



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
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CECW-P

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Feasibility Studies for Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

1. References

- a. Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, 15 August 2017.
- b. ER 200-2-2, Procedures for Implementing NEPA, 4 March 1988.
- c. 40 CFR 1500-1508, CEQ Regulations for Implementing the Procedural Provisions of NEPA.
- d. Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (CEQ, 1986).
- e. Implementation Guidance for Section 1005 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Project Acceleration, 20 March 2018.
- f. SMART Planning Feasibility Studies: A Guide to Coordination and Engagement with the Services, September 2015.

2. Applicability. EO 13807 applies a number of concepts to environmental review and permitting associated with "infrastructure projects," as defined in the EO. Sections 4 and 5 of Executive Order (EO) 13807 also apply specific performance accountability measures and process enhancements to projects meeting the EO's definition of "major infrastructure projects." This guidance applies to feasibility studies where the USACE planning decision document could lead to a recommendation for project authorization or modification to a project authorization, including general re-evaluation studies, post authorization change reports, and other reports supporting project authorization or budget decisions that result in a Chief's Report or Director's Report.

- a. Section 3.(d) of EO 13807 defines "infrastructure project" as "a project to develop the public and private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation,

SUBJECT: Implementation Guidance for Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the FPISC [Federal Permitting Improvement Steering Council].”

b. Section 3.(e) defines “major infrastructure project” (a subclass of infrastructure project as defined above) 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.”

c. Section 3.(a) of EO 13807 defines “authorization” as “any license, permit, approval, finding, determination, or other administrative decision issued by a Federal department or agency that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of an infrastructure project, including any authorization under 42 U.S.C. 4370m(3).” As so defined in the EO, this term is not synonymous with Congressional authorization, or any other approval, finding, determination, or decision issued by Congress or any other entity or organization that is not a Federal department or agency.

d. Districts should apply the concepts applicable to “infrastructure projects,” as well as future process improvements, to planning studies that don’t otherwise meet the definition of “major infrastructure projects,” particularly those feasibility studies with Environmental Assessments (EAs).

3. Purpose. The EO sets out several policies of the Federal Government related to infrastructure projects including, but not limited to, a policy to develop environmentally sensitive infrastructure; a policy to conduct coordinated, consistent, predictable, and timely environmental reviews; and a policy to make timely decisions with the goal of completing all federal environmental reviews and authorization decisions for “major infrastructure projects” within two years. The purpose of this guidance is to clarify and reinforce those Civil Works project development processes and procedures that will provide for compliance with the EO.

4. Environmental Stewardship. The Federal objective for water resources planning is to contribute to national economic development, consistent with protecting the Nation’s environment, pursuant to national environmental statutes, applicable executive orders,



SUBJECT: Implementation Guidance for Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

and other Federal planning requirements. Provisions for environmental considerations are integrated throughout the Principles & Guidelines and are specifically addressed in discussion of the Environmental Quality (EQ) Account and the EQ procedures. The EQ procedures should be applied early in the planning process so that significant natural and cultural resources of the study area can be identified and inventoried, used in developing planning objectives, and accommodated in a reasonable set of alternative plans, which achieve the planning objectives. Further, USACE's Environmental Operating Principles were developed to ensure that USACE missions include totally integrated sustainable environmental practices. The Environmental Operating Principles provide corporate direction to ensure that the workforce recognizes the USACE role in, and responsibility for, sustainable use, stewardship, and restoration of natural resources across the Nation.

5. Coordinated Environmental Reviews. The EO states it is the policy of the Federal Government to conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner. 33 U.S.C. 2348(c)(2) and (e)(8) require agencies to conduct environmental reviews of water resource development projects concurrently to the extent practicable for feasibility studies, providing compliance with this policy. References 1.e. and 1.f. provide detailed guidance on conducting concurrent and coordinated environmental reviews for feasibility studies.

a. All Federal, Tribal, and State agencies required to conduct or issue a review for the study should be invited to serve as either a cooperating agency or a participating agency for the environmental review process. The coordinated environmental review process stresses promoting transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Tribes, or the public, and the temporal and spatial scales to be used to analyze those issues.

b. Districts will use principles of risk-informed decision making to conduct environmental compliance concurrently with the feasibility study process. Risk-informed decision making within the environmental discipline does not mean deferring environmental compliance until later during the study or during preconstruction engineering and design (PED) solely to avoid data gathering early in the study. Each iteration of the planning process progresses in level of detail for environmental analysis and review. Consistent with Reference 1.c., study teams should focus on issues which are significant to decision making and reduce emphasis on information which is not. Study teams should use readily available information, and proxies when appropriate, to gather only the information necessary for the next planning decision based on feedback from

SUBJECT: Implementation Guidance for Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

coordinating with cooperating and participating agencies and to manage decision risks. Study teams should utilize public and agency coordination to assist in focusing on those most significant issues for decision making and better characterize what key uncertainties exist within the environmental discipline. Study teams can manage those associated instrumental risks using a risk register. The point of risk-informed planning is not to focus on those universal risks that would apply across the portfolio, such as the risk that a cooperating agency will not support a recommended plan, but instead to focus on those critical risks that are unique to a given study and have the potential to significantly affect decision making.

6. Permitting Timetable. Section 5.a.(ii) of the EO requires agencies to develop and follow a permitting timetable for "major infrastructure projects." The permitting timetable is an environmental review and authorization schedule, or other equivalent schedule, for a major infrastructure project or group of major infrastructure projects that identifies milestones, including intermediate and final completion dates for action by each agency on any Federal environmental review or authorization required for a major infrastructure project or group of major infrastructure projects. Study teams will use the schedule developed in accordance with Paragraph 5.d. of Reference 1.e., conducting the required coordination and concurrence with the cooperating and participating agencies, as the permitting timetable for major water resources infrastructure projects under the EO. Study schedules must have sufficient detail to demonstrate utilization of a coordinated review.

7. Notice of Intent. References 1.b. and 1.c. indicate that as soon as practicable after a decision is made to prepare an EIS or supplement, the scoping process for the draft EIS or supplement will be announced in a NOI. Changes in WRRDA 2014 included elimination of the reconnaissance phase, but added a requirement for a meeting within 90 days of the start of the study with all Federal, Tribal, and State agencies (see Reference 1.e.). Without the reconnaissance phase and much of the early information obtained during that phase, the decision regarding the appropriate NEPA document (categorical exclusion, EA, or EIS) would be better informed by the interagency meeting within 90 days of the study start in Reference 1.e. Therefore, the NOI may be issued between the Alternatives Milestone Meeting (AMM), which typically occurs within the first 90 days of the study, and before the Tentatively Selected Plan (TSP) Milestone, allowing the interagency meeting and one or more iterations of the six step planning process to occur, in order to make a risk-informed decision on the appropriate NEPA document (categorical exclusion, EA, or EIS) for the study. Consistent with References 1.b. and 1.c., districts will issue the NOI as soon as practicable after making the determination of the need to prepare an EIS, which is likely to occur close to the AMM.



SUBJECT: Implementation Guidance for Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

8. NEPA Scoping. Reference 1.c. directs that the NEPA scoping process be announced in a NOI. However, CEQ guidance in Reference 1.d. does not prohibit early scoping prior to a NOI. Scoping may be initiated early in the feasibility study, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively. However, early scoping cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered. Any information received from the public or other agencies during this early scoping is expected to help reduce uncertainty regarding the appropriate type of NEPA document for the feasibility study.

9. One Federal Decision. Civil Works studies and proposed projects are required to be in compliance with all applicable Federal environmental statutes and regulations and with applicable State laws and regulations where the Federal government has clearly waived sovereign immunity. It is also expected that project recommendations made by district commanders within a final integrated feasibility report/NEPA document are informed by the results of a coordinated and transparent environmental review process. Lastly, under Reference 1.b., the Assistant Secretary of the Army for Civil Works [ASA(CW)] retains authority for signature of the Record of Decision (ROD), after completion of a Chief's Report. Therefore, for water resources development projects meeting the definition of "major infrastructure project" under EO 13807, the district commander's transmittal of a final feasibility report will also include the findings of all applicable environmental compliance requirements to comply with One Federal Decision in Section 5.(b) of the EO. For water resources development projects meeting the definition of "major infrastructure project" under EO 13807, requests to defer an environmental requirement after the district commander's transmittal of the final feasibility report must describe the risk and uncertainty of the request and must be endorsed by the policy and legal compliance review team at the Agency Decision Milestone in order to comply with Section 5(b)(ii) of the EO.

10. For water resources development projects meeting the definition of "major infrastructure project" under EO 13807, the length of the environmental review process for determining compliance with the EO will be calculated from the date of the NOI to the date of the district commander's transmittal of the final feasibility report or other decision document.

11. Issue Resolution. To comply with Section 5.(a)(iii) of the EO, study teams will inform the vertical team of any instances where a permitting timetable milestone for a water resources development project meeting the definition of "major infrastructure project" under EO 13807 is missed or extended, or is anticipated to be missed or extended. In

SUBJECT: Implementation Guidance for Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

addition, study teams should keep the vertical team informed of any issues in the environmental review process that may affect the team's ability to meet a feasibility study milestone.

12. Questions regarding this implementation guidance should be directed to Lauren Diaz, Office of Water Project Review, at (202) 761-4663 or [Lauren.B.Diaz@usace.army.mil](mailto:Lauren.B.Diaz@usace.army.mil).



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