

Appendix 2-B
Federal Policies and Laws

CONTENTS

| | <u>Page</u> |
|---|-------------|
| Introduction | 2-B-3 |
| Environmental | 2-B-3 |
| Health | 2-B-5 |
| Historic and Archeological Preservation | 2-B-5 |
| Land and Water Usage | 2-B-7 |
| Abbreviations | 2-B-12 |

Introduction

The following section lists Federal Legislation that contains Federal policies, which might affect drainage design and construction. This section gives the legislative reference, regulations reference, purpose, applicability, general procedures, and agency for coordination and consultation. For more detailed information about specific Federal policies, the applicable legislation should be consulted. Note: Abbreviations are given at the end of this section.

Environmental

1. National Environmental Policy Act: 42 U.S.C. 4321-4347 (P.L. 91-190 and 94-81). Reference - 23 CFR 770-772, 40 CFR 1500-1508, CEQ Regulations, Executive Order 11514, as amended by Executive Order 11991 on NEPA responsibilities.

Purpose - Consider environmental factors through systematic interdisciplinary approach before committing to a course of action.

Applicability - All highway projects.

General Procedures - Procedures set forth in CEQ regulations and 23 CFR 771.

Coordination - Appropriate Federal, State, and local agencies.

2. Section 4(f) of the Department of Transportation Acts: 23 U.S.C. 138, 49 U.S.C. 303 (P.L. 100-17, 97-449, and 86-670), 23 CFR 771.135.

Purpose - Preserve publicly owned public parklands, waterfowl and wildlife refuges, and all historic areas.

Applicability - Significant publicly owned public parklands, recreation areas, wildlife and waterfowl refuges, and all significant historic sites used for a highway project.

General Procedures - Specific finding required: (1) Selected alternative should avoid protected areas unless not feasible or prudent, and (2) Includes all possible planning to minimize harm.

Coordination - DOI, DOA, HUD, State, or local agencies having jurisdiction, and State Historic Preservation Officer (for historic sites).

3. Economic, Social, and Environmental Effects: 23 U.S.C. 109(h) (P.L. 91- 605), 23 U.S.C. 128, 23 CFR 771.

Purpose - To assure that possible adverse economic, social, and environmental effects of proposed highway projects and project locations are fully considered, and that final decisions on highway projects are made in the best overall public interest.

Applicability - To the planning and development of proposed projects on any Federal-aid system for which the FHWA approves the plans, specifications, and estimates, or has the responsibility for approving a program.

General Procedures - Identification of social, economic, and environmental effects; consideration of alternative courses of action; involvement of other agencies and the public; systematic interdisciplinary approach. The report required by Section 128, on the consideration given to the social, economic, and environmental impacts of the project, may serve as part of the NEPA compliance document.

Coordination - Appropriate Federal, State, and local agencies.

4. Public Hearings: 23 U.S.C. 128, 23 CFR 771.111.

Purpose - To ensure adequate opportunity for public hearing(s) on the social, economic, and environmental effects of alternative project locations and major design features, as well as the consistency of the project with local planning goals and objectives.

Applicability - Public hearings or hearing opportunities are required for projects described in each State's FHWA-approved public involvement procedures.

General Procedures - Public hearings or opportunities for public hearings during the consideration of highway location and design proposals are conducted as described in the State's FHWA-approved, public involvement procedures. States must certify to FHWA that such hearings or the opportunity therefore have been held and must submit a hearing transcript to FHWA.

Coordination - Appropriate Federal, State, and local agencies.

5. Surface Transportation and Uniform Relocation Assistance Act of 1987: Section 123(f) Historic Bridges 23 U.S.C. 144(o) (P.L. 100-17).

Purpose - Complete an inventory of on-and-off system bridges to determine their historic significance. Encourage the rehabilitation, reuse, and preservation of historic bridges.

Applicability - Any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

General Procedures - (1) Identify historic bridges on and off system, (2) Seek to preserve or reduce impact to historic bridges, and (3) Seek a recipient prior to demolition.

Coordination - State Historic Preservation Officer and Advisory Council on Historic Preservation.

6. Surface Transportation and Uniform Relocation Assistance Act of 1987: Section 130 Wildflowers, 23 U.S.C. 319(b) (P.L. 100-17), FHPM 6-2-5-1, 23 CFR 752.

Purpose - To encourage the use of native wildflowers in highway landscaping.

Applicability - Wildflowers are to be planted on any landscaping project undertaken on the Federal-aid highway system.

General Procedures - At least 1/4 of 1 percent of funds expended on a landscaping project must be used to plant wildflowers on that project.

Coordination - Appropriate Federal and State agencies.

Health

1. Safe Drinking Water Act: 42 U.S.C. 300f - 300j-6 (P.L. 93-523 and 99-339), FHPM 6 7-3-3, 23 CFR 650, Subpart E, 40 CFR 141,149.

Purpose - Ensure public health and welfare through safe drinking water.

Applicability - (1) All public drinking water systems and reservoirs (including rest area facilities), (2) Actions which may have a significant impact on an aquifer or wellhead protection area which is the sole or principal drinking water source as designated through the Federal Register process.

General Procedures - (1) Compliance with national primary drinking water regulations, (2) Compliance with State wellhead protection plans, (3) Compliance with MOAs between EPA and FHWA covering specific sole source aquifers.

Coordination - EPA and appropriate State agency.

2. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976: 42 U.S.C. 6901, et seq., see especially 42 U.S.C. 6961-6964 (P.L. 89 272, 91(P.L. 89-272, 91-512, and 94-580), 23 CFR 751, 40 CFR 256-300.

Purpose - Provide for the recovery, recycling, and environmentally safe disposal of solid wastes.

Applicability - All projects which necessitate the disposal of solid wastes.

General Procedures - Solid wastes will be disposed of according to the rules for specific waste involved.

Coordination - EPA.

3. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA): 7 U.S.C. 136-136y (P.L. 92-516), 40 CFR 162-171.

Purpose - Control the application of pesticides to provide greater protection to man and the environment.

Applicability - All activities which necessitate use of restricted pesticides.

General Procedures - Using or supervising "restricted use" pesticides will require certification.

Coordination - EPA.

Historic and Archeological Preservation

1. Section 106 of the National Historic Preservation act, as amended: 16 U.S.C. 470f (P.L. 89-665, 91-243, 93-54, 94-422, 94-458, 96-199, 96-244, and 96-515), Executive Order 11593, 23 CFR 771, 36 CFR 60, 36 CFR 63, 36 CFR 800.

Purpose - Protect, rehabilitate, restore, and reuse districts, sites buildings, structures, and objects significant in American architecture, archeology, engineering, and culture.

Applicability - All properties on or eligible for inclusion on the National Register of Historic Places.

General Procedures - (1) Identify and determine the effects of project on subject properties, (2) Afford Advisory Council an early opportunity to comment in accordance with 36 CFR 800, (3) Avoid or mitigate damages to greatest extent possible.

Coordination - State Historic Preservation Officer, Advisory Council on Historic Preservation, DOI (NPS).

2. Section 110 of the National Historic Preservation Act, as amended: 16 U.S.C. 470h-2 (P.L. 96-515), 36 CFR 65, 36 CFR 78.

Purpose - Protect national historic landmarks and record historic properties prior to demolition.

Applicability - All properties designated as National Historic Landmarks. All properties on or eligible for inclusion on the National Register of Historic Places.

General Procedures - (1) Identify and determine the effects of a project on subject properties, (2) Afford Advisory Council an early opportunity to comment in accordance with 36 CFR 800.

Coordination - State Historic Preservation Officer, Advisory Council on Historic Preservation, DOI (NPS).

3. Archeological and Historic Preservation Act: 16 U.S.C. 469-469c (P.L. 93-291) (Moss-Bennett Act), 36 CFR 66 (draft).

Purpose - Preserving significant historical and archeological data from loss or destruction.

Applicability - Any archeological resources discovered as a result of a Federal construction project or Federally licensed activity or program.

General Procedures - (1) Notify DOI (NPS) when a Federal project may result in the loss or destruction of a historic or archeological property, (2) DOI and/or the Federal agency may undertake survey or data recovery.

Coordination - DOI (NPS) departmental consulting archeologist and State Historic Preservation Officer.

4. Act for the Preservation of American Antiquities: 16 U.S.C. 431-433 (P.L. 59-209), 36 CFR 251.50-.64, 43 CFR 3. Archeological Resources Protection Act: 16 U.S.C. 470aa-11 (P.L. 96-95), 18 CFR 1312, 32 CFR 229, 36 CFR 296, 43 CFR 7.

Purpose - Preserve and protect paleontological resources, historic monuments, memorials, and antiquities from loss or destruction.

Applicability - Archeological resources on Federally- or Indian-owned property.

General Procedures - (1) Ensure contractor obtains permit and identifies and evaluates resource, (2) Mitigate or avoid resource in consultation with appropriate officials in the State, (3) If necessary, apply for permission to examine, remove, or excavate such objects.

Coordination - Department or agency having jurisdiction over land on which resources may be situated (BIA, BLM, DOA, DOD, NPS, TVA, USFS), State Historic Preservation Officer, recognized Indian tribe if appropriate.

5. American Indian Religious Freedom Act: 42 U.S.C. 1996 (P.L. 95-341).

Purpose - Protect places of religious importance to American Indians, Eskimos, and Native Hawaiians.

Applicability - All projects which affect places of religious importance to Native Americans.

General Procedures - Consult with knowledgeable sources to identify and determine any effects on places of religious importance. Comply with Section 106 procedures if the property is historic.

Coordination - BIA, State Historic Preservation Officer, State Indian liaison, Advisory Council on historic Preservation, if appropriate.

Land And Water Usage

1. Wilderness Act 16 U.S.C. 1131-1136, 36 CFR 251, 293, 43 CFR 19, 8560, 50 CFR 35.

Purpose - Preserve and protect wilderness areas in their natural condition for use and enjoyment by present and future generations.

Applicability - All lands designated as part of the wilderness system by Congress.

General Procedures - Apply for modification or adjustment of wilderness boundary by either Secretary of the Interior or Agriculture, as appropriate.

Coordination - Agriculture (USFS), DOI (FWS, NPS, BLM), and State agencies.

2. Wild and Scenic Rivers Act: 16 U.S.C. 1271-1287, 36 CFR 251, 261, 43 CFR 8350.

Purpose - Preserve and protect wild and scenic rivers and immediate environments for benefit of present and future generations.

Applicability - All projects which affect designated and potential wild, scenic, and recreational rivers, and/or immediate environments.

General Procedures - Submit project plans and reports to appropriate Federal agency.

Coordination - DOI (NPS) and/or Agriculture (USFS), State agencies.

3. Land and Water Conservation Fund Act (Section 6(f)): 16 U.S.C. 460I-4 to I-11 (P.L. 88-578).

Purpose - Preserve, develop, and assure the quality and quantity of outdoor recreation resources for present and future generations.

Applicability - All projects which impact recreational lands purchased or improved with land and water conservation funds.

General Procedures - The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this act to other than public outdoor recreation use.

Coordination - DOI, State agencies.

4. Executive Order 11990, Protection of Wetlands, DOT Order 5660.1A, 23 CFR 777.
Purpose - To avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.
Applicability - Federally undertaken, financed, or assisted construction and improvements in or with significant impacts on wetlands.
General Procedures - Evaluate and mitigate impacts on wetlands. Specific finding required in final environmental document.
Coordination - DOI (FWS), EPA, USCE, NMFS, NRCS, State agencies.

5. Emergency Wetlands Resources Act of 1986: 16 U.S.C. - 3901 Note (P.L. 99-645).
Purpose - To promote the conservation of wetlands in the U. S. in order to maintain the public benefits they provide.
Applicability - All projects which may impact wetlands.
General Procedures - (1) Preparation of a National Wetlands Priority Conservation Plan which provides priority with respect to Federal and State acquisition, (2) Provides direction for the National Wetlands Inventory Project.
Coordination - FWS.

6. National Trails Systems Act: 16 U.S.C. 1241-1249, 36 CFR 251, 43 CFR 8350.
Purpose - Provide for outdoor recreation needs and encourage outdoor recreation.
Applicability - Projects affecting national recreational, scenic, or side trails designated by Congress and lands through which such trails pass.
General Procedures - (1) Apply for right-of-way easement from the Secretary of Interior or Agriculture, as appropriate, (2) Ensure that potential trail properties are made available for use as recreational and scenic trails.
Coordination - DOI (NPS) or Agriculture (USFS).

7. Rivers and Harbors Act of 1899: 33 U.S.C. 401, et seq., as amended and supplemented, 23 CFR part 650, Subpart H, 33 CFR 114-115.
Purpose - Protection of navigable waters in the U.S.
Applicability - Any construction affecting navigable waters and any obstruction, excavation, or filling.
General Procedures - Must obtain approval of plans for construction, dumping, and dredging permits (Section 10) and bridge permits (Section 9).
Coordination - USCE, USCG, EPA, State agencies.

8. Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 and 1987): 33 U.S.C. 1251-1376 (P.L. 92-500, 95-217, 100-4), DOT Order 5660.1A, FHWA Notices N5000.3 and N5000.4, FHPM 6-7-3-3, 23 CFR 650, Subpart B, E, 771, 33 CFR 209, 40 CFR 120, 122-125, 128-131, 133, 125-136, 148, 230-231.
Purpose - Restore and maintain chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution.
Applicability - Any discharge of a pollutant into waters of the U.S.

General Procedures - (1) Obtain permit for dredge or fill material from USCE or State agency, as appropriate (Section 404); (2) Permits for all other discharges are to be acquired from EPA or appropriate State agency (Section 402); (3) Water quality certification is required from State water resource agency (Section 401), (4) all projects shall be consistent with the State nonpoint source pollution management program (Section 319).

Coordination - USCE, EPA, designated State water quality control agency, designated State non-point source pollution agency.

9. Executive Order 11988, Floodplain Management, as amended by Executive Order 12148, DOT Order 5650.2, FHPM 6-7-3-2, 23 CFR 650, Subpart A, 771.

Purpose - To avoid the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to restore and preserve the natural and beneficial values served by floodplains.

Applicability - All construction of Federal or Federally aided buildings, structures, roads, or facilities which encroach upon or affect the base floodplain.

General Procedures - (1) Assessment of flood hazards, (2) Specific finding required in final environmental document.

Coordination - FEMA, State and local agencies.

10. National Flood Insurance Act: (P.L. 90-448), Flood Disaster Protection Act: (P.L. 93-234) 42 U.S.C. 4001-4128, DOT Order 5650.2, FHPM 6-7-3-2, 23 CFR 650, Subpart A, 771, 44 CFR 59-77.

Purpose - (1) Identify flood-prone areas and provide insurance, (2) Requires purchase of insurance for buildings in special flood-hazard areas.

Applicability - Any Federally assisted acquisition of construction project in area identified as having special flood hazards.

General Procedures - Avoid construction in, or design to be consistent with, FEMA-identified flood-hazard areas.

Coordination - FEMA, State and local agencies.

11. Marine Protection Research and Sanctuaries Act of 1972, as amended: 33 U.S.C. 1401-1445 (P.L. 92-532, 93-254, 96-572), 33 CFR 320, 330, 40 CFR 220-225, 227-228, 230-231.

Purpose - Regulate dumping of materials into U.S. ocean waters.

Applicability - Any transportation to and dumping into the open sea.

General Procedures - Apply for permit in accordance with existing procedures.

Coordination - EPA, USCE (if dredge material).

12. Water Bank Act: 16 U.S.C. (P.L. 91-559, 96-182), 7 CFR 752.

Purpose - Preserve, restore, and improve wetlands of the Nation.

Applicability - Any agreements with landowners and operators in important migratory waterfowl nesting and breeding areas.

General Procedures - Apply procedures established for implementing Executive Order 11990.

Coordination - Secretary of Agriculture, Secretary of Interior.

13. Coastal Zone Management Act of 1972: 16 U.S.C. 1451-1464 (P.L. 92-583, 94-370, 96-464), 15 CFR 923, 926, 930-931, 23 CFR 771.

Purpose - Preserve, protect, develop, and (where possible) restore and enhance resources of the coastal zone.

Applicability - All projects significantly affecting areas under the control of the State coastal zone management agency for which a plan is approved by the Department of Commerce.

General Procedures - Ensure that projects comply with Federal consistency regulations and the appropriate approved State plan for coastal zone management programs.

Coordination - State coastal zone management agency and the Department of Commerce (OCZM).

14. Coastal Barrier Resource Act, as amended: 16 U.S.C. 3501-3510, 42 U.S.C. 4028 (P.L. 97-348), Great Lakes Coastal Barrier Act of 1988 (P.L. 100-707), 13 CFR 116 Subparts D, E, 44 CFR 71, 205 Subpart N.

Purpose - Minimize the loss of human life, wasteful expenditures of Federal revenues, and the damage to fish, wildlife, and other natural resources.

Applicability - Any project that may occur within the boundaries of a designated coastal barrier unit. Exemptions for certain actions are possible.

General Procedures - Coordinate early with the FWS Regional Director. Consult maps that depict the boundaries of each coastal barrier resources system unit.

Coordination - FEMA, DOI (FWS).

15. Farmland Protection Policy Act of 1981: 7 U.S.C. 4201-4209 (P.L. 97-98, 99-198), 7 CFR 658.

Purpose - Minimize impacts on farmland and maximize compatibility with State and local farmland programs and policies.

Applicability - All projects that take right-of-way in farmland.

General Procedures - (1) Early coordination with the NRCS, (2) Land evaluation and site assessment, (3) Determination on whether or not to proceed with farmland conversion based on severity of impacts and other environmental considerations.

Coordination - NRCS.

16. Resource Conservation and Recovery Act of 1976 (RCRA), as amended: 42 U.S.C. 690, et seq. (P.L. 94-580, 98-616), 40 CFR 260-271.

Purpose - Protect human health and the environment, prohibit open dumping, manage solid wastes, regulate treatment, storage, transportation, and disposal of hazardous waste.

Applicability - Any project that takes right-of-way containing a hazardous waste.

General Procedures - Coordinate with EPA or State agency on remedial action.

Coordination - EPA or State agency approved by EPA, if any.

17. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended: 42 U.S.C. 9601-9657 (P.L. 96-510), 40 CFR 300, 43 CFR 11. Superfund Amendments and Reauthorization Act of 1986 (SARA) (P.L. 99-499).

Purpose - Provide for liability, compensation, clean up, and emergency response for hazardous substances released into the environment and the clean up of inactive hazardous waste disposal sites.

Applicability - Any project that might take right-of-way containing a hazardous substance.

General Procedures - (1) Avoid hazardous waste sites, if possible, (2) Check EPA lists of hazardous waste sites, (3) Field surveys and reviews of past and present land use, (4) Contact appropriate officials if uncertainty exists, (5) If hazardous waste is present or suspected, coordinate with appropriate officials, (6) If hazardous waste encountered during construction, stop project and develop remedial action.

Coordination - EPA or State agency approved by EPA, if any.

18. Endangered Species Act of 1973, as amended: 16 U.S.C. 1531-1543 (P.L. 93-205, 94-359, 95-632, 96-159, 97-304), 7 CFR 355, 50 CFR 17, 23, 25-29, 81, 217, 222, 225-227, 402, 424, 450-453.

Purpose - Conserve species of fish, wildlife, and plants facing extinction.

Applicability - Any action that is likely to jeopardize continued existence of such endangered/threatened species or result in destruction or modification of critical habitat.

General Procedures - Consult with the Secretary of the Interior or Commerce as appropriate.

Coordination - DOI (FWS), Commerce (NMFS).

19. Fish and Wildlife Coordination Act: 16 U.S.C. 661-666c (P.L. 85-624, 89-72, 95-616).

Purpose - Conservation, maintenance, and management of wildlife resources.

Applicability - (1) Any project which involves impoundment (surface area of 10 acres or more), diversion, channel deepening, or other modification of a stream or other body of water, (2) Transfer of property by Federal agencies to State agencies for wildlife conservation purpose.

General Procedures - Coordinate early in project development with FWS and State fish and wildlife agency.

Coordination - DOI (FWS), State fish and wildlife agencies.

Abbreviations

Following are the abbreviations used in the above descriptions of Federal policies:

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| BIA | Bureau of Indian Affairs |
| BLM | Bureau of Land Management |
| CEQ | Council on Environmental Quality |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act |
| CFR | Code of Federal Regulations |
| DOA | Department of the Army |
| DOD | Department of Defense |
| DOI | Department of the Interior |
| DOT | Department of Transportation |
| EPA | Environmental Protection Agency |
| FEMA | Federal Emergency Management Agency |
| FHPM | Federal-Aid Highway Program Manual |
| FHWA | Federal Highway Administration |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FWPCA | Federal Water Pollution Control Act |
| FWS | Fish and Wildlife Service |
| HUD | Housing and Urban Development |
| NMFS | National Marine Fisheries Service |
| NPS | National Park Service |
| NRCS | National Resource Conservation Service; formerly Soil Conservation Service (SCS) |
| OCZM | Office of Coastal Zone Management |
| P.L. | Public Law |
| RCRA | Resource Conservation and Recovery Act |
| SARA | Superfund Amendments and Reauthorization Act |
| SEE | Social, Economic, and Environmental |
| SIP | State Implementation Plan |
| Stat. | Statute |
| TVA | Tennessee Valley Authority |
| UMTA | Urban Mass Transportation Administration |
| U.S.C. | United States Code |
| USCE | U.S. Corps of Engineers |
| USCG | U.S. Coast Guard |
| USFS | U.S. Forest Service |