

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
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April 11, 2018

The Honorable Bob Goodlatte  
Chair  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jerry Nadler  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Nadler:

The U.S. Chamber of Commerce supports the “Permitting Litigation Efficiency Act of 2018,” and greatly appreciates the Committee’s interest in issues related to regulatory reform and federal permit streaming.

The federal permitting process is broken. It takes too long, requires too many steps, and leaves open too many avenues for legal challenges. To their credit, Congress and the administration in recent years have taken steps to improve the federal permitting process. Title 41 of the “Fixing America’s Surface Transportation Act (FAST-41)” established a process for environmental review that caps the amount of time for reviews, places a statute of limitations on lawsuits on reviews, and designates a lead agency that coordinates concurrent reviews among all reviewing agencies. This law is a great start, and a testament to the leadership on such issues by this Committee over the past several Congresses. We believe more can be done to expand these streamlining steps for environmental reviews, and to speed up final permit decisions.

This bill would address judicial challenges to federal permits that are one of the most significant factors that slow down the process and raise the costs of obtaining a permit. The “Permitting Litigation Efficiency Act of 2018” addresses judicial challenges to federal permits and the issuance of injunctions and restraining orders on permits or permitted activities.

Again, the Chamber supports the “Permitting Litigation Efficiency Act of 2018,” and thanks the Committee for leadership on this issue.

Sincerely,



Neil L. Bradley

Cc: Members of the House Committee on the Judiciary



MEMORANDUM OF UNDERSTANDING  
IMPLEMENTING ONE FEDERAL DECISION UNDER  
EXECUTIVE ORDER 13807

**I. Introduction**

The undersigned Federal agencies (agencies) enter into this Memorandum of Understanding (MOU) to establish a cooperative relationship for the timely processing of environmental reviews and authorization decisions for proposed major infrastructure projects under the One Federal Decision (OFD) policy established in Executive Order (E.O.) 13807.<sup>1</sup> E.O. 13807 requires the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ), in consultation with the Federal Permitting Improvement Steering Council (Permitting Council), to develop a framework for implementation of the Executive Order. On March 20, 2018, OMB and CEQ issued an OMB/CEQ Memorandum to Heads of Federal Departments and Agencies titled “One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807” (OFD Framework) pursuant to which agencies enter into this MOU. The agencies accordingly agree to work together to implement OFD as set forth in this MOU.

**II. Background**

Under the OFD approach established in E.O. 13807, Federal agencies with a role in the environmental review and permitting process for a major infrastructure project are directed to develop an environmental review and authorization decision schedule for that project. For each major infrastructure project, agencies will work together to develop a single Permitting Timetable for the necessary environmental review and authorization decisions, prepare a single environmental impact statement (EIS), sign a single record of decision (ROD), and issue all necessary authorization decisions within 90 days of issuance of the ROD, subject to limited exceptions.<sup>2</sup> E.O. 13807 sets a goal for agencies of reducing the time for completing environmental reviews and authorization decisions to an agency average of not more than two years from publication of a Notice of Intent (NOI) to prepare an EIS. The purposes of this MOU are to:

- provide a more predictable, transparent and timely Federal review and authorization process for delivering major infrastructure projects;

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<sup>1</sup> E.O. 13807 defines a “major infrastructure project” as “an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.” E.O. 13807 of August 15, 2017, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” 82 Fed. Reg. 40,463, 40,464 (Aug. 24, 2017). The funding criterion of E.O. 13807 ensures that agencies are expending resources on the environmental review and authorization of project proposals that are likely to be constructed. Public and private funds shall be considered “reasonably available” whether or not they are contingent on completion of environmental reviews and issuance of necessary authorizations for the project.

<sup>2</sup> All references to days in this MOU are to calendar days unless otherwise indicated.

- establish standard operating procedures for how the Federal Government will make concurrent and synchronized reviews for major infrastructure projects; and
- eliminate duplication of effort among agencies, improve the efficiency of project delivery, make better-informed decisions and promote good environmental, community and economic outcomes.

### **III. Definitions**

Terms used herein have the definitions assigned to them in E.O. 13807 and 40 C.F.R. Parts 1500-1508.

### **IV. Authorities**

Section 5(a) of E.O. 13807 directs Federal agencies to implement an OFD policy in accordance with the framework developed by OMB and CEQ under Section 5(b) of the Executive Order. Section 5(e) of the Executive Order authorizes CEQ to issue such regulations, guidance, and directives to Federal agencies as it may deem appropriate to further the goals of the order. Other authorities for agencies to enter into this MOU include NEPA, Title 41 of the Fixing America's Surface Transportation Act, 42 U.S.C. §§ 4370m *et seq.* (FAST-41) and the specific authorities of each agency.

### **V. General Agreements**

The lead agency will decide whether a project sponsor has identified the reasonable availability of funds, and whether the project otherwise meets the definition of "major infrastructure project" under E.O. 13807, and is therefore subject to OFD. The lead agency's decision shall be determinative for purposes of this MOU.

This MOU sets forth the agreement of the signatory agencies through which they will jointly and cooperatively process environmental reviews and make authorization decisions for major infrastructure projects, to the extent consistent with applicable law.

- A. Two-year goal. Agencies will undertake to meet the goal set forth in E.O. 13807 of reducing the time to two years for each agency to complete all environmental reviews and authorization decisions for major infrastructure projects starting from the date the NOI is published to issuance of a ROD, except as provided in the OFD Framework. To help achieve this goal, agencies commit to cooperate, communicate, share information, and resolve conflicts that could prevent meeting milestones.
- B. Agency Implementation of OFD. Agencies will develop appropriate policies to ensure the use and efficient implementation of OFD for major infrastructure projects. Within 90 days, each agency will transmit to CEQ and OMB a plan to facilitate the efficient implementation of OFD.
- C. Communication. Agencies will actively participate in environmental reviews and authorization processes for major infrastructure projects, and communicate with one

another, as well as project applicants and sponsors, in an effective and structured manner that starts early and continues throughout the review process. This active communication should provide all agencies with the opportunity to identify concerns, raise potential issues early in the review process, and identify solutions.<sup>3</sup>

- D. Concurrent Reviews. Agencies will carry out their obligations with respect to the environmental review and authorization decisions for a major infrastructure project concurrently, and in conjunction with the review performed by the lead agency under NEPA, to the extent consistent with applicable law.
- E. Permitting Timetable. Agencies will work together to meet the milestones, including the intermediate and final completion dates of any reviews or authorization decisions, of the Permitting Timetable established pursuant to this MOU.
- F. Commitment to Process Enhancements. Agencies will work individually and collectively, as appropriate, to:
1. identify and remove process impediments to implementing OFD;
  2. implement best practices that will result in more efficient reviews;
  3. develop and implement appropriate programmatic agreements with respect to project reviews where multiple major infrastructure projects present common issues;
  4. as appropriate, update, develop and adopt internal procedures, including amendments to their NEPA implementing procedures, to implement their responsibilities under E.O. 13807 and the OFD Framework, including through the E.O. 13807 Sec. 5(e)(iii) working group process; and
  5. work together to revise and improve this MOU from time to time, as needed, including through prompt notification of any changes to agency Chief Environmental Review and Permitting Officers (CERPOs)<sup>4</sup> or other key personnel.
- G. Cooperating Agency for FERC Proceedings.
1. Each agency whose authorization is required, or which otherwise has jurisdiction by law, for a major infrastructure project with respect to which FERC is lead agency under NEPA and which is the subject of a FERC proceeding will, upon the request of FERC, participate as a cooperating agency under Section VI. Other agencies may participate as cooperating agencies with respect to such projects at FERC's invitation, as provided in 40 C.F.R. 1501.6.

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<sup>3</sup> Predecisional documents prepared by FERC or submitted to FERC in FERC proceedings are to be treated as confidential. Such documents may not be released, including release requested under the Freedom of Information Act or other applicable law, without prior authorization from FERC. FERC regulations prohibit the disclosure of "the nature and time of any proposed action by the Commission" and limit the disclosure of interagency communications. 18 C.F.R. §§ 3c.2(b), 388.107(e).

<sup>4</sup> Agency CERPOs are designated by agency heads pursuant to 42 U.S.C. § 4370m-1(b)(2)(A)(iii)(I).

2. Under 40 C.F.R. 1501.6, agencies may decline any such FERC invitation only if the agency has no jurisdiction by law. Agencies that decline to be cooperating agencies at FERC's invitation agree not to join the FERC proceeding as an intervenor.
3. An agency's participation as a cooperating agency under this subsection shall not impede such agency's ability to submit comments to the FERC docket for the relevant proceeding, nor impede the agency's ability to defend any mandatory conditions in court proceedings.

## **VI. Determination of Lead and Cooperating Agencies**

A. Determination of Lead and Cooperating Agencies. Lead and cooperating agencies will be determined as soon as practicable and in accordance with 40 C.F.R. 1501.5 and 1501.6. Each potential lead or cooperating agency will, as soon as practicable, designate a point of contact (Project POC), which may be the agency CERPO, to represent the agency in interagency consultations about that project. In any case where the lead agency is disputed:

1. The Project POC for the agency that receives the first substantial contact with the project sponsor (originating agency) will notify the Project POCs for the other potential cooperating and lead agencies of the dispute regarding lead agency determination.
2. The Project POC of the notified agencies will have 10 business days to object. If a notified agency Project POC objects to the selection of lead agency, then the originating agency will convene a meeting with all other notified agency Project POCs to occur no later than 15 business days after responses have been received. During the meeting, the agencies will agree on an agency to be the lead agency.
3. If agencies cannot agree, then the originating agency CERPO will follow the procedures for lead agency determination by CEQ pursuant to 40 C.F.R. 1501.5.
4. Co-lead agencies may designate one of the co-lead agencies to be "lead agency" for purposes of this MOU and of the OFD Framework.

## **VII. Permitting Timetable**

A. Development of Permitting Timetable.

1. The lead agency, in consultation with the project sponsor and cooperating and participating agencies,<sup>5</sup> will develop a Permitting Timetable that identifies the actions and associated milestones for applicable environmental reviews and authorizations. The Permitting Timetable will be developed as soon as practicable after the project is sufficiently advanced to allow the determination of relevant milestones and generally before publication of an NOI. To the maximum extent practicable and permitted by

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<sup>5</sup> For purposes of this MOU, "participating agency" shall have the meaning set forth in FAST-41 or such other law as may apply to the lead agency's authorization of the project.

law, the Permitting Timetable will establish a schedule of no more than two years from NOI to publication of a single ROD that will provide for the completion of all required authorization decisions.

2. After consultation with all cooperating and participating agencies, the lead agency will transmit to each cooperating agency a proposed Permitting Timetable for comment. If no agency CERPO or Project POC objects in writing to the proposal within 10 business days, the proposal will be the Permitting Timetable for the project. To the extent an agency objects to a proposed milestone, such agency will communicate its objection and the basis for the objection to the lead agency in writing within 10 business days. If the objecting agency has authorization responsibility for the project, such agency will also include an alternative proposed milestone which will comport with the two-year OFD schedule, unless special circumstances or applicable law make the two-year schedule impracticable.
3. With respect to cooperating agencies with authorization decision responsibilities, if the lead agency cannot reconcile the alternative proposed milestone with other proposed Permitting Timetable milestones, the lead agency will elevate the issue to an appropriate senior official of the cooperating agency for timely resolution. After an opportunity to resolve the issue, the lead agency will issue the Permitting Timetable.
4. All agencies will comply with the milestones set forth in the Permitting Timetable to the maximum extent practicable and permitted by law.

B. Contents of Permitting Timetable.

1. The Permitting Timetable for major infrastructure projects should include the environmental review and authorization milestones specified in Appendix B of the CEQ/OMB Memorandum on “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Processes for Infrastructure Projects,” as amended. The lead agency may also include any other appropriate milestones in the Permitting Timetable that the lead agency deems appropriate, are requested by the project sponsor, or are requested by a cooperating or participating agency.
2. The lead agency will design the Permitting Timetable so that it has adequate time to accept and consider public, cooperating agency, and participating agency comments and input, and conduct any appropriate alternatives analysis or impact assessments.
3. The Permitting Timetable will account for intermediate and final completion dates for any environmental review or authorization required for the project. The Permitting Timetable should include estimated milestones for the project sponsor to develop and submit complete applications and any other information required for Federal authorization of the project, including required authorization decisions by non-Federal entities. In such cases, lead agencies will estimate when the project’s design will be advanced enough to determine such dates, and establish estimated milestones accordingly.

C. Modifications and Updates.

1. Following consultations with cooperating agencies, the lead agency will update, and as necessary modify, the Permitting Timetable at least quarterly. A modified Permitting Timetable will be transmitted to each cooperating and participating agency Project POC and to the project sponsor.
2. With respect to the modification of milestones concerning actions by cooperating agencies with authorization decision responsibilities, lead agencies may modify such milestones following the procedures contained in Section VII.A.
3. If the lead agency receives a written request from the project sponsor to suspend or cancel the environmental review and authorization process, or otherwise determines that the project sponsor has suspended or cancelled the project, the lead agency will document the request and modify the Permitting Table accordingly.

D. Publication. A copy of the Permitting Timetable and any modifications will be made available to the public online, including, as appropriate and practicable, through the Federal Permitting Dashboard.

## **VIII. Agency Roles and Responsibilities**

A. Lead Agencies.

1. The lead agency is responsible for organizing the Federal environmental review and authorization processes for a proposed project, including assigning a management official to lead the environmental review process and identifying a primary Federal point of contact at each cooperating or participating agency for the project.
2. After a lead agency has been designated, that agency will be responsible for requesting cooperation from other Federal agencies that have jurisdiction by law or special expertise (as determined by the lead agency under 40 C.F.R. 1501.6) on any environmental issue that should be addressed in the EIS. To the fullest extent possible and at the earliest time practicable, the lead agency should seek the cooperation of State, tribal or local agencies of similar qualifications in accordance with 40 C.F.R. 1506.2. The lead agency should also identify and invite participating agencies.
3. The lead agency will prepare a single EIS for the project in coordination with the other Federal cooperating agencies with authorization decision responsibilities and will ensure that the final EIS (FEIS) includes an adequate level of detail to inform decisions by all agencies with review or authorization decision responsibilities for the proposed project.
4. The lead agency will inform cooperating agencies regarding new material information and changes related to the project.



5. The lead agency is responsible for developing the Purpose and Need, identifying the range of alternatives to be analyzed, identifying the preferred alternative and determining whether to develop the preferred alternative to a higher level of detail.
6. The lead agency will provide the cooperating agencies the opportunity to review and contribute to all relevant substantive phases of the EIS preparation in conformity with the Concurrence Points set forth in Section XI.
7. The lead agency is responsible for preparing and publishing a single ROD for all Federal agencies with authorization responsibility for the project to support any necessary authorization decisions. The ROD will incorporate the decisions of each such agency, unless an exception to a single ROD is met as set forth in Section XIII or where Federal law provides for the lead agency to issue a combined FEIS/ROD.
8. The lead agency will maintain a consolidated project file of the information assembled and utilized by the Federal cooperating agencies as the basis for their environmental reviews under NEPA.

B. Cooperating Agencies.

1. Cooperating agencies with authorization decision responsibilities will coordinate and synchronize their authorization reviews with the lead agency's development of the FEIS and issuance of the ROD.
2. Agencies with authorization decision responsibilities will participate as cooperating agencies when invited by the lead agency, consistent with 40 C.F.R. 1501.6. Agencies without authorization decision responsibilities may participate as cooperating agencies whenever invited by the lead agency.
3. At the request of the lead agency, cooperating agencies will make available personnel and/or expertise to the lead agency, to the extent practicable.
4. Cooperating agencies will be responsible for identifying any information necessary to complete application review and authorizations in accordance with the Permitting Timetable, as well as the means of obtaining such information.
5. Cooperating agencies will ensure that any issues that may delay the Permitting Timetable are promptly brought to the attention of the lead agency.
6. Each cooperating agency should limit its comments to those issues that are within that agency's areas of special expertise or jurisdiction.
7. Each cooperating agency will be responsible for making its respective authorization decisions, and will maintain the administrative record associated with such decisions and provide such information as the lead agency may request for the consolidated project file.

- C. Participating Agencies. Participating agencies will complete their reviews and provide any necessary input in compliance with the requests of the lead agency.
- D. State, Local, and Tribal Agencies. Lead agencies may invite any relevant State, local or tribal agency with Federal authorization decision responsibilities for a major infrastructure project to be a cooperating agency. Lead agencies will seek to secure such State, local or tribal agency's commitment to comply with the Permitting Timetable and such other obligations of a cooperating agency under this MOU as the lead agency may deem appropriate and necessary for the project, if necessary by the execution of a separate written agreement with such agency.
- E. CERPOs.
1. Each agency CERPO will help oversee the implementation of this MOU and E.O. 13807 at that agency.
  2. Each agency CERPO should be informed of all major infrastructure projects for which that agency is either a lead agency or cooperating agency, and of the Permitting Timetables for such projects.
  3. Each agency CERPO should help agency leadership ensure the prioritization of resources at that agency to comply with applicable Permitting Timetables.

## **IX. Preliminary Project Planning**

- A. Preapplication Procedures and Prescoping. After a lead agency is determined, the lead agency should begin prescoping, including through using any applicable preapplication procedures at that agency. The lead agency should also identify and begin discussions with potential cooperating and participating agencies and the project sponsor to identify potentially significant environmental issues, the community and stakeholders affected, the extent of the analysis needed, and the time required to complete environmental review and authorization decision processes. The lead agency will complete its prescoping process as expeditiously as possible.
- B. Preliminary Planning. During prescoping, or as soon as practicable, the lead agency, in consultation with the cooperating agencies and the project sponsor, may develop a preliminary project plan that will establish how agencies will work together to process the environmental review and authorization decisions for the project. Plans and timetables developed for FAST-41 projects may serve as preliminary project plans. The plan may include:
- A Permitting Timetable;
  - A project-specific framework for all agencies' reviews, analyses and decisions;
  - Specific areas of responsibilities and roles of all involved agencies;
  - Identification of the significant issues and concerns that affect the environmental review and authorizations needed for the project;

- A stakeholder, public and tribal outreach and engagement plan;
- Requirements for complete applications for respective authorizations, and an identification of the earliest possible stage when the application could be submitted;
- Procedures for integration of environmental review and authorization processes with the goal of meeting milestones in the Permitting Timetable; and
- Potential avoidance, minimization, and mitigation strategies.

C. Programmatic Coordination Plan. A preliminary project plan for an individual project may be established separately from any programmatic coordination plan, or it may incorporate one or more programmatic coordination plans established by the lead agency to govern coordination with one or more agencies.

## **X. Notice of Intent**

- A. Timing of Publication. The lead agency will publish the NOI as soon as practicable after determining (1) that a project is a major infrastructure project; and (2) after consultation with cooperating agencies, that the project proposal is sufficiently developed to permit scoping and meaningful public comment. The publication of the NOI should not be unreasonably delayed.
- B. Revision or Withdrawal. If the lead agency determines that the NOI must be revised, supplemented, corrected, reissued, or withdrawn, the lead agency will transmit the proposed change to all cooperating and participating agencies and to the project sponsor, and modify the Permitting Timetable accordingly, before publishing a new NOI. The modified Permitting Timetable will reflect the date of the new NOI as the new start date for purposes of the two-year OFD schedule.

## **XI. Scoping and Concurrence Points**

### **A. Scoping.**

1. The scoping process should be an open process for determining the scope of issues to be addressed in the EIS, identifying the significant issues related to the proposed project and engaging stakeholders and the public. Lead agencies should determine the level and form of public engagement on a case-by-case basis, taking into account factors such as the overall size and complexity of the project.
2. Agencies will use the NEPA scoping process to agree on the relevant analyses, studies and engineering design that will be needed in order for each agency to be able to sign a single ROD and for all the authorization decisions to be issued within 90 days after the ROD is signed.
3. Agencies will consult and seek to agree on the best use and relevance of prior developed information, such as information developed during a planning process.

### **B. Requirement of Coordination.**

1. The OFD policy integrates the requirements of all Federal agencies with authorization decision responsibilities. The undersigned agencies commit to implementing the OFD process early in project development to avoid schedule delays. The environmental review process will be conducted concurrently with the applicable authorization decision processes, and, as such, the lead agency should obtain a written concurrence from all cooperating agencies whose authorization is required for the project at three key milestones: 1) Purpose and Need, 2) Alternatives To Be Carried Forward for Evaluation, and 3) the Preferred Alternative. Lead agencies, in consultation with the relevant cooperating agencies with applicable authorization decision responsibilities, have discretion to add other concurrence points as necessary to meet project specific circumstances.
2. The lead agency will request written concurrence on each concurrence point from all cooperating agencies whose authorization is required for the project. "Concurrence" for purposes of this MOU means confirmation by the agency that the information is sufficient for that stage, and the environmental review process may proceed to the next stage of the NEPA process, as set forth in the lead agency's request for written concurrence. Each applicable cooperating agency will either confirm its concurrence or inform the lead agency that it cannot yet concur. A non-concurring agency will undertake to resolve the issue and provide the requested concurrence, and will if necessary elevate the issue pursuant to Section XII. Cooperating agency Project POCs will respond to the lead agency's request for concurrence within 10 business days. Failure to respond within 10 business days may be treated as concurrence, at the discretion of the lead agency.
3. With respect to cooperating agencies whose authorization is not required for the project, comments should be considered by the lead agency and reflected in the environmental analysis and/or project planning, as appropriate.

C. Specific Concurrent Points.

1. Concurrence Point #1: Purpose and Need.
  - (a) The concurrence point will generally occur early in the NEPA review process, prior to issuance of an NOI. The Purpose and Need statement is the foundation for the NEPA alternatives analysis. Cooperating agencies with authorization decision responsibilities for a project will review the lead agency's Purpose and Need statement and determine if it meets their NEPA obligations.
2. Concurrence Point #2: Alternatives to be Carried Forward for Evaluation.
  - (a) This concurrence point identifies the alternatives to be carried forward for analysis in the EIS. Concurrence should be sought as early as possible and prior to detailed analysis in the draft EIS (DEIS). Concurrence should be obtained prior to presenting the results of alternatives screening to the public. In order to fulfill the needs of other agencies' authorities, there may be alternatives that require analysis beyond what is necessary for the lead agency.

### 3. Concurrence Point #3 - Preferred Alternative.

(a) A preferred alternative should be identified in the DEIS and must be identified in the FEIS. A final decision is identified in the ROD. Before a preferred alternative is identified in a DEIS or FEIS, the lead agency will request written concurrence on the preferred alternative from all agencies whose authorization is required for the project, and will explain in such request the rationale for its selection. An agency's concurrence on a preferred alternative identified in the DEIS will also serve as concurrence for that preferred alternative in the FEIS, unless there is a material change in the preferred alternative from DEIS to FEIS.

D. Changed Circumstances. If after concurrence, the lead agency determines that changes to the Purpose and Need, Alternatives, or the Preferred Alternative are necessary, then the lead agency and cooperating agencies with authorization decision responsibilities will review such changes to determine if concurrence should be revisited.

## **XII. Elevation of Delays and Dispute Resolution**

- A. Any issue or dispute that arises between or among agencies during the OFD process will be addressed expeditiously to avoid delay.
- B. Agencies will implement this section consistent with any dispute resolution process established in an applicable law, regulation, or legally binding agreement to the maximum extent permitted by law.
- C. Agencies will seek to resolve issues or disputes at the earliest possible time at the project level through staff who have day-to-day involvement in the project.
- D. Agencies will notify their CERPOs of any instance where a dispute is to be elevated. Where appropriate, agencies will also consult with the project sponsor, and its input should also be considered.
- E. If a dispute between agencies causes a milestone to be missed or extended, or the lead agency anticipates that a Permitting Timetable milestone will be missed or will need to be extended, then the dispute should be elevated to an official designated by the relevant agency for resolution. Such elevation should take place as soon as practicable after the lead agency becomes aware of the dispute or potential missed milestone. Disputes that do not impact the ability of an agency to meet a milestone may be elevated as appropriate.
- F. Once elevated to the designated official, if no resolution has been reached at the end of 30 days after the relevant milestone date or extension date, then the relevant agencies will elevate the dispute to senior agency leadership for resolution.

## **XIII. Exceptions**

- A. The lead agency will grant exceptions to the single EIS and single ROD requirement of E.O. 13807 when:
  - 1. the project sponsor requests that the agencies issue separate NEPA documents;
  - 2. the NEPA obligations of a cooperating or participating agency have already been satisfied; or
  - 3. the lead agency determines that one ROD would not promote efficient completion of the project's environmental review and authorization process.
- B. The lead agency may grant an exception to the single ROD requirement of E.O. 13807 when Federal law provides for the lead agency to issue a combined FEIS/ROD and cooperating agencies are not authorized to issue a combined FEIS/ROD. When a lead agency elects to grant such an exception, the agencies not authorized to issue a combined FEIS/ROD will issue a joint ROD or other appropriate decision document as soon as practicable, consistent with applicable law and the Permitting Timetable.
- C. FERC will grant an exception to the single ROD requirement of E.O. 13807 when the FERC licensing order serves as the ROD. In such situations, the agencies not authorized to issue a combined FEIS/ROD will issue a joint ROD or other appropriate decision document as soon as practicable, consistent with applicable law and the Permitting Timetable.
- D. The lead agency may also extend the 90-day deadline for any authorization required for a project in the following circumstances:
  - 1. when applicable law prohibits an agency from issuing its approval or permit within the 90-day period;
  - 2. the project sponsor requests that the permit decision or approval follow a different timeline; or
  - 3. an extension would better promote completion of the project's environmental review and authorization process.
- E. The lead agency may terminate the coordinated development of the single EIS and/or single ROD under OFD upon request of the project sponsor, changed circumstances, or if the project sponsor fails to respond timely to lead agency requests.

#### **XIV. Miscellaneous Provisions**

- A. Agencies may enter into appropriate agreements as necessary to implement OFD, including agreements on a program- and project-specific basis. Any such agreements will be consistent with this MOU, E.O. 13807, the OFD Framework, and Federal law.

- B. Nothing contained in this MOU is intended to or should be construed to limit or affect the authority or legal responsibilities of the undersigned agencies, or binds the undersigned agencies to perform actions beyond their respective authorities.
- C. Nothing in this MOU shall be construed to impair or otherwise adversely affect:
  - 1. the authority granted by law to an executive department or agency, or the head thereof; or
  - 2. the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- D. Nothing in this MOU is intended to, or should, be construed to restrict the agencies from participating in similar activities or arrangements with other public or private entities, organizations, or individuals.
- E. Independent agency staff will comply with this MOU to the maximum extent practicable, consistent with such agency's status as an independent agency, statutory requirements, and such agency's regulations and procedures.<sup>6</sup>
- F. The mission requirements, funding, personnel, and other priorities of the undersigned agencies may affect their ability to fully implement all the provisions identified in this MOU.
- G. This MOU shall be implemented consistent with applicable law and subject to the availability of appropriations.
- H. Specific activities that involve the transfer of money, services, or property between or among the undersigned agencies may require execution of separate agreements or contracts.
- I. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- J. This MOU may be modified and amended, or terminated, by written agreement among the undersigned agencies.
- K. Additional Federal agencies may become parties to this MOU by signing an addendum to the MOU.
- L. This MOU is effective on April 10, 2018.

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<sup>6</sup> For purposes of this MOU, "independent agency" means an independent regulatory agency as defined in 44 U.S.C. § 3502(5).

Department of the Interior

By: 

Name: Ryan Zinke

Title: Secretary

Date: 9 APR 18



Department of Agriculture

By

Sonny Perdue

Name: Sonny Perdue

Title: Secretary

Date:

April 9, 2018

Department of Commerce

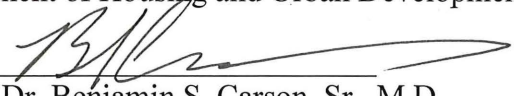
By: Wilbur L. Ross, Jr.

Name: Wilbur L. Ross, Jr.

Title: Secretary

Date: April 9, 2018

Department of Housing and Urban Development

By: 

Name: Dr. Benjamin S. Carson, Sr., M.D.

Title: Secretary

Date: 4-9-18

Department of Transportation

By: EL. Chao

Name: Elaine L. Chao

Title: Secretary

Date: 4/9/18

Department of Energy

By: RICK PERRY

Name: Rick Perry

Title: Secretary

Date: 4/9/18

Department of Homeland Security

By: 

Name: Kristin M. Nielsen

Title: Secretary

Date: 4/9/18

U.S. Army Corps of Engineers

By: Mark T. Esper  
Name: Mark T. Esper  
Title: Secretary

Date: 4-9-18

Environmental Protection Agency

By: 

Name: Scott Pruitt

Title: Administrator

Date: 4-9-18



Federal Energy Regulatory Commission

By: Kevin J. McIntyre

Name: Kevin J. McIntyre

Title: Chairman

Date: 3/21/2018

Advisory Council on Historic Preservation

By: John M. Fowler

Date: 3/21/12

Name: John M. Fowler  
Title: Executive Director

Federal Permitting Improvement Steering Council

By: Angela C  
Name: Angela Colamaria  
Title: Acting Executive Director

Date: April 9, 2018