

Federal Energy Regulatory Commission One Federal Decision Implementation Plan

The Federal Energy Regulatory Commission provides this implementation plan, pursuant to section V.B. of the “Memorandum of Understanding Implementing One Federal Decision under Executive Order 13807,” effective April 10, 2018.

1. Agency Actions Already Completed or in Progress:

Commission staff has reviewed its regulations, policies, and procedures for consistency with One Federal Decision (OFD). Commission staff developed the attached comments (attachment A) to indicate how the Commission will implement the OFD Memorandum of Understanding (MOU). To assist in OFD implementation, Commission staff also developed the attached flowcharts (attachments B and C) to highlight where major OFD MOU provisions will occur in the Commission’s review processes. The flowcharts outline the OFD approaches for the most commonly used pre-filing and application review processes for hydropower and natural gas (interstate pipeline, storage, and liquefied natural gas (LNG)) projects under the Commission’s jurisdiction. In general, Commission staff will apply the approach in the flowcharts to all projects; however, not all projects will be subject to the OFD MOU provisions, such as the Cross-Agency Priority (CAP) Goals or agency performance accountability system. Additional approaches for other existing Commission review processes will be developed as needed.

After the OFD MOU was signed, Commission staff participated in multiple outreach efforts. Commission staff conducted presentations and met with industry groups and agencies to discuss OFD implementation for proposed hydropower projects at the National Hydropower Association and HydroVision International Conferences. In addition, Commission staff held a *FERC Environmental Review and Compliance for Natural Gas Facilities Seminar* and presented at the International Right-of-Way Association’s 2018 Annual International Education Conference, at which OFD implementation in regard to interstate natural gas and LNG facilities was discussed with various stakeholders. Commission staff also coordinated with agencies with special expertise. For example, Commission staff reached out to the U.S. Coast Guard and the Department of Transportation regarding siting analyses for LNG projects.

Over the past few decades, the Commission has developed and implemented MOUs to, among other things, promote interagency coordination and concurrent reviews. Specifically, the Commission has previously entered into MOUs with the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, Interior, State, and Transportation; U.S. Coast Guard; U.S. Army Corps of Engineers; Council on Environmental Quality; Environmental Protection Agency; and Advisory Council on Historic Preservation.¹ These MOUs cover a wide range of topics, including: the commitment to early cooperation and involvement; coordinating environmental

¹ Copies of these MOUs can be found at <https://www.ferc.gov/legal/mou.asp>.

reviews, historic preservation activities, and public safety analyses; streamlining reviews; determining project purpose, need, and alternatives; and resolving disputes. Commission staff will continue to utilize these MOUs, where practical, to meet the goals of OFD, and will incorporate the commitments and responsibilities of these MOUs into agency training sessions.

2. Additional Planned Actions:

After the Commission's OFD implementation plan is submitted to the Council on Environmental Quality and Office of Management and Budget, Commission staff plans to organize and conduct training sessions for internal staff, federal and state agencies, applicants, and other stakeholders on how the Commission will implement OFD. In addition to the flowcharts in attachments B and C, Commission staff will develop audience-specific training tools and guidance to support this effort. For outreach with other agencies, Commission staff plans to meet and work directly with appropriate agency regional- and field-office staff on OFD implementation. After meeting with the appropriate agencies and discussing their respective OFD implementation plans, Commission staff will determine if any additional modifications to our review processes are necessary.

Commission staff's planned interagency coordination will be patterned after other recent meetings intended to increase the transparency and efficiency of agencies' environmental review processes. For example, on November 1, 2017, Commission staff hosted an interagency meeting to discuss the natural gas pre-filing process. In response to that meeting, Commission staff plans to: develop agency-specific checklists for applicants that identify typical data needs or processes; prepare a list of regional points of contact at agencies who review proposed natural gas projects; and provide agencies with advanced notification of upcoming seminars and training sessions.

Commission staff conducts a range of other outreach events with federal and state agencies, applicants, and other stakeholders that can also be used to identify areas for improvement in review processes. For example, Commission staff hosts:

- The *Environmental Review and Compliance for Natural Gas Facilities Seminar* multiple times per year and around the country to discuss various aspects of the environmental review process, different types of natural gas applications, and the environmental information required in an application;
- Project-specific interagency (federal and state) meetings during application reviews to introduce a project and identify environmental concerns; and
- A range of training sessions and interagency meetings to discuss various aspects of the hydropower licensing process.

Commission staff plans to continue these outreach events and incorporate OFD implementation, as appropriate, going forward.

The Commission is also evaluating potential changes as part of other initiatives. As part

of the current update of its Strategic Plan, the Commission will incorporate the provisions of OFD through specific strategies and by establishing agency performance goals related to the completion of environmental reviews and authorizations for infrastructure projects, consistent with the new CAP Goal on Infrastructure Permitting Modernization. The Commission's efforts will be actively monitored throughout the year and reported in the Commission's Annual Performance Plan and Annual Performance Report. These planning and reporting processes will ensure OFD receives appropriate prioritization and attention throughout the agency.

Under Executive Order 13777 (Enforcing the Regulatory Reform Agenda), the Commission established a regulatory reform task force to perform a thorough review of the Commission's regulations, policies, and processes, and to identify opportunities to reduce regulatory burdens. While the Commission considers potential reforms, it may evaluate potential changes that could also serve to meet the goals of the OFD MOU.

The Commission also issued a Notice of Inquiry on April 19, 2018, seeking information and stakeholder perspectives to help the Commission explore whether, and, if so, how it should revise its policy statement on the certification of natural gas transportation facilities. The Notice of Inquiry seeks input on ways that the Commission could improve the efficiency of its review process. The comment period on the Notice of Inquiry ends on July 25, 2018. The comments received may identify areas for the Commission to consider modifying to further streamline the process.

3. Development of Permitting Timetables:

The Commission is the lead agency for the environmental review and authorization of hydropower and natural gas infrastructure subject to the Federal Power Act and the Natural Gas Act. As is already done under the Fixing America's Surface Transportation Act, Commission staff will determine what other authorizations are needed and contact each of the relevant agencies to determine target dates for the completion of applicable milestones. Commission staff will delegate populating target dates and descriptions on the permitting dashboard to the relevant agency, ensuring their concurrence prior to publishing the permitting timetable.

Commission staff has reviewed applications filed and post-application Notices of Intent to prepare an Environmental Impact Statement issued since August 15, 2017, to identify OFD projects. Consistent with the attached flowcharts and OFD guidance, Commission staff will develop permitting timetables for these projects in consultation with other agencies.

4. Elevation of Issues/Disputes That May Cause Delays:

Initial elevation of disputes will consist of the Commission's environmental Project Manager (or Deputy Project Manager) reaching out to equivalent agency staff to discuss

the issue. If the issue cannot be resolved at that level, the Project Manager will inform the Branch Chief and Division Director. If the issue cannot be resolved by the Branch Chief or Division Director, the Division Director will notify the Commission's Chief Environmental Review and Permitting Officer (CERPO) and Federal Permitting Improvement Steering Council Member (Council Member). The CERPO and Council Member will contact the other agency's CERPO and Council Member to seek resolution. In cases where resolution has not been reached, the CERPO and Council Member will notify the Commission's Chairman. Depending on the nature of the dispute, there may be a need for a vote of the full five-member Commission to resolve the matter.

Attachment A



Executive Office of the President
Office of Management and Budget



Executive Office of the President
Council on Environmental Quality

March 20, 2018

M-18-13

MEMORANDUM FOR HEAD OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: Mick Mulvaney
Director
Office of Management and Budget

Mary Neumayr
Chief of Staff
Council on Environmental Quality

SUBJECT: One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807

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),¹ are issuing this guidance² for agencies to carry out responsibilities under Executive Order (E.O.) 13807, which requires Federal agencies to process environmental reviews and authorization decisions for "major infrastructure projects" as One Federal Decision (OFD).³ Section 5 of E.O. 13807 directs all Federal agencies with environmental review, authorization, or consultation responsibilities for major infrastructure projects to develop a single Environmental Impact Statement (EIS) for such projects, sign a single Record of Decision (ROD) and issue all necessary authorizations within 90 days thereafter, subject to limited exceptions. E.O. 13807 sets a government-wide goal of reducing, to two years, the average time

¹ The Permitting Council was created by Title 41 of the Fixing America's Surface Transportation Act (FAST-41 Act), 42 U.S.C. §§ 4370m *et seq.*

² Federal agencies should implement this Memorandum consistent with applicable law. This Memorandum 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.

³ 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 (Aug. 24, 2017). Unless otherwise indicated, terms are used herein as defined in E.O. 13807.

for each agency to complete the required environmental reviews and authorization decisions for major infrastructure projects, as measured from the date of publication of a notice of intent (NOI) to prepare an EIS.⁴

To implement the OFD framework, each Federal agency with responsibility to conduct environmental reviews or make authorization decisions with respect to major infrastructure projects⁵ should enter into, and from time to time revise and improve, a Memorandum of Understanding for Implementation of One Federal Decision (MOU), as set forth in Appendix A hereto. This MOU outlines the roles and responsibilities for agencies, and the process by which they should jointly and cooperatively process environmental reviews and make authorization decisions for major infrastructure projects.

As reflected in the attached MOU, an essential element of the OFD framework is the development of a schedule, referred to herein as the “Permitting Timetable,” that includes key milestones critical to completion of the environmental review and issuance of a ROD. The Permitting Timetable should account for any federally-required decisions or authorizations, including those that are assumed by, or delegated to, State, tribal, or local agencies, and are a prerequisite to the issuance of a decision or authorization by a Federal agency. The Permitting Timetable should provide a complete picture of the environmental review and authorization requirements for a project, and give specific focus to those reviews and authorizations that are complex, require extensive coordination, or might significantly extend the overall project review schedule. Cooperating agencies that are required by law to develop schedules for environmental review or authorization processes should transmit a summary of such schedules to the lead agency for integration into the Permitting Timetable.

When developing the Permitting Timetable, lead Federal agencies need not include the estimated intermediate and final completion dates of any reviews or authorizations until the design of the project has sufficiently advanced so that those dates can be determined. In such cases, lead agencies should estimate when the project’s design will be advanced enough to determine such dates, and establish estimated milestones accordingly.

⁴ E.O. 13807 was effective August 15, 2017. Accordingly, its two-year goal is applicable to environmental reviews of major infrastructure projects for which an NOI was published after August 15, 2017. If the lead agency determines that it must reissue, revise, or withdraw the NOI due to a substantial change in the project proposal or delay by the project proponent, the two-year timeframe will start with publication of the reissued or revised NOI.

⁵ Sec. 3 of 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.” 82 Fed. Reg. at 40,464. 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. The burden of demonstrating the reasonable availability of funds is on the project sponsor. Project sponsors may meet this burden by submitting a finance plan showing the estimated costs of the project and the available sources from which the project sponsor anticipates meeting the costs. Agencies shall facilitate project sponsors’ demonstration of the reasonable availability of funds.

To ensure timely completion of the environmental review and issuance of necessary authorizations, OMB and CEQ recommend the Permitting Timetable for major infrastructure projects provide for environmental review according to the following schedule:

- 1) Formal scoping and preparation of a Draft EIS (DEIS) within 14 months, beginning on the date of publication of the NOI to publish an EIS and ending on the date of the Notice of Availability of the DEIS;⁶
- 2) Completion of the formal public comment period and development of the Final EIS (FEIS) within eight months of the date of the Notice of Availability of the DEIS; and
- 3) Publication of the final ROD within two months of the publication of the Notice of Availability of the FEIS.⁷

While the actual schedule for any given project may vary based upon the circumstances of the project and applicable law, agencies should endeavor to meet the two-year goal established in E.O. 13807.

Consistent with E.O. 13807, agencies should, if necessary for the implementation of OFD, develop procedures and appropriate policies, including by reviewing and revising their existing NEPA procedures. In addition, the Permitting Council should support implementation of the OFD policy and should recommend any needed revisions to the CEQ/OMB Memorandum M-17-14 on “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Processes for Infrastructure Projects,”⁸ including its Appendix B. In consultation with the interagency working group established under Section 5(e) of E.O. 13807, CEQ and OMB will review and, if necessary, recommend changes to ensure the effectiveness of each agency’s policies in implementing OFD.

Agencies should also ensure that they have an efficient process for the elevation and resolution of issues consistent with the process set forth in the attached MOU. For environmental review and authorization issues that cannot be resolved at an interagency level, agencies should follow the dispute resolution process provided by law for the environmental review and authorization processes for such projects, if any. CEQ will mediate disputes where other dispute resolution process is provided for by law.⁹ In addition, OMB will have final interpretative authority regarding this guidance and the MOU adopted hereunder.

⁶ The Federal Energy Regulatory Commission and other agencies identified by OMB and CEQ that have procedures that provide for publication of the NOI substantially in advance of filing of the project application may comply with OFD by starting the two-year schedule from the date on which an application is filed.

⁷ Where Federal law allows for one or more agencies to issue a combined FEIS/ROD, nothing in the OFD framework precludes the use of that authority.

⁸Memorandum for Heads of Federal Department and Agencies titled “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects” (Jan. 13, 2017) *available at* <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-14.pdf>.

⁹ FAST-41 Act covered projects should follow the dispute resolution procedures provided by the statute and related OMB-CEQ Guidance. *See* Memorandum for Heads of Federal Department and Agencies titled “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects” (Jan. 13, 2017).

The Commission's processes rely heavily on the use of pre-filing engagement with stakeholders in order to assist the applicant in developing a more complete application. This may include issuing an NOI well in advance of the filing of an application. If an NOI is issued in pre-filing, the Commission will use the date the application is filed to start the two-year timeframe. If an NOI has not been issued in pre-filing, the Commission will use the NOI issuance date (after the application is filed) to start the two-year timeframe.

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.) 13807.¹ 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.² E.O. 13807 sets a goal for agencies of reducing the time for completing

¹ 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.

² All references to days in this MOU are to calendar days unless otherwise indicated.

See section XIII.C for clarification of exceptions for Commission projects.

Given the nature of the Commission's processes for considering proposed natural gas and hydropower projects, availability of funding will not be a criterion used by Commission staff to determine covered projects. See further discussion below.

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;
- 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.

As footnote 6 of the Framework notes, the Commission has a different procedure and may issue an NOI prior to the filing of an application with the Commission (i.e., in the pre-filing process). In these cases, the two-year timeframe will start on the date an application is filed with the Commission.

The Commission processes applications for proposed infrastructure projects as they are filed. Applicants are not required to demonstrate funding for proposed projects and many will not be able to procure funding until the Commission authorizes the project. Accordingly, availability of funding will not be a criterion used by staff to determine which projects are covered.

- 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.³
- 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)⁴ or other key personnel.
- G. Cooperating Agency for FERC Proceedings.

³ 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).

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

Due to the Commission's status as a quasi-judicial independent agency and ex-parte communication restrictions, communication with project sponsors must occur on the public record.

The Commission has processes in place for regular interagency meetings. These processes will be continued to meet the goals of the MOU.

The flowcharts in attachments B and C highlight the Commission's process to implement OFD.

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.
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.

The Commission will be the lead agency on applications for infrastructure projects within its jurisdiction.

1. The lead agency, in consultation with the project sponsor and cooperating and participating agencies,⁵ 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 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.

⁵ 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.

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.

Use of the term "preferred alternative" in Commission staff's analyses signifies that this is the alternative selected for in-depth analyses and mitigation measure development. However, the determination and final selection of the "preferred alternative" that is authorized can only be made by the five-member Commission through its order.

As the Commission's order serves as its ROD, other involved agencies will issue a joint ROD or other appropriate decision document as soon as practicable, consistent with applicable law and the permitting timetable. See Section XIII.C.

The Commission's eLibrary system serves as its consolidated project file.

Coordination and synchronization of cooperating agency reviews assumes that the project sponsor submits applications to other agencies concurrently with filing its application with the Commission.

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

The Commission's pre-filing processes incorporate many of the steps detailed in this section, as illustrated in the attached flowcharts (Attachments B and C).

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

- B. 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.

Per footnote 6 of the Framework, if an NOI is issued in pre-filing, the Commission will use the date an application is filed to start the two-year timeframe. If an NOI has not been issued in pre-filing, the Commission will use the NOI issuance date (after the application is filed) to start the two-year timeframe.

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.

When scoping occurs during the pre-filing process, a project is unrefined, and not all relevant information about the project is available. In such cases, agreement among the agencies on analyses, studies, and engineering design may not be possible until an application is filed.

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.

See discussion above regarding how Commission staff consider the "preferred alternative."

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.

The purpose and need statement used in the environmental review are defined by the Federal Power Act, Natural Gas Act, and/or project-specific considerations.

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.

See discussion above regarding how Commission staff consider the "preferred alternative."

- 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.

Given the organizational structure of the Commission, Project Managers will inform the CERPO of any issues, and the CERPO will inform the Commission's Council Member. The CERPO or Council Member will reach out to the appropriate counterparts at the involved agencies. If necessary, the Council Member will elevate the issue to the Commission's Chairman.

- 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.
- D. 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.
- E. 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.
- F. 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.⁶
- G. 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.
- H. This MOU shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

- I. 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.
- J. 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.
- K. This MOU may be modified and amended, or terminated, by written agreement among the undersigned agencies.
- L. Additional Federal agencies may become parties to this MOU by signing an addendum to the MOU.
- M. This MOU is effective on April 9, 2018.

Attachment B

This is a companion document to the following flowchart entitled *FERC Natural Gas Pipeline and LNG Facility EIS Environmental Review Process*. The flowchart highlights where major provisions of the One Federal Decision (OFD) Memorandum of Understanding (MOU) will occur in the Federal Energy Regulatory Commission's process. The primary steps in the Commission's pre-filing and application review processes are shown with major OFD provisions depicted in gold. Steps depicted in green represent applicant or other agency actions that are outside of the Commission's control, but are necessary to the review process.

The OFD MOU sets a goal of completing all federal environmental reviews and authorizations for major infrastructure projects within an average of two years, measured from the date of publication of a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). Per the OFD Framework, the Commission has procedures that provide for publication of an NOI to prepare an EIS substantially in advance of filing of an application (i.e., in the pre-filing process), and may meet the OFD goals by starting the two-year timeline from the date on which the application is filed. The gold arrow in the flowchart includes a cumulative timeline for completing major steps in the application review process and meeting the two-year goal. Project-specific circumstances, including scope and complexity, account for the timeline ranges shown.

The flowchart assumes that the applicant makes use of the pre-filing process to engage agencies and the public early, and identify and resolve major issues before filing an application. The natural gas pre-filing process is a minimum 6-month, mandatory process for liquefied natural gas projects. The pre-filing process is voluntary for natural gas pipeline projects, and, as such, imposes no minimum or maximum time required for participation. If an applicant for a natural gas pipeline project chooses not to use the pre-filing process, then the NOI to prepare an EIS, agency consultation, and scoping would occur after the application is filed.

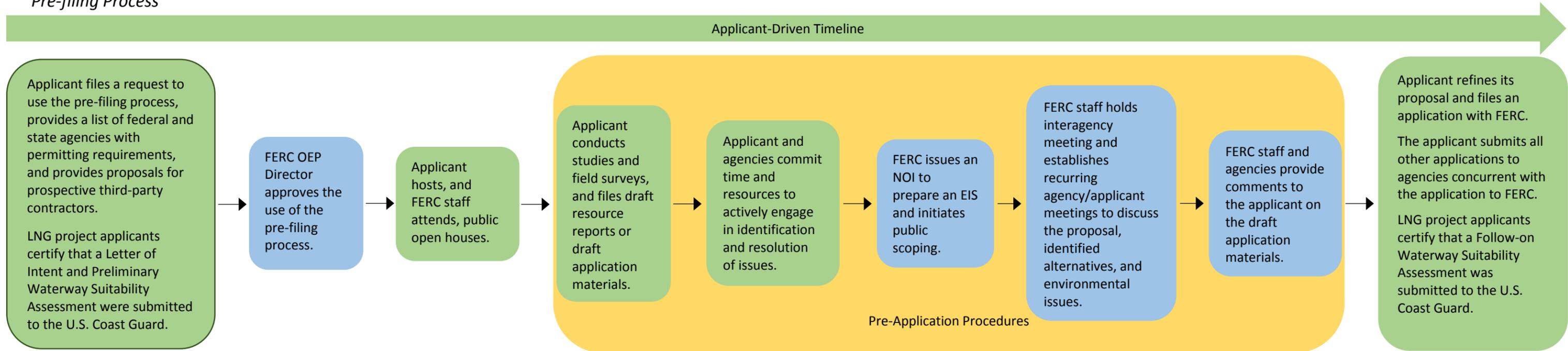
The Commission's ability to meet the timeline ranges in the flowchart and carry out the OFD goals are dependent on: (1) the applicant filing a complete application developed in consultation with agencies and other stakeholders; (2) the applicant providing timely and complete responses to data requests; and (3) all other agencies adhering to the timeframes established in the permitting timetable for their specific environmental reviews and authorizations. In addition, significant modifications to an applicant's proposal after the filing of an application may alter the timeline.

Additional Acronyms Used in the Flowchart

DEIS	Draft Environmental Impact Statement
EO	Executive Order
FEIS	Final Environmental Impact Statement
LNG	Liquefied Natural Gas
OEP	Office of Energy Projects
ROD	Record of Decision

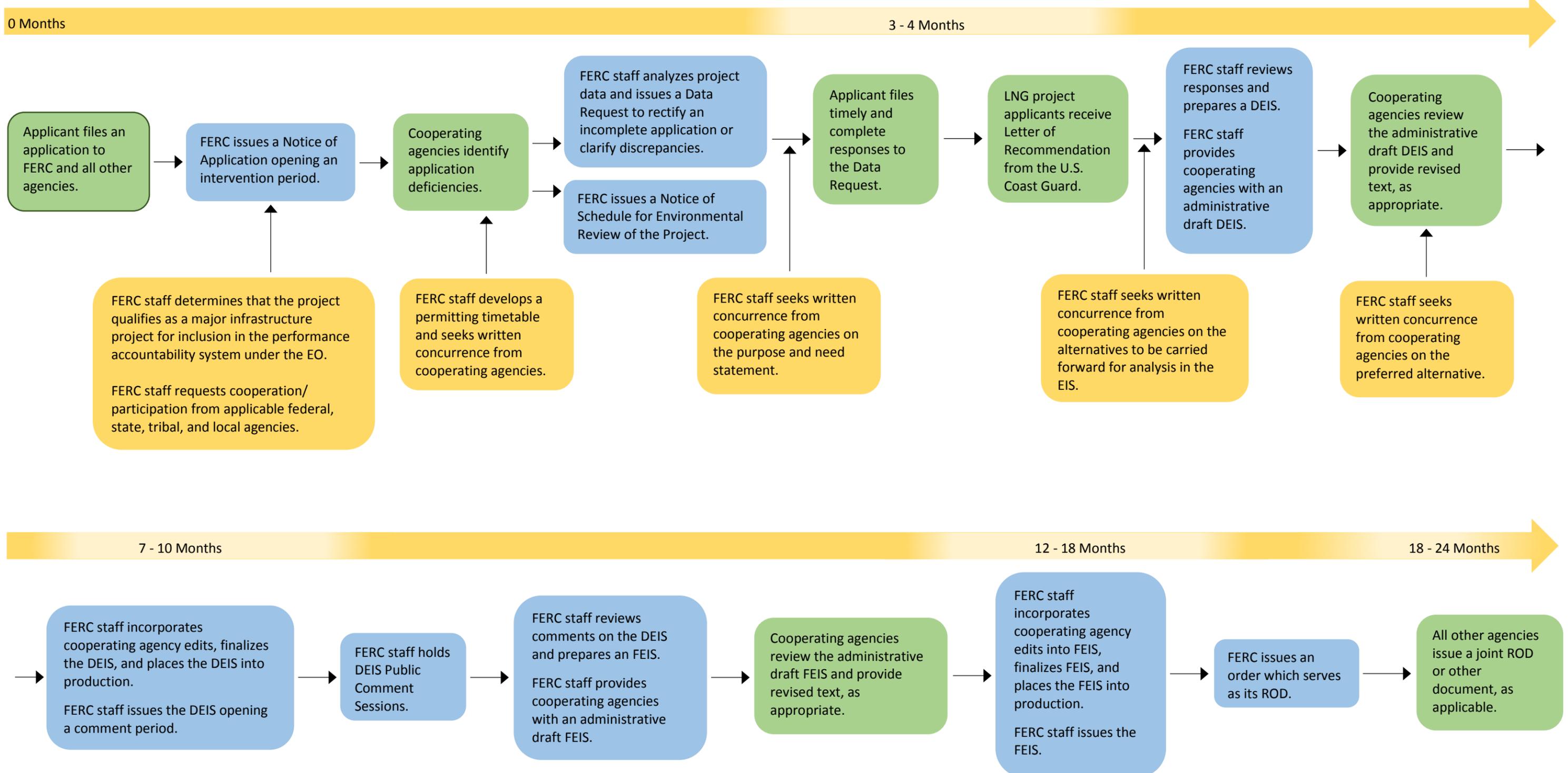
- One Federal Decision Provisions
- FERC Actions
- Applicant or Other Agency Actions

Pre-filing Process



FERC Natural Gas Pipeline and LNG Facility EIS Environmental Review Process

Application Review Process



Attachment C

This is a companion document to the following flowchart entitled *FERC Hydropower Licensing Process*. The flowchart highlights where major provisions of the One Federal Decision (OFD) Memorandum of Understanding (MOU) will occur in the Federal Energy Regulatory Commission's most commonly used licensing process (i.e., the Traditional Licensing Process). The primary steps in the Commission's pre-filing and application review processes are shown with major OFD provisions depicted in gold. Steps depicted in green represent applicant or other agency actions that are outside of the Commission's control, but are necessary to the review process.

The OFD MOU sets a goal of completing all federal environmental reviews and authorizations for major infrastructure projects within an average of two years, measured from the date of publication of a Notice of Intent to Prepare an Environmental Impact Statement (EIS).¹ The gold arrow in the flowchart includes a cumulative timeline for completing major steps in the application review process and meeting the two-year goal. Project-specific circumstances, including scope and complexity, account for the timeline ranges shown.

The Commission's ability to meet the timeline ranges in the flowchart and carry out the OFD goals are dependent on: (1) the applicant filing a complete application developed in consultation with agencies and other stakeholders; (2) the applicant providing timely and complete responses to additional information requests; and (3) all other agencies adhering to the timeframes established in the permitting timetable for their specific environmental reviews and authorizations. In addition, significant modifications to an applicant's proposal after the filing of an application may alter the timeline.

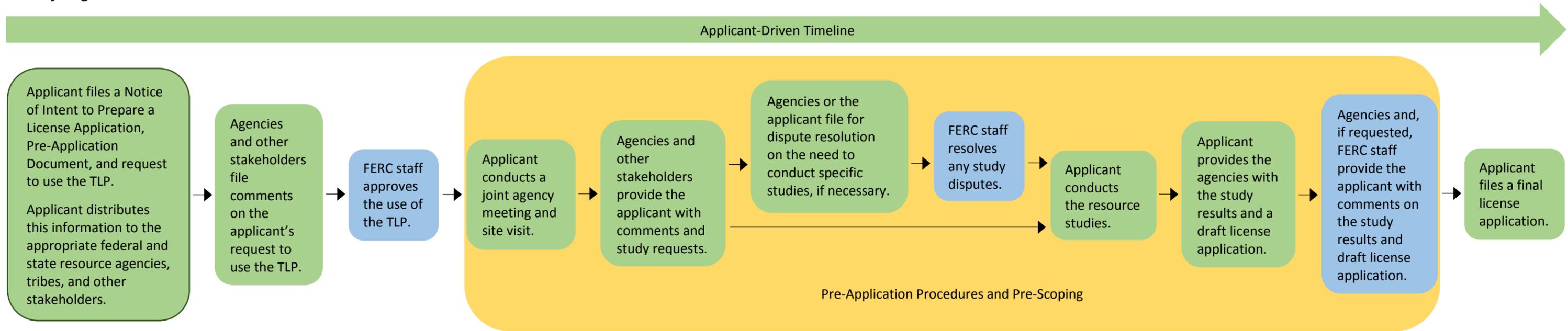
Additional Acronyms Used in the Flowchart

DEIS	Draft Environmental Impact Statement
EO	Executive Order
FEIS	Final Environmental Impact Statement
NOI	Notice of Intent
ROD	Record of Decision
TLP	Traditional Licensing Process

¹ Per the OFD Framework, the Commission has procedures that provide for publication of a Notice of Intent to prepare an EIS substantially in advance of filing of an application (i.e., in the pre-filing process), and may meet the OFD goals by starting the two-year timeline from the date on which the application is filed.

- One Federal Decision Provisions
- FERC Actions
- Applicant or Other Agency Actions

Pre-filing Process



FERC Hydropower Licensing Process

Application Review Process

