



**U.S. Department
Of Transportation**

Office of the Secretary
of Transportation

Under Secretary for Policy

1200 New Jersey Ave., SE
Washington, DC 20590

MEMORANDUM FOR SECRETARIAL OFFICERS AND HEADS OF OPERATING ADMINISTRATIONS

From: Loren Smith 
Deputy Assistant Secretary for Transportation Policy

Subject: Interim Policy on One Federal Decision Implementation
(RIN 2105-ZA09)

The U.S. Department of Transportation (DOT) is issuing this memorandum to implement Executive Order (E.O.) 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*¹ for DOT projects. E.O. 13807 directs Federal agencies to conduct environmental reviews and make authorization decisions under the National Environmental Policy Act (NEPA) in a coordinated, consistent, predictable, and timely manner and requires agencies use a One Federal Decision (OFD) process for major infrastructure projects (MIPs), with exceptions.

On March 20, 2018, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued a memorandum to the heads of all Federal departments and agencies, *One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807* (OFD Framework).² Consistent with the OFD Framework, the Federal agencies likely to have responsibilities to conduct environmental reviews or make authorization decisions with respect to MIPs executed the *Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807* (OFD MOU) on April 9, 2018.³ The OFD MOU is the agreement through which Federal agencies will cooperatively process environmental reviews and make authorization decisions for proposed MIPs. In February 2019, CEQ and OMB issued a Memorandum for the Secretary of Transportation, *Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment*

¹ 82 FR 40463 (Aug. 24, 2017).

² [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_Framework_Guidance_\(M-18-13\)_2018-03-20.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_Framework_Guidance_(M-18-13)_2018-03-20.pdf)

³ [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_MOU_\(M-18-13-Part-2\)_2018-04-09.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_MOU_(M-18-13-Part-2)_2018-04-09.pdf)

*Authority Under the Surface Transportation Project Delivery Program (NEPA Assignment Guidance).*⁴

This memorandum addresses how DOT will implement the coordinated and timely process for environmental reviews and authorization decisions of MIPs as established in the E.O. and OFD MOU and obtain the data necessary for reporting on the Cross-Agency Priority (CAP) Goal.⁵ This memorandum applies to all DOT Operating Administrations (OAs) and State agencies assigned responsibilities under the Surface Transportation Project Delivery Program authorized by 23 U.S.C. 327 (NEPA assignment agencies).⁶ This memorandum incorporates the definitions as identified in the E.O. and OFD MOU.

This memorandum is not legally binding on regulated entities and will not be relied upon by the Department as a separate basis for affirmative enforcement action or other administrative penalty. Nonconformity will not affect rights and obligations of regulated entities under existing statutes and regulations.

I. Scope of OFD MOU

1. What are the key principles of the OFD process?

Section 5 of E.O. 13807 and section VIII of the OFD MOU define the responsibilities of Federal agencies with a role in the environmental review and authorization decision process for a MIP (i.e., lead agency, cooperating agency under the NEPA or participating agency). These responsibilities include:

- Identifying a lead Federal agency responsible for navigating the project through the Federal environmental review and authorization decision process;
- Identifying primary points of contact at each Federal agency;
- Developing a “permitting timetable” for the project’s environmental review and authorization decisions;
- Integrating the permitting and environmental review processes;
- Following a process that elevates issues that result in, or are likely to result in, delays to senior agency officials;
- Preparing a single environmental impact statement (EIS); and

⁴ M-19-11 Memorandum for the Secretary of Transportation, Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment Authority Under the Surface Transportation Project Delivery Program (February 26, 2019) available at <https://www.whitehouse.gov/wp-content/uploads/2019/02/m-19-11.pdf>.

⁵ The E.O. 13807 instructed OMB to create a CAP Goal on Infrastructure Permitting Modernization so that, where permitted by law (a) Federal environmental reviews and authorization processes for infrastructure projects are consistent, coordinated, and predictable; and (b) the time for the Federal Government’s processing of environmental reviews and authorization decisions for new major infrastructure projects should be reduced to not more than an average of approximately 2 years, measured from the date of the publication of the notice of intent to prepare an environmental impact statement or other benchmark deemed appropriate by the Director of OMB.

⁶ For purposes of this memorandum, the NEPA assignment agency would take on the role of the lead Federal agency, where appropriate. Section VII of this memorandum provides specific guidance to NEPA assignment agencies.

- Preparing and signing a single record of decision (ROD).⁷

Section 4(a)(i)(B) of the E.O. also establishes goals to complete environmental reviews and make project decisions for MIPs within an average of two years from the date of publication of a notice of intent (NOI) to the issuance of the ROD and for authorization decisions to be issued within 90 days from the signature of the ROD, unless an exception applies. Attachment A contains a NEPA flow chart for MIPs showing the OFD process. DOT encourages OAs to apply the principles outlined in the OFD MOU to all NEPA projects where it will expedite the review process.

2. What projects are covered by OFD?

OFD only applies to MIPs for which the initial Notice of Intent (NOI) was published after August 15, 2017^{8, 9}. E.O. 13807 defines a MIP 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.

Per section V of the OFD MOU, the lead Federal agency is solely responsible for determining whether a project meets the definition of a MIP.

Programmatic or Tier 1 EISs that do not lead to construction and planning projects or studies are not MIPs.

3. What constitutes “multiple authorizations by Federal agencies”?

For the purposes of determining whether a project is a MIP under E.O. 13807, “multiple authorizations” means that there are at least two Federal agencies and there are two or more Federal authorizations. The Federal Environmental Review and Authorization Inventory¹⁰ lists potential federal authorizations for infrastructure projects. Consultations, such as those conducted under section 7 of the Endangered Species Act and under section 106 of the National Historic Preservation Act are considered federal authorizations.

⁷ When DOT issues a combined FEIS/ROD, the other relevant agencies (i.e., signatory cooperating agencies) would sign a separate single ROD no sooner than 30 days from the combined FEIS/ROD notice of availability.

⁸ E.O. 13807 was issued on August 15, 2017.

⁹ Supplemental documents where the initial EISs NOI date is prior to the Executive Order would not be considered MIPs.

¹⁰ Available at <https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory>

4. *What factors should an OA consider when determining whether the project sponsor has identified the reasonable availability of funds sufficient to complete the project?*

Under section V of the OFD MOU, the lead Federal agency is responsible for determining whether the project sponsor has demonstrated the reasonable availability of funds sufficient to complete the project.¹¹ This is a project-by-project determination.

The OFD Framework clarified the reasonable availability of funds requirement, as follows:

*The “reasonable availability of funds” criterion of E.O. 13807 ensures that agencies are expending resources on the environmental review and authorization of project proposals that are likely to have the necessary funds to be constructed in the event that a build option is selected. 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.*¹²

The project sponsor bears the burden of demonstrating to the OA the reasonable availability of funds and may provide supporting documentation, such as letters of commitment from the project sponsor and any private or public entity that has committed to provide financial support necessary to complete the project. In making its determination, an OA may rely upon financial information that is dependent in part on funding anticipated from Federal financial assistance programs, tolling, future appropriations, and other future sources to the extent there is a reasonable basis to conclude that such sources would be available to construct the project if the build option is selected. The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) may rely on the listing of a project on a statewide transportation improvement program (STIP), transportation improvement program (TIP), or long-range plan, as applicable. Ultimately, it is the lead Federal agency’s determination whether a project is a MIP.

If there is an unresolved disagreement between the project sponsor and the lead Federal agency on whether a project is a MIP, the OA should notify the Director of the Infrastructure Permitting Improvement Center (IPIC) of the disagreement.

5. *How does the OFD process apply to existing legal authorities or requirements?*

The OFD process does not preempt or affect agencies’ legal authorities including statutory or regulatory requirements. For example, if an OA has statutory or regulatory processes for implementing NEPA or elevating disputes, those processes should be followed. To the extent that the processes outlined in the OFD MOU are consistent with existing legal authorities, the principles of the OFD process should be integrated.

¹¹ Completion of project refers to construction of the project and does not include reasonable availability of funds sufficient for operation and maintenance activities.

¹² OFD Framework, page 2, footnote 5. Available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/M-18-13.pdf>

6. *Are there any exceptions to the OFD process for MIPs?*

Section XIII of the OFD MOU outlines several exceptions to the use of a single EIS and a single ROD for MIPs:

- The project sponsor requests that the Federal agencies issue separate NEPA documents;
- The NEPA obligations of a cooperating or participating agency have already been satisfied;
- The lead Federal agency determines that a single ROD would not promote efficient completion of the project's environmental review and authorization decision process; or
- Federal law provides for the lead Federal agency to issue a combined FEIS/ROD (e.g., 49 U.S.C. 310 or 23 U.S.C. 139) and cooperating agencies are not authorized to issue a combined FEIS/ROD.

Section XIII also allows the lead Federal agency to extend the 90-day deadline for any authorization decisions required for a MIP if:

- Applicable law prohibits an agency from issuing its approval or permit within the 90-day period;
- The project sponsor requests that the permit decision or approval follow a different timeline; or
- An extension would better promote completion of the environmental review and authorization decision process.

Finally, section XIII provides that the lead Federal agency may terminate the coordinated development of the single EIS and/or single ROD under OFD if:

- The project sponsor requests it;
- There are changed circumstances; or
- The project sponsor fails to respond timely to the lead Federal agency's requests.

II. Agency Responsibilities

7. *What are the responsibilities of an originating agency for MIPs?*

The originating agency is the Federal agency that has the first substantial contact with the project sponsor for a potential MIP. The originating agency should propose a designation of the lead Federal agency¹³ to the potential lead and cooperating agencies. In determining who should be the lead Federal agency, the originating agency should consider the following factors consistent with 40 CFR 1501.5(c) and 23 U.S.C. 139, where appropriate:

- Magnitude of agency's involvement;
- Project approval/disapproval authority;
- Expertise concerning the action's environmental effects;
- Duration of agency's involvement; and

¹³ In instances where there are joint or co-leads for a potential MIP, the OFD MOU states that 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. DOT encourages OA's to designate one lead for the OFD process to avoid confusion and ensure the lead Federal agency requirements are implemented efficiently.

- Timing of agency’s involvement.

For DOT projects, the lead Federal agency will typically be a DOT OA.

8. *What happens if an agency objects to the proposed lead Federal agency designation for a MIP?*

Consistent with section VI.A.2 of the OFD MOU, a potential lead or cooperating agency has 10 business days to notify the originating agency that it objects to the proposed lead Federal agency designation. If this occurs, the originating agency will convene a meeting with the potential cooperating and lead agencies no later than 15 business days after it receives the objection to reach agreement on the lead Federal agency designation.

Any OA that is involved in a disagreement over the lead Federal agency designation (either as the originating agency, lead Federal agency, or a cooperating agency) should notify the Director of the IPIC of the dispute and the date and time of the planned meeting. If, after the meeting, the agencies cannot agree on the lead Federal agency designation, the OA must notify the Director of IPIC that an agreement could not be reached and the issue will be elevated to the Chief Environmental Review and Permitting Officer (CERPO). If necessary, the CERPO may elevate the determination to CEQ consistent with 40 CFR 1501.5.

9. *What are the responsibilities of the lead DOT agency?*

Under the OFD MOU, the lead Federal agency is responsible for:

- Assigning a management official¹⁴ to lead the environmental review process;
- Inviting other Federal agencies that have jurisdiction by law or special expertise to serve as cooperating agencies;
- Inviting State, Tribal or local agencies that have jurisdiction by law or special expertise to be a cooperating agency;
- Requesting involvement from participating agencies;
- Identify a point of contact at each cooperating and participating agency for the project;
- Developing a permitting timetable in consultation with the project sponsor and the cooperating and participating agencies;
- Publishing and updating the permitting timetable on the Permitting Dashboard;¹⁵
- Coordinating any changes to the permitting timetable with cooperating and participating agencies, as well as the project sponsor;
- Informing cooperating agencies of any new material information or changes related to the project;
- Providing cooperating agencies the opportunity to review and contribute to relevant substantive phases of the EIS preparation (see Question 16):
 - Concurrence point #1: Purpose and need
 - Concurrence point #2: Alternatives to be carried forward for evaluation; and

¹⁴ The management official is the project manager for the task and typically the person who is listed as the point of contact in the NOI. This person does not need to be a manager or supervisor (OFD MOU, section VIII.A.1)

¹⁵ <https://www.permits.performance.gov/>

- Concurrence point #3: Preferred alternative;
- Developing the purpose and need;
- Identifying the range of alternatives and the alternatives to be carried forward for evaluation;
- Preparing a single EIS in coordination with Federal cooperating agencies with environmental review and authorization decision responsibilities;
- Identifying the preferred alternative;
- Determining whether to develop the preferred alternative to a higher level of detail, where authorized and appropriate;
- Ensuring the FEIS includes an adequate level of detail to inform decisions by all agencies with environmental review and authorization decision responsibilities for the proposed project;
- Publishing the combined FEIS/ROD;¹⁶
- Coordinating the development of a single ROD to be signed by all cooperating agencies with an authorization decision. This ROD would be signed no sooner than 30 days after the lead DOT agency publishes the notice of availability for the combined FEIS/ROD consistent with 40 CFR 1506.10(b)(2); and
- Ensuring there is a consolidated project file of the information assembled and used by the Federal cooperating agencies as the basis for their environmental review under NEPA.

10. What are the responsibilities of lead DOT agencies in reporting potential and current MIPs?

Under section 4 of the E.O. 13807, DOT is responsible for providing updates to OMB on progress towards achieving the CAP goal for MIPs.^{17, 18} To obtain the data necessary for reporting on the CAP Goal, OAs must provide a monthly status report via email to Director of the IPIC. The OA monthly status reports are due on the on the 1st of the month and must identify the following:

- New EIS projects, including projects where the OA has not yet issued a notice of intent (NOI);
- The lead Federal agency’s determination on whether the new EIS is a MIP and the basis for that decision. This includes providing an explanation for a determination made by a lead Federal agency that the project sponsor did not have the reasonable availability of funds sufficient to construct the project; and
- Any material updates on current MIPs. This includes any delays, unresolved

¹⁶ In cases where a DOT OA is a lead Federal agency and does not use the combined FEIS/ROD, the OA would be responsible for coordinating the preparation and publication of a single EIS and single ROD for all agencies with authorization decisions to sign.

¹⁷ OMB issued guidance to implement a performance accountability system that tracks the environmental review and authorization decision process for major infrastructure projects, engages agency officials in regular reviews of agency performance, and facilitates achievement of the Cross-Agency Priority Goal (CAP Goal) to Modernize Infrastructure Permitting. The accountability system applies to all Federal agencies that have a role in the environmental review and permitting process for major infrastructure projects. More information on this CAP Goal is available at: https://www.performance.gov/CAP/CAP_goal_12.html. The OMB Accountability guidance is available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-25.pdf>

¹⁸ NEPA assignment agencies are not subject to this monthly reporting requirement as they are not being tracked for the Accountability requirements.

disagreements, efficiencies gained, etc.

III. Permitting Timetable

11. What is the permitting timetable, and what does it include?

Section 3(f) of the E.O. defines the permitting timetable as a schedule that identifies the actions and associated milestones for applicable environmental reviews and authorizations for MIPs. The actions and associated milestones are generally those currently tracked on the Permitting Dashboard for other DOT projects (subject to the Permitting Dashboard reporting requirements). For a list of potentially applicable authorizations, see the *Federal Environmental Review and Authorization Inventory* available at <https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory-excel>. For a list of applicable milestones to include in permitting timetables, see Appendix B of the Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects available at <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/Official%20Signed%20FAST-41%20Guidance%20M-17-14%202017-01-13.pdf>.

Consistent with section VII of the OFD MOU, the lead Federal agency may also include other actions and milestones in the permitting timetable that the lead Federal agency deems appropriate, or are requested by a project sponsor, cooperating agency, or participating agency. The permitting timetable should include estimated milestones for the project sponsor to develop and submit complete applications and other information required for Federal authorization, including required authorization decisions by non-Federal entities.

If practicable, the permitting timetable for a MIP should be structured so that the ROD is signed within two years from the date the NOI is published.¹⁹ In addition, the permitting timetables should provide for all necessary Federal environmental permits, approvals, and authorizations to be issued within 90 days from the signature of the ROD, unless an exception applies (see Question 6).

12. How is the permitting timetable created, and how is it modified?

Consistent with section VII of the OFD MOU and the Federal Permitting Dashboard Reporting Standard, the lead Federal agency should consult with the project sponsor and all cooperating and participating agencies (as applicable) to develop a permitting timetable for the MIP. The lead Federal agency should work with the project sponsor and cooperating agencies to identify target dates for each of the action's associated milestones in the timetable. The timetable should ensure there is adequate time to consider comments from the public and cooperating and participating agencies for each action.²⁰

¹⁹ In the event that a two-year timeline is not practicable, the OA should submit a permitting timetable that is appropriate and explain in the Permitting Dashboard the reasons why a two-year timeframe is not practicable.

²⁰ This memorandum does not replace requirements contained in the December 28, 2018, Federal Permitting Dashboard Reporting Standard available at www.transportation.gov/transportation-policy/permittingcenter/federal-permitting-dashboard-reporting-standard

Once the proposed permitting timetable has been populated with each identified action’s milestone dates, it will be submitted to cooperating agencies for comment per section VII.A.2 of the OFD MOU. As outlined in the OFD MOU, cooperating agencies have 10 business days to make any objections to the permitting timetable for the project before it is “published” to the Permitting Dashboard. The permitting timetable must be uploaded onto the Permitting Dashboard no later than 30 days after the publication of the NOI.²¹ When there is an objection to a proposed milestone date by a cooperating agency or project sponsor, the basis for the objection should be submitted in writing to the lead Federal agency. If the agency objecting to the proposed milestone date has authorization responsibility, it must include an alternative proposed milestone date that will allow the MIP to meet the two-year OFD schedule, unless special circumstances or applicable law make the two-year schedule impracticable. Once identified and concurred upon, the lead Federal agency should publish the permitting timetable information on the Permitting Dashboard. During project development, the lead Federal agency is responsible for publishing and updating all actions and associated milestones on the Permitting Dashboard as well as designating each action’s status as “planned,” “in progress,” “paused,” “cancelled,” or “completed.” The lead Federal agency should update the permitting timetable at least once quarterly and provide the updated permitting timetable to any cooperating or participating agency as well as the project sponsor.

After publishing the project timetable on the Permitting Dashboard, the lead agency can modify the permitting timetable at any point during project development. A cooperating agency, participating agency, or project sponsor can request a modification to the permitting timetable from the lead Federal agency. When modifications to the permitting timetable dates are made, the modification should still aim to complete the environmental review period within two years and allow for applicable authorizations to be issued within 90 days of the issuance of the ROD. When modifications are made to the permitting timetable, the lead Federal agency should consult with the cooperating and participating agencies and project sponsor on the modifications. The lead Federal agency should then distribute the modified permitting timetable to any cooperating agencies and the project sponsor in the same manner as the initial permitting timetable. If there are no written objections to the proposed modifications within 10 business days, the modified permitting timetable should be published on the Permitting Dashboard.²²

13. What if the permitting timetable milestone dates are unknown?

When it is uncertain if a specific Permitting Dashboard action will be required for the project, the action can be included in the permitting timetable and should be marked as “Planned.” An action may also be marked as “Planned” when it is certain the environmental review or authorization decision will be required, but the triggering milestone has not been completed. Milestone dates will be required for all actions in “Planned” status for projects that are “In Progress.” Agencies should estimate dates using their best judgment and in coordination with cooperating agencies and the project sponsor.

²¹ This requirement was established by the September 26, 2018 OMB Memorandum, *Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System*.

²² This memorandum does not modify lead agency’s responsibility under 23 U.S.C. 139 regarding schedule modifications.

IV. Pre-Scoping and Project Initiation

14. What should be done prior to the NOI?

The pre-scoping or early coordination process includes all steps relating to the environmental review process that occur prior to the issuance of the NOI, which serves as the initiation of formal scoping for the project. The pre-scoping process provides an initial opportunity for the lead Federal agency, project sponsor, and cooperating and participating agencies to identify the reasonably anticipated authorization decisions; identify potentially significant environmental issues and potential avoidance, minimization, and mitigation strategies; define the extent of the analysis needed; begin outreach to the community and stakeholders who may be affected; and determine the timetable for the project.

Per section IX of the OFD MOU process, the lead Federal agency, in consultation with the cooperating and participating agencies and project sponsor, should develop a preliminary project plan that may include:

- Identification of the significant issues and concerns that affect the environmental review and authorizations needed for the project;
- A project-specific framework for all agencies' reviews, analyses and decisions;
- Specific areas of responsibilities and roles of all involved agencies;
- 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 decision processes through concurrent reviews with the goal of meeting milestones in the permitting timetable;
- A permitting timetable (schedule);
- Potential avoidance, minimization, and mitigation strategies; and
- A process to identify types of the pre-scoping information that can be carried forward into the formal scoping process.

DOT has developed a OFD Coordination Plan Outline²³ for OA's to use as a resource for developing a coordination plan for public and agency participation in the NEPA process that incorporates key concepts from the OFD policy.

15. When should the lead Federal agency issue the NOI for a MIP?

The issuance of the NOI is the start of the MIP environmental review process's two-year timeline and the start of the NEPA scoping process, which is a public process. The lead Federal agency should issue the NOI once it determines the project proposal is sufficiently developed to

²³ The OFD Coordination Plan Outline is available at <https://www.transportation.gov/transportation-policy/permittingcenter/one-federal-decision-coordination-plan-outline>

allow scoping and meaningful public input. The lead Federal agency should have a proposed purpose and need, and a description of possible reasonable alternatives in the NOI.²⁴

The scoping process is required under NEPA, and it allows the Federal agencies to focus on the relevant analyses, studies, and engineering design in the remainder of the environmental review process. Therefore, to facilitate issuance of a single EIS, the lead Federal agency should coordinate with all parties with authorization decisions in developing the NOI.

V. Concurrence Points

16. What are concurrence points?

Section XI of the OFD MOU identifies three separate points in the environmental review process where the lead Federal agency should request the written concurrence of cooperating agencies with authorization decision responsibilities. These are referred to as “concurrence points.” Concurrence means confirmation by each agency that the information is sufficient for that stage in the NEPA process, and that the environmental review process may proceed as set forth in the lead agency’s request for written concurrence.²⁵ The lead Federal agency, in coordination with the cooperating agencies and project sponsor, may identify additional concurrence points, as appropriate.

The concurrence points are designed to help prevent delays to the project schedule by ensuring agencies address key concerns and issues early in the environmental review process.

The three concurrence points identified in the OFD MOU are the identification of the:

- 1) Purpose and need²⁶, which will generally occur early in the NEPA review process;
- 2) Alternatives to be carried forward for evaluation, prior to performing the detailed analysis in the Draft EIS (DEIS); and
- 3) Preferred alternative, which should be identified in the DEIS but must be identified in the FEIS.

As stated in section XI of the OFD MOU, the lead Federal agency should request written concurrence from the cooperating agencies whose authorization is anticipated as being required for the project at each of the concurrence points. The cooperating agencies with authorization responsibilities will have 10 business days to concur or to not concur with comments.²⁷ Failure

²⁴ In addition, FHWA, FRA, and FTA, consistent with 23 U.S.C. 139, must provide the public with a meaningful opportunity to provide input on the proposed purpose and need and alternatives for a project. These agencies generally conduct that outreach through the project’s NOI, and as such, provide the proposed purpose and need and alternatives in the NOI.

²⁵ See OFD MOU section 11.B.2.

²⁶ If a draft purpose and need is developed for the NOI to allow for public comment, the OA should consider whether a concurrence point is needed at both the formulation of the draft purpose and need (prior to the issuance of the NOI) and at the development of the final purpose and need (prior to analysis of the alternatives).

²⁷ Section XI of OFD MOU

of such cooperating agencies to respond to a concurrence request within 10 days may be treated by the lead Federal agency as concurrence.

Cooperating agencies should afford substantial deference to the lead DOT agency's determination of the purpose and need which defines the scope for the range of alternatives that are carried forward per the longstanding agreement with resource agencies.^{28,29} The OFD MOU does not change the lead Federal agency's primary authority and responsibility to define the project's purpose and need and range of alternatives or provide cooperative agencies additional authority over that decision than what they already have. To avoid disagreements and facilitate an efficient process, the OA is encouraged to resolve agencies' concerns and consider cooperating agencies' needs for meeting their authorization decisions as early as possible to ensure that cooperating agencies can utilize the FEIS for their own environmental review.

17. What happens if a cooperating agency non-concurs at a concurrence point?

Consistent with section XI.B.2 of the OFD MOU, the non-concurring agency must work with the lead Federal agency and other cooperating agencies (as appropriate) to resolve the issue at the staff level. If consensus cannot be reached on how to resolve the concern at the staff level, the lead Federal agency will elevate the issue, as appropriate, through its headquarters office. If the dispute cannot be resolved or it lasts more than 30 days, the OA should notify the Director of IPIC, who will inform the CERPO, of the dispute.

Please note that the lead DOT agency should be given deference in the determination of purpose and need, and which alternatives will be carried forward for evaluation (see Question 16).

VI. Miscellaneous

18. What is the elevation process under the OFD MOU?

Section XII of the OFD MOU addresses elevation of delays and dispute resolution. The project team should identify and attempt to resolve disputes and elevate unresolved disputes through the field, regional, and headquarters levels, as appropriate. If a dispute between agencies is anticipated to cause or results in a missed or extended permitting timetable milestone deadline, then the OA should notify the Director of IPIC of the dispute. If this dispute cannot be resolved

²⁸ May 12, 2003 letter from James L. Connaughton, Council on Environmental Quality to Former Secretary of Transportation Norman Y. Mineta outlines that the lead agency has the authority and responsibility to define the "purpose and need" for purposes of NEPA analysis. Specifically, the letter states that "[i]n the case of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to the DOT agency's articulation of purpose and need. 49 U.S.C. §101(b)(5). This deference reflects CEQ's expectation and experience in other settings where an agency has the primary substantive expertise and program responsibility."

²⁹ For capacity projects at congested airports, Federal, State, and local agencies participating in the review process are statutorily required to be bound by the purpose and need as defined by FAA and consider only those alternatives that FAA determines are reasonable. 49 U.S.C. 47171.

within 30 days from when it is first identified, the Director of IPIC will elevate the issue to the DOT CERPO.^{30,31}

When there is a delay in a milestone that results in the overall permitting timetable action being delayed for more than 30 days, the OA should follow the elevation process under the accountability system (See Attachment B. Elevation Process).

19. What are an OA's responsibilities when issuing a combined FEIS/ROD versus the responsibilities when issuing a single FEIS and a single ROD for MIPs?

As required by law, DOT OAs will issue a combined FEIS/ROD to the maximum extent practicable.³² In these instances, the EIS (both DEIS and FEIS) should contain the information needed for the cooperating agencies to utilize the EIS for their environmental review to support their authorization decisions.

The OA will issue the notice of availability for the combined FEIS/ROD for DOT's decision making. The combined FEIS/ROD will serve as the cooperating agencies' FEIS. The OA should coordinate the development of a single ROD for all other the cooperating agencies with authorization decisions. This ROD should be signed at least 30 days after the combined FEIS/ROD is published.

In instances where DOT is not issuing a combined FEIS/ROD, the OA serving as the lead Federal agency is responsible for preparing and publishing a single FEIS and single ROD³³ for all Federal agencies with authorization decisions for the project. This single ROD will incorporate the decisions of each of these agencies. In these cases, the OA should ensure the ROD is structured in a way to allow each agency to amend relevant portions of the ROD.

20. How does the lead Federal agency calculate and report costs for MIPs?

The OAs serving as lead Federal agencies are required under the OMB accountability framework³⁴ to establish a cost methodology to account for the Federal costs of preparing the environmental review and authorization decisions for the major infrastructure project.³⁵ These costs are required to be posted on the Federal Agency Portal (backend of the Permitting

³⁰ Note, this elevation process does not supersede the issue resolution and elevation process in 23 U.S.C. 139(h) for certain surface transportation projects. It does not apply to NEPA Assignment agencies.

³¹ The DOT elevation process does not apply to NEPA assignment agencies. However, DOT encourages NEPA assignment agencies to develop their own elevation processes to identify and raise issues to a senior level early to prevent unnecessary delays.

³² 49 U.S.C. 304a(b) and 23 U.S.C. 139(d)(8).

³³ All agencies signing the ROD should consult to determine which statute of limitations and judicial review provisions would apply to their respective actions.

³⁴ OFD Accountability Guidance, Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System, available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-25.pdf>

³⁵ NEPA assignment agencies are not required to track and report costs for major infrastructure projects.

Dashboard).³⁶ See Attachment C. DOT's Cost Methodology Process for MIPs for more information.

21. What happens if a MIP ROD needs to be amended?

In the event an OA should amend a MIP ROD, it should notify the any cooperating agencies of the intent to amend the ROD. If the amendment does not affect any other agencies' decision or authorization, the OA may issue its own amendment to the ROD. However, if the amendment may affect another agency's environmental or authorization decision, the OA should consider issuing a joint amended ROD with the other agencies, as appropriate.

22. Does the lead Federal agency have discretion to extend the deadline for an authorization decision?

Per section II of the OFD MOU, all authorization decisions should be issued within 90 days of the final ROD signature.³⁷ Section XIII.D of the OFD MOU allows the lead Federal agency to extend the 90-day deadline for any authorization required for a project in certain circumstances (i.e., when meeting the deadline is prohibited by law, the project sponsor requests a different timeline, an extension would better promote completion of the project's environmental review and authorization decision process). If an OA extends the deadline for a permit or authorization decision milestone past 90-days following the ROD, the OA should update the permitting timetable and provide the reason for the delay in the Permitting Dashboard (see Question 6). An OA that extends the deadline of a permit or authorization decision milestone past 90 days should notify the Director of IPIC of the extension and reasons behind the extension in the monthly report.

23. What happens if the project is delayed or suspended?

A project may be delayed for a variety of reasons that may or may not be within the Federal government's control. In these situations, the lead Federal agency may "Pause" the overall project status on the Permitting Dashboard and provide the reasons for the pause. This will "Pause" all action milestones for the project on the Permitting Dashboard. The Permitting Dashboard provides a drop-down list of reasons for a project pause that will distinguish between pauses within and outside Federal control. A project's overall environmental review period will not include any time periods where the project was "paused" when this pause is attributed to outside the Federal government's control. Suspensions of the project requested by a project sponsor should also be indicated by a pause on the Permitting Dashboard.

³⁶ Only MIPs with NOI date after the OMB approval of the DOT cost methodology will be required to track costs. Agencies will not be required to go back and track costs for MIPs that were already in progress prior to approval of the agencies' cost calculation methodology.

³⁷ When DOT issues a combined FEIS/ROD, the final ROD will be the single ROD signed by all other cooperating agencies. The 90-day clock does not start until the other agencies sign their ROD.

24. What happens if the project is terminated or is no longer a MIP?

A lead DOT agency, in coordination with the project sponsor, as applicable, may terminate a MIP. Termination of a MIP may be due to the termination of a project or the determination that the project no longer meets the definition of a major infrastructure project. In these instances, the lead Federal agency should notify all cooperating and participating agencies that the project is no longer a MIP and rescind the NOI, where appropriate. The lead Federal agency is responsible for updating the status of the project on the Permitting Dashboard to show that it is no longer a MIP and make any updates to the Permitting Dashboard to reflect its current status. The OA should notify the IPIC director in the monthly report of any terminated projects or determinations that the project is no longer considered a MIP.

25. In addition to this memorandum, how will DOT ensure the OFD framework and OFD MOU are implemented for MIPs?

DOT is updating guidance documents and training materials to incorporate the OFD process for MIPs. DOT's goal is to ensure a coordinated interagency approach that enhances consistency, transparency, accountability, and efficiency for MIPs and ensures consistent implementation across DOT.

OAs should periodically review and integrate recommended best practices identified by the Federal Permitting Improvement Steering Council (FPISC)³⁸ to improve their environmental review and authorization process. Consistent with section 4(b)(ii) of the E.O., OMB will track the OAs' ongoing implementation of these best practices in a performance accountability system.

VII. Applicability to NEPA Assignment Agencies

26. Do E.O. 13807 and the OFD MOU apply to States that have assumed the Secretary's NEPA responsibilities under 23 U.S.C. 327?

NEPA assignment agencies, through their memorandum of understanding with DOT, are required to follow procedural and substantive requirement including Federal statutes and regulations and Executive Orders. The NEPA Assignment Guidance³⁹ specifies that NEPA assignment agencies are subject to parts of E.O. 13807⁴⁰ and should follow the processes and procedures in this guidance that implement those provisions of the E.O. and the OFD MOU.

³⁸ The FPISC issues a list of recommended best practices to improve Federal environmental review and authorization processes annually. The Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018 is available at <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/documentation/40856/fast-41fy-2018best-practices-report.pdf>.

³⁹ OMB and CEQ Memorandum for the Secretary of Transportation, "Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment Authority Under the Surface Transportation Project Delivery Program" (February 26, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/20190226OMB-CEQ327.pdf>.

⁴⁰ Each memorandum of understanding with a NEPA assignment agency includes a Part 5.1.1, which addresses procedural and substantive requirements and provides: "Such procedural and substantive requirements include Federal statutes and regulations [and] Executive Orders issued by the President of the United States."

While they are required to report project and permit timetables on the Permitting Dashboard, NEPA Assignment agencies are not subject to the MB accountability memorandum (M-18-25) which establishes the accountability system under E.O. 13807, to track Federal agency performance in the processing of environmental reviews and authorization decisions.⁴¹ However, State agencies are encouraged to track their performance and to take all practicable steps to ensure timely completion of environmental reviews and authorization decisions. NEPA assignment agencies are also encouraged to develop elevation processes to identify and raise issues to a senior level early to prevent unnecessary delays.

27. Are NEPA Assignment agencies given the discretion to grant exceptions to the OFD process for MIPs?

Yes; NEPA Assignment agencies, as the lead Federal agency, where appropriate, have authority under E.O. 13807 to grant exceptions to the use of a single EIS or single ROD, extend the 90-day deadline for any authorization required, and to terminate the coordinated development adhering to the criteria outlined in E.O. 13807, the MOU, and reemphasized in Question 6 and 18 of this memorandum.

28. Are NEPA Assignment agencies required to keep the project file for the MIP project?

Yes; as with other projects that involve NEPA, DOT expects NEPA assignment agencies to maintain a consolidated project file.⁴² For MIPs, the project file should also include, to the extent possible, the information assembled and utilized by the cooperating agencies as the basis for their environmental review under NEPA for the project.⁴³

VIII. Additional Resources:

DOT OFD Coordination Plan Outline, October 4, 2018, available at <https://www.transportation.gov/transportation-policy/permittingcenter/one-federal-decision-coordination-plan-outline>.

Executive Order (E.O.) 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, 82 FR 40463, August 24, 2017, available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/>.

⁴¹ See CEQ *Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment Authority Under the Surface Transportation Project Delivery Program*. (February 26, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/20190226OMB-CEQ327.pdf>.

⁴²Section 23 USC 327(a)(2)(C).

⁴³ FHWA is in the process of developing guidance for NEPA assignment agencies on how to build and maintain an administrative record for litigation defense purposes.

Guidance on the Use of Combined FEIS/ROD and Errata Sheets in NEPA reviews, April 30, 2019 available at <https://www.transportation.gov/transportation-policy/permittingcenter/guidance-use-combined-feisrod-and-errata-sheets-nepa-reviews>.

List of Authorizations, *Federal Environmental Review and Authorization Inventory*, available at <https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory-excel> (last updated July 30, 2018).

List of Permitting Dashboard Milestones, *Appendix B of the Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects* available at <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/Official%20Signed%20FAST-41%20Guidance%20M-17-14%202017-01-13.pdf> (last updated January 13, 2017).

NEPA Assignment Guidance, *OMB and CEQ Memorandum for the Secretary of Transportation on Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment Authority Under the Surface Transportation Project Delivery Program* (February 26, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/20190226OMB-CEQ327.pdf>.

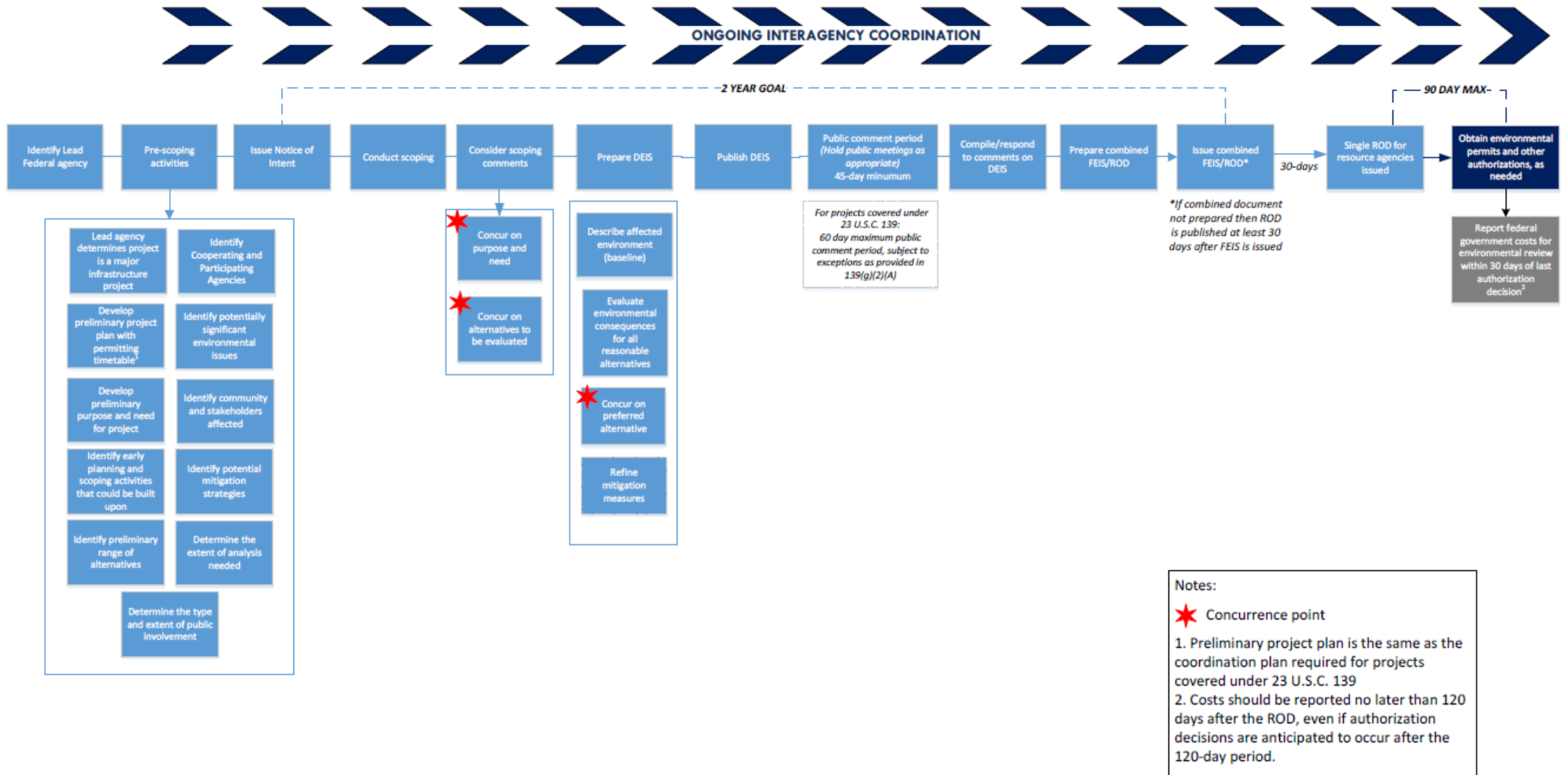
OFD Accountability Guidance, *Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System*, September 26, 2018, available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-25.pdf>

OFD Framework, *One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807*, March 20, 2018, available at [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_Framework_Guidance_\(M-18-13\)_2018-03-20.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_Framework_Guidance_(M-18-13)_2018-03-20.pdf)

OFD MOU, *Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807*, April 9, 2018, available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>

Attachment A

U.S. Department of Transportation One Federal Decision Process



DOT MAJOR INFRASTRUCTURE PROJECTS ELEVATION PROCESS

Identification & Determination

- Identify milestone delay.¹
- The Lead Federal Agency determines whether (1) the milestone delay¹ leads to a delay of the final action by more than 30 days; and (2) the milestone delay is within the Federal government's control.
- If yes, the elevation process has been triggered.

Notification

- The Lead Federal Agency should reflect the elevation process has been triggered in the back-end of the Federal Dashboard.
- Notification should be made to the OA Headquarter's Environmental Office that the elevation process has been triggered.
- OA Headquarter's Environmental Office will provide status of the elevation process in the next major infrastructure project monthly report that is submitted to the Director of the Infrastructure Permitting Improvement Center (IPIC).

OA Elevation

- Develop a plan at the project level to remedy the delay with affected agencies.
- Use internal elevation processes as needed to address any disputes and remedy the delay.²
- Report the delay of the milestone, the remedy, the impact the delay has on completing the action, and the effect on the overall project timeline in the next major infrastructure project monthly report that is submitted to the Director of IPIC.

OST Elevation

- If no remedy to the delay of the milestone is reached within 30 days of the initial determination that the elevation process has been triggered, the OA HQ Environmental Office will elevate the delay to the Director of IPIC and DOT's Chief Environmental Review and Permitting Officer (CERPO) for resolution.

¹ A milestone delay may be a missed milestone date or may be a delay to a future milestone target.

² Note, this elevation process does not supersede the issue resolution and elevation process in 23 U.S.C. 139(h) for certain surface transportation projects.

Department of Transportation One Federal Decision Cost Methodology

April 8, 2019

I. Introduction

Pursuant to the Office of Management and Budget (OMB) Memo M-18-25, Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System, this document outlines the US Department of Transportation's (USDOT) cost methodology for environmental reviews and authorization decisions for major infrastructure projects (MIP), as defined in Executive Order 13807. The cost methodology will determine the estimated total cost to complete the MIP from notice of intent (NOI) to environmental review and authorization decision completion by considering the Federal agency cost of full-time equivalent (FTE) hours and direct contractor costs, as appropriate. USDOT's cost methodology includes the lead Federal agency's direct costs associated with complying with all of the environmental laws and authorization decisions that apply to the MIP and tracked on the Permitting Dashboard.¹

II. USDOT Cost Considerations

The USDOT MIP project costs will vary due to different levels of DOT involvement and oversight with MIPs. Additionally, a large portion of the costs associated with most of the environmental review and authorization decisions for USDOT MIPs are the responsibility of the project sponsor. Per the OMB accountability system guidance, which requests the estimated cost to the Federal government for each MIP, the project sponsor costs are not captured in USDOT's cost methodology.

USDOT's cost methodology determines the lead Federal agencies' total estimated cost for the MIP environmental review and authorizations and only includes the estimate of costs incurred by cooperating agencies when provided by the cooperating agency upon environmental review or authorization decision completion.

III. Cost Methodology

OAs will determine the cost to the Federal government to complete the environmental review and authorizations for a MIP by adding together the 1) lead agency's estimated FTE costs, 2) Cooperating Federal agency estimated FTE costs (if provided), and 3) direct contractor costs. All figures will be rounded to the nearest tens of thousand-dollar figure (i.e., \$45,246 will be entered into the Permitting Dashboard as \$50,000).

A. Lead Federal Agency Estimated Costs

In determining the lead agency's total estimated costs for a MIP, the OA will add the FTE costs with any travel costs associated with the project.

To determine the Lead Federal Agency FTE Costs the OA should estimate the total number of full-time equivalent (FTE) Federal government personnel hours spent completing environmental review and authorizations for the MIP. This should include estimates of the hours spent by the:

- Project management team responsible for the MIP

¹ For a list of applicable authorizations see the *Federal Environmental Review and Authorization Inventory* available at <https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory-excel>.

- Subject matter experts who participated in the review
- Managers and supervisors who have direct or indirect oversight of MIPs; and
- Attorneys who review documents pertaining to the MIP (e.g., legal sufficiency).

This does not include non-direct Federal government staff hours from administrative support staff or human resources or other indirect Federal government costs such as overhead.

To calculate the estimated costs, the OA will estimate the total Federal government FTE hours spent on environmental review and authorizations and multiply this by the USDOT FTE average hourly rate.²

$$\text{Lead Agency FTE Costs} = \text{Estimated FTE Hours} \times \$62.00$$

To determine Lead Federal Agency estimated costs the OA will add the FTE Costs (above) with any agency travel costs associated with the MIP.

$$\text{Lead Federal Agency Costs} = \text{Lead Federal Agency FTE Costs} + \text{Travel Costs}$$

B. Cooperating Agency Costs

The lead OA will request estimated costs to complete environmental review and authorizations for the MIP from cooperating agencies who were involved with the MIP. The cost estimates provided by cooperating agencies will be added to the OA cost estimates to establish total costs of Federal agency environmental review and authorization decisions. To meet the cost reporting requirements discussed below in Section VI estimated costs by cooperating agencies will be included if they are received by the lead OA in time to report the costs in the Permitting Dashboard.

C. Direct Contractor Costs³

Direct contractor costs will be included in the total Federal government cost estimate and should include any contractor costs associated with preparing or reviewing environmental review and authorizations associated with the MIP.

² The average FTE hourly rate was computed assuming most SMEs, project managers, and attorneys reviewing documents are between a GS-12 and GS-15 salary. Taking the low point of the GS-12 scale [\$30.47] and the high point of the GS-15 [\$65.48] + 30% to account for additional employer costs and rounding to the nearest dollar equals \$62.00 / hour.

³ DOT interprets the requirements of the OMB Accountability Guidance that provides, in part, “Agencies also should include contractors that are funded directly by the agency and third-party contractors that are supervised by the agency but funded by another party” to not require costs of environmental review/permitting paid directly by a third-party contractor and not reported to the DOT/OA pursuant to its agreement with the project sponsor. Assessment of such costs would create an unreasonable burden. Since these are costs are attributed to a project sponsor rather than costs associated with a Federal government agency, DOT’s review of the Guidance suggests they do not constitute Federal government costs of environmental review or permitting actions. Moreover, should the information be available, including these costs would overly inflate the costs to the Federal government in preparing and reviewing environmental review and its associated authorization decisions for MIPs. In addition, including third-party contracting costs would create inconsistencies for similar projects solely based on who the project sponsor is.

D. Total Federal Government Costs

The total Federal government cost of a MIP equals the total estimated Federal government cost, plus cooperating agency costs, and direct contractor costs for the environmental review and authorization of the MIP.

Total Federal Government Costs = Lead Federal Agency Costs + Cooperating Agencies Costs + Direct Contractor Costs
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IV. Cost Reporting

Within 30 days from MIP completion,⁴ the lead OA must report the total Federal governmental costs in the Federal Permitting Dashboard.

V. Level of Effort

The level of effort for USDOT to report costs is minimal because USDOT will estimate costs rather than track individual hours or create a tracking system to account for the hours and costs of a MIP.

⁴ Project completion is defined as 120 days after the publication of the ROD, even if there are permitting authorizations that are not completed yet.