



Eastern Border Transportation Coalition

Guide for Planning and Constructing Border Crossing Projects

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Introduction

The Eastern Border Transportation Coalition (EBTC) was created in 1994 to provide an effective voice for border crossing and international trade interests along the Eastern portion of the U.S. – Canada border. The coalition consists of Departments and Ministries of Transportation from four states and five provinces that encompass a territory from Michigan eastward to Labrador/Newfoundland. The mission of the EBTC is to assist with the development of a seamless, multimodal transportation network that is safe, secure, efficient and environmentally sustainable by providing a proactive forum that allows likeminded public and private organizations to work together to overcome barriers and impediments. Nearly 75% of the total U.S. – Canadian surface trade passes through EBTC border crossings.

The EBTC members are responsible for the construction and maintenance of highway and bridge facilities in their respective jurisdictions, including those leading to/from the international border crossings. EBTC has recognized that the respective state and provincial transportation agencies are only one of several agencies involved in providing transportation services at each border location, and that there is a critical need for all of these agencies to consult and cooperate in order to make the border transportation “system” operate as effectively and efficiently as possible.

Accordingly, the EBTC held a one day workshop in Montreal, Quebec on border infrastructure projects in the fall of 2006 at which a number of these agencies participated in discussions on how to make the planning and construction of these projects work better. The workshop identified several key issues which, if addressed, would help the planning process and perhaps save time and money. The issues identified included:

- Consultation and cooperation between and among the various border agencies is essential. The border is a transportation “system” with each involved agency having its own mandate and responsibilities, but with a need to work together to make the system work effectively. Typically, border projects have long lead times and it is, therefore, beneficial for each agency to be aware of what other agencies are planning for the same border location early on in the process so coordination between agencies is possible.
- At the outset, all agencies should be informed of any plan affecting a border location so they can determine if they need to be involved in the on-going process. It was also recognized that if individual personal relationships are formed, it can be a big asset, particularly at times of delay or when project adjustments are needed.
- Having a project coordinator, either a person or a committee, is beneficial in keeping the project moving forward and ensuring that inter-agency communication occurs.
- It is necessary to expect delays because they will almost certainly happen. If the potential for delays to occur is considered when developing the plan, it will be easier to remain on schedule.
- The different approval and financing processes of the various agencies must be taken into account. Obviously, approval and financing are required before final commitment is made to the project.

- Keeping the public informed and involved at all stages of the project will help ensure success. If this is done from the outset particular obstacles can be identified and addressed.
- Although the process and legal requirements are often different on each side of the international border, cooperation in dealing with common issues (i.e., environmental approval) can be helpful.

One of the recommendations emerging from the workshop was to create a “guide” for those involved in planning border projects to highlight awareness of the range of agencies involved and the various processes in effect. It was observed that, often, planners of new border projects are not totally familiar with all of the aspects relating to it being a “border” project as opposed to an intra-jurisdictional one.

Therefore, EBTC has created this guide as a reference document and initial primer to facilitate the planning process and provide a roadmap to the issues involved with the necessary interagency cooperation.

Section One

Federal Agencies and Approvals - United States

Federal Highway Administration (FHWA)

What is the Federal Highway Administration?

The Federal Highway Administration (FHWA) is one of the major agencies within the U.S. Department of Transportation. The FHWA is responsible for ensuring the safety and operations of the nation's roads and highways. Although the majority of the roads and highways are owned and operated by State, local and tribal governments, FHWA provides financial and technical support through the Federal-aid Highway Program to construct, operate and maintain the 160,000 mile National Highway System (NHS). The program also provides resources for one million additional miles of urban and rural roads that are not on the NHS, but eligible for federal aid. The FHWA operates on a \$30 billion annual budget that is funded by fuel and motor vehicle excise taxes.

How is the FHWA organized?

The FHWA consists of a headquarters office in Washington, D.C., a division office in each state, the District of Columbia and Puerto Rico. There are also two specialty offices within the agency, the FHWA Resource Center and the Federal Lands Division.

The FHWA Resource Center has four offices that provide expert technical assistance, technology deployment and training on a full range of transportation issues to FHWA division offices, State DOTs and others. The staff offers specialized assistance in the following disciplines: air quality, civil rights, construction and project management, environmental issues, finances, geotechnical engineering and hydraulics, operations, pavement and materials, planning, safety and highway design and structures.

The Federal Lands Division performs transportation design and construction services for other federal agencies, such as the National Park Service. The Division has three regional offices; the Eastern located in Sterling, VA, the Central located in Lakewood, CO and the Western located in Vancouver, WA.

How is FHWA involved with border issues?

The FHWA has developed five strategic goals in the areas of mobility, natural environment, national security, productivity and safety, to help accomplish its stated mission. Under the productivity goal there are two strategies that specifically account for the importance of cross-border flow:

- Global connectivity- promoting and facilitating a more efficient domestic and global transportation system that enables economic growth
- Border crossing efficiency- working with international, federal and state agencies and industry groups to remove institutional, technological and physical barriers to the efficient flow of trade at border crossings;

In recognition of the importance of cross-border trade and travel, the FHWA, in concert with Transport Canada, created the U.S.-Canada Transportation Border Working Group

(TBWG) to address planning, operational, mobility and security issues at land border crossings. One of the funds that the FHWA administers under the Federal-aid Highway Program is the Coordinated Border Infrastructure fund, which is specifically designated for project at or within a designated distance from border crossings with Canada and Mexico.

What approvals are needed from FHWA?

Under the National Environmental Policy Act of 1969 (see NEPA, page 16), the FHWA must ensure compliance for all federally funded highway projects and every project that requires a federal permit, change in access control or any other significant federal action. The FHWA is charged with determining the level of analysis necessary under NEPA and with issuing either a categorical exclusion, a Finding of No Significant Impact or a Record of Decision before construction may begin for a highway project.

When should the FHWA become involved?

The FHWA should be involved in an informal, consultative manner through the earlier steps when the project scope and the purpose and need are being determined. At that point the FHWA can be consulted for assistance in the determination of the level of analysis that will be necessary.

Where can additional information be found?

Further guidance and detailed explanations on the actual implementation of the policy can be found at the FHWA website:

www.fhwa.dot.gov

www.fhwa.dot.gov/resourcecenter

<http://www.thetbwg.org/>

United States Coast Guard (USCG)

What is the United States Coast Guard?

The United States Coast Guard is the smallest of the seven branches of the U.S. military. Its purpose is to protect the public, the environment and the economic and security interests of the U.S. in maritime regions that include international waters and American coasts, ports and inland waterways. In 2003, the USCG was transferred from the jurisdiction of the U.S. Department of Transportation to aegis of the U.S. Department of Homeland Security, making it a sister agency to the U.S. Customs and Border Patrol.

How is the USCG organized?

The missions of the USCG are classified into five primary functions: maritime safety, border security and law enforcement, maritime commercial mobility, national defense and the protection of natural resources. The USCG is divided into ten district offices that provide nationwide coverage. The EBTC region is served by district offices in New York City (New Jersey, New England, and southern New York State) and Cleveland (upstate and western New York, Michigan and portions of Pennsylvania, Ohio, Wisconsin and Minnesota).

How is the USCG involved with border issues?

The USCG is responsible for maintaining and patrolling navigable waterways to ensure safe and efficient movement to support domestic and international trade. The maritime commercial mobility function includes responsibility for 18,000 highway and railroad bridges that span navigable waterways. The USCG issues permits for bridge construction, orders for obstructive bridges to be removed and oversees drawbridge operations. As such, the USCG is responsible for the approval of the location and plans for bridges and causeways built across navigable waterways. This role also includes oversight and approval for the location and plans of international bridges that span navigable waterways.

What approvals are needed from the USCG?

The USCG's oversight role for the approval of international bridges mandates that agencies obtain a bridge permit prior to the construction or significant modification of a structure across navigable water between the United States and Canada.

When should the USCG become involved?

The USCG should be included as a cooperating agency during the NEPA process (see NEPA, page 16) and the applicant should arrange a pre-application meeting and consultation with the appropriate district office. This will help to expedite the permit approval process, as the Coast Guard will be assured that all NEPA requirements have been met. This also opens the line of communications for issues which may come up during NEPA, such as the ability to have piers in the water. The application package should be submitted to the Coast Guard District office within the jurisdiction of the proposed bridge site.

Where can additional information be found?

Further guidance about the organization and detailed information on the bridge permit policy can be found at the U.S. Coast Guard website:

<http://www.uscg.mil/>

<http://www.uscg.mil/hq/g-o/g-opt/g-opt.htm>

U.S. Department of State (DOS)

What is the Department of State?

The DOS is the diplomatic arm of the federal government, responsible for representing the United States overseas, engaging foreign governments through diplomatic channels to advance United States policies and coordinating and supporting the international activities of other U.S. agencies.

How is the Department of State organized?

The DOS maintains embassies in the capital cities of each country with which the U.S. has diplomatic relations and consulates in other key cities. The current U.S. Ambassador to Canada is David Wilkins and he is based at the U.S. Embassy in Ottawa. There are U.S. consulates in Calgary, Halifax, Montreal, Quebec City, Toronto, and Vancouver, and an American Presence Post in Winnipeg.

How is the Department of State involved with border issues?

The DOS has direct involvement with three programs that affect cross-border operations and binational trade. The DOS is directly involved with its counterparts in Canada and Mexico in the advancement of the Security and Prosperity Partnership, an action plan to enhance security and economic prosperity in North America, including trilateral cooperation on trade facilitation, transportation, environment and public health issues within North America. The Western Hemisphere Travel Initiative is a series of initiatives to reduce terrorist-related security risks by mandating that all individuals traveling to and from the U.S. present a passport or some other secure document. Links to additional details on these initiatives are provided below. The DOS is also responsible for the issuance and approval of Presidential permits for cross-border facilities.

What approvals are needed from the DOS?

As noted above, DOS maintains responsibility for the issuance and approval of Presidential Permits. Under Executive Order 11423 (amended of August 16, 1968), a Presidential Permit is required for the construction of facilities crossing the U.S. international borders including, but not limited to, bridges and tunnels. EO 11423 was further amended in 2004 to include “border crossings for land transportation, including motor or rail vehicles . . . whether or not in conjunction with the facilities” to which Executive Order 11423 previously applied.

Under EO 11423 the DOS is authorized to issue guidance on the implementation of these additional requirements. In its guidance, DOS determined that the new “land border crossing” language will apply to all new crossings of the international border as well as to all substantial modifications of existing crossings.

The DOS issued guidance on February 23, 2007, indicating when a project sponsor must notify DOS about a project, and when an application for a Presidential Permit is required. The guidance defines three types of projects:

- green (minor impact, no notification required)
- yellow (may have a substantial impact, notification required)

- red (substantial modification, permit required.)

Based on the criteria provided, a project sponsor makes the initial determination as to what action it must take (notification or permit application), but final determination is made by DOS.

When should the Department of State become involved?

The DOS requests that even when notification is not required, the project sponsor informally apprise DOS of events related to the border, including any change (policy or otherwise) at the border that could reasonably be expected to affect U.S. relations with Canada, as well as changes to facilities that comprise or feed into the border crossing that reasonably could be expected to have an effect on operations in Canada.

The DOS encourages project sponsor consultation to determine a project's likely classification (i.e., green, yellow, red) before submitting a Required Project Notification Information (RPNI). If there is any question regarding a project's status, the sponsor should consult with DOS as early as possible after it establishes project parameters and implementation plans.

Are there any other impacts if a Presidential Permit is required?

If the State Department determines that it will indeed need to issue a Permit for the action at the border, DOS should be included as a cooperating agency during the NEPA process. This reduces the likelihood of DOS needing to conduct a separate NEPA process.

Where can additional information be found?

The guidance for Presidential Permits, which also includes attachments outlining the required project notification information and project categories examples, can be found at: <http://www.state.gov/p/wha/rt/permit>

For more information about Presidential permits for facilities at the U.S.-Canada border, please contact the Department's Office of Canadian Affairs at the address below, by phone at (202) 647-2170, or by e-mail at WHACANmail@state.gov.

Additional information on other border issues can be found at:

<http://www.state.gov/>

http://www.dhs.gov/xnews/releases/pr_1182350422171.shtm

<http://www.spp.gov/>

General Services Administration (GSA)

What is the General Services Administration?

The primary mission of the GSA involves the acquisition and provision of buildings, facilities and work space for the federal workforce and the acquisition and procurement of equipment and supplies needed by the federal workforce. The GSA oversees nearly \$500 billion in federal assets that include more than 8,300 government owned or leased buildings, an interagency fleet of 170,000 vehicles and technology programs and products ranging from laptop computers to systems with a value over \$100 million. GSA also plays a key role in developing and implementing policies that help other federal agencies improve their service to and communication with the public by offering effective citizen-response tools and services.

How is the General Services Administration organized?

Approximately 12,000 GSA employees are distributed across the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and various Staff Offices, including the Office of Congressional and Intergovernmental Affairs (OCIA). Eleven Regional Offices extend GSA's outreach to federal customers nationwide. GSA Regional Offices are located in Boston, New York, Philadelphia, Atlanta, Chicago, Kansas City, Fort Worth, Denver, San Francisco, Auburn (Washington), Washington, DC.

How is the GSA involved with border issues?

The GSA is responsible for the construction, maintenance and equipping of the administrative buildings, primary and secondary inspection facilities, cargo warehouses and other buildings at land ports of entry/border crossings. The GSA's Border Station Center develops and maintains standard processes and procedures to ensure that border crossings are developed consistently and according to standards.

The Center consists of a national program office and two geographic offices that focus on each of the two borders. The U.S. Northern Border office is based in Denver, while the U.S. Southern Border office is based in Fort Worth. The offices maintain planning tools, such as the "Border Wizard" modeling system, and have technical capabilities to address the need for special inspection tools such as truck x-ray machines, radiation portal monitors, license plate readers and US-VISIT biometric readers.

What approvals are needed from the GSA?

For construction and major modifications at a border crossing the GSA, acting as a developer, will be the lead agency in securing funding and leading the project from the conceptual stage of design through the final phases of construction.

When should the GSA become involved?

The GSA needs to be cognizant of sudden and unprecedented changes in the mission of the U.S. Customs and Border Protection which can impact a project whether it is in the design or construction phase. The GSA works closely with state and federal transportation agencies, the governments of Mexico and Canada and with other local and regional governments to ensure that any project proposed is consistent with planning initiatives. Therefore, the GSA needs to be involved at the earliest planning stages prior to the design phase.

Where can additional information be found?

<http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-13303>

U.S. Customs & Border Protection (CBP)

What is the U.S. Customs and Border Protection?

The U.S. Customs and Border Protection (CBP) is the unified border agency within the Department of Homeland Security charged with the management, control, and protection of the United States' borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws. CBP has a work force of about 18,000 officers, including 13,000 border patrol agents.

How is CBP organized?

CBP is responsible for the operations of all the ports of entry in the United States. There are 326 official ports of entry in the United States and 15 preclearance offices in Canada and the Caribbean. There are 20 Field Operational Offices that provide centralized management oversight and operational assistance to the ports of entry and preclearance offices. Within the geographic range of the EBTC there are Field Operational Offices located at Buffalo, Detroit, Boston and New York City.

How is CBP involved with border issues?

CBP enforces the import and export laws and regulations of the U.S. federal government and conducts immigration policy and programs. CBP also perform agricultural inspections to protect the USA from potential carriers of animal and plant pests or diseases that could cause serious damage to America's crops, livestock, pets, and the environment. CBP has developed, implemented and continues to operate a number of security and commercial trade initiatives in the post 9/11 era to meet the greater security challenges while still maintaining mobility and access at border crossings. These initiatives include the Secure Border Initiative (SBI), the Free and Secure Trade (FAST) program, NEXUS, the Container Security Initiative, Customs-Trade Partnership Against Terrorism (C-TPAT) and the Automated Commercial Environment (ACE).

What approvals are needed from CBP?

Even though the General Services Administration is responsible for the building management at the border, a formal approval on the general concept and the final design is necessary. CBP should be informed of any changes in the final design. A formal commitment for CBP's facility improvement related to the MOT/DOT project, including staffing, data inputs for the purposes of an Intelligent Transportation System and the agenda is necessary. Those commitments can be letters exchanged between the directors of the divisions involved. Agreements to clarify the responsibilities of CBP and DOT/MOT in terms of infrastructure management: maintenance, snow plowing, electricity fees, signing, road marking, etc. is necessary to avoid confusion.

Note: in some jurisdictions, those agreements are sometimes subject to the participation of a third party (ministries/departments responsible of the federal/provincial or federal /states relations)

When should CBP become involved?

Coordination should begin at the early steps of the project. Road infrastructures are directly linked with the ports of entries CBP is operating; any modification in the way CBP processes passenger and commercial traffic can result in impacts on the road infrastructure. Any inputs from CBP regarding the customs and processing operations (staff, security requirements, safety programs offered, etc) should be integrated in the project. Coordination is especially important during the construction phase to maintain fluidity and security when traffic is diverted temporarily. CBP should be involved in the planning of the alternative itinerary with other ports of entries if required.

Where can additional information be found?

Please visit the U.S. Customs and Border Protection web site at: <http://www.cbp.gov/>

U.S. Department of Labor (DOL)

What is the Department of Labor?

The Department of Labor oversees the working conditions and collective bargaining rights of the nation's workers, protects retirement and health care benefits, assists employers with finding workers, and tracks changes in employment, prices, and other national economic measurements. The DOL administers a variety of Federal labor laws including those that guarantee workers' rights to safe and healthful working conditions; a minimum hourly wage and overtime pay; freedom from employment discrimination; unemployment insurance; and other income support.

While most laws with labor provisions regulating the transportation industry are administered by agencies outside the Department of Labor, longshoring and maritime industry safety and health standards are issued and enforced by the Occupational Safety & Health Administration (OSHA), a DOL agency.

How is the DOL organized?

The DOL consists of 25 separate offices and program areas that carry out a diverse range of functions. Among the agencies under the DOL umbrella are OSHA, the Bureau of Labor Statistics, the Bureau of International Labor Affairs (ILAB), and the Employment Standards Administration. The DOL maintains a division office and a number of One Stop Career Centers and Job Corps Centers in each state. For instance there are 22 One Stop Career Centers and 2 Job Corps Centers in the State of Maine.

How is the DOL involved with border issues?

The Office of Trade and Labor Affairs within the Bureau of International Labor Affairs administers the Foreign Labor Certification Program. The program allows employers to hire foreign workers, temporarily or permanently, when there are not sufficient U.S. workers who are able, willing, qualified, and available to perform the job. It ensures that the employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers that are similarly employed. These determinations are required to carry out the Secretary of Labor's responsibilities under the Immigration and Nationality Act (INA), which regulates the admission of aliens into the U.S. The role of the U.S. Department of Labor (USDOL) is to certify to the Secretary of State and the Attorney General that these conditions are met before a foreign worker is brought to the U.S. on an employment-based visa.

What approvals are needed from the Department of Labor?

International border projects may require workers to cross an international boundary in the process of completing the job. The Foreign Labor Certification Program provides

labor certification to the employers bringing these workers into the United States. It is the responsibility of the employer to acquire the necessary labor certification approvals. It is possible that employers may also need to pursue endorsements from other state and federal agencies following the approval of labor certification applications.

When should the Department of Labor become involved?

Prior to the start of the construction phase the division office in the state or the state labor department should be consulted. State labor departments act as agents for the USDOL. The state labor department will assist the employer in the filing of the certification application to the USDOL and will determine the prevailing wage and the availability of able, willing, and qualified U.S. workers. State and federal departments of labor representation may not be necessary at all project meetings, but the sooner consultation is begun the better.

Where can additional information be found?

<http://www.dol.gov/index.htm>

<http://www.foreignlaborcert.doleta.gov/>

Section Two

U.S. Federal Environmental Policy and Procedure

National Environmental Policy Act (NEPA)

What is the National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA) is the basic national charter for protection of the environment, as contained within the Code of Federal Regulations (CFR), Section 42, part 4231. NEPA is a Congressional directive for federal agencies to work together with state, local and tribal governments, public and private organizations, and the public to use all practicable means to achieve and balance national, social, economic and environmental goals while accomplishing the proposed improvement. It was passed to ensure that information on the environmental impacts of any federal action is available to public officials and citizens before decisions are made and actions are taken

Compliance with NEPA is one of the most significant federal requirements. It affects every federally funded project and every project requiring federal permitting, change in access control or other significant federal action regardless of funding. The basic requirements of NEPA are established under the United States Council on Environmental Quality (CEQ) in the CFR, Section 40, parts 1500 through 1508. These regulations are supplemented for surface transportation projects in CFR, Section 23, part 771.

The CEQ and the Federal Highway Administration (FHWA) have regulations that outline what FHWA and other federal agencies must do to comply with NEPA. Regulations issued by the CEQ require agencies to:

- “integrate the NEPA process into the earliest planning stages to ensure appropriate consideration of significant issues and to eliminate delay”;
- “emphasize the need for cooperative consulting among agencies before the EIS is prepared, rather than submission of adversary comments on a completed document”;
- “emphasize the importance of identifying significant issues at the earliest possible stage and narrowing the scope of the EIS accordingly
- Preserve important historic, cultural, and natural heritage aspects; accurate scientific analysis, comments from expert agencies and public scrutiny are essential to implementing NEPA. Ultimately, the NEPA process is intended to help public officials make decisions that are based on an understanding of the environmental consequences.

What projects are subject to the NEPA process?

All federally funded projects are required to undergo at the outset a determination of the appropriate NEPA classification (see discussion on levels of analysis). Also, certain 100% State/non-federal funded projects that require federal approvals or permits may require compliance with the NEPA classification determination. Examples of federal approvals or permits for such projects are:

- U.S. Coast Guard Navigable Waterways permit
- U.S. Army Corps of Engineers Section 404 Clean Water Act permit (i.e., wetlands)
- FHWA Interstate System Access Modification approval

It is imperative that other federal agencies that will have any role in issuing a necessary permit be involved in the project at the earliest stages. It is possible that a cooperating agency that is consulted too late in the NEPA process might have to issue its own NEPA report, which would cause delays of a year or more to the project schedule.

The NEPA process is intended to evaluate a wide range of impacts that may have adverse impacts on the natural environment or the citizens in or near the proposed project location. The range of impacts considered include:

- significant impacts on any natural, cultural, recreational or historic resource
- significant air, noise or water quality impacts
- significant impacts on the transportation system or to travel patterns

How does the NEPA process work?

The first step under NEPA is the establishment of a purpose and needs statement to briefly specify the basis for the proposed improvement. The statement should be a statement of a transportation problem, not a statement of a solution; should be specific enough so that the range of alternatives developed will offer real potential for addressing the transportation problem; must not be so specific as to “reverse engineer” a solution.

The next step involves the determination of which of the NEPA processes must be followed. There are three levels of analysis depending on the significance of the anticipated social, economic and environmental impacts of the proposed project. An Environmental Assessment/Finding of No Significant Impacts, or an Environmental Impact Statement/Record of Decision will be required for every project that is not categorically excluded as having no significant environmental impact.

Categorical Exclusions:

An undertaking may be categorically excluded from a detailed environmental analysis if it meets certain criteria that have been previously determined to have no significant impact on the environment. Most federal agencies have developed lists of typical actions that normally are considered as such (see CFR, Section 23, part 771, subsection 117c and 117d for additional details). Categorical exclusions are also known as NEPA Type II projects. Examples of projects that would typically fall into this class include:

- Construction of bicycle and pedestrian lanes and paths
- Installation of noise barriers
- Improvements to existing rest areas and truck inspection stations

- There are additional actions that may be designated as categorical exclusions after FHWA approval that involves the completion of a checklist to certify that certain criteria are met by the project. While each state division office has tailored their own checklist, an example of the types of projects that would typically fall into this class include:
 - Highway upgrades by resurfacing, rehabilitation, reconstruction or the addition of shoulders or auxiliary lanes (mainline capacity is not added)
 - Installation of ramp metering control devices
 - Construction of new rest areas and truck inspection stations

Environmental Assessment (EA)

An Environmental Assessment is a written report that is used to determine whether or not the proposed action would significantly affect the environment. If the answer is no, a Finding of No Significant Impact (FONSI) is issued. Projects requiring the completion of an EA are also known as NEPA Type III projects. The EA must document compliance, to the extent possible, with all applicable environmental laws and Executive orders.

If it is determined that there are significant environmental consequences an Environmental Impact Statement (EIS) report must be prepared. The EA need not be circulated for public comment in the same formal manner as is done with an EIS report, but must be made available for public inspection. If the lead agency anticipates that there will be significant impacts or significant controversy, they may bypass this step and prepare an EIS without first completing an EA.

Environmental Impact Statement (EIS)

An EIS (NEPA Type I projects) is a more detailed evaluation of the proposed action and the reasonable alternatives to achieve it. An EIS is prepared when it is determined that the action is likely to cause significant environmental impacts. An EIS must rigorously explore and objectively evaluate all reasonable alternatives and explain the rationale for eliminating any alternatives from detailed study. Reasonable alternatives are those that are practical or feasible from the technical and economic standpoint and the common sense viewpoint, even if they are not the preferred alternative. An alternative is not reasonable if it does not satisfy purpose and need.

State, local and federal agencies, public and private organizations and the public are all allowed to provide input into the preparation of the EIS and then comment on the draft EIS report. The report must identify the preferred alternative, summarize the public outreach process and detail the actions that will be taken to mitigate any adverse impacts. The EIS must document compliance, to the extent possible, with all applicable environmental laws and Executive orders. Examples of projects that would typically fall into this class include:

- A new controlled access freeway
- A highway project of four or more lanes on a new location
- New construction or extension of fixed rail transit facilities

After the final EIS report is completed and circulated a Record of Decision is issued, detailing how the findings of the EIS were incorporated into the final decision making process.

When should the FHWA become involved?

The FHWA should be involved in an informal, consultative manner through the earlier steps when the project scope and the purpose and need are being determined. At that point the FHWA can be consulted for assistance in the determination of the level of analysis that will be necessary (also see FHWA, page 4). For projects that are likely to trigger the need for an EA or EIS, the FHWA should be partnered with as early as possible since these processes can be lengthy and involved.

When the decision has been made to prepare an EIS the FHWA issues a Notice of Intent for publication in the Federal Register while the project agency announces the intent by appropriate means at the local level. Upon publication of the Notice of Intent the scoping process begins, where a range of alternatives and impacts and significant issues are identified. For actions that require an EA or EIS, the project agency in conjunction with the FHWA shall, at the earliest appropriate time initiate consultation with interested agencies and public officials (i.e., the mayor and county executive of the host city and county and the MPOs, at minimum) to advise them of the scope and to achieve the following objectives:

- Determination of aspects of the proposed action that have the potential for social, economic or environmental impact
- Identification of alternatives and measures that may mitigate adverse impacts
- Establishment of a comprehensive public input plan

When can project construction begin?

Final design activities, property acquisition, purchasing of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

- The action has been classified as a categorical exclusion;
- A FONSI has been approved or
- A Final EIS has been approved and a Record of Decision has been issued

Where can additional information be found?

Further guidance and detailed explanations on the actual implementation of the policy can be found at the FHWA website:

<http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/home>

http://www.access.gpo.gov/nara/cfr/waisidx_03/23cfr771_03.html (Code of Federal Regulations Section 23, part 771)

http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm (Council on Environmental Quality Regulations For Implementing NEPA)

Clean Water Act – Section 404

What is the Clean Water Act?

The federal Water Pollution Control Act Amendments of 1972 and subsequent amendments in 1977 are collectively and commonly known as the Clean Water Act. The intent of the legislation was to establish a structure for regulation of the discharge of pollutants into the nation's waterways. It authorizes the Environmental Protection Agency to implement a wide range of pollution control programs, such as industrial wastewater standards and water quality standards for all contaminants in surface waters.

What projects require a Section 404 permit?

Section 404 of the Act regulates the discharge of dredged, excavated, or fill material in wetlands, streams, rivers, including adjacent and isolated wetlands. Regulated activities include the placement of pilings as fill and sidecasting associated with ditching, draining and excavating activities. The granting of Section 404 permits are administered by the U.S. Army Corps of Engineers. The Corps makes decisions regarding Section 404 permit requests after it completes a careful environmental review of the impacts of proposed discharges, including the potential adverse effects on wetlands. This permit program is designed to avoid impacts to wetlands where possible and minimize these impacts when they are unavoidable. However, if a permit is issued for a project that will result in a loss of wetlands, compensatory mitigation is necessary to replace those lost wetlands. The Environmental Protection Agency leads the development of the environmental criteria used to evaluate proposed discharges.

When should the Corps of Engineers become involved?

The actual permit does not have to be secured until the final stages of project design, prior to the submission of the plans, specifications and estimates. However, it is strongly encouraged that coordination with the Corps begin during the scoping or preliminary design phases. The emphasis on the allowance of only actions that are unavoidable and the need to minimize the impacts of unavoidable actions will often result in the need to modify aspects of the design or in extreme cases the need to select a different preferred alternative.

Where can additional information be found?

<http://www.usace.army.mil/>

<http://www.epa.gov/r5water/cwa.htm>

Section Three

Federal Agencies and Approvals - Canada

Transport Canada

What is Transport Canada?

Transport Canada is the Canadian federal government department which is responsible for overseeing all transportation matters under federal jurisdiction. Their mission is to ensure that the national transportation system is safe, efficient and accessible to all users, while being environmentally responsible.

How is Transport Canada organized?

Transport Canada has its national headquarters in Ottawa and has five regional offices across the country, as well as a number of Transport Canada Centers that are distributed across the country to provide additional access. The five regional offices are the Pacific (Vancouver, BC), Prairie and Northern (Winnipeg, MB), Ontario (North York), Quebec (Dorval) and Atlantic (Moncton, NB). The Transport Canada Centers provide aviation, marine and surface transportation assistance to stakeholders and citizens.

How is Transport Canada involved with border issues?

Transport Canada administers the infrastructure funding programs to support initiatives under the Smart Border Action Plan to reduce border congestion and expand infrastructure capacity. The goals of the Action Plan are to secure the flow of people and goods, secure infrastructure and develop information sharing and enforcement capabilities.

In concert with the U.S. Federal Highway Administration, Transport Canada created the U.S. – Canada Transportation Border Working Group (TBWG) to address planning, operational, mobility and security issues at land border crossings. Working with the TBWG membership, Transport Canada was instrumental in the development of the Border Information Flow Architecture (BIFA), a tool for enabling the integration of ITS improvements at or near the border.

What approvals are needed from Transport Canada?

The Minister of Transport and Transport Canada are responsible for ensuring compliance with the Navigable Waters Protection Act and the International Bridges and Tunnels Act (see pages 31 and 35, respectively).

When should Transport Canada become involved?

Transport Canada should be contacted early in the project planning process to determine if the International Bridges and Tunnels or Navigable Waters Protection Acts or other Canadian federal acts apply to the border project. If approval is required and if it must go for cabinet approval, significant lead times are required. Administration of activities under these Acts is carried out by the Programs Group of Transport Canada.

Where can additional information be found?

<http://www.tc.gc.ca/en/menu.htm>

<http://www.tc.gc.ca/Programs/menu.htm>

A copy of the International Bridges and Tunnels Act is available at:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?pub=bill&doc=C-3&parl=39&ses=1&language=E&File=32>

A copy of the Navigable Waters Protection Act is available at:

http://laws.justice.gc.ca/en/ShowDoc/cs/N-22/bo-ga:s_1::bo-ga:s_2/20070323/en?page=1&isprinting=true

The NWPA application process is outlined at:

<http://www.tc.gc.ca/pacific/marine/nwpa/applicationguide.htm>

Canada Border Services Agency (CBSA)

What is the Canada Border Services Agency?

The Canada Border Services Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, which meet all requirements under the program legislation. The CBSA is responsible for administering more than 90 acts and regulations. CBSA is co-responsible with the U.S. Customs and Border Protection (CBP) for the FAST and Nexus programs.

How is CBSA organized?

The 12,000 employees of the CBSA provide services at approximately 1,200 points across Canada and at 39 international locations. CBSA manages 119 land border crossings, 61 of which are operated on a 24/7 basis. They also operate at 9 international airports and at 3 major marine ports. CBSA operates 35 Hub or central offices that are responsible for providing service to inland sites and other service locations. CBSA also operates 20 FAST processing sites and 11 crossings for NEXUS users.

How is CBSA involved with border issues?

The Canada Border Services Agency (CBSA) ensures the security and prosperity of Canada by managing the access of people and goods to and from Canada. In the wake of 9/11, CBSA has worked with its U.S. counterparts on improvements to security and services on the shared border through the Smart Border Declaration and the Canada-U.S. Smart Border Action Plan. CBSA initiatives include the FAST and NEXUS programs, CANPASS Air, the Container Security Initiative, Integrated Border Enforcement Teams and the Western Hemisphere Travel Initiative. The CBSA offers a number of programs to facilitate domestic and international trade while ensuring the security and integrity of the trade system, including Partners In Protection, e-Manifest for highway and rail cargo, Advanced Commercial Information for air and marine commercial carriers, and the Commercial Driver Registration Program.

What approvals are needed from CBSA?

At the early stages of the project a formal approval on the general concept should be obtained. Formal approval is also necessary for the final design. CBSA should be informed of any changes on the final design.

The agreement should clarify the responsibilities of CBSA and DOT/MOT in terms of infrastructure management issues such as maintenance, snow plowing, electricity fees, etc. If there is an ITS component in the project that requires the CBSA's participation (data input), it should be mentioned in the agreement. Other items that should be included in the agreement include:

- Data on the nature of traffic at the specific border crossing for need assessment;
- Safety program (FAST/EXPRES, Nexus) offered (or to be offered) and impact on infrastructure.
- Coordination for signing and road marking.
- Strategy to manage traffic and to maintain fluidity, security and road safety during the construction phase and to plan alternative itinerary with other port authority if required.
- Formal agreement on the final design of the project, the schedule for the construction phase.

If the project has impacts on Canadian Duty Free Shop activities and property, CBSA is the organization responsible to establish contact and to obtain an agreement from the operator. A communication section for inaugural activities, press releases, should also appear in this agreement.

When should CBSA become involved?

CBSA should become involved at the early steps of any border project. To reach road safety and fluidity objectives targeted by the border project, every phase (planning, need assessment, construction and operation) has to be fully coordinated with the proper CBSA division.

Where can additional information be found?

Please visit the CBSA web site at: <http://www.cbsa-asfc.gc.ca/>. The site also provides coordinates for each border crossings in Canada.

Royal Canadian Mounted Police (RCMP)

What is the Royal Canadian Mounted Police?

The Royal Canadian Mounted Police is the Canadian national police service and an agency of the Ministry of Public Safety Canada. The RCMP is unique in the world since it is a national, federal, provincial and municipal policing body. The RCMP administers or enforces more than 250 federal statutes and agreements.

The RCMP mandate includes enforcement issues related to Canada's borders. It carries out this mandate through a section known as the Border Integrity Service Lines. They contribute to the national security of Canada and protect Canadians from terrorism, organized crime and other border-related criminality, while allowing for the secure and effective international movement of people and goods. This mandate is carried out in partnership with international and domestic government agencies, domestic stakeholders and the community at large.

How is the RCMP organized?

The RCMP has over 26,000 employees, including regular and civilian members and there are over 75,000 volunteers who assist the force. The force is further dispersed across the national headquarters in Ottawa, four geographic regions (with regional headquarters in Ottawa, Halifax, Regina and Vancouver), fourteen divisions and more than 750 detachments. For management purposes the force is structured along five business areas: federal services, criminal intelligence, contract policing, national police services and corporate infrastructure.

How is the RCMP involved with border issues?

The RCMP's Immigration and Passport (I&P) program disrupts organized migrant smuggling and the trafficking of persons, and investigates organizations involved in illegally procuring, distributing and/or using Canadian travel documents. The I&P units work closely with domestic and foreign agencies such as CBSA and the U.S. Department of Homeland Security, as well as the community at large. There are six dedicated Immigration and Passport sections across Canada. The program is primarily responsible for the investigation of violations against the Immigration and Refugee Protection Act, Citizenship Act, Canadian Passport Order and the Criminal Code of Canada.

The Integrated Border Enforcement Team (IBET) program is a multi-faceted law enforcement initiative comprised of both Canadian and American partners. This bi-national partnership enables the five core law enforcement partners involved in IBETS to share information and work together daily with other local, state and provincial enforcement agencies on issues relating to national security, organized crime and other criminality transiting the Canada/US border between the Ports of Entry (POE).

The national IBET partner agencies from Canada and the U.S. are the RCMP, CBSA, U.S. CBP, US Bureau of Immigration and Customs Enforcement and the US Coast Guard. The IBET is an intelligence-led cooperative that supports national security investigations associated to the Canada/US border and investigates cross-border illegal activities, between the POE.

Intelligence is developed and shared with all IBET partners in strict accordance with applicable laws, regulations and Agency/Departmental policies through appropriate protocols. IBET is a cooperative bilateral initiative that ensures borders are open for business, but closed to crime. On December 21, 2001, Canada and the United States signed the Smart Border Declaration. As a result, the number of IBETs expanded in specific strategic regions/areas along the Canada/US border.

What approvals are needed from the RCMP?

A formal approval on the general concept should be obtained from RCMP at the early stages of the project. Another one is also necessary for the final design. RCMP should be informed of any changes on the final design.

When should the RCMP become involved?

The RCMP should be consulted when making any significant changes to border crossing infrastructure but particularly when planning a new crossing. The new crossing will require security policing services which would be provided by the RCMP.

Where can additional information be found?

The RCMP has a Detachment in each province. The contact information for all of the Detachments can be found on the following website:

http://www.rcmp.ca/html/generalcont_e.htm

Information about the roles of the RCMP with respect to borders can be found at the following website: http://www.rcmp.ca/fio/border_integrity_e.htm

Citizenship and Immigration

What is the Department of Citizenship and Immigration?

Citizenship and Immigration Canada (CIC) was established in 1994 to link immigration services with citizenship registration, to promote the unique ideals all Canadians share; and to help build a stronger Canada. The Department is responsible for issuing work permits to allow the admission of temporary workers. A work permit is needed for most temporary jobs in Canada, though for some positions and business people it is not necessary. Remember that in most cases, you have to apply for a work permit from outside Canada, and that your employer also has a role in the application process.

If you are applying to work temporarily in Quebec, you must meet all of the federal requirements and you must get a Quebec acceptance certificate (CAQ) from the province.

How is the CIC organized?

Work permit applications are handled through the case processing centres (CPCs) at the CPC Vegreville processing center. Applicants on a border project can also contact the CBSA

How is the CIC involved with border issues?

CIC issues work permits to enable worker entry into Canada for most temporary position, although for some positions and business people it is not necessary. In most cases, a work permit must be applied for from outside Canada, and the employer also has a role in the application process.

What approvals are needed from CIC?

International border projects may require workers to cross an international boundary in the process of completing the job; crossing the border for this purpose normally requires a valid work permit supported by a Labour Market Opinion. Upon application from the employer, HRSDC, through Service Canada, provides a Labour Market Opinion (LMO) on the job for which the employer wants to bring workers into Canada. An LMO can be Positive, Neutral or Negative, depending on the conditions presented. If the LMO is

negative, CIC will not issue a work permit in that case. It is the responsibility of the employer to acquire the necessary LMO approvals as much in advance as possible.

When should CIC become involved?

Well prior to the start of the construction phase, CBSA should be contacted to ensure the CIC process gets started and determine if Labour Market Opinions from Service Canada will be required. CBSA acts as an agent for CIC and will assist the employer in the filing of the certification application to CIC. The Labour Market Opinion Process includes an analysis of prevailing wage and the availability of able, willing, and qualified Canadian workers.

Where can additional information be found?

<http://www.cic.gc.ca/english/work/index.asp>

<http://www.cic.gc.ca/francais/travailler/index.asp>

<http://www.cic.gc.ca/english/information/faq/work/index.asp>

<http://www.cic.gc.ca/francais/information/faq/travailler/index.asp>

Section Four

Canadian Federal Environmental Policy and Procedure

It is important to note that the following environmental requirements related to border infrastructure projects are applied everywhere in Canada. However, the environmental assessment regulation might differ from one province to another. In some provincial jurisdictions, there might be harmonization agreements signed with the federal government agreeing on a simplified process, based on a one-stop center to conduct the environmental assessment. Those agreements prevent duplication by ensuring a project is only subject to a single environmental assessment that meets legal requirements of all jurisdictions involved.

Canadian Environmental Assessment Act

What is the Canadian Environmental Assessment Act (CEAA)?

The Canadian Environmental Assessment Act was enacted in 1995 and was later modified and reinforced in 2003. The objectives of the CEAA are to promote sustainable development and cooperation between federal and provincial governments on environmental assessments. It is also to ensure that the environmental effects of projects are carefully reviewed before federal authorities take action in connection with them so that projects do not cause significant adverse environmental effects. The Canadian Environmental Assessment Agency has the duty to promote, monitor and facilitate the compliance with the Act and its regulation. The agency coordinates the federal environmental assessment for screenings that are also subject to the assessment process of another jurisdiction and for all comprehensive studies. If there are no provincial initiatives, Transport Canada is the coordinator.

What projects are subject to the CEAA process?

According to the CEAA, every project must receive an appropriate degree of environmental assessment. The degree depends largely on the scale and complexity of the likely effects of the project. Consequently, there are different types of environmental assessment. The Canadian Environmental Assessment Register ensures convenient public access to records relating to the environmental assessment of a project.

Infrastructures projects, at the border or elsewhere, are subject to the the CEAA when at least one of these criteria is found:

- The federal government has decision making authority for the project;

- The federal government participates in the funding of the project (through a specific program or not);
- The project is conducted on lands that belong to the federal government;
- The project has impacts on navigable waters (Navigable Waters Protection Act);
- The project has impacts on fish habitat (Fisheries Act).

How does the CEAA process work?

The application of an CEAA environmental assessment does not result in project specific authorization to proceed or not proceed. Instead, it allows the proper federal authorities to issue permits, transfer lands, fund or construct projects if the results of the environmental assessment conclude that the impacts on the environment are non-existent or can be attenuated. For example, Transport Canada can fund road infrastructure projects at the border only if the environmental assessment conducted by the Canadian Environmental Assessment Agency concluded that the projects have no adverse environmental effects.

When should the Canadian Environmental Assessment Agency become involved?

The environmental assessment of the project should be conducted as early as is practicable in the planning stages of the project and before irrevocable decisions are made. The sooner the evaluation begins, the sooner attenuation measures can be identified and the project modified in order to respect environmental criteria. A minimum period of 12 months should be anticipated for completion of the environmental evaluation if the inventory can be completed in spring and additional 4 months is required to conduct the public consultation.

Where can additional information be found?

Further guidance and detailed explanations on the actual implementation of the policy can be found at the Canadian Environmental Assessment Agency website:

http://www.ceaa.gc.ca/index_e.htm

http://www.ceaa.gc.ca/013/010/directives_e.htm (Cabinet Directive on Implementing the Canadian Environmental Assessment Act)

http://www.ceaa.gc.ca/012/newguidance_e.htm (How to Do Environmental Assessments)

The Navigable Waters Protection Act (NWPA)

What is Navigable Waters Protection Act?

The main objective of the Navigable Waters Protection Act is to ensure unimpeded safe navigation and efficient use of the nation's water ways. It is one of the oldest Acts in Canada, dating to 1882. The NWPA forbids the placement or construction of any structure under, over, across or through navigable waters without the authorization of Transport Canada. "Navigable water" includes a canal and any other body of water created or altered as a result of the construction of any work." Therefore this Act could apply to a border project where a water crossing is involved.

What projects are subject to the NWPA process?

The NWPA applies to any body of water which is capable, in its natural state, of being, navigated by floating vessels of any type for the purpose of transportation, recreation or commerce, and includes canals and man-made water bodies.

How does the NWPA process work?

Authorization can be obtained prior to the construction phase from Transport Canada simultaneous to the CEAA environmental evaluation at the Canadian Environmental Assessment Agency. An approval issued under the NWPA authorizes site specific work and the associated plans and the impacts to navigation. Depending on the type of work, there are two types of processes that are followed:

- For major projects, defined as those that may potentially cause substantial interference with navigation, there is a formal approval process. If a navigability assessment determines that there is such potential there is initial assessment to determine if the CEAA will need to be addressed. If so, Transport Canada will provide input to the CEAA to ensure navigation issues and potential mitigation measures are addressed.
- A decision under the CEAA is then made before the NWPA permit can be issued. The determination will either allow the action and the issuance of a permit, determine that approval may not be granted or that further assessment is needed in the form of a review panel.
- For projects that are not likely to cause substantial interference with navigation, there is a work assessment process. Under this process Transport Canada performs an assessment and makes necessary recommendation to avoid any navigation impacts. The project may then proceed to the construction phase.

When should Transport Canada become involved?

Since a CEEA environmental assessment may be necessary before the permit can be issued, consultation with Transport Canada should begin as early as practicable in the planning phase of the project. A minimum period of five months should be anticipated to receive the authorization. In some cases the navigability of a waterway cannot be established during winter, and the schedule has to be adjusted accordingly.

Where can additional information be found?

<http://www.tc.gc.ca/acts-regulations/GENERAL/n/nwpa/regulations/001/nwpa003/nwpa3.htm>

<http://www.tc.gc.ca/acts-regulations/GENERAL/n/nwpa/act/nwpa.htm>

The Fisheries Act

What is the Fisheries Act?

Canada is home to a diverse marine and freshwater system of rivers, streams, lakes and wetlands, which contain a remarkable diversity of fish species, which are valuable contributors to Canada's history, identity and culture. Because of the importance of fish habitat, their conservation and protection has been enshrined in law through the Fisheries Act, first enacted in 1868 as one of the country's first laws. The Fisheries Act was subsequently amended to add specific provisions for the conservation and protection of fish habitat, referred to as the habitat protection and pollution prevention provisions. These provisions make the Act one of the strongest environmental laws in Canada. The purpose of the Act is to protect the fish habitat and to forbid or control the activities and construction that might result in the alteration or the destruction of those habitats. It is administered by Fisheries and Oceans Canada (DFO).

What projects are subject to the Fisheries Act?

Any infrastructure project that has impacts on the fish habitat is subject to the authorization of the Canadian Ministry of Fisheries and Oceans. The Act applies to all fishing zones, territorial seas and inland waters of Canada and is binding to federal, provincial and territorial governments. As federal legislation, the Fisheries Act supersedes provincial legislation when the two conflict. Consequently, approval under provincial legislation may not necessarily mean approval under the Fisheries Act.

How does the Fisheries Act authorization process work?

Subsection 37(1) of the Act allows the Minister of DFO to request plans, specifications, studies or any other information that will allow the Minister to determine if the deposit of deleterious substances or a harmful alteration, disruption or destruction (HADD) of fish habitat is likely to occur. Subsection 37(2) empowers the Minister, after reviewing the plans, studies or other information requested under Section 37(1), to modify or add to the work or undertaking to avoid or mitigate the deposit of a deleterious substance or a HADD to fish habitat. Furthermore the Minister can restrict the operation of the work or undertaking and direct the closing of the work.

When should Fisheries and Oceans Canada become involved?

Authorization should be obtained prior to the construction phase from the Canadian Ministry of Fisheries and Oceans and can be sought simultaneous to the CEAA environmental evaluation. Construction can begin only when compliance to the Canadian

Environmental Assessment, the Navigable Waters Protection and the Fisheries Acts is fully achieved. Provincial requirements regarding environmental assessment also have to be fully respected to begin the construction phase. A minimum period of six months should be anticipated from the time of the presentation of a complete project to receipt of the authorization.

Where can additional information be found?

http://www.dfo-mpo.gc.ca/oceans-habitat/index_e.asp

http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/act-acte_e.asp

International Bridges and Tunnels Act

What is the International Bridges and Tunnels Act?

The Act is a Canadian federal statute which states that any construction or alteration of an international bridge or tunnel must have the approval of the federal Cabinet. The Act provides the federal government with legislative authority to ensure effective oversight of existing international vehicular and railway bridges and tunnels, as well as any new international bridges or tunnels built in the future. Prior to the Act there existed no clear authority to regulate approvals for the construction of new or significantly modified bridges or tunnels, approvals for change in ownership and issues of maintenance, operations, safety and security.

What projects are affected by the International Bridges and Tunnels Act?

The 24 international vehicular bridges and tunnels (14 in Ontario, nine in New Brunswick and one in Quebec) and nine international railway bridges and tunnels (eight in Ontario and one in New Brunswick) are affected by this legislation, as are any new international bridges or tunnels constructed in the future.

How does the International Bridges and Tunnels Act process work?

The Governor in Council may, on the recommendation of the Minister of Transport, make regulations respecting the maintenance and repair as well as the operation and use of international bridges and tunnels. In addition, the Governor in Council may make regulations regarding their security and safety, and must approve any purchase of international bridges or tunnels.

- **Security**: The Minister will have the power to order the inspection of a structure or the disclosure of copies of its safety inspection reports. Previously, safety reports were shared with Transport Canada on a voluntary basis and reports were not provided on a consistent basis. As well, the Minister will have the power to order a threat and vulnerability assessments of a facility to identify security gaps, or order that these gaps be addressed.
- **New construction**: The Act replaces the need for a special act of Parliament for the construction of any new international bridge or tunnel, resulting in a streamlined administrative process that is undertaken parallel to other permit processes.
- **Bridge operations and tolls**: The Minister will be able to regulate, if required, operational issues such as how the bridge is to be used or the types of vehicles

permitted. The Minister will have limited powers with regard to toll rates, being able to act only if changes in rates have a negative effect on traffic.

- Ownership: Approval by the Governor in Council will be required prior to the sale of an international bridge or tunnel, or the acquisition or change in control of an entity that presently own or operates such facilities.

When should approval under the Act be sought?

The need to comply with the provisions of the Act went into effect upon the Act receiving Royal Assent on February 1, 2007.

Where can additional information be found?

http://www.parl.gc.ca/common/bills_ls.asp?lang=E&ls=c3&source=library_prb&Parl=39&Ses=1

<http://www.tc.gc.ca/acts-regulations/GENERAL/i/ibta/act/menu.htm>

Highlights & guidelines: www.tc.gc.ca/programs/surface/bridges/IBTA.htm.

Section Five

International Agencies and Approvals

International Joint Commission (IJC)

What is the International Joint Commission?

The International Joint Commission is the governing body for the International Boundary Waters Treaty and the International Boundary Commission. The Commission is responsible for determining the position of any point on the boundary necessary to settle questions that might arise between the two governments.

How is the International Joint Commission organized?

The 1909 International Boundary Waters Treaty established the IJC, with three members appointed by the President of the United States and three appointed by the Governor in Council on the advice of the Prime Minister. The IJC has set up more than twenty boards made up of experts to assist it in carrying out their responsibilities. The IJC has staff based at four different locations. The Canadian Section is based in Ottawa, while its United States counterpart is based in Washington, D.C. The Great Lakes Regional staff maintains offices in Windsor, Ontario and in Detroit.

How is the International Joint Commission involved with border issues?

The IJC provides principles and mechanisms to help resolve and prevent disputes, primarily concerning water quantity and quality along the boundary between Canada and the United States under the International Boundary Waters Treaty. It assists the two countries in the protection of the transboundary environment, including the implementation of the Great Lakes Water Quality Agreement and improvement of transboundary air quality.

The Commission also alerts the two governments of emerging along the boundary that may lead to bilateral disputes. The IJC authorizes use for water sources while protecting competing interests in accord with rules set out in the treaty. Thus, the Commission may

need to approve applications for dams and canals involving the potentially disputed water source.

What approvals are needed from the International Joint Commission?

A letter of authorization by the commissioners is required to perform any type of work on the 20 feet (6 meters) wide vista along the boundary. Work is defined as: "Any ditch, earthwork, building or structure of any description or any lines of telephone, telegraph or power, including posts, piers or abutments for sustaining or protecting the wires or cables of those lines."

The Commission can also provide approval for international bridge construction under the International Boundary Waters Treaty. This approval can also be received through an exchange of Diplomatic notes between the US State Department and the Canadian Department of Foreign Affairs.

When the IJC become involved?

The boundary commission permit should be applied for once the location of a new international crossing is determined in order to have an official ruling on the location of the international border and approval to construct. Once the environmental review, particularly with respect to water flows, is completed, the application for a permit from the IJC or the exchange of diplomatic notes to allow an international bridge under the International Boundary Waters Treaty can proceed.

Where additional information be found?

http://www.ijc.org/en/home/main_accueil.htm

<http://www.internationalboundarycommission.org/>

<http://www.ijc.org/rel/agree/water.html>

Section Six

Provincial and State Agencies and Approvals

State and Provincial Departments (Ministries) of Transportation:

What is the role of the state and provincial transportation agencies when it comes to border crossing projects?

In many ways, these agencies are the driving force for improvements to the efficiency and flow at our shared border crossings. After all, the highway system on both sides of the border feeds into the border station complex. What happens on the highway affects the border station and vice versa.

Coordination between these transportation agencies and CBP, GSA and CBSA is essential. For example, at the Armstrong, Quebec/Jackman, Maine port of entry (POE), the Quebec Ministry of Transportation is working closely with the GSA to create a separate truck lane leading into the new U.S. POE being constructed over the next few years. Conversely, the Maine DOT will install rumble strips to warn drivers travelling on Route 201 north so that they are alert as they approach the CBSA facility.

Neighboring transportation agencies work closely to coordinate planning, design and construction around border crossings and corridors of commerce to ensure improvements. Often, state and provincial transportation agencies undertake and coordinate complex NEPA studies that include cooperating federal agencies such as GSA, FHWA, etc. They can also be the responsible party for securing such approvals as U.S. Coast Guard bridge permits, U.S. State Department Presidential Permits, International Boundary Commission permission for major improvements at border crossings. Such studies often result in approval to construct new improvements such as the new POE at Calais, ME/ St. Stephen, N.B.

What is involved in state and provincial environmental clearance?

State and provincial environmental clearance policies require agencies to review certain actions to determine whether they will have any significant impact on the environment. Environmental clearance is a planning tool used to identify the potential effects of projects on the environment – the air, water, land and living organisms, including humans.

Generally, the details required for environmental clearance focus on the information needs of regulatory and resource management decision-makers, as well as informing the public, government agencies, and industry about environmental matters. Public consultation is embedded in environmental clearance. This provides an opportunity for people who may be affected by a proposed project to express any concerns and provide advice. Results are documented in the environmental clearance report.

Under what circumstances do state and provincial environmental policies apply?

State environmental policy acts are creations of individual states and are not mandated by federal law. Not all states have enacted environmental policy acts. Some state environmental policy acts apply to state actions only, while some apply to both state and local agency actions. State actions or projects involving federal approvals and/or funding are subject to the National Environmental Policy Act (NEPA).

Provincial environmental assessment acts are creations of individual provinces. Projects involving federal approvals and funding are subject to the Canadian Environmental Assessment Act (CEAA). However, agreements are in place so that in cases where both federal and provincial jurisdictions require an environmental assessment (EA), only one EA is conducted for the project. The CEAA does not supersede the requirements set forth by other federal, provincial, or municipal environmental legislation. Generally, state and provincial policies do not apply to private projects unless a special designation is made.

Where additional information be found?

Please contact the appropriate state or provincial agency charged with oversight of environmental policy in your jurisdiction. The addresses for the agencies can be found on the EBTC website.