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SECTION 400 - STATE AND LOCAL PROJECTS

SECTION 410.00 - INTRODUCTION

This chapter explains the different requirements for projects with and without Federal nexus. A “nexus” is simply a connection to Federal authority because of a Federal permit requirement, use of Federal property or Federal funding. Some apparently simple local projects are required to meet the same conditions some seemingly complex projects are required to meet due to a Federal nexus. The process for obtaining environmental clearance for Federal funding for local projects is lengthy but need not be cumbersome if the sponsoring agency is fully aware of the requirements from the beginning of the application process.

For projects originating within local highway districts, the Local Highway Technical Assistance Council (LHTAC) will process environmental clearance. For review purposes, these actions are treated as ITD District 7 by HQ and all codes, regulations, formats and forms that are typically used for project clearance, and described in this and other ITD manuals, will apply to LHTAC projects. For more information on the internal workings of LHTAC, see their website at: <http://www.lhtac.org>.

Many projects are initiated at a local level or from within the districts using only local or State funding. The lack of Federal nexus will change the requirements for most of these projects. There are also non-road projects for local benefit that do have Federal funding and these projects will fall under the regulations for NEPA and the typical road construction environmental clearance process. For more guidance on local projects see the ITD Local Public Agencies Manual on the ITD Publications CD.

410.01 Abbreviations and Acronyms.

ADT	Average Daily Traffic
CFR	Code of Federal Regulations
COE	US Army, Corp. of Engineers
CMAQ	Congestion Management & Air Quality
DOT	Department of Transportation
EAC	Enhancement Advisory Committee
ESA	Endangered Species Act
FHWA	Federal Highway Administration
HQ	Headquarters
ITD	Idaho Transportation Department
LHTAC	Local Highway Technical Assistance Council
MOA	Memorandum of Agreement
MOU	Memo of Understanding(?)
NEPA	National Environmental Protection Act
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users
STP	Surface Transportation Program
TE	Transportation Enhancement

TEA	Transportation Enhancement Activity
TEA-21	Transportation Equity Act for the 21 st Century
USC	United States Code

410.02 Summary of Requirements.

410.02.01 State and Local Projects with Federal Nexus

All ITD projects are required to meet all the NEPA, ESA and other federal regulations and guidelines. For Eligibility purposes, Transportation Enhancement (TE) Projects must meet one of the listed activities in the TE definition in TEA-21 and must be related to surface transportation. Currently, LHTAC does not process projects using TE funding. For a complete guide to TE requirements go the FHWA Transportation Enhancement website at: <http://environment.fhwa.dot.gov/guidebook/index.asp>

410.02.02 Local Projects with No Federal Nexus

Local projects without Federal funding must meet all State and local requirements regarding permits and environmental protection.

410.02.03 State Projects with No Federal Nexus

State projects without Federal funding must meet all Federal, State and local requirements regarding permits and environmental protection.

SECTION 420.00 – APPLICABLE STATUTES AND REGULATIONS

For TE information as it relates to TEA-21, see the FHWA website at: <http://www.fhwa.dot.gov/environment/te/guidance.htm>

SECTION 430.00 - POLICY GUIDANCE

430.01 FHWA Policy / Guidance on Federal-aid Projects.

FHWA policy on environment is incorporated into 23CFR771. See: <http://www.access.gpo.gov/nara/cfr/>

FHWA Guidance on project eligibility and programs is incorporated in to the Guide to Federal-aid Programs and Projects. See: <http://www.fhwa.dot.gov/programadmin/covert21.htm>

430.02 FHWA Interim Guidance Transportation Enhancement Activities - 23 U.S.C. and SAFETEA-LU.

Federal transportation policy, as reflected in the strategic goals of the U.S. Department of Transportation (DOT), the Federal Highway Administration (FHWA), and its Environmental Policy Statement, continues to stress mobility, protection of the human and natural environment, including community preservation, sustainability, and livability. The achievement of these goals and objectives remains a high priority for the DOT. SAFETEA-LU continues the opportunities to achieve these priority efforts through expansion and funding of the TE program activities initiated under the ISTEA.

TE activities are a sub-component of the Surface Transportation Program (STP). The policy and procedural requirements that apply to the STP program also apply to the provisions for funding and implementation of TE activities. The laws governing traditional Federal-aid projects funded under Chapter 1 of Title 23 U.S.C., such as the National Environmental Policy Act (NEPA) and related laws, apply to transportation enhancements as well, except where the Congress expressly provided additional streamlining provisions, innovative finance, and cost sharing provisions solely for the TE activities.

Through the TE activities, Congress provided opportunities to enhance and contribute to innovations in the transportation system. This is being carried out in a non-traditional fashion through implementation of a specific list of TE activities. The focus of these actions is to improve the transportation experience in and through local communities. The FHWA seeks to broaden TE program participation, the rates of implementation of transportation and community enhancing projects. It is the policy of the FHWA to foster and encourage partnerships with State and local officials and public interest groups to improve the delivery of these valuable transportation enhancements. Where appropriate, public-private partnerships may also be encouraged.

430.03 ITD Transportation Enhancement Program—Board Policy B-11-03. The Director of ITD shall distribute and administer the Surface Transportation Program Enhancement funds allocated to Idaho under TEA 21.

SECTION 440.00 – MOUs AND MOAs

An MOA is a memorandum of agreement. The term memo of understanding (MOU) may also be used. [Provide some direction on what readers need to know about MOUs and MOAs.] See [Exhibit 1800-3](#).

SECTION 450.00 – TECHNICAL GUIDANCE

The Environmental Checklist for State Funded Projects has been the basis for environmental clearance for State funded projects without Federal nexus. ITD has now adopted the NEPA process used for Federal projects into the state funded project process approval. There is no difference in the way in which state and Federal funded projects are processed for environmental clearance.

Local projects with general Federal funding are processed the same as ITD District projects. This means that projects submitted from a local area entity will be treated separately and distinctly from the home district projects. Applications for environmental clearance will be processed through ITD HQ for all transportation projects. TE funded projects will be processed through the local ITD highway district. HQ will be the primary contact point for the review process of LHTAC projects and will ensure that all environmental documents meet Federal guidelines before forwarding to FHWA for approval.

SECTION 460.00 – PERMITS AND APPROVALS

A Federal-aid or State-funded project may require one or more permits from State, Federal, or local agencies. Permits are normally obtained through an application process. Project approvals are obtained through coordination and negotiation with the approving agency.

SECTION 470.00 – NON-ROAD PROJECT REQUIREMENTS

See [Section 410.00](#)

SECTION 480.00 – EXHIBITS

Exhibit 400-1. Permits, Approvals, and Notifications

Permit/ Approval	Grantor	Conditions Requiring
NEPA Doc. EE, EA, EIS and Determination CE, FONSI, ROD	FHWA	Project actions involving federal funds/approval
Noise Analysis	FHWA	Type 1 projects
Interstate Access Control	FHWA	Addition or change of access points
Section 4(f)	FHWA	Use of park & recreation lands, wildlife, waterfowl refuges, historic sites of national, State, or local significance
Section 6(f)	DOI	If land and water conservation funds are utilized in the purchase
Archaeological and Historic (Section 106)	SHPO, Advisory Council & FHWA	Suspected/actual, historic/archaeological properties impacted by the project
FAA Airport/ Highway Clearance	FAA	Airspace intrusion of highway facility (proposed construction in the vicinity of public use/ military airports may require FAA notice)
Prime & Unique Farmland Evaluation	NRCS	Lands impacted are of prime or unique status
Hazardous Materials Notifications	EPA, DEQ, DHD, BFD	Asbestos, Solid Wastes, Underground Storage Tanks, Hazardous Wastes Used Oil, Pb Paints
Endangered/ Threatened Species	FWS/NMFS and FHWA	Plant or animal species that are listed as endangered or threatened
Clean Air Act	EPA, DEQ	Insuring conformity with CO, PM ₁₀ , and PM _{2.5} standards
Stream Alteration or Encroachment	DWR	Alteration of stream channel or lake fill

Permit/ Approval	Grantor	Conditions Requiring
Section 404	Army Corps of Engineers (Coordination with USFWS and EPA)	Discharging, dredging, or placing fill material within waters of the U.S. or adjacent wetlands
Flood Plains & Floodways	FEMA, Counties & FHWA	Any structure/ activity that may adversely affect the flood regime of a stream within the flood zone
Section 10	Army Corps of Engineers (Coordinate w/ FWS)	Obstruction, alteration, or improvement of any navigable water
Section 9	Coast Guard (Coordinate w/ FWS)	Bridges and causeways in navigable waters
Non-Jurisdictional Wetlands	FHWA	Impact to lands covered with shallow & temporary/intermittent waters (swamps, bogs, marshes, sloughs, potholes, etc.)
Sole Source Aquifer	EPA	Any activity that may effect the aquifer recharge zone
NPDES	EPA	Discharge of pollutants into State surface waters

Exhibit 400-2 Local Project Environmental Forms Checklist

Form	Action	Report
ITD 654	Complete Narrative for Env.	Env. Evaluation
ITD 652	Hazardous Materials Evaluation	Form
1500	Cultural/Historic Resource Evaluation	Form & Report
1500A	Determine of Significance and Effect	Form
ITD 2784	NPDES Checklist	Form

Exhibit 400-3 FHWA Guidance on NEPA Requirements for TE

FHWA Policy Memorandums - Planning and Environment Core Business Unit

U.S. Department of Transportation

Federal Highway Administration

Subject: ACTION: NEPA Requirements
for Transportation Enhancement
Activities (Reply Due: December 15)

Date: October 28, 1996

From: Rodney E. Slater Administrator

Reply to HEP-30
Attn. of:

To: Regional Administrators

Section 316 of the National Highway System Designation Act of 1995 has given us a mandate to further streamline the processing of transportation enhancement activities (TEA) projects under the National Environmental Policy Act of 1969 (NEPA). Accordingly, as part of the streamlining process, Section 316 of the 1995 act directs the Secretary of Transportation to develop categorical exclusions under NEPA for TEA'S.

We already have considerable flexibility under the current regulation to streamline the NEPA process for TEA'S, consistent with the principles of environmental protection and enhancement. For example, Section 771.117(c) identifies actions that, by their nature, meet the criteria for CE's. Some of these actions cover TEA-type projects, namely construction of bicycle and pedestrian lanes, paths, and facilities; landscaping; acquisition of scenic easements; and such non-construction activities as publication of a scenic byways brochure, a historic bridge photo book, or a geographic information system for archaeological survey of a transportation project. As the provision states, these actions "normally do not require any further NEPA approvals....."

Thus, the fact that a TEA project falls within one of these listings is usually approval enough; NEPA documents and FHWA approval would be required only if unusual circumstances are involved in the proposed action or project. Such circumstances include the presence of significant environmental impacts, substantial controversy on environmental grounds, significant impact on properties protected by Section 4(f) of the Department of Transportation Act of 1966 or Section 106 of the National Historic Preservation Act of 1966, or inconsistencies with any Federal, State or local requirement relating to the environment.

Under another provision, Section 771.117(d), additional TEA actions may qualify for a CE classification, but because of the greater possibility of impacts with these projects, FHWA approval of the classification is required. The list in this section consists only of examples to illustrate the types of projects that may qualify; TEA's do not have to match one of the examples to qualify for a CE classification. The applicant (the State or other project sponsor) is responsible for providing information to allow the FHWA to decide if a CE classification is proper. It is important to state that because most TEA's are small-scale projects, they should almost always be processed as a CE. Only a modest amount of information is required to describe their potential environmental impacts and to demonstrate that they do not have significant impacts.

For types of projects not listed in Section 771.117(c) or covered by Section 771.117(d), our approval of a CE classification under Section 771.117(d) can be accomplished on a project-by-project basis or programmatically. As discussed in the attached guidance memorandum dated March 30, 1989, the programmatic approach allows a State transportation department and the FHWA to concur in advance that additional types of projects satisfy all the criteria for a CE classification. The use of programmatic CE approvals has been an effective way of ensuring that the letter and spirit of NEPA are satisfied in a way that reflects the particular nature of the environment and the program in each State.

I urge you to review the extent to which each State in your district has used the programmatic CE approach to ensure that TEA's receive the full advantage of this option. You are encouraged to use the programmatic CE process for TEA projects whether or not they are included in the lists of example projects in the Section 771.117(c) or (d). When we modify 23 CFR 771, a section will be included to state that all TEA projects normally should be processed as CE's. This change will be consistent with Section 316 of the 1995 act.

To advise the Congress regarding the status of our streamlining efforts, I request that you provide us a brief description, by December 15, of any process used for streamlining NEPA approvals for TEA's in your States. Please describe how the CE classification has been applied to TEA projects under Section 771.117(c) and (d). Where programmatic approvals have been used, we would like to know which types of projects are covered, whether other types of projects have been proposed but not approved, and the process for securing approvals, including the roles of the State transportation department, the FHWA division office, and project sponsors in assembling and reviewing environmental documentation. We would also like to know about cases where a TEA project required preparation of an EA or an EIS.