean Air Act, 42 U.S.C. 7401–7671q.* This statute regulates emissions of air pollutants in order to protect human health and the environment. In general, the Clean Air Act delegates responsibility to State and local governments to prevent and control air pollution by requesting States to submit State implementation plans (SIPs) to the Environmental Protection Agency (EPA) for program approval and delegation of implementation responsibilities. SIPs are written plans that States develop to provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). If a State fails to create and implement an adequate SIP, EPA creates and implements its own SIP for that State. In 1990, Congress amended the Clean Air Act to include parts that: strengthen measures for attaining air quality standards (Title I); set forth provisions relating to mobile sources (Title II); expand the regulation of hazardous air pollutants (Title III); require substantial reductions in power plant emissions for control of acid rain (Title IV); establish operating permits for all major sources of air pollution (Title V); establish provisions for stratospheric ozone protection (Title VI) and expand enforcement powers and penalties (Title VII). [Source: 42 U.S.C. 7401.] Regulations implementing the Clean Air Act may be found in 40 CFR parts 50–99.

Transportation plans, programs and highway and transit projects must conform to the State's air quality implementation plans that provide for attainment of the NAAQS under regulations at 40 CFR part 51 subpart T. DOT actions other than highway and transit actions must also conform to the SIP under EPA's General Conformity regulation, 40 CFR part 51 subpart W. Conformity requirements apply to actions in nonattainment and maintenance areas.

## B. Noise

*Section 136(b) of Public Law 91–605, 23 U.S.C. 109(h) & 109(i).* Title 23 of the United States Code, sections 109(h) and 109(i), require the Secretary of Transportation to promulgate guidelines to "assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the costs of eliminating or

minimizing such adverse effects and the following: (1) Air, noise, and water pollution; \* \* \* and to "develop and promulgate standards for highway noise levels compatible with different land uses and \* \* \* shall not approve plans and specifications for any proposed project on any Federal-aid system \* \* \* unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards." The FHWA regulations for the mitigation of highway traffic noise in the planning and design of federally aided highways are contained in title 23 of the Code of Federal Regulations part 772. Compliance with the noise regulations is a prerequisite for the granting of Federal-aid highway funds for construction or reconstruction of a highway. [Source: 23 U.S.C. 109(h) & 109(i).]

## C. Environmental Justice

*Executive Order No. 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-income Populations."* This Executive Order establishes a formal Federal policy on environmental justice. The Council on Environmental Quality (CEQ) has oversight of the Federal Government's compliance with EO 12898. CEQ has published a guidance document on environmental justice for Federal agencies. In addition, all Federal agencies were directed under EO 12898 to establish internal directives to ensure that the spirit of the Order is reflected in the full range of their activities. The CEQ's guidance describes how analysis of environmental justice impacts must be integrated within the NEPA framework, including the scoping, public participation, analysis, alternatives and mitigation phases of NEPA analysis. The U.S. Department of Transportation's agency level order establishing procedures for compliance with EO 12898 establishes requirements for integrating environmental justice into the NEPA process through analysis of environmental justice impacts and public involvement, as well as definitions of relevant terms. [Source: Executive Order No. 12898.]

## D. Wildlife

*1. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, at Section 1536.* The Endangered Species Act (ESA) provides for the protection of species that are at risk of extinction throughout all or a significant portion of their range, and for the protection of ecosystems on which they depend. Generally, the U.S. Fish and Wildlife Service (FWS) coordinates ESA

activities for terrestrial and freshwater species, and the National Marine Fisheries Service (NMFS) coordinates ESA activities for marine and anadromous species.

The ESA provides for the listing of plant and animal species that are endangered or threatened. All listing decisions are based solely on the best scientific and commercial data available, and consideration of economic impacts during the listing process is prohibited by the Act. Under section 7 of the ESA, all Federal agencies are required to undertake programs for the conservation of endangered and threatened species. Any Federal action that would jeopardize a listed species or destroy or modify its critical habitat is prohibited. Section 7 activities must be carried out in consultation with FWS or NMFS. [Source: 16 U.S.C 1531.] Requirements for the consultation process are described in 50 CFR part 402.

*2. Executive Order 13112, "Invasive Species."* The purpose of this Executive Order is to prevent the introduction of invasive species into the natural environment and provide for their control and minimize the economic, ecological and human health impacts that invasive species may cause. The Order established an Invasive Species Council to oversee implementation of the Order, oversee Federal agency activities concerning invasive species, develop a National Invasive Species Management Plan and facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, environment and human health. Each Federal agency whose actions may affect the status of invasive species is directed to identify such actions and attempt to prevent the introduction of invasive species and not authorize, fund or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species. [Source: Executive Order 13112.]

*3. Marine Mammal Protection Act, 16 U.S.C. 1361.* This statute establishes a Federal responsibility to conserve marine mammals with management vested in both the Departments of the Interior and Commerce. The Act created a moratorium, with certain exceptions, on the taking of marine mammals in United States waters and by United States citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. Native Americans, Aleuts and Eskimos are exempted from the moratorium on taking provided that the taking is conducted for the sake of

subsistence or for the purpose of creating and selling authentic native articles of handicraft and clothing. [Source: 16 U.S.C. 1361.] Applicable regulations: National Oceanic and Atmospheric Administration, Department of Commerce—Civil procedures, 15 CFR Part 904; United States Fish and Wildlife Service, Department of the Interior—General provisions, 50 CFR Part 10; United States Fish and Wildlife Service, Department of the Interior—Marine mammals, 50 CFR Part 18; United States Fish and Wildlife Service, Department of the Interior—Administrative procedures for grants-in-aid (Marine Mammal Protection Act of 1972), 50 CFR Part 82; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Regulations governing the taking and importing of marine mammals, 50 CFR Part 216; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Regulations governing the taking and importing of marine mammals, 50 CFR Part 216; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—General provisions, 50 CFR Part 217; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Endangered fish or wildlife, 50 CFR Part 222; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Authorization for commercial fisheries under Marine Mammal Protection Act of 1972, 50 CFR Part 229; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Whaling provisions, 50 CFR Part 230; and, Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations—Transfer of marine mammal management authority to States, 50 CFR Part 403.

4. *Anadromous Fish Conservation Act, 16 U.S.C. 757a-757g.* This statute authorizes the Secretaries of the Interior and Commerce to enter into cooperative agreements with the States and other non-Federal interests for conservation, development and enhancement of anadromous fish, including those in the

Great Lakes, and to contribute up to 50 percent as the Federal share of the cost of carrying out such agreements. Authorized are investigations, engineering and biological surveys, research, stream clearance, construction, maintenance, and operations of hatcheries and devices and structures for improving movement, feeding and spawning conditions. Also authorized is construction by the Bureau of Reclamation and the Army Corps of Engineers of water resource projects needed solely for such fish. The Fish and Wildlife Service is authorized to conduct studies and make recommendations to the EPA concerning measures for eliminating or reducing pollution substances detrimental to fish and wildlife in interstate or navigable waters, or their tributaries. [Source 16 U.S.C. 757a-g.] Endangered Species Committee Regulations—Anadromous fisheries conservation, development and enhancement, 50 CFR Part 401.

5. *Fish and Wildlife Conservation Act, 16 U.S.C. 2901-2911.* This statute authorizes financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife. [Source: 16 U.S.C. 2901-2911.] United States Fish and Wildlife Service, Department of the Interior—Rules implementing the Fish and Wildlife Conservation Act of 1980, 50 CFR Part 83.

6. *Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d.* This statute requires consultation with the U.S. Fish and Wildlife Service (FWS) and the appropriate State wildlife agency when a project will impound, divert, channelize, or otherwise control or modify the waters of any stream or other body of water. Generally, if a permit is required under sections 9 or 10 of the River and Harbor Act of 1899, or sections 402 or 404 of the Clean Water Act, the consultation requirement will apply. Permit applications will be forwarded to the FWS, which will review them according to their “Guidelines for the Review of Fish and Wildlife Aspects of Proposals in or Affecting Navigable Waterways,” published in the **Federal Register** on December 1, 1975. The FWS issued a mitigation policy in the **Federal Register** on January 23, 1981, that can be consulted when planning mitigation measures. The results of the consultation should be included in the Final EIS or EA. [Sources: 33 U.S.C. 401, 16 U.S.C. 661.]

7. *Executive Order 13186, ‘Responsibility of Federal Agencies To*

*Protect Migratory Birds.*” This Executive Order directs each Federal agency taking actions that have, or are likely to have, a measurable effect on migratory bird populations to develop and implement, within two years, a Memorandum of Understanding with the Fish and Wildlife Service that shall promote the conservation of migratory bird populations. The Department of the Interior was given the task to establish an interagency Council for the Conservation of Migratory Birds to oversee the implementation of the Order. [Source: Executive Order 13186.]

8. *Migratory Bird Treaty Act, 16 U.S.C. 703-712.* The purpose of this statute is to protect the most common wild birds found in the United States by making it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird. Also covered by the Act is the indirect killing of birds by destruction of their nests and eggs. The Fish and Wildlife Service reviews and comments on proposals that could kill birds, even indirectly. [Source: 16 U.S.C. 703.] The Fish and Wildlife Service’s implementing regulations are located at 50 CFR part 10, 50 CFR part 14, and 50 CFR part 20.

9. *Nonindigenous Aquatic Nuisance Prevention and Control Act, 16 U.S.C. 4701-4751.* The purpose of this statute is to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements; to coordinate federally conducted, funded or authorized research, prevention control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species; to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels. [Source: 16 U.S.C. 4701-4751.] Applicable regulations: Coast Guard’s implementing regulations at 33 CFR part 151.

#### E. Historic and Cultural Resources

1. *Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f.* Section 106 of the National Historic Preservation Act, in general, requires the head of any Federal agency having

jurisdiction over a proposed Federal or federally assisted undertaking, or having authority to license an undertaking, to take into account the effect of the undertaking on any property included in or eligible for inclusion in the National Register of Historic Places. Section 106 also requires the agency head to afford the Advisory Council on Historic Preservation (AHP) a reasonable opportunity to comment on such undertaking. [Source: 16 U.S.C. 470f.] The AHP's regulations implementing section 106 appear at 36 CFR part 800.

2. *Archeological Resources Protection Act, 16 U.S.C. 470aa-11.* This statute preserves and protects paleontological resources, historic monuments, memorials and antiquities from loss or destruction. The Act applies to archeological resources on federally or Native American-owned property, establishes penalties for looting and vandalizing such archaeological sites and places protection and management responsibilities on Federal agencies having jurisdiction over land on which the resources may be situated. [Source: 16 U.S.C. 470aa-11.] Regulations concerning the Archaeological Resources Protection Act may be found at 43 CFR Part 7, Protection of Archaeological Resources and 43 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections.

3. *Archeological and Historic Preservation Act, 16 U.S.C. 469-469c.* This statute carries out the policy established by the Historic Sites Act and directs Federal agencies to notify the Secretary of the Interior (National Park Service) whenever they find a Federal or federally assisted, licensed, or permitted project may cause loss or destruction of significant scientific, prehistoric or archeological data. The Department of the Interior and/or the Federal agency may undertake a survey or data recovery. [Source: 16 U.S.C. 469-469c.] The Department of the Interior's implementing regulations can be found at 43 CFR part 7.

4. *Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013.* This statute establishes a means for American Indians, Native Hawaiians, and Native Alaskans to request the return of human remains and other cultural items presently held by Federal agencies or federally assisted museums or institutions. The Act also contains provisions regarding the intentional excavation and removal of, inadvertent discovery of, and illegal trafficking in Native American human remains and cultural items. All Federal agencies that

manage land and/or are responsible for archaeological collections from their lands or generated by their activities must comply with the Act. [Source: 25 U.S.C. 3001.] The Department of the Interior's regulations implementing NAGPRA may be found at 43 CFR part 10.

5. *Executive Order No. 13007, "Indian Sacred Sites."* This Executive Order requires Federal land managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may restrict access to or ceremonial use of, or adversely affect, sacred sites. [Source: Executive Order 13007.]

#### F. Social and Economic Impacts

1. *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. 4601-4655.* This statute establishes a policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs. If land is to be acquired for a Federal or federally assisted program, the program's environmental documentation should contain a description of the land to be acquired. In cases where an acquisition requires the displacement of businesses or individuals, there is a social impact that must be analyzed as part of the environmental documentation process. [Source: 42 U.S.C. 4601.] Federal regulations implementing the Uniform Act are contained in 49 CFR part 24.

2. *Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks."* This Executive Order directs each agency to "ensure that its policies, programs, activities, and standards address disproportionate risks to children \* \* \*." Also, for each regulatory action subject to the Order, agencies must conduct "an evaluation of the environmental health or safety effects of the planned regulation on children" and include "an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency." These findings are to be submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review. In addition, the Order created a task force, co-chaired by the Secretary of Health and Human Services and the EPA Administrator, to make recommendations to the President on Federal strategies for children's

environmental health and safety. [Source: Executive Order 13045.]

3. *Executive Order No. 13175, "Consultation and Coordination With Indian Tribal Governments."* This Executive Order establishes regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities. Each agency is responsible for establishing a process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. [Source: Executive Order No. 13175.]

4. *American Indian Religious Freedom Act, 42 U.S.C. 1996.* This statute protects and preserves places of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, including access to sites, use and possession of sacred objects and the freedom to worship through ceremonials and traditional rites. This Act applies to all projects that affect places of religious importance to Native Americans. [Source 42 U.S.C. 1996.] Applicable regulations: Forest Service, Department of Agriculture—Protection of archaeological resources: Uniform regulations, 36 CFR Part 296; Office of the Secretary of the Interior—Protection of archaeological resources: Uniform regulations, 43 CFR Part 7; and, United States Fish and Wildlife Service, Department of the Interior—Seizure and forfeiture procedures, 50 CFR Part 12.

5. *Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201-4209.* This statute minimizes the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. Federal programs are to be administered to be compatible with State, local units of government, and private programs and policies to protect farmland. Federal agencies are required to develop and review their policies and procedures to implement the FPPA. The FPPA does not authorize the Federal Government to regulate the use of private or nonfederal land. Projects are subject to FPPA if they may irreversibly convert farmland directly or indirectly to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency. [Source: 7 U.S.C. 4201-4209.] Implementing regulations by the Department of Agriculture, Natural Resources Conservation Service are found at 7 CFR part 658.

## G. Water Resources and Wetlands

1. *Clean Water Act, 33 U.S.C. 1251–1377.* This statute establishes the basic structure for regulating discharges of pollutants into the waters of the United States. It gives the EPA the authority to implement pollution control programs, such as setting wastewater standards for industry. The Clean Water Act also contains requirements to set water quality standards for all contaminants in surface waters. The Act makes it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit is obtained. The Act also funds construction of sewage treatment plants under the construction grants program. Section 401 requires water quality certification from the applicable State Water Resource Agency. Section 319 requires that all projects be consistent with State Non-Point Source Pollution Management programs. Section 404, as discussed below, requires the applicant obtain a permit for dredge or fill material from the U.S. Army Corps of Engineers or State agency, as appropriate. Section 402 requires that permits for all other discharges are to be acquired from the EPA or appropriate State agency. [Source: 33 U.S.C. 1251–1376.] Applicable regulations may be found at 23 CFR part 650 subpart B, 33 CFR parts 209, 320–323, 325, 328, 329, and 40 CFR parts 121–125, 129–131, 133, 135–136, 230–231.

2. *Section 404 of the Clean Water Act, 33 U.S.C. 1344.* This section authorizes the U.S. Army Corps of Engineers (USACE) to regulate discharges of dredged or fill material into waters of the United States, including wetland areas. This authority encompasses fill that occurs as a result of infrastructure development, such as a light rail line or a bus terminal. In issuing permits, the Corps of Engineers must apply guidelines developed by the Administrator of the Environmental Protection Agency, and EPA may prohibit fill or disposal at a site or area. [Source: 33 U.S.C. 1344.] Regulations outlining USACE's authority and general policies for implementing the program are found at 33 CFR part 320 and 40 CFR part 230.

3. *Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.* This statute designates a protected network of undeveloped coastal barriers located on the Atlantic and Gulf Coasts called the Coastal Barrier Resources System. Section 5 of this Act prohibits Federal expenditures for construction of any facilities, structures, roads, bridges, airports, etc., within the System. Exceptions can be made for some

activities such as the maintenance of existing channel improvements and related structures, and the maintenance, replacement, reconstruction, or repair (not expansion) of publicly-operated roads or facilities which are essential links in a larger network or system. Consultation with the U.S. Department of the Interior is required. When a proposed project impacts a coastal barrier unit, the Draft Environmental Impact Statement (EIS) should:

- Include a map showing the relationship of each alternative to the unit(s);
- Identify direct and indirect impacts to the unit(s), qualifying and describing the impacts as appropriate;
- Discuss the results of early coordination with the Fish and Wildlife Service, identifying any issues raised and how they were addressed;
- Identify any alternative which (if selected) would require an exception under the Act.

Any issues identified or exceptions required for the preferred alternative should be resolved prior to its selection. This resolution is documented in the final EIS. [Source: 16 U.S.C. 3501.]

4. *Coastal Zone Management Act, 16 U.S.C. 1451–1465.* This statute established a voluntary program in which, of the 35 States with coastal zones, 28 States are currently participating. These States have Department of Commerce approved State plans and receive Federal money and technical assistance to administer their programs. If a transportation project will directly affect the coastal zone of any State with an approved Coastal Zone Management (CZM) Program, the environmental document must show whether the project will be consistent with the CZM Plan. The State agency managing the program, called the principal 306 agency, is usually the State Department of Natural Resources or equivalent agency. This agency should be consulted for procedures that are used to determine consistency with the CZM Plan and its opinion on whether the proposed project is consistent with the State's program. The environmental document should present the applicant's certification that the project is (or is not) consistent with the CZM program and the views of the State agency. [Source: 16 U.S.C. 1451.]

5. *Land and Water Conservation Fund (LWCF), 16 U.S.C. 460l–4.* This statute provides money to Federal, State and local governments to purchase land, water and wetlands for the benefit of the public. Lands and waters purchased through the LWCF are used to:

- Provide recreational opportunities
- Provide clean water

- Preserve wildlife habitat
- Enhance scenic vistas
- Protect archaeological and historical sites

- Maintain the pristine nature of wilderness areas

Land is bought from landowners at fair-market value (unless the owner chooses to offer the land as a donation or at a reduced price). The Fund receives money mostly from fees paid by companies drilling offshore for oil and gas. Other funding sources include the sale of surplus Federal real estate and taxes on motorboat fuel. Section 6(f) of the Act contains provisions to protect Federal investments and the quality of assisted resources. It discourages the casual loss of park and recreation facilities by ensuring changes or conversions from recreation use will bear a cost. The "anti-conversion" requirement applies to all parks and other sites that have been the subject of Land and Water grants of any type. [Source 16 U.S.C. 460l–4.]

Implementing regulations: Forest Service, Department of Agriculture—Occupancy and use of developed sites and areas of concentrated public use, 36 CFR part 291.

6. *Rivers and Harbors Act of 1899, 33 U.S.C. 403.* This statute provides for the protection of navigable waters in the United States by prohibiting the construction of any bridge, dam, dike or causeway over or in navigable waterways of the United States without Congressional approval. Administration of section 9 has been delegated to the Coast Guard. Structures authorized by the State legislatures may be built if the affected navigable waters are totally within one State, provided that the Chief of Engineers and the Secretary of the Army approve the plan. Under section 10 of the Act, the building of any wharfs, piers, jetties, and other structures is prohibited without Congressional approval, and excavation or fill within navigable waters requires the approval of the Chief of Engineers. [Sources: 33 U.S.C. 401, 33 U.S.C. 403.] Applicable regulations: Administrative procedure with respect to the Corps of Engineers, 33 CFR Part 209; Permits for structures or work in or affecting navigable waters of United States, 33 CFR Part 322; Corps of Engineers nationwide permit program, 33 CFR Part 330.

7. *Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6.* This statute seeks to ensure public health and welfare through safe drinking water. The SDWA applies to all public drinking water systems and reservoirs and actions that may have a significant impact on an aquifer or wellhead

protection area that is the sole or principal drinking water. The 1996 amendments require States to develop and implement Source Water Assessment Programs to analyze existing and potential threats to the quality of the public drinking water throughout the State. [Source: 42 U.S.C. 300f–300j–6.] The EPA regulations on SDWA: National primary drinking water regulations, 40 CFR Part 141, and National primary drinking water regulations implementation, 40 CFR Part 142.

8. *Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.* This statute preserves and protects wild and scenic rivers and immediate environs for the benefit of present and future generations. All streams and their adjacent land areas which are included in the National Wild and Scenic Rivers System are classified and designated in the following categories: wild river areas, scenic river areas, or recreational river areas. Project proposals and reports that may have a direct and adverse effect on designated and potential rivers must be coordinated with the appropriate Federal agency, either the Department of the Interior or Agriculture. [Source: 16 U.S.C. 1271–1287.] Applicable regulations: Department of Agriculture—Forest Service, 36 CFR Part 297; Department of the Interior—National Park Service, 43 CFR Part 8350.

9. *Executive Order No. 11990, "Protection of Wetlands."* This Executive Order was created to avoid the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. The Order directs Federal agencies to avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harms to wetlands that may result from such use. In making this finding, the agency may take into account economic, environmental and other pertinent factors. [Source: Executive Order No. 11990.] Preservation of the Nation's Wetlands, U.S. DOT Order 5660.1A, sets forth the U.S. Department of Transportation policy for interpreting Executive Order 11990. The Order requires that transportation facilities and projects should be planned, constructed, and operated to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable, and

establishes procedures for implementation of the policy. [Source: U.S. DOT Order 5660.1A.]

10. *Executive Order No. 11988, "Floodplain Management."* This Executive Order emphasizes the importance of floodplains and directs Federal agencies to avoid conducting, allowing or supporting actions on a floodplain. When contemplating transportation projects, maps of the Federal Insurance Administration should be consulted to determine if the proposed project site is located within the 100-year floodplain. Flood Insurance Rate Maps (FIRMs) are available for review at local zoning or planning commission offices. If the proposed project is located within a floodplain, a detailed analysis should be included in the environmental document, as specified in U.S. Department of Transportation Order 5650.2, "Floodplain Management and Protection." The analysis should discuss any risk to, or resulting from, the action, the impacts on natural and beneficial floodplain values, the degree to which the action provides direct or indirect support for development in the floodplain and measures to minimize harm or to restore or preserve the natural and beneficial floodplain values affected by the project. [Sources: Executive Order No. 11988 and U.S. Department of Transportation Order 5650.2.]

11. *Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931.* This statute promotes the conservation of wetlands in the United States in order to maintain the public benefits they provide. The statute requires the preparation of a national wetlands priority conservation plan that provides priority with respect to Federal and State acquisition and also provides direction for the national wetlands inventory. This statute also authorized the purchase of wetlands from Land and Water Conservation Fund monies. It required the Secretary of the Interior to establish a National Wetlands Priority Conservation Plan, required the States to include wetlands in their Comprehensive Outdoor Recreation Plans, and transferred to the Migratory Bird Conservation Fund amounts equal to the import duties on arms and ammunition.

The Act also required the Secretary of the Interior to report to Congress on wetlands loss, including an analysis of the role of Federal programs and policies in inducing such losses. In addition, it directed the Secretary of the Interior, through the Fish and Wildlife Service, to continue the National Wetlands Inventory; to complete by September 30, 1998, mapping of the

contiguous United States; to produce, as soon as practicable, maps of Alaska and other noncontiguous portions of the United States; and to produce, by September 30, 1990, and at ten-year intervals thereafter, reports to update the September 1982 "Status and Trends of Wetlands and Deepwater Habitat in the Coterminous United States, 1950's to 1970's." The Fish and Wildlife Service coordinates this statute. [Source: 16. U.S.C. 3921, 3931.]

12. *Transportation Equity Act for the 21st Century: Wetlands Mitigation.* 23 U.S.C. 103(b)(6)(m), 133(b)(11). Mitigation of wetlands impacts related to projects funded through the National Highway System (NHS) and Surface Transportation Program (STP) is eligible for program funds, including participation in wetland mitigation banks; restoration, enhancement and creation of wetlands; and contributions to statewide and regional plans, including banks authorized under the Water Resources Development Act. For projects funded through NHS or STP, it applies to federally undertaken, financed, or assisted construction and improvements, or such projects with impacts on wetlands. Participants must evaluate and mitigate impacts on wetlands and a specific finding regarding wetlands is required in the final environmental document. TEA-21 established a preference for mitigation banking to compensate for unavoidable losses to wetlands and other natural habitat caused by transportation projects funded under title 23. [Sources: 23 U.S.C. 103(b)(6)(m), 133(b)(11).] Implementing guidance: Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605; Nov. 28, 1995) and Guidance on the Use of the TEA-21 Preference for Mitigation Banking, July 11, 2003.

13. *Flood Disaster Protection Act, 42 U.S.C. 4001–4128.* The Act requires any federally assisted acquisition or construction project to avoid, or the design to be consistent with, flood-hazard areas identified by the Federal Emergency Management Agency (FEMA). The Act mandates flood insurance for all federally backed mortgages and mortgages and loans obtained through federally insured and regulated financial institutions. In addition, disaster assistance grants (public assistance) are not available to local governments not participating in the program. [Source: 42 U.S.C. 4001–4128.] Applicable regulations 23 CFR 771, 44 CFR parts 59–62, 64–68, 70–71, 75–77.

14. *Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401–1445.* The purpose of this statute is to prevent

"unregulated dumping of material into the oceans, coastal, and other waters" that endanger "human health, welfare, and amenities, and the marine environment, ecological systems and economic potentialities." Moreover, the transportation and dumping of radioactive, chemical, or biological substances is forbidden. This Act also includes Title III, known as the National Marine Sanctuaries Act, which charged the Secretary of Commerce to identify, designate, and manage marine sites based on conservational, ecological, recreational, historical, aesthetic, scientific or educational value within significant national ocean and Great Lakes waters. [Source: 33 U.S.C. §§ 1401–1445.] Applicable regulations are found at 33 CFR parts 320 and 330 and 40 CFR parts 220–225, 227–228, and 230–231.

15. *Water Bank Act*, 16 U.S.C. 1301–1311. The Water Bank Act's purpose is to preserve, restore and improve wetlands of the Nation. This Act applies to any agreements with landowners and operators in important migratory waterfowl nesting and breeding areas. The Act authorized the Secretary of Agriculture, after coordination with the Secretary of the Interior, to enter into 10-year contracts with landowners to preserve wetlands and retire adjoining agricultural lands and directs the Secretary of Agriculture to reexamine payment rates every 5 years after 1980. The amount to be expended in any one State in any calendar year is limited to not more than 15 percent of the funds appropriated. [Source: 16 U.S.C. 1301–1311.] The Department of Agriculture's implementing regulations are found at 7 CFR part 752.

16. *Act to Prevent Pollution From Ships*, 33 U.S.C. 1901–1911. This statute requires ships in U.S. waters, and U.S. ships wherever located, to comply with the International Convention for the Prevention of Pollution from Ships. Annex V to the Convention generally proscribes the disposal of plastics and other garbage in the sea. The Antarctic Science, Tourism and Conservation Act of 1996 amended the Act to require that ships also comply with Annex IV of the Protocol on Environmental Protection to the Antarctic Treaty. [Source: 33 U.S.C. 1901–1911.] Implementing regulations: Coast Guard, Oil pollution prevention regulations for vessels, 33 CFR part 155; Rules for the protection of the marine environment relating to tank vessels carrying oil in bulk, 33 CFR part 157; Reception facilities for oil, noxious liquid substances and garbage, 33 CFR part 158; Ports and waterways safety; Inland waterways navigation regulations, 33 CFR part 162; Vessel

inspections, 46 CFR part 2; Barges carrying bulk liquid hazardous materials cargo, 46 CFR 151; and, Ships carrying bulk liquid, liquefied gas, or compressed gas hazardous materials, 46 CFR part 153.

17. *The Oil Pollution Act of 1990 (OPA)*, 33 U.S.C. 2701–2761; 46 U.S.C. 3703(a). The OPA requires oil storage facilities and vessels to submit to the Federal government plans detailing how they will respond to large discharges. The OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill responses on a regional basis. EPA has published regulations for aboveground storage facilities and the Coast Guard has done so for oil tankers. [Sources: 33 U.S.C. 2701–2761; 46 U.S.C. 3703(a).] Implementing regulations are found at 15 CFR part 990, 33 CFR part 135 and 49 CFR part 194.

## H. Parklands

*Section 4(f) of the Department of Transportation Act*, 49 U.S.C. 303(b)–303(c). Title 49 of the United States Code, section 303(b), requires the Secretary of Transportation to cooperate and consult with the Secretaries of Interior, Housing and Urban Development, and Agriculture, along with the States in developing plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities. Section 303(c) in general provides that the Secretary may not approve a transportation program or project requiring the use of a public park, recreation area, wildlife refuge, or significant historic site unless there is no prudent or feasible alternative and the program or project includes all possible planning to minimize harm to the property. [Source: 49 U.S.C. 303(b)–303(c).] Implementing regulations: Federal Highway Administration—Environmental impact and related procedures, 23 CFR part 771.

## I. Hazardous Materials

1. *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, 42 U.S.C. 9601–9675. The CERCLA was created to provide for liability, compensation, cleanup and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites. As explained below, the Superfund Amendments and Reauthorization Act (SARA) amended CERCLA in 1986. CERCLA applies to any project that may deal with land containing a hazardous substance. [Source: 49 U.S.C. 9601.] 40 CFR part 300 provides the

organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. 43 CFR part 11 supplements the procedures established under 40 CFR part 300 for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a natural resource trustee can determine compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the National Contingency Plan.

2. *Superfund Amendments and Reauthorization Act of 1986 (SARA)*, Public Law 99–499, 100 STAT. 1613–1781 (codified in CERCLA "42 U.S.C. 9671–9675"). This statute amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1986. The amendments include: stressing the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites; requiring Superfund actions to consider the standards and requirements found in other State and Federal environmental laws and regulations; providing new enforcement authorities and settlement tools; increasing State involvement in every phase of the Superfund program; increasing the focus on human health problems posed by hazardous waste sites; encouraging greater citizen participation in making decisions on how sites should be cleaned up; and increasing the size of the trust fund to \$8.5 billion. SARA also required EPA to revise the Hazard Ranking System to ensure that it accurately assessed the relative degree of risk to human health and the environment posed by uncontrolled hazardous waste sites that may be placed on the National Priorities List. [Source: Pub. L. 99–499.]

3. *Resource Conservation and Recovery Act (RCRA)*, 42 U.S.C. 6901–6992k. This statute regulates the generation, treatment, storage, transportation and disposal of solid hazardous waste. RCRA also sets forth a framework for the management of non-hazardous wastes. RCRA focuses only on active and future facilities and does not address abandoned or historical sites. Subtitle I establishes a regulatory program that prevents, detects and cleans up releases from underground storage tank systems containing petroleum or hazardous substances. [Source: 42 U.S.C. 6901.] 40 CFR parts 260–271 establishes the standards and

procedures the EPA uses in implementing RCRA.

4. *Toxic Substances Control Act, 15 U.S.C. 2601*. This statute empowers the EPA to track the industrial chemicals currently produced or imported into the United States. EPA can require the reporting or testing of those chemicals that it deems may pose an environmental or human-health hazard. EPA can also ban the manufacture and import of those chemicals that pose an unreasonable risk. [Source: 15 U.S.C. 2601.] EPA's implementing regulations: Procedures governing testing consent agreements and test rules, 40 CFR parts, 790–792; Provisional test guidelines, 40 CFR part 795; Chemical fate testing guidelines, 40 CFR part 796; Environmental effects testing guidelines, 40 CFR part 797; Health effects testing guidelines, 40 CFR part 798; and, Identification of specific chemical substance and mixture testing requirements, 40 CFR part 799.

5. *Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136a–136y*. FIFRA controls the application of pesticides to provide greater protection to people and the environment. The primary focus of FIFRA is to provide Federal control of pesticide distribution, sale, and use. EPA is given authority under FIFRA not only to study the consequences of pesticide usage but also to require users (farmers, utility companies, and others) to register when purchasing pesticides. Through later amendments to the law, users also must take exams for certification as applicators of pesticides. All pesticides used in the U.S. must be registered (licensed) by EPA. Registration assures that pesticides will be properly labeled and that if in accordance with specifications, will not cause unreasonable harm to the environment. [Source: 7 U.S.C. 136.] The EPA's implementing regulations are found at 40 CFR parts 152–171.

6. *The Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. 11001–11050*. The EPCRA was enacted by Congress as the national legislation on community safety. EPCRA establishes requirements for Federal, State and local governments, Indian Tribes and industry regarding emergency planning and "Community Right-To-Know" reporting on hazardous and toxic chemicals. The purpose of the Community Right-To-Know provisions is to increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. There are four major provisions to EPCRA: emergency planning (sections 301–303), emergency release notification (section

304), hazardous chemical storage reporting requirements (sections 311–312), and toxic chemical release inventory (section 313). [Source: 42 U.S.C. 1101–11050]. Implementing regulations are located at: 40 CFR parts 355 and 370.

#### J. Federal Procedures

1. *National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4335*. This statute established a national policy for protection of the environment. The statute includes three major purposes: (1) It sets national environmental policy; (2) it establishes a basis for environmental impact statements (EIS); and (3) it created the Council on Environmental Quality (CEQ). NEPA requires that, to the extent possible, the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with the protection goals of the law. It also requires Federal agencies to use an interdisciplinary approach in planning and decision making for actions that impact the environment. Finally, NEPA requires the preparation of an EIS on all major Federal actions significantly affecting the quality of the human environment. [Source: 42 U.S.C. 4231–4335.] The Council on Environmental Quality (CEQ) issued regulations for implementing the procedural aspects of NEPA (40 CFR parts 1500–1508). Shortly following the regulations CEQ issued guidance, commonly referred to as "Forty Questions and Answers on the CEQ Regulations". Other applicable regulations and Executive Orders are 23 CFR parts 771–772 and Executive Order 11514 as amended by Executive Order 11991 on NEPA responsibilities. The

Department's procedures for compliance with the NEPA and other environmental requirements are in Order DOT 5610.1C, Procedures for Considering Environmental Impacts. Most of the Department's operating administrations also have their own specific procedures. The Departmental order can be found at <http://199.79.179.19/OLPFiles/OST/008589.tif> or <http://199.79.179.19/OLPFiles/OST/008589.pdf>.

2. *Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109*. This statute focuses industry, government and public attention on reducing the amount of pollution through cost-effective changes in production, operation and raw materials use. The Act promotes using practices that increase efficiency in the use of energy, water, or other natural resources and protect the resource base through conservation, including recycling, source reduction and sustainable agriculture. The Act also created pollution prevention State

grants to be awarded to promote the use of source reduction techniques by businesses. [Source: 42 U.S.C. 13101.] Applicable regulations are found at 40 CFR 35.340, 48 CFR 23.702 and 48 CFR 52.223–5.

3. *49 U.S.C. 47101*. This statute establishes the National Transportation Policy, stating that it is the goal of the United States to develop a national intermodal transportation system and that all forms of transportation will be full partners in the effort to reduce energy consumption and air pollution while promoting economic development. This statute also notes that it is in the public interest to reduce noncompatible land uses around airports and place a priority on efforts to mitigate noise around airports. The statute directs the Department of Transportation (DOT) to cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs and that such programs shall be developed considering long-range land-use plans and overall social, economic, environmental, system performance and energy conservation objectives. Finally, the statute directs DOT to consult with the Secretary of the Interior and the Administrator of the EPA about any project included in a project grant application involving the location of an airport or runway, or a major runway extension that may have a significant effect on natural resources or the environment. [Source: 49 U.S.C. 47101.] Implementing regulations: Federal Aviation Administration—Airport noise compatibility planning, 14 CFR Part 150.

4. *Executive Order 13148, "Greening of Government Through Leadership in Environmental Management."* Under this Order, the head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations become a fundamental and integral component of Federal Government policies, operations planning and management. The Order has the following goals: environmental management; environmental compliance; right-to-know and pollution prevention; release reduction of toxic chemicals; use reduction of toxic chemicals, hazardous substances and other pollutants; reductions in ozone-depleting substances; and, environmentally and economically

beneficial landscaping. [Source: Executive Order 13148.]

5. *Executive Order No. 13274, "Environmental Stewardship and Transportation Infrastructure Project Reviews."* This Executive Order was issued to enhance environmental stewardship and streamline environmental review of transportation infrastructure projects. The Executive Order establishes an interagency Transportation Infrastructure Streamlining Task Force to promote streamlining and environmental stewardship in transportation projects. [Source: Executive Order No. 13274.]

6. *Executive Order 11593, "Protection and Enhancement of the Cultural Environment."* This Executive Order tasks Federal agencies to survey all lands under their ownership or control and nominate to the National Register of Historic Places all properties that appear to qualify. It also requires agencies not to inadvertently destroy such properties prior to completing their inventories. This Order was codified as part of the 1980 amendments to the National Historic Preservation Act. [Sources: Executive Order 11593, National Historic Preservation Act 16 U.S.C. 470.]

7. *The Federal Facilities Compliance Act of 1992 (FFCA), Public Law 102-386 (106 Stat. 1505).* The FFCA amended the Solid Waste Disposal Act by making all Federal agencies subject to all substantive and procedural requirements of Federal, State and local solid and hazardous waste laws in the same manner as any private party, waiving sovereign immunity of the United States in all such cases. Moreover, while employees, officers, and agents of the United States may not be liable for civil penalties under any such law for actions committed within the scope of that person's official duties, such persons may be liable for criminal penalties. The Administrator of the EPA is authorized to commence an administrative enforcement action against any Federal agency or department in the same manner as against a private party. Finally, agencies must reimburse the EPA for the required annual inspections of agency hazardous waste facilities, and for EPA to conduct a comprehensive ground water monitoring evaluation at the first inspection of each site conducted after October 6, 1992. [Source: Pub. L. 102-386 (106 Stat. 1505).] The EPA implementing regulation may be found at 40 CFR 22.37.

8. *Executive Order 13287, "Preserve America."* This Order was issued to provide leadership in preserving America's heritage by actively advancing the protection, enhancement,

and contemporary use of the historic properties owned by the Federal Government, and promote intergovernmental cooperation and partnership for the preservation and use of historic properties. The Order directs Federal agencies to increase their knowledge of historic resources in their care and to enhance the management of these assets. The Order further encourages agencies to seek partnerships with State, tribal, and local governments and the private sector to make more efficient and informed use of their resources for economic development and other recognized public benefits. Finally, the Order directs agencies to assist in the development of local and regional nature tourism programs using the historic resources that are a significant feature of many State and local economies. [Source: Executive Order 13287.]

## K. Land

1. *Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.* The Landscaping and Scenic Enhancement Act empowers the Secretary of Transportation to approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public, and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways. Section 130 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 amended 23 U.S.C. 319 by adding a requirement that native wildflower seeds or seedlings or both be planted as part of any landscaping project undertaken on the Federal-aid highway system. At least one-quarter of one percent of funds expended for a landscaping project must be used to plant native wildflowers on that project. This provision requires every landscaping project to include the planting of native wildflowers unless a waiver has been granted. [Source: 23 U.S.C. 319.] Implementing regulations may be found at 23 CFR parts 650, 655, 662, and 752.

2. *Highway Beautification Act, 23 U.S.C., 131, 136, and 319.* The Highway Beautification Act's purpose is to provide effective control of outdoor advertising and junkyards, to protect the public investment, to promote the safety and recreational values of public travel

and to preserve natural beauty. The Act also provides landscapes and roadside development reasonably necessary to accommodate the traveling public. This Act applies to interstate and primary systems, as the primary system existed on June 1, 1991, and the National Highway System. [Sources: 23 U.S.C. 131, 136, and 319.] Implementing regulations may be found at 23 CFR parts 750-752.

3. *National Trails System Act, 16 U.S.C. 1241-1249.* The National Trails System Act made it Federal policy to recognize and promote trails by providing financial assistance, support of volunteers and coordination with States. As a result, 8 national scenic trails (NSTs) and 15 national historic trails (NHTs) have been established by law (and are administered by the National Park Service, the USDA Forest Service, and the Bureau of Land Management, depending on the trail); over 800 national recreation trails have been recognized by the Secretaries of Agriculture and the Interior; and 2 side-and-connecting trails have also been certified. In addition, other Federal statutes support and fund trails through programs such as FHWA's Recreational Trails Program and Transportation Enhancements programs, HUD block grants, and the NPS Rivers, Trails, and Conservation Assistance Program. [Sources: 16 U.S.C. 1241-1249.] Implementing regulations are found at 36 CFR part 251 and 43 CFR part 8350. See also the National Recreational Trails Fund of the Intermodal Surface Transportation Efficiency Act of 1991, 16 U.S.C. 1261, which established the program to allocate funds to States to provide and maintain recreational trail and trail-related projects.

Issued in Washington, DC, on April 16, 2004.

**Emil H. Frankel,**

*Assistant Secretary for Transportation Policy.* [FR Doc. 04-10308 Filed 5-5-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Transfer of Federally Assisted Land or Facility

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of intent to transfer Federally assisted land or facility.

**SUMMARY:** Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et. seq.*, permits the Administrator of the Federal Transit Administration