

Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects

A number of Federal environmental statutes, regulations, and Executive Orders establish requirements applicable to the development and review of transportation infrastructure projects that receive financial support from the United States Department of Transportation (DOT). DOT strives to meet these requirements in a manner that is both environmentally sound and expeditious. The goal of this document is to contribute to this important effort by providing a brief description of the primary statutes, regulations, and Executive Orders applicable to the development and review of these transportation infrastructure projects. Additionally, many agencies have developed guidance to assist in implementation of the law, and this document references certain guidance. This summary is not, and should not be relied upon as, a complete list of statutes, regulations, and Executive Orders that could apply to a transportation infrastructure project or an official or independent interpretation or expression of policy on the matters summarized.

DOT includes nine 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 implementing procedures, and websites where more information on environmental procedures and requirements may be found. All referenced regulations may be accessed on the [Federal Digital System](#). Because this document only presents a brief summary of the more frequently applicable statutes, regulations, and Executive Orders, readers who want more complete information should refer to the relevant operating administration's website.

U.S. Department of Transportation Operating Administration NEPA Implementing Procedures and Useful Websites*	
Office of the Secretary of Transportation (OST) <ul style="list-style-type: none"> NEPA Procedures: DOT Order 5610.1C, 44 FR 56420, Oct. 1, 1979 Useful Websites: <ul style="list-style-type: none"> Transportation and Climate Change Clearinghouse Bureau of Transportation Statistics, Energy and Environment 	
Federal Aviation Administration (FAA) <ul style="list-style-type: none"> NEPA Procedures: FAA Order 1050.1E (agency-wide); FAA Order 5050.4B, NEPA Implementing Instructions for Airport Actions; FAA Order JO 7400.2J, Procedures for Handling Airspace Matters, Chapter 32, Environmental Matters Useful Websites: <ul style="list-style-type: none"> Airport Environmental Program Air Traffic Organization Environmental Reviews Environmental Policy 	
Federal Highway Administration (FHWA) <ul style="list-style-type: none"> NEPA Procedures: 23 CFR part 771 Useful Websites: <ul style="list-style-type: none"> Planning, Environment, & Realty Core Highway Topics: Environment 	
Federal Motor Carrier Safety Administration (FMCSA) <ul style="list-style-type: none"> NEPA Procedures: FMCSA Order 5610.1, National Environmental Policy Act Implementing Procedures, 69 FR 9680, Mar. 1, 2004 	
Federal Railroad Administration (FRA) <ul style="list-style-type: none"> NEPA Procedures: Procedures for Considering Environmental Impacts, 64 FR 28545, May 26, 1999, and 78 FR 2713, Jan.14, 2013 Useful Website: <ul style="list-style-type: none"> Environment 	
Federal Transit Administration (FTA) <ul style="list-style-type: none"> NEPA Procedures: 23 CFR part 771 Useful Website: <ul style="list-style-type: none"> Environmental Analysis and Review 	

* The Office of the Secretary plans to update its NEPA implementing procedures soon, and the operating administrations also update their procedures from time to time. We encourage readers to check the Department's website for current versions of DOT's environmental procedures.

Maritime Administration (MARAD)

- NEPA Procedures: Maritime Administrative Order 600-1—Procedures for Considering Environmental Impacts, 50 FR 30900, July 30, 1985
- Useful Website:
 - [Environment and Safety](#)

National Highway Traffic Safety Administration (NHTSA)

- NEPA Procedures: 49 CFR part 520

Pipeline and Hazardous Materials Safety Administration (PHMSA)

- NEPA Procedures: [DOT Order 5610.1C](#), 44 FR 56420, Oct. 1, 1979

Saint Lawrence Seaway Development Corporation (SLSDC)

- NEPA Procedures: [SLSDC Order 10-5610.1C, Procedures for Considering Environmental Impacts](#), 46 FR 28795 May 28, 1981

LIST OF ABBREVIATIONS

Council on Environmental Quality (CEQ)

United States (U.S.)

U.S. Army Corps of Engineers (USACE)

U.S. Department of Agriculture (USDA)

U.S. Department of Agriculture, Forest Service (Forest Service)

U.S. Department of Commerce (DOC)

U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS)

U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)

U.S. Department of the Interior (DOI)

U.S. Department of the Interior, Bureau of Land Management (BLM)

U.S. Department of the Interior, Fish and Wildlife Service (FWS)

U.S. Department of the Interior, National Park Service (NPS)

U.S. Department of Transportation (DOT or Department)

U.S. Department of Transportation, Federal Aviation Administration (FAA)

U.S. Department of Transportation, Federal Highway Administration (FHWA)

U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA)

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

U.S. Department of Transportation, Federal Transit Administration (FTA)

U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA)

U.S. Environmental Protection Agency (EPA)

A. FEDERAL PROCEDURES

1. National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347. This act established a national policy for protection of the environment, formed the basis for environmental impact statements (EIS) and other environmental review documents, and created CEQ, which coordinates Federal environmental efforts and oversees Federal agency implementation of the NEPA process. NEPA requires that, to the extent possible, Federal policies, regulations, and laws be interpreted and administered in accordance with NEPA’s environmental protection goals. It also requires Federal agencies to use an interdisciplinary approach in planning and decision making for actions that significantly impact the environment. Finally, NEPA requires the preparation of an EIS on all major Federal actions significantly affecting the quality of the human environment. CEQ’s regulations implementing the procedural aspects of NEPA are found at 40 CFR parts 1500–1508. Shortly after it promulgated the regulations, CEQ issued guidance to agencies, entitled “Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” 46 FR 18026, Mar. 23, 1981. Executive Order 11514, “Protection and Enhancement of Environmental Quality,” as amended by Executive Order 11991, provides further guidance on NEPA responsibilities. The Department’s procedures for compliance with NEPA and other environmental requirements are found in DOT Order 5610.1C, “Procedures for Considering Environmental Impacts.” Most of the Department’s operating administrations also have their own specific procedures or regulations, as detailed in the table at the beginning of this Notice.

2. Federal-Aid Highway Act of 1970, 23 U.S.C. 109. Section 109(h) requires the Secretary 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] (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services” FHWA’s implementing regulations for Section 109(h) are found at 23 CFR part 771.

3. Airport Improvement Policies & National Transportation Policy, 49 U.S.C.

47101. This statute establishes the National Transportation Policy, the goals of which are to develop a national intermodal transportation system that is a coordinated, flexible network of diverse and complementary forms of transportation, and reduce energy consumption and air pollution while promoting economic development. The statute also directs airport development projects to provide for the protection and enhancement of natural resources and the quality of the environment, and for aviation facilities to be constructed and operated to minimize noise impact. Finally, it notes that it is in the public interest to reduce non-compatible land uses around airports and place a priority on efforts to mitigate noise around airports. The statute directs the Secretary of Transportation to cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs and consider long-range land use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The Secretary of Transportation must also consult with the Secretary of the Interior and the EPA Administrator 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, water and air quality, or another factor affecting the environment.

Additional guidance is provided in FAA Order 5100.38C, “Airport Improvement Program Handbook.”

4. Efficient Environmental Reviews for Project Decisionmaking, 23 U.S.C. 139.

Initially established in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 6002, this provision calls for environmental streamlining and the timely delivery of transportation projects, while protecting and enhancing the environment. Environmental streamlining provides for transportation and natural, cultural, and historic resource agencies to establish realistic timeframes to develop projects, and then to work cooperatively to adhere to those timeframes. A key element of this review process is the coordination requirement with early collaboration to obtain input from the public, Tribes, and Federal, State, and local agencies. The Moving Ahead for Progress in the 21st Century Act (MAP-21), Division A, Title I, Subtitle C sets forth a policy and a series of provisions to accelerate project delivery. Sections 1305–1309 include a rulemaking to allow use of programmatic approaches for environmental reviews; an issue resolution process, including timelines, to ensure issues are addressed without causing delays; and the opportunity for project sponsors to receive technical assistance to resolve outstanding issues on certain EISs, by providing resources, facilitating interagency coordination, and promoting efficient collaboration.

5. Integration of Planning and Environmental Review, 23 U.S.C. 168. This statute sets out a process where a “planning product,” which may include decisions, analyses, studies, or other documented information developed in the planning process, may be adopted and relied upon in the proposed project’s NEPA review.

6. Vision 100: Century of Aviation Reauthorization Act, Section 304, 49 U.S.C. 47171. This statute calls for environmental streamlining in aviation projects. It directs the

Secretary of Transportation to develop and carry out an expedited and coordinated environmental review process for airport capacity projects at congested airports, aviation safety projects, and aviation security projects. Each Federal agency with jurisdiction over an environmental review, analysis, opinion, permit, license, or approval must give the highest possible priority to projects designated by FAA for priority environmental review. State agencies may choose to participate in the streamlining process.

7. FAA Modernization and Reform Act of 2012, Section 213, 49 U.S.C. 40101 note.

Section 213, Acceleration of NextGen Technologies, provides for coordinated and expedited environmental review of the development and implementation of certain air traffic procedures using performance-based navigation, including area navigation procedures. Such procedures are part of FAA's Next Generation Air Transportation System ("NextGen"), which involves shifting from fixed, ground-based radio navigation transmitting facilities and radar to satellite, or GPS, navigation, and onboard surveillance.

8. Executive Order 13604, "Improving Performance of Federal Permitting and Review of Infrastructure Projects" (Mar. 22, 2012). This Executive Order seeks to facilitate improvements in Federal permitting and review processes for infrastructure projects, including transportation projects. It establishes a Steering Committee, of which DOT is a member, charged with developing and implementing a Federal Permitting and Review Performance Plan to reduce the aggregate time required to make Federal permitting and review decisions while improving outcomes for communities and the environment. These goals are accomplished by institutionalizing best practices, developing better communication and dispute resolution among agencies, and setting timeframes. The Executive Order also directs member agencies to develop Agency Plans to improve permitting and review processes and reduce decisionmaking

timeframes within their own agency, through performance metrics, technological improvements, and implementation of the Federal Plan. Finally, the Executive Order directs member agencies to identify projects of national or regional significance on an ongoing basis, to be tracked on the Federal Permitting Dashboard. This Executive Order expands the effort launched under the Presidential Memorandum issued August 31, 2011, “Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review.” This Memorandum tasked agencies to identify High Priority Projects to expedite through the permitting and review process and required the development of the Federal Permitting Dashboard where those projects are tracked.

9. Executive Order 13274, “Environmental Stewardship and Transportation Infrastructure Project Reviews” (Sept. 18, 2002). This Executive Order directs agencies to promote policies that streamline agency review and approval of high-priority transportation infrastructure projects while maintaining safety, public health, and environmental protection.

B. AIR QUALITY

1. Clean Air Act (CAA), 42 U.S.C. 7401–7671q. This act regulates emissions of air pollutants in order to protect human health and the environment. In general, the CAA delegates responsibility to State and local governments to prevent and control air pollution by requiring States to submit State Implementation Plans (SIPs) to 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), which are scientific-based Federal standards designed to protect public health with an adequate margin of safety and to promote public welfare. EPA has established NAAQS for the following pollutants: ozone, carbon monoxide, particulate matter, sulfur dioxide, nitrogen dioxide, and

lead. 40 CFR part 50. If a State fails to create and implement an adequate SIP, EPA creates and implements a Federal Implementation Plan (FIP) for that State. In 1990, Congress amended the CAA to: 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). Regulations implementing the CAA are found at 40 CFR parts 50–99.

Section 176(c), 42 U.S.C. 7506(c), requires that transportation plans, programs, and highway and transit projects must conform to the SIP that provides for attainment of the NAAQS under regulations at 40 CFR part 51 subpart T and part 93 subpart A. Conformity means that transportation activities will not cause new air quality violations, exacerbate existing violations, or delay timely attainment of the NAAQS. DOT actions other than highway and transit actions must conform to the SIP under EPA’s General Conformity regulation, 40 CFR part 51 subpart W and part 93 subpart B. Conformity requirements apply to actions in nonattainment and maintenance areas.

Section 202, 42 U.S.C. 7521, requires EPA to regulate toxic air pollutants from motor vehicles and motor vehicle fuels, also called mobile source air toxics (MSATs). 40 CFR part 85 regulates air pollution from mobile sources. 40 CFR part 86 regulates emissions from new and in-use highway vehicles and engines.

C. WATER RESOURCES AND WETLANDS

1. Clean Water Act (CWA), 33 U.S.C. 251–1387. This act establishes the basic structure for regulating discharges of pollutants into waters of the United States. It gives EPA

the authority to implement pollution control programs, such as setting wastewater standards for industry. The CWA also contains requirements to set water quality standards (WQS) for all contaminants in surface waters. The act makes it unlawful for any person to discharge any pollutant from a point source into waters of the United States unless a permit is obtained.

Before a Federal agency can issue a license or permit for construction or other activity, **Section 401**, 33 U.S.C. 1341, requires the agency to obtain written certification from the State in which the affected activity would take place that the activity will not cause or contribute to a violation of relevant State water quality standards. If Federal approval of an activity would result in a downstream State exceeding its WQS, that State can also play a role in the 401 process.

Section 404, 33 U.S.C. 1344, authorizes USACE to regulate discharges of dredged or fill material into waters of the United States, including wetland areas. This authority includes fill that occurs as a result of infrastructure development, such as a light rail line or a highway project. In issuing permits, USACE must apply guidelines developed by the EPA Administrator, and EPA may prohibit fill or disposal at a site or area. Regulations outlining USACE's authority and general policies for implementing the program are found at 33 CFR part 320 and 40 CFR part 230.

Section 402, 33 U.S.C. 1342, creates the National Pollutant Discharge Elimination System (NPDES) program, which requires point sources to obtain a discharge permit from EPA or the appropriate State water resource agency. These permits set limits on the amount of various pollutants that a source can discharge into waters of the United States in a given time.

Applicable CWA regulations are found at 23 CFR part 650, subpart B; 33 CFR parts 209, 320–330, 332, 335–338; and 40 CFR parts 121–125, 129–133, 135–136, and 230–233.

2. Coastal Barrier Resources Act, 16 U.S.C. 3501–3510. This act protects ecologically sensitive, undeveloped coastal barriers through the Coastal Barrier Resources System (CBRS). **Section 5**, 16 U.S.C. 3504, of the act prohibits Federal expenditures for construction or purchase of any facilities, structures, roads, bridges, airports, etc., within the CBRS. With FWS consultation, the act allows exceptions for some activities such as the maintenance or improvement of existing navigation channels and related structures, and the maintenance, replacement, reconstruction, or repair (not expansion) of publicly-operated roads or facilities that are essential links in a larger network or system. Supporting environmental documentation should include a map showing the relationship of each alternative to the coastal barrier(s) or “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 FWS, identifying any issues raised and how they were addressed; and identify any alternative that (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. FWS published “Advisory Guidelines,” 48 FR 45664, Oct. 6, 1983, which outlines the procedures for FWS consultation for exceptions.

3. Coastal Zone Management Act, 16 U.S.C. 1451–1466. This act establishes a national policy to preserve, protect, develop, and where possible, restore or enhance, the resources of the Nation’s coastal zone for current and succeeding generations. The act creates a voluntary program where States develop management plans that DOC approves, funds, and provides with technical assistance. If a proposed federally assisted transportation project or DOT action will directly affect the coastal zone of any State with an approved plan, DOT must ensure that the proposed action is consistent with the plan. DOT must prepare a written consistency

determination that includes a detailed description of the action, its associative facilities and coastal zone effects, a statement of how the project is consistent with the plan, and data to support the consistency determination. The DOC designated State coastal management agency must respond to consistency determinations and recommend alternatives where necessary. Further, any applicant for a proposed federally licensed or permitted activity that will directly affect the coastal zone of any State with an approved plan must certify to the State coastal zone agency that the proposed activity complies with the enforceable policies of the State's approved plan, and the State must notify the Federal agency concerned that the State concurs with or objects to the applicant's certification. NOAA's implementing regulations are found at 15 CFR parts 923 and 930.

4. Rivers and Harbors Act of 1899, 33 U.S.C. 401, 403, 404, 406–409, 411–416, 418, 502, 549, 686, and 687. **Section 9**, 33 U.S.C. 401, of this act prohibits the construction of any bridge, causeway, dam, or dike over or in navigable waterways of the United States without congressional approval. Administration of Section 9 is delegated to the Coast Guard, which approves the location and clearances of bridges through permits. Permits are required for new construction and reconstruction or modification of a bridge or causeway over waters of the United States. Structures authorized by the State legislatures may be built without congressional approval if the affected navigable waters are totally within one State, and if the Secretary of Transportation approves the plan. Under **Section 10**, 33 U.S.C. 403, of the act, the building of any wharfs, piers, jetties, and other structures in any water of the United States is prohibited without congressional approval, and excavation or fill within navigable waters requires the recommendation of the Chief of Engineers and approval by the Secretary of the Army. The

Coast Guard's implementing regulations are found at 33 CFR parts 114–116. USACE's implementing regulations are found at 33 CFR parts 320–322, 325–326, and 329–330.

5. Safe Drinking Water Act of 1974 (SDWA), 42 U.S.C. 300f–300j-26. This act seeks to ensure public health and welfare by protecting drinking water and its sources, including rivers, lakes, reservoirs, springs, and ground water wells. 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 source of drinking water. It prohibits Federal funding for any project that may contaminate a designated sole or principal source of drinking water (a sole source aquifer) through a recharge zone, which supplies water to the aquifer, so as to create a significant hazard to public health. The 1996 amendments required 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. EPA's implementing regulations are found at 40 CFR parts 141–147, and 149.

6. Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287. This act preserves and protects, for the benefit and enjoyment of present and future generations, rivers and their immediate environments listed in the National Wild and Scenic Rivers System or under study for inclusion in the System. All rivers and their adjacent land areas are classified and designated in the following categories: wild river areas, scenic river areas, or recreational river areas. The act prohibits Federal agencies from assisting in the construction of any water resources project that would have a direct and adverse impact on designated or potentially designated rivers. Projects that may have a direct and adverse effect on designated or potentially designated rivers must be coordinated with either DOI (NPS, BLM, and FWS) or USDA (Forest Service). Implementing regulations are found at 36 CFR part 297 (Forest Service) and 43 CFR part 8350 (BLM).

7. Emergency Wetlands Resources Act of 1986, 16 U.S.C. 3921–3932. This act promotes the conservation of wetlands in the United States in order to maintain their public benefits. **Section 3921**, coordinated by FWS, requires the preparation and periodic review and revision of a national wetlands priority conservation plan that prioritizes the types of wetlands and interests in wetlands for Federal and State acquisition. The act also authorizes the purchase of wetlands not acquired under the authority of the Migratory Bird Conservation Act of 1929, consistent with the wetlands priority conservation plan.

8. Transportation Equity Act for the 21st Century (TEA-21): Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14). These sections make mitigation of wetlands impacts related to projects funded through the National Highway System (NHS) and Surface Transportation Program (STP) eligible for Federal funding. Mitigation may include participation in natural habitat and wetland mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990. SAFETEA-LU and MAP-21 have continued the preference for use of mitigation banks for compensatory mitigation. FHWA’s wetlands mitigation regulations are found at 23 CFR part 777. Implementing guidance includes EPA/USACE/FWS/NMFS/USDA’s Natural Resources Conservation Service “Federal Guidance for the Establishment, Use and Operation of Mitigation Banks,” 60 FR 58605, Nov. 28, 1995, and FHWA/USACE/EPA joint guidance, “Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to Fulfill Mitigation Requirements Under Section 404 of the Clean Water Act,” July 11, 2003.

9. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 6006(b), 23 U.S.C. 328. This statute provides funding eligibility for environmental restoration and pollution abatement to address water pollution or environmental degradation caused by a transportation project funded under Title 23 of the U.S. Code (Highways).

10. National Flood Insurance Reform Act of 1994, 42 U.S.C. 4001–4128. This act, amending the Flood Disaster Protection Act of 1973 and the National Flood Insurance Act of 1968, prohibits Federal agencies from providing financial assistance for acquisition of buildings and certain disaster assistance to any community identified as flood-prone by the Federal Emergency Management Agency (FEMA) that has not participated in the National Flood Insurance Program. The act also mandates that property owners purchase 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. FEMA's implementing regulations are found at 44 CFR parts 59–80.

11. Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401-1445. Also known as the Ocean Dumping Act, this act regulates the dumping of all materials into ocean waters, and seeks to prevent the dumping of any material that endangers human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities. The act provides for permits to release materials into ocean waters upon a finding by the EPA Administrator that the release will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. Further, the act explicitly forbids permits for the dumping of radioactive, chemical

and biological warfare agents, high-level radioactive waste, and medical waste. Applicable regulations are found at 33 CFR parts 320, 324–327, 330 and 335–336 (USACE) and 40 CFR parts 220–225, 227–229, and 230–231 (EPA).

12. National Marine Sanctuaries Act, 16 U.S.C. 1431–1445c. This act, originally Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the Secretary of Commerce to identify, designate, manage, and protect as national marine sanctuaries, marine environments based on their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The act requires Federal agencies whose actions are “likely to destroy, cause the loss of, or injure a sanctuary resource,” to consult with the National Marine Sanctuary Program (NMSP) before taking the action. NMSP regulations are found at 15 CFR part 922.

13. Maritime Pollution Prevention Act of 2008, 33 U.S.C. 1901–1911. This act 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. This act implements Annex VI to the Convention, which sets limits on sulfur oxide and nitrogen oxide emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances. This act also amended the Act to Prevent Pollution from Ships, implementing Annex V to the Convention, which generally bans the disposal of plastics and other garbage in the sea. The Coast Guard’s implementing regulations are as follows: 33 CFR parts 151, 153, 155 157, and 158; 46 CFR parts 2, 151, and 153.

14. Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701–2761. The OPA requires oil storage facilities and vessels to submit plans to the Federal government 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, 40 CFR part 112, and the Coast Guard has done so for oil tankers, 33 CFR parts 133–138. Additional implementing regulations are found at 15 CFR part 990 (NOAA) and 49 CFR part 194 (PHMSA).

15. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207. Section 404 establishes the Hazard Mitigation Grant Program (HMGP). Administered by FEMA, the HMGP enables local government agencies to acquire real property in floodplains for the purpose of protecting communities from future flood hazards. Properties so acquired are protected by restrictive covenants that limit future uses of the property. Coordination with and approval from FEMA may be necessary for the use these properties for a transportation project. Implementing regulations for the HMGP are found at 44 CFR part 206, subpart N.

16. Executive Order 11988, “Floodplain Management” (May 24, 1977). This Executive Order directs agencies to reduce the risk of flood loss, minimize the impact of floods on human safety, health and welfare, and restore and preserve the natural and beneficial values served by floodplains on Federal lands and through federally financed programs and activities. DOT Order 5650.2, “Floodplain Management and Protection,” outlines the Department’s procedures for transportation projects. First, the Department should consult the relevant Flood Insurance Rate Map to determine if the proposed project site is located within the 100-year floodplain. Then, if the proposed project is located within a floodplain, the Department conducts a detailed analysis of the risks and impacts of the project and any proposed mitigation.

17. Executive Order 11990, “Protection of Wetlands” (May 24, 1977). This Executive Order seeks to preserve and enhance the natural and beneficial values of wetlands and

minimize their destruction, loss, or degradation. It directs Federal agencies to avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds that (1) there is no practicable alternative to such construction, and (2) the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the agency may take into account a variety of factors, including public health, safety and welfare, maintenance of natural systems, including conservation, as well as recreational, scientific, and cultural uses. DOT Order 5660.1A, “Preservation of the Nation’s Wetlands,” sets forth DOT’s policy for implementing this Executive Order. The order requires that transportation facilities and projects should be planned, constructed, and operated to ensure the protection, preservation, and enhancement of the Nation’s wetlands to the fullest extent practicable, and establishes procedures for implementation of the policy.

18. Executive Order 13547, “Stewardship of the Ocean, Our Coasts, and the Great Lakes” (July 19, 2010). This Executive Order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests. It adopts the “Final Recommendations of the Interagency Ocean Policy Task Force” and directs agencies to implement the final recommendations under the guidance of the National Ocean Council.

D. WILDLIFE

1. Endangered Species Act (ESA), 16 U.S.C. 1531–1544. The ESA provides for the protection of species that are endangered or threatened with extinction throughout all or a

significant portion of their range, and for conservation of the ecosystems on which they depend. Generally, FWS coordinates ESA activities for land and freshwater species, and NMFS coordinates ESA activities for marine and anadromous species.

Section 4, 16 U.S.C 1533, provides for the listing of endangered or threatened plant and animal species. All determinations are based solely on the best scientific and commercial data available, and the ESA prohibits consideration of economic impacts during the listing process.

Section 7, 16 U.S.C. 1536, prohibits any Federal action that would jeopardize a listed species or destroy or modify its critical habitat unless exempted by the Endangered Species Committee established by this section. Federal agencies must consult with FWS or NMFS regarding any activities that may affect a listed species. **Section 10**, 16 U.S.C. 1539, provides for an incidental take permit if FWS or NMFS determines that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The incidental take permit applicant must submit a conservation plan that describes the impacts of the take, as well as the measures the applicant will take to minimize and mitigate such impacts. 50 CFR part 17 identifies those species of wildlife and plants determined to be endangered or threatened with extinction; 50 CFR part 223 identifies threatened marine and anadromous species; and 50 CFR part 224 identifies endangered marine and anadromous species. 50 CFR part 402 describes the requirements for the consultation process.

2. Fish and Wildlife Conservation Act, 16 U.S.C. 2901–2912. This act authorizes financial and technical assistance to States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife. It also encourages Federal agencies to use their statutory and administrative authority to conserve and promote conservation

of nongame fish and wildlife and their habitats. Implementing regulations are found at 50 CFR part 83.

3. Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d. This act requires agencies to consult with FWS and the appropriate State wildlife agency when a project will deepen a channel or impound, divert, or otherwise control or modify the waters of any stream or other body of water.

4. Marine Mammal Protection Act, 16 U.S.C. 1361–1423h. This act establishes a Federal responsibility to conserve marine mammals with conservation oversight vested in both DOI and DOC. Additionally, the Marine Mammal Commission, established by the act, provides independent oversight of the marine mammal conservation policies and programs carried out by Federal agencies. The act prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the import of marine mammals and marine mammal products into the United States. Native Americans, Aleuts, and Eskimos residing in Alaska are exempted from the moratorium on taking, provided that the take is conducted for subsistence purposes or for creating and selling authentic native articles of handicrafts and clothing. The Marine Mammal Protection Act regulations are located at 15 CFR part 904 (NOAA); 50 CFR parts 10, 18 and 82 (FWS); 50 CFR parts 216, 217, 222, 229, and 230 (NMFS); and 50 CFR part 403 (FWS, NMFS, and NOAA joint regulation).

5. Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f. This act authorizes the Secretaries of the Interior and Commerce to enter into cooperative agreements with the States and other non-Federal entities for conservation, development, and enhancement of anadromous fish, including those in the Great Lakes and Lake Champlain, and to contribute up to 50 percent as the Federal share of the cost of carrying out such agreements. **Section 757f** authorizes FWS

to conduct studies and make recommendations to the Secretary of Health and Human Services concerning the elimination or reduction of pollution detrimental to fish and wildlife in interstate or navigable waters, or their tributaries. Implementing regulations are located at 50 CFR part 401.

6. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801–1884. The purpose of this act is to manage and conserve fishery resources in Federal waters. The 2006 amendments to the act require fishery management plans that set levels to determine when overfishing is occurring and establish a recovery plan. **Section 305(b)(2)**, 16 U.S.C. 1855(b)(2) requires all Federal agencies to consult with NMFS regarding any actions that may adversely affect an Essential Fish Habitat. NMFS implementing regulations are located at 50 CFR part 600.

7. Migratory Bird Treaty Act, 16 U.S.C. 703–712. This act makes it unlawful for anyone to hunt, kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird species. The act also covers the indirect killing of birds by destruction of their nests and eggs. FWS’s implementing regulations are located at 50 CFR parts 10, 14, 20, and 21.

8. The Bald and Golden Eagle Protection Act of 1940, 16 U.S.C. 668–668d. This act prohibits a take of bald or golden eagles, including their parts, nests, or eggs. It imposes civil and criminal penalties for individuals who “take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import” bald or golden eagles, unless the Secretary of the Interior issues a take permit for scientific, exhibition, or religious purposes or to protect wildlife, agricultural, or other interests. 50 CFR parts 13 and 22 outline the FWS permitting process for nonpurposeful limited takes.

9. Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, 16 U.S.C.

4701–4751. The purpose of this act 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 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. The Coast Guard’s implementing regulations are found at 33 CFR part 151, subparts C and D.

10. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-668ee. This act prohibits new and existing uses of National Wildlife Refuges that FWS deems incompatible with the mission or purposes of the refuge. Implementing regulations are found at 50 CFR parts 25, 26, and 29.

11. Executive Order 13112, “Invasive Species” (Feb. 3, 1999). The purpose of this Executive Order is to prevent the introduction of invasive species into the natural environment, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species may cause. The Order directs each Federal agency whose actions may affect the status of invasive species to identify such actions; to use programs to prevent the introduction of invasive species, detect, monitor, and control populations, restore native species and habitat

conditions in invaded ecosystems, conduct research and development to prevent and control invasive species, and promote education on invasive species; and not to authorize, fund, or carry out actions that the agency believes are likely to cause or promote the introduction or spread of invasive species. The Order also 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.

12. Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds” (Jan. 10, 2001). This Executive Order directs each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations to develop and implement, within two years, a Memorandum of Understanding with FWS that promotes the conservation of migratory bird populations. The Order directed the Secretary of the Interior to establish an interagency Council for the Conservation of Migratory Birds to oversee the implementation of the Order.

E. LAND

1. Department of Transportation Act, 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)). Section 4(f) provides that the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or significant historic site only if there is no prudent and feasible alternative and the program or project includes all possible planning to minimize harm to the property. Section 6009(a) of SAFETEA-LU amended this provision to allow for approval of projects with de minimis impacts. Once the Secretary determines that a transportation use of Section 4(f)

property results in a de minimis impact, analysis of avoidance alternatives are not required, and the Section 4(f) evaluation process is complete. The statute also requires the Secretary of Transportation to cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, along with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities. Except otherwise determined by the Secretary of Transportation, MAP-21 (23 U.S.C. 103(c)(5)) exempts the Interstate System from these provisions regardless of whether it is eligible for listing on the National Register of Historic Places. FHWA and FTA implementing regulations are found at 23 CFR part 774. Additional guidance is provided in the FHWA Section 4(f) Policy Paper, 77 FR 42802, July 20, 2012.

2. Highway Beautification Act of 1965, 23 U.S.C. 319. The Secretary of Transportation may approve Federal-aid highway construction costs for landscape and roadside development. Section 130 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 amended **Section 319** to require at least one quarter of one percent of funds expended on Federal-aid highway landscaping projects be dedicated to the planting of native wildflower seeds and/or seedlings unless the Secretary grants a waiver. Implementing regulations for Section 319 are found at 23 CFR part 752.

3. National Trails System Act, 16 U.S.C. 1241-1251. The National Trails System Act made it Federal policy to recognize and promote national scenic, historic, and recreational trails by providing financial assistance, support of volunteers, and coordination with States. As a result, eleven national scenic trails (NSTs) and nineteen national historic trails (NHTs) have been established by law (depending on the trail, NPS, Forest Service, or BLM administers the trail); the Secretaries of Agriculture and the Interior have recognized over 1,000 national recreation

trails; and two side-and-connecting trails have also been certified. Implementing regulations are found at 43 CFR part 8350.

4. The Wilderness Act, 16 U.S.C. 1131-1136. This act establishes the National Wilderness Preservation System and a policy for managing and protecting these designated wilderness areas. It prohibits commercial enterprises, permanent or temporary roads, motorized vehicles, boats or other equipment, aircraft landings, structures, and installations in designated wilderness areas. An agency must determine whether a proposed activity will affect a designated area under this act, and must consult with the appropriate administering agency to make this determination and obtain its approval for a project if that is the case. The administering agency determines if the proposed project is a prohibited activity, how the proposed activity may be mitigated, and whether the proposing agency can and should obtain an exemption to a prohibition. Implementing regulations are found at 50 CFR part 35 (FWS); 43 CFR part 19 (DOI Office of the Secretary); 36 CFR parts 219, 261, and 293 (Forest Service); 43 CFR part 6300 (BLM).

5. Land and Water Conservation Fund Act of 1965 (LWCF), 16 U.S.C. 460l-4-460l-11. This act provides money to Federal, State, and local governments to purchase land, water, and wetlands for the benefit of the public. **Section 6(f)(3)**, 16 U.S.C. 460l-8, of the act contains provisions to protect Federal investments and the quality of assisted resources. It prohibits the conversion of properties acquired or developed through the LWCF to non-public outdoor recreation uses unless approved by the Secretary of the Interior and substituted with other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. NPS's implementing regulations are found at 36 CFR parts 59, 406-409, 411-416, 418, 502, 549, 686, and 687.

6. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209. This act seeks to protect farmlands and minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. The FPPA directs Federal agencies, to the extent practicable, to administer their programs to be compatible with State, local, 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 non-Federal 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. Implementing regulations by USDA, Natural Resources Conservation Service, are found at 7 CFR part 658.

F. HISTORIC AND CULTURAL RESOURCES

1. National Historic Preservation Act, 16 U.S.C. 470–470x-6. This act requires the head of any Federal agency with jurisdiction over a proposed Federal or federally assisted project to take into account the effects of the undertaking on any property included in or eligible for inclusion in the National Register of Historic Places. **Section 106**, 16 U.S.C. 470f, requires the agency to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertaking. The agency is also required to consult with the State Historic Preservation Officer (SHPO) and, where the project may affect historic properties on tribal lands, the Tribal Historic Preservation Officer (THPO). The ACHP's regulations implementing Section 106 appear at 36 CFR part 800. The procedures for nominating and listing properties in the National Register of Historic Places are found at 36 CFR part 60. The criteria for determining eligibility for inclusion in the National Register are found at 36 CFR part 63.

2. Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm. This act preserves and protects archaeological resources from loss or destruction. The act applies to archeological resources and sites on Federal and Native American lands. It 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. Regulations concerning the Archaeological Resources Protection Act are found at 43 CFR part 7 and 43 CFR part 79.

3. Archeological and Historic Preservation Act, 16 U.S.C. 469–469c. This act carries out the policy established by the Historic Sites Act of 1935 and amended and expanded the Reservoir Salvage Act of 1960. It directs Federal agencies to provide for the preservation of historical and archeological data, including relics and specimens, that might otherwise be irreparably lost or destroyed as a result of building access roads, the relocation of railroads and highways, or any alteration of the terrain caused by any Federal construction project or federally licensed activity or program. Federal agencies must notify the Secretary of the Interior (NPS) whenever they find that a Federal or federally licensed project may cause irreparable loss or destruction of significant scientific, prehistoric, historical, or archeological data. DOI and/or the Federal agency may undertake a survey or data recovery. The act clarifies that all Federal agencies are authorized to fund archeological investigations, reports, and other kinds of activities to mitigate the impacts of their projects on important archeological sites. DOI's implementing regulations are found at 43 CFR part 7.

4. Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170. This act provides a process for federally assisted museums and Federal agencies to return Native American cultural items, including human remains, funerary

objects, sacred objects, and objects of cultural patrimony, to lineal descendants, culturally affiliated Indian Tribes, including any Alaska Native village, and Native Hawaiian organizations. 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. DOI's regulations implementing NAGPRA are found at 43 CFR part 10.

5. Executive Order 13007, “Indian Sacred Sites” (May 24, 1996). In order to protect and preserve Indian religious practices, 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. The Order also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may adversely affect sacred sites or restrict access to or the ceremonial use of such sites.

6. Executive Order 13287, “Preserve America” (Mar. 3, 2000). The President issued this Executive Order 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 promoting intergovernmental cooperation and partnership for the preservation and use of historic properties. The Order encourages agencies to seek partnerships with State, tribal, and local governments and the private sector to promote local economic development by using historic properties in a manner that contributes to their long-term preservation and productive use. The Order directs agencies to assess their inventories of historic properties, including an evaluation of their condition, management needs, and suitability

for contribution to community economic development initiatives. Finally, the Order directs agencies to assist States, Indian Tribes, and local communities in promoting the use of historic properties for heritage tourism and related economic development.

G. 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 act mandates the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs to ensure that such persons must not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole, and to minimize the hardship of displacement on such persons. Federal regulations implementing the Uniform Act are contained in 49 CFR part 24.

2. American Indian Religious Freedom Act, 42 U.S.C. 1996. This statute establishes a Federal policy to protect and preserve places of religious significance 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. The following implementing regulations for the Archaeological Resources Protection Act of 1979 call for consideration of the American Indian Religious Freedom Act: 36 CFR part 296 (Forest Service); and 43 CFR part 7 (DOI). FWS considers the act in 50 CFR part 12.

3. Executive Order 13045, “Protection of Children from Environmental Health and Safety Risks” (Apr. 21, 1997). This Executive Order directs each Federal agency to identify and assess environmental health and safety risks that may disproportionately affect children, and ensure that its policies, programs, activities, and standards address these disproportionate risks. 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; Executive Orders 13229 and 13296 extended the existence of this task force.

4. Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments" (Nov. 6, 2000). This Executive Order establishes regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, including regulations, proposed legislation, and other policy statements or actions that have substantial direct effects on Indian Tribes. The Order requires each agency to establish a process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Prior to the release of this Executive Order, DOT issued DOT Order 5301.1, "Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes," which outlines the Department's guidance on coordination with Tribes. Additionally, the Department completed a Tribal Consultation Plan in response to President Obama's November 5, 2009 Memorandum on Tribal Consultation. The purpose of the plan is to develop, improve, and maintain partnerships with Indian Tribes by using agreed upon processes when the Department develops, changes or implements policies, programs, or services with tribal implications. See www.dot.gov/tribal.

H. CIVIL RIGHTS AND ENVIRONMENTAL JUSTICE

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d-7. This act prohibits discrimination on the basis of race, color, or national origin in connection with programs and activities receiving Federal financial assistance. It authorizes and directs the involved Federal departments and agencies to take action to carry out this policy. Title VI

prohibits discrimination and exclusion from participation in or denial of benefits of any program or activity receiving Federal financial assistance.

DOT's implementing regulations are found at 49 CFR part 21. Guidance for implementing FHWA's Title VI compliance program is found at 23 CFR part 200; FMCSA's is found at 49 CFR part 303. FTA issued Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," 77 FR 52116, Aug. 28, 2012, which provides recipients of FTA financial assistance with guidance and instructions to carry out DOT's Title VI regulations, 49 CFR part 21.

2. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (Feb. 11, 1994). This Executive Order establishes a Federal policy on environmental justice, whereby agencies must identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. CEQ has oversight of the Federal Government's compliance with the Order, and published a guidance document to assist Federal agencies in developing NEPA procedures that effectively identify and address environmental justice concerns. Additionally, DOT issued Order 5610.2(a), 77 FR 27534, May 10, 2012, updating Order 5610.2, 62 FR 18377, Apr. 15, 1997, that established requirements for integrating environmental justice into the NEPA process through analysis of environmental justice impacts and public involvement. Additionally, operating administrations have issued their own guidance implementing environmental justice: FHWA Order 6640.23A (June 14, 2012); and FTA Circular 4703.1 (Aug. 15, 2012). DOT participates on the Environmental Justice Interagency Working Group established by Executive Order 12898. On August 4, 2011, the Secretary of Transportation and other agencies signed a Memorandum of Understanding on

Environmental Justice and Executive Order 12898 (MOU). The MOU provides for coordination of Federal agency environmental justice efforts and calls for agencies to meet commitments, such as establishing an environmental justice strategy. The DOT strategy is posted at www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/revised_strategy.

I. HAZARDOUS SUBSTANCES

Sometimes, DOT projects are located on sites that are contaminated by hazardous waste. Although the project sponsor and DOT might not be responsible for the presence of the waste, the following statutes may govern the use and cleanup of these sites.

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675. The CERCLA, commonly referred to as Superfund, provides broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. It establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites; provides for liability of persons responsible for releases of hazardous waste at these sites; and establishes a trust fund to provide for cleanup when no responsible party can be identified.

EPA's implementing regulations are found at 40 CFR parts 300–374. The National Oil and Hazardous Substances Pollution Contingency Plan, 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. DOI promulgated 43 CFR part 11, Natural Resource Damage Assessments, which 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.

Subpart O of 40 CFR part 35, 40 CFR 35.6000-35.6820, contains the regulations governing cooperative agreements and Superfund State contracts for Superfund response actions.

2. Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601-9675. This act amended CERCLA in 1986. The amendments stress the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites; require Superfund actions to consider the standards and requirements found in other State and Federal environmental laws and regulations; provide new enforcement authorities and settlement tools; increase State involvement in every phase of the Superfund program; increase the focus on human health problems posed by hazardous waste sites; encourage greater citizen participation in making decisions on how sites should be cleaned up; and increase the size of the trust fund to \$8.5 billion. SARA also required EPA to revise the Hazard Ranking System (HRS) 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 (NPL). The SARA amendments also included the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. 11001–11050, which 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. Implementing regulations are located at 40 CFR parts 302, 350, 355, 370, and 374.

3. Small Business Liability Relief and Brownfields Revitalization Act, 42 U.S.C. 9601, 9604, 9605, 9607, 9628. The “Brownfields Law” amended CERCLA by providing funds to assess and clean up brownfields; clarified CERCLA liability protections; and provided funds to enhance State and tribal response programs. DOT supports brownfield redevelopment

through its financial and technical assistance programs, including project siting on brownfields, as well as encouraging transportation access to these sites.

4. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k. This act regulates the generation, treatment, storage, transportation, and disposal of hazardous waste. RCRA also sets forth a framework for the management of non-hazardous solid wastes. RCRA focuses only on active and future facilities and does not address abandoned or historical sites, which are addressed by CERCLA. 40 CFR parts 260–282 establish the standards and procedures EPA uses in implementing RCRA. Subtitle I establishes a regulatory program that prevents, detects, and cleans up releases from underground storage tank systems containing petroleum or hazardous substances.

J. NOISE

1. Federal-Aid Highway Act of 1970, 23 U.S.C. 109. Section 109(i) states that the Secretary must “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.” Compliance with the noise regulations is a prerequisite for the granting of Federal-aid highway funds for construction or reconstruction of a highway. FHWA regulations for the mitigation of highway traffic noise in the planning and design of federally aided highways are contained in 23 CFR part 772.

2. Noise Control Act of 1972, 42 U.S.C. 4901–4918. This act declares that it is Federal policy to promote an environment free from noise that jeopardizes human health or welfare. The act directs EPA to coordinate Federal research and activity in noise control, establish Federal noise emission standards for products distributed in commerce, and provide information to the

public respecting the noise emission and reduction characteristics of such products. **Sections 4916 and 4917** require the EPA Administrator, in consultation with the Secretary of Transportation, to promulgate noise emission regulations that reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance, for railroads and motor carriers. These sections also require the Secretary of Transportation to issue and enforce regulations on the noise emission standards. EPA's standards are found at 40 CFR part 201 for railroads and 40 CFR part 202 for motor carriers. FRA's regulations are found at 49 CFR part 210. FMCSA's regulations are found at 49 CFR part 325. FTA has issued "Transit Noise and Vibration Impact Assessment" (May 2006), which provides guidance on gauging the noise and vibration of transit projects.

3. Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521–47533. This act directs the Secretary of Transportation to establish a national aviation noise policy and a national program for reviewing airport noise and access restrictions on the operation of stage two and stage three aircraft. FAA's implementing regulations are found at 14 CFR part 161.

4. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 47501–47510. This act directs the Secretary of Transportation to establish (1) a single system for measuring noise at airports and (2) a single system for determining the exposure of individuals to noise resulting from airport operations. Further, it directs the Secretary to identify land uses that are normally compatible with various noise exposure levels, and to receive from airport operators voluntary submissions of noise exposure maps and noise compatibility programs that propose measures to reduce existing and prevent future non-compatible uses in the areas covered by the map. The Secretary may provide grants to support map and program development and to support projects

that are part of a noise compatibility program. FAA implementing regulations are found at 14 CFR part 150.