DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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JAN 19 2018

MEMORANDUM FOR COMMANDING GENERAL OF THE U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 1125 of the Water Resources Development Act (WRDA) of 2016 - Use of Funding Agreements within the Regulatory Program

1. Statutory Authorities:

   a. 33 United States Code (U.S.C) § 2352, Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended (Section 214) (Appendix A);

   b. 23 U.S.C. § 139(j) (Section 139(j)), added to title 23 U.S.C. by Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) 2005, and amended by Section 1307 of the Moving Ahead for Progress in the 21st Century (MAP-21) Act and Section 1304(i) of the Fixing America's Surface Transportation (FAST) Act (Appendix A) as amended, and;

   c. 49 U.S.C. § 307 (Section 307), added to 49 U.S.C. by Section 1312 of the FAST Act (Appendix A).

2. Purpose and Applicability: The purpose of this memorandum is to update guidance previously provided to Regulatory offices within districts, dated 2 September 2015, on the establishment, management, and oversight of funding agreements under the main statutory authorities that allow the U.S. Army Corps of Engineers (Corps) to accept and expend funds to expedite the permit review process. This document is applicable to all current and proposed funding agreements with regulatory under the authorities listed in Section 1. The most recent changes incorporated by this document include modifications to Section 214 by Section 1006 of the Water Resources Reform and Development Act of 2014 (WRRDA) and Section 1125 of the Water Infrastructure Improvements for the Nation (WIIN) Act/Water Resources Development Act (WRDA) of 2016, modifications to Section 139(j) by Section 1304(i) of the FAST Act, and the addition of Section 307 to 49 U.S.C. by Section 1312 of the FAST Act.

3. Background:

   a. Section 214: Section 214 provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-Federal public entity, public-utility company, natural gas company, or railroad carrier to expedite the permit review

process for that entity, company, or carrier for projects or activities that have a public purpose. The authority to accept and expend funds from non-Federal public entities does not expire, unless modified by law. The authority to accept and expend funds from public-utility companies, natural gas companies, and railroad carriers expires on 10 June 2024, unless otherwise extended or revoked by law. The full legislative text of Section 214, as amended, is provided in Appendix A. See section 5 of this document for more information on Section 214.

b. Section 139(j): Section 139(j) is a U.S. Department of Transportation (USDOT) authority[1] It provides that the Secretary of Transportation may allow public entities that receive financial assistance from USDOT to provide funds to Federal agencies, state agencies, and Indian tribes participating in the environmental review process[2] for a project[3] or program. Section 139(j) only applies to those public entities receiving financial assistance under title 23 ("Highways") or chapter 53 of title 49 ("Public Transportation") of the U.S.C. Funds provided under Section 139(j) may only be used to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes. The full legislative text of Section 139(j), as amended, is provided in Appendix A. See section 6 of this document for more information on Section 139(j).

c. Section 307: Section 307 is also a USDOT authority. It provides that the Secretary of Transportation may allow public entities receiving financial assistance from USDOT for one or more projects, or a program of projects, to provide funds to Federal agencies, state agencies, and Indian tribes participating in the environmental planning and review process for the project(s) or program. The project(s) or program receiving financial assistance from USDOT must have a public purpose. As with 139(j), funds provided under Section 307 may only be provided to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes. See section 7 of this document for more information on Section 307.

d. Signature Delegation:

(1) The Secretary of the Army has decision-making authority to, after public notice, accept and expend funds under Section 214 to expedite the evaluation of permits under the jurisdiction of the Department of the Army. By memorandum dated 8

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[1] "Fixing America's Surface Transportation Act (FAST): Questions and Answers on the procedural changes to 23 U.S.C. 139 as they relate to Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), & Federal Transit Administration (FTA) projects"; https://www.environment.fhwa.dot.gov/legislation/authorizations/fastact/qa_23USC_changes_1304.aspx

[2] "Environmental review process" is defined in 23 U.S.C. 139(a)(3).

[3] "Project" is defined in 23 U.S.C. 139(a)(6).

January 2018, the Secretary of the Army delegated this authority to the Assistant Secretary of the Army for Civil Works (ASA(CW)). Subsequently, by memorandum dated January 19, 2018, this authority was redelegated by ASA(CW) to the Commanding General of the U.S. Army Corps of Engineers and his authorized representatives. The Commanding General of the U.S. Army Corps of Engineers in turn may redelegate this authority to District and Division commanders by memorandum. These delegations of authority are subject to any terms and conditions in the delegations, and shall remain in effect until 10 June 2024, unless revoked or superseded. A copy of the delegations are provided in Appendix C of this guidance.

4. Guidance Applicable to All Agreements (214 and 139(j)) within the Regulatory Program.

a. Accountability: Funds accepted under any of the statutory authorities must be accounted for to ensure they are expended for the intended purpose. District Commanders will establish separate accounts to track the acceptance and expenditure of the funds in accordance with the current fiscal year budget execution guidance. Funds accepted under a funding agreement will be programmed in accordance with the guidance in the 5 March 2013 memorandum for Regulatory Chiefs and Regulatory Program Managers[4], or the most recent version of this guidance. Important points to note from this guidance include the following: 1) any incoming funds accepted through a reimbursable agreement must be programmed into the current two-year appropriation (for example, TAFS: 96-3126 2017/2018 for FY 2017), and; 2) districts must use the appropriate CCS code under the two-year appropriation, which is 991 for Section 214 agreements, 992 for 139(j) agreements, and 993 for Section 307 agreements.

b. General Acceptable Activities Completed Under a Funding Agreement: Prior to expending funds on any activity, the district must determine that the activity contributes to meeting the specific purpose of the appropriate statutory authority as described in sections 3, 5, 6, and 7 of this document. Acceptable activities should be discussed with the funding entity prior to execution of an agreement, and documented in the agreement. Examples of acceptable activities that the funds may be expended on include, but are not limited to: application review, technical writing, site visits, training, travel, outreach, field office set-up costs, copying, coordination activities, additional personnel (including support/clerical staff), technical contracting, programmatic tool development and improvement (such as programmatic agreements, NEPA-404 merger agreements, general permits, etc.), acquisition of Geographic Information System (GIS) data, pre-application meetings, and participation in the transportation planning process

[4] The subject of the 5 March 2013 memorandum is "Programming of Funds Accepted from a Reimbursable Agreement within the Regulatory Program", and can be found on Regulatory HQ's RIX 2.0 SharePoint site.

or other early coordination activities such as NEPA/404 synchronization. Funds may also be used to contract discrete tasks to inform decisions or conduct administrative actions. For contracts used to develop decision documents or NEPA documentation, such documents must be directed by the Corps to be submitted as draft, and be reviewed and adopted by the Corps before a permit decision can be made.

c. Agreements Citing Multiple Statutory Authorities: There is no legal need to cite multiple statutory authorities (i.e. those in section 1 of this document) in a funding agreement. Districts should cite only one authority in any new, modified, or renewed agreement. For those older agreements that do cite multiple statutory authorities, districts should collaborate with their funding entity to decide which authority to use, and which requirements apply until renewal of that agreement.

d. Agreements that Include Section 408: Regulatory funding agreements that additionally allow the review of modification(s) to a federal project under Section 408 must comply with Engineer Circular (EC) 1165-2-216 and its appendices, unless superseded by more recent guidance. Funds provided for Regulatory reviews must be kept in a separate account and tracked separately from the funds provided for Section 408 reviews.

e. Impartial Decision-Making: Maintaining impartiality in decision-making is of utmost importance under any funding agreement. District and Division Commanders must ensure that the acceptance and expenditure of funds from external entities will not impact impartial decision-making with respect to application review and any final permit decision, either substantively or procedurally. At a minimum, all districts with funding agreements must comply with the following standards:

(1) The review must comply with all applicable laws and regulations. Any procedures or decisions that would otherwise be required for a specific type of project or review under consideration cannot be eliminated. However, process improvements that are developed under a funding agreement are encouraged to be applied widely, when applicable, for all members of the regulated public to benefit;

(2) In cases where funds from external entities are used, all final permit decisions (including individual permit decisions and all reporting general permit verifications, such as nationwide, general, regional general, and state programmatic general permits) and associated decision documents must be reviewed and approved in writing by a responsible official that is at least one level above the decision-maker. No permit required decisions must also be reviewed and approved in writing by the one-level-above reviewer. For the purposes of this guidance, the permit decision-maker is the person that has been delegated signature authority. For example, if the decision-maker

is a Regulatory Section Chief, then the one-level-above reviewer may be the Regulatory Chief or Deputy Chief. Section chiefs and team leaders are appropriate one-level-above reviewers provided that signature authority has been delegated to the project manager level. For example, if the funded project manager would otherwise have signature authority for a general permit for non-funded projects, then the section chief or team leader could be an appropriate one-level-above reviewer for general permits reviewed under a funding agreement by that project manager. In accordance with national Regulatory policy and guidance, districts are encouraged to delegate signature authority to the lowest appropriate level. Additionally, the one-level-above reviewer must meet the following requirements: must hold a position that is not partially or fully funded by the same funding entity, and; has not been partially or fully funded by the same funding entity for at least one year;

(3) Instruments for mitigation banks or in-lieu-fee programs developed for an entity with a funding agreement must be signed by a Regulatory Branch/Division Chief, an equivalent, or a higher level position that is not funded by any funding agreement;

(4) All preliminary jurisdictional determinations (JDs) and approved JDs where funds are used to complete the JD must have documentation that a non-funded regulator conducted a review of the determination. This review is intended to maintain impartiality in the decision and does not require a one-level-above reviewer. The JD review does not need to be a field review. For those approved JDs that require coordination with EPA, additional internal review is not required;

(5) Funds from agreements cannot be used for enforcement activities. Funds from agreements may be used for compliance inspections (i.e. of issued permits and monitoring of compensatory mitigation banks, etc.), but cannot be used to resolve non-compliance issues. Enforcement activities must be charged to Regulatory's appropriated funds in accordance with the most recent budget execution guidance;

f. Agreement Development and Decision: Prior to accepting funds contributed by non-Federal public entities, natural gas companies, public-utility companies, or railroad carriers under Section 214, or public entities under Section 139(j) or Section 307, the district must issue a public notice clearly indicating the following: the name of the funding entity, the statutory authority to accept and expend such funds, the reason for such contributions, how acceptance of the funds is expected to expedite the permit review process, what types of activities the funds would be expended on, and what procedures would be in place to ensure that the use of funds would not impact impartial decision-making. The public notice must also include consideration of the impacts of the proposed funding agreement on the District's Regulatory program and if there are any expected impacts on the timeframes for evaluation of applications for the general

public within that district. Providing a copy of initial public notices for review by the Regulatory HQ Section 214/Transportation Program Manager prior to issuance is voluntary; however, at a minimum, a copy of the issued public notice should be forwarded to the Regulatory HQ Section 214/Transportation Program Manager for situational awareness, and posted in the designated folder on Regulatory HQ's RIX 2.0 SharePoint site.

Following the review of the comments received in response to the public notice, the district or Division Commander will determine, in consultation with district offices of counsel, if the acceptance and expenditure of funds is appropriate in consideration of the requirements under the applicable statutory authority, if the district will be able to preserve impartial decision making, and if the acceptance and expenditure of funds will not adversely affect review timeframes for the general public. A final draft of a funding agreement must be completed to inform the district or Division Commander's decision. This decision, as well as consideration of all public comments received from the public notice, shall be documented in a Memorandum for the Record (MFR). Upon execution of the MFR by the district or Division Commander, an informational public notice will be issued indicating the district or Division Commander's decision. If the decision is to accept funds, those funds may only be accepted after execution of the MFR, execution of the agreement[5], and issuance of the informational public notice.

An updated analysis based on the abovementioned requirements shall be conducted and documented in a MFR each time a funding agreement is renewed or substantively modified. An example of a substantial modification would be modifying a funding agreement to provide funding for reviews under 33 U.S.C. § 408 (Section 408). Issuance of a new public notice is not required for renewal or modification of a funding agreement if the purpose of the agreement remains the same. Like all new agreements, renewed or modified funding agreements and decision MFRs for the renewed or modified agreements must be executed by the district or Division Commander. Upon execution of any new, modified, or renewed funding agreement, the district shall forward a signed copy of the agreement to the Regulatory HQ Section 214/Transportation Program Manager. Regulatory HQ will maintain a copy of all active agreements on the Regulatory HQ 214/Transportation public website (see section 4.j of this document).

g. Training Policy: All employees paid through funds accepted under an agreement, regardless of the amount of time charged, must receive training on this guidance at least once during each fiscal year that the employee works under a funding agreement. The training may be accomplished through the direction of a non-funded manager in the employee's chain of command, or through the employee's participation in a training

[5] The decision MFR and agreement must be signed by the district or division commander.

offered by Regulatory HQ. When an employee is selected to begin working under a funding agreement for the first time, the employee should read this guidance and receive the required mandatory training prior to starting work under the agreement.

h. Furlough Policy: Should a lapse of appropriations result in a shutdown furlough for the Regulatory Program, funds are not to be used to continue activities for the funding entity. Any exception to this policy may be requested from Regulatory HQ in extreme circumstances, but may be denied.

i. Transparency Policy:_Regulatory HQ will maintain a public web page on the use of these authorities. The Regulatory HQ public web page will include:

(1) The statutory text of Section 214, Section 139(j), and Section 307;
(2) A clearly marked link to the ORM2 public portal for final permit decisions made under funding agreements;
(3) Copies of all active funding agreements;
(4) Copies of the most recent decision document templates;
(5) Copies of all the combined annual reports since FY 2015, developed in accordance with section 4.k. of this guidance; and
(6) A copy of this implementation guidance.

To support this effort, districts are required to do the following:

(1) Agreements. Immediately after the execution of a funding agreement (including all new, renewed, and modified agreements), the district shall post a copy of the fully executed agreement in the designated folder on the Regulatory HQ RIX 2.0 SharePoint site, and alert the Regulatory HQ Section 214/Transportation Program Manager of the posting. Regulatory HQ will then post the document on HQ's 214/Transportation public web page. It is the district's responsibility to ensure that all of the district's active agreements are posted on the Regulatory HQ 214/Transportation public web page, and that the agreements are up-to-date.

(2) ORM data. Districts have primary responsibility to ensure that ORM data entry is timely and accurate so that all final permit decisions, including all individual permit decisions and general permit[6] verifications, made for projects where funds are used are posted on the Regulatory HQ's ORM2 public portal in a timely manner. When entering ORM data for applications and JDs reviewed under a funding agreement, districts shall select the "Water Resources Development Act 214/Transportation Agreements Regulatory Funded (Corps)" box in ORM under the Fund Tracking menu

[6] Includes all general permit types, such as nationwide, general, regional general, and state programmatic general permits.

on each Request for Action screen and JD screen; this will ensure identification on the ORM2 public portal and accurate annual reporting. Districts should also include the funding entity's name in the applicant company/agency name field in ORM, as this field is tracked in the WRRDA Summary Report from ORM. Finally, prior to submitting the annual report to the appropriate Major Subordinate Command (MSC) Division Program Manager and the Regulatory HQ/Transportation Program Manager, districts shall certify that the ORM data provided in their annual report has been reviewed for quality assurance/quality control (QA/QC).

(3) Website Links: Districts with active funding agreement(s) must provide the following links on their public district Regulatory websites: 1) an operational link to the Regulatory HQ 214/Transportation public web page mentioned above; and 2) an operational link to the Regulatory HQ ORM2 public portal's WRDA 214/Transportation tab.

j. Annual Reporting Requirements: In accordance with Section 214, the ASA(CW) will submit an annual report on the implementation of Section 214 in each district to Congress. To support this requirement, any district that has accepted and/or expended funds under any of the statutory authorities in a fiscal year must provide an annual report on the implementation of funding agreement(s) to the Regulatory HQ/Transportation Program Manager during the subject fiscal year. Annual reports are due to Regulatory HQ by October 31st following the subject fiscal year. Annual reports must include the following:

(1) A list of all funding agreements that were active during the subject fiscal year;

(2) For the subject fiscal year, an accounting of the total funds accepted and total funds expended per agreement;

(3) A list of all permit decisions issued under a funding agreement during the subject fiscal year, along with impact and compensatory mitigation data. Districts are directed to use the "WRRDA Summary Report" function in ORM (under the "Special/Other" tab in ORM Reports) to generate this list, and not to modify the formatting or columns in the report when including in the annual report. Districts are responsible for ensuring their list contains all projects reviewed under a funding agreement for the subject fiscal year, only includes permit decisions completed under a funding agreement, and that the information provided is accurate and complete;

(4) A list of all employees that charged time to any agreement, a brief description of the mandatory annual training on this guidance that was completed during the subject

FY, and the completion date of the annual training for each employee (see section 4.g. for more information);

(5) A qualitative description demonstrating how the agreement expedited the permit review process for the funding entity. This should include any major accomplishments during the subject fiscal year, such as the development of programmatic tools or agreements, cross-agency training or outreach efforts, instrumental pre-application meetings, the completion of major permit milestones or decisions, etc. The qualitative description is particularly important for agreements that may not have much quantitative data, such as agreements that were developed for the review of a large, on-going project that may not have had any permit decisions completed during the subject fiscal year;

(6) Quantitative data demonstrating how the agreement expedited the permit review process for the funding entity. For agreements that include review of multiple permit applications, this should include a comparison of review timeframes by permit type for the funding entity as compared to other applicants within the same district, as well as an evaluation of any performance metrics established for the agreement. Districts have discretion on the parameters to compare; examples include average days in review and/or percentage of actions meeting performance metrics. For projects in which Regulatory is the lead agency under the National Environmental Policy Act (NEPA) for an Environmental Impact Statement (EIS), a discussion of the timeframes between the major NEPA steps such as notice of intent (NOI), scoping, draft EIS, final EIS, and record of decision (ROD), should be provided;

(7) Verification that the district has met all transparency requirements, including the following: 1) the provision of operational links to Regulatory HQ's public Section 214/Transportation Information web page and Regulatory HQ's public ORM2 portal for final decisions made under a funding agreement; and, 2) the provision of the district's currently active funding agreements for publication on Regulatory HQ's public Section 214/Transportation Information web page;

(8) Districts shall use the template document in Appendix B for preparing the annual report. Annual reports must be reviewed by the MSC Division Regulatory Program Manager for content and accuracy, and then sent by the MSC Division Regulatory Program Manager to the Regulatory HQ Section 214/Transportation Program Manager. Regulatory HQ will compile the reports received and provide a combined annual report to ASA(CW). The ASA(CW) will submit the combined annual report to the required Congressional committees within 90 days of the conclusion of each fiscal year. Regulatory HQ will maintain copies of the combined annual reports since FY 2015 on the Regulatory HQ 214/Transportation Information public website.

5. Guidance for Agreements Citing Section 214: This section provides specific guidance pertaining to agreements citing Section 214 as the authority to execute the agreement. See section 3.a. of this document for a general description of Section 214.

a. General Guidance: All projects or activities reviewed under a 214 agreement must have a public purpose, regardless of the type of funding entity. Additionally, activities conducted in accordance with a Section 214 agreement must expedite the permit review process. Expediting the review process could include generally shorter review times as compared to typical review times prior to the agreement, facilitation of a smoother review process through improved coordination and communication, or the development or use of programmatic agreements or standard operating procedures. The expedited review cannot result in an adverse effect on the timeframes for review of other applications within the same district, when considered collectively.

b. Allowable Permittees: The funding entity must be an applicant (or co-applicant) and permittee (or co-permittee) for all decisions made under the funding entity's 214 agreement.

c. This section provides specific guidance pertaining to the four types of entities that may contribute funds to the Secretary of the Army under Section 214.

(1) Non-Federal Public Entities.

(i) The term "non-Federal public entity" is limited to governmental agencies or governmental public authorities, including governments of federally recognized Indian Tribes, i.e., any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. § 5130]. Examples of governmental agencies or governmental public authorities include state, local, or Tribal transportation departments, Municipal Planning Organizations (MPO), port authorities, flood and storm water management agencies, or public infrastructure departments that have the desire to expedite the permitting process programmatically, or for a specific project. Private entities cannot be considered non-Federal public entities.

(ii) Many projects proposed by non-Federal public entities such as roads, transit facilities, air and seaport improvements, public works, flood control structures, parks, and other public facilities, are largely available for the general public's use and benefit, and serve a public purpose. Projects reviewed under a Section 214 agreement with a non-Federal public entity may be funded by public funds, potentially by private funds, or a mix of private and public funds. However, the non-Federal public entity must be an applicant on the permit application; a permit, if granted, must be issued to the

non-Federal public entity; and the proposed single and complete project must have a public purpose. Examples include, but are not limited to, public-private partnerships (P3) to support construction of High Occupancy Vehicle lanes on an interstate highway or to support the maintenance or improvement of flood control structures. Also, it is not acceptable for private entities to provide funds to a non-Federal public entity to expedite a private project. An example would be, but is not limited to, a residential developer providing funds to a city government that has a Section 214 agreement to expedite the review of a residential development in that city.

(iii) Districts have discretion in determining whether a single and complete project has a public purpose and therefore, may be reviewed under a Section 214 agreement with a non-Federal public entity.

(iv) Agreements with municipal electric authorities, gas authorities, or railroad agencies or authorities that meet the definition of non-Federal public entity are not subject to the 10 June 2024 expiration date of the authority for public-utility companies, natural gas companies, and railroad carriers, even if they also meet the definition of public-utility company, natural gas company, or railroad carrier.

(v) No funds provided by a Federal agency to a non-Federal public entity may be accepted by the Corps under Section 214 unless the non-Federal public entity forwards to the Corps a written confirmation from the Federal agency that the use of the funds to expedite the permit review process is acceptable.

(2) Public-Utility Companies: Section 214 additionally allows for agreements to be established with a "public-utility company." Section 214 defines public utility companies using the definition in Section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. § 16451). It is important to note that, as defined in Section 214, public-utility companies are not necessarily "public" companies (i.e. could be private companies). Public-utility companies include the following two subcategories: 1) electric utility companies, which are companies that own or operate facilities used for the generation, transmission, or distribution of electric energy for sale; and, 2) gas utility companies, which are companies that own or operate facilities used for distribution at retail of natural or manufactured gas for heat, light, or power (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale).

These companies are subject to federal regulation (dating from the 1930s) outside of Corps authorities, because Congress determined that such companies affected the public interest. Regulatory HQ has determined that projects involving facilities for the generation, transmission, or distribution of electric energy for sale, and facilities used for

distribution at retail of natural or manufactured gas for heat, light, or power are appropriate for review under Section 214. Energy exploration and production activities, such as drilling, hydrofracturing, or mining, are not to be reviewed under Section 214 agreements with public-utility companies, because these activities do not involve the generation, transmission, or distribution of electric energy. Any exceptions to this policy should be coordinated with Regulatory HQ.

(3) Natural Gas Companies: Section 214 also allows for agreements to be entered into with a natural gas company, and defines natural gas company using the definition in Section 1262 of the Public Utility Holding Company Act of 2005, in addition to also including a person engaged in the transportation of natural gas in intrastate commerce. A natural gas company is a company engaged in the transportation of natural gas in intrastate or interstate commerce or the sale of such gas in interstate commerce for resale. The transportation of natural gas in interstate commerce is subject to federal regulation (dating from the 1930s) outside of Corps authorities, because Congress determined that such activities affected the public interest. Regulatory HQ has determined that projects reviewed under a Section 214 agreement with a natural gas company may include projects involving the transportation and/or distribution of natural gas (inclusive of gas gathering lines, feeder lines, transmission pipelines, and distribution pipelines) and any attendant storage facilities. Energy exploration and production activities, such as drilling, hydrofracturing, or mining, are not to be reviewed under Section 214 agreements with natural gas companies, because these activities do not involve the transportation and/or distribution of natural gas. *Any exceptions to this policy should be coordinated with Regulatory HQ.*

(4) Railroad Carriers: Section 1125 WRDA 2016 modified Section 214 to allow the Secretary of the Army to enter into agreements with railroad carriers, as defined in Section 20102 of title 49, United States Code. Section 20102 provides the following definitions of "railroad carrier" and "railroad" for the purposes of implementing Part A, "Safety," of the Railroad Programs Subtitle of title 49:

(i) *Railroad carrier* means a person[7] providing railroad transportation, or, as approved by the Secretary of Transportation, a group of commonly controlled railroad carriers operating within the U.S. as a single, integrated rail system; and,

(ii) *Railroad* means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including [but not limited to]: a) commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and b) high-speed ground transportation systems that connect metropolitan areas, without regard to

[7] In accordance with 1 U.S.C. § 1, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies as well as individuals.

the technologies used for the system; but c) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

The Federal Railroad Administration (FRA) administers the federal railroad safety statutes. The inclusion in Section 214 of Section 20102's definition of railroad carrier indicates Congressional intent to apply Section 214 to railroad carrier facilities regulated by the FRA, which may include public, private, interstate, or intrastate railroad facilities that allow for the transport of goods, or, the transport of passengers between cities and within metropolitan and suburban areas, but not "plant railroads"[8] (i.e. those located inside an industrial installation that are not part of the general railroad system of transportation), and not rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

As Section 20102 of title 49, U.S.C. is presently interpreted by the FRA, there is no single regulatory definition further distinguishing "rapid transit operations in an urban area that are not connected to the general railroad system" from "commuter rail or other short-haul railroad passenger service in a metropolitan or suburban area", the former of which is excluded from the definition of railroad carrier, while the latter is included. However, FRA has provided examples for each category, as follows:

(i) Urban rapid transit operations not connected to the general system of transportation (excluded): Metro in the Washington, D.C. area; CTA in Chicago; and the subway systems in New York, Boston, and Philadelphia; and,

(ii) Commuter rail or other short-haul railroad passenger service (included): Metra and the Northern Indiana Commuter Transportation District in the Chicago area; Virginia Railway Express and MARC in the Washington area; and Metro-North, the Long Island Railroad, New Jersey Transit, and the Port Authority Trans Hudson (PATH) in the New York area.[9]

In the case of one of the entities listed as an example in the preceding paragraph proposing a Section 214 agreement as a railroad carrier, the district will utilize the FRA's categorization when determining whether that entity qualifies. In determining whether other metropolitan or suburban railroad entities qualify for Section 214 agreements as railroad carriers, districts should consult the appropriate regional FRA office on a case-by-case basis. If uncertainty remains after consulting the regional FRA office, the question should be referred to the Regulatory HQ 214/Transportation Program Manager for coordination with FRA Headquarters. Districts shall notify and keep the Regulatory HQ 214/Transportation Program Manager apprised of the status of

[8] 49 Code of Federal Regulations (CFR) 213.3(b)(1).
[9] 49 CFR Appendix A to Part 209.

any requests from railroad entities for potential Section 214 agreements. Railroad entities providing rapid transit systems that do not qualify for Section 214 agreements as railroad carriers may be eligible for other types of funding agreements (e.g. if the railroad entity is a public entity receiving financial assistance from the Federal Transit Administration (FTA), it may be eligible for a 307 or 139(j) agreement, or may be eligible as a non-Federal public entity under Section 214).

6. Guidance for Agreements Citing Section 139(j): This section provides specific guidance pertaining to agreements citing Section 139(j) as the authority to execute the agreement. See section 3.b. of this document for a general description of Section 139(j).

a. Section 139(j) allows the Corps to enter into agreements with public entities receiving financial assistance from the Department of Transportation under title 23 or chapter 53 of title 49, which are typically administered by Federal Highway Administration (FHWA) and FTA, respectively. Section 139(j) agreements require approval by the Secretary of Transportation, as public entities are eligible to receive reimbursement with USDOT funds for these agreements. The USDOT has delegated approval of funding agreements down to the division level of FHWA and the FTA. The USDOT has not interpreted Section 139(j) as allowing other modal administrations (such as Federal Aviation Administration or Maritime Administration) to approve agreements with public entities[10]. If there is any uncertainty regarding whether a public entity is eligible for a funding agreement under 139(j), the public entity and/or the Corps should consult the USDOT operating administration from which the public entity receives financial assistance for a project or program, as any agreement to provide funds to the Corps would require approval by the appropriate USDOT operating administration.

b. Activities conducted under a Section 139(j) agreement must directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultations processes, for the transportation project or program receiving funding under title 23 or chapter 53 of title 49. Additionally, Section 139(j) funds may only be used for activities beyond the Corps' normal and ordinary capabilities under its general appropriations. Because transportation project planning and delivery encompasses a variety of activities and reviews, participation in the transportation planning (pre-NEPA) process and streamlining initiatives such as NEPA/404 synchronization efforts are encouraged under Section 139(j), along with the activities listed in section 4.b. of this guidance, so long as those activities result in

[10] Pursuant to Section 11503 of the FAST Act, Section 139(j) could apply to certain FRA-administered projects. FRA has indicated that public entities interested in 139(j) agreements should consult FRA headquarters with questions regarding applicability of Section 139(j) to a specific project or program.

review times that are less than the customary time necessary for such a review. FHWA has provided guidance that the development of programmatic agreements and initiatives satisfies the requirement to reduce time limits as long as the results of those efforts are designed to provide a reduction in review time. Section 139(j) puts the onus on FHWA and FTA to interpret allowable activities under the statute. Districts shall consider FHWA or FTA approval of a funding agreement as certification that the agreement is compliant with Section 139(j). However, districts must consider whether a Section 139(j) agreement is also compliant with the standards in section 4 of this guidance, prior to the District Commander approving any such agreement. In summary, Section 139(j) agreements must meet FHWA//FTA's standards and the Corps Regulatory HQ implementation guidance requirements to be acceptable.

c. FHWA or FTA may require documentation of the "customary time" necessary for a review and/or establishment of performance metrics for the agreement to demonstrate it is contributing to expediting and improving transportation project planning and delivery. Districts are encouraged to use ORM data and/or the national performance metrics to establish a baseline of review times within the district, and consider that information in development of any performance metrics for the agreement. Development of the performance metrics should be a collaborative process between the district and the funding entity. Districts have discretion on the number and type of performance metrics within an agreement, including which milestones to use to determine time in review (receipt of application, date determined complete, etc.). When considering the quantity and content of any performance metrics for an agreement, the district must consider the potential effect of those metrics on performance management within the whole Regulatory Branch/Division. Districts must be cautious to not agree to any performance metrics that would be so onerous or stringent that achieving them comes at the cost of decreased performance for other applicants in the district.

d. A Section 139(j) agreement must also include a section or appendix which establishes projects and priorities to be addressed by the agreement. If the funding transportation agency does not know a list of projects and/or priorities at the time of the agreement, then the agreement should describe the process to identify or change projects and/or priorities. 139(j) agreements can only be used to review projects receiving funding under title 23 or chapter 53 of title 49; this means that state-funded only or local-funded only projects cannot be reviewed under a 139(j) agreement.

7. Guidance for Agreements Citing Section 307: This section provides specific guidance pertaining to agreements citing Section 307 as the authority to execute the agreement. See section 3.c. of this document for a general description of Section 307.

a. Section 307 is a new authority that allows the Corps to enter into agreements with public entities receiving financial assistance from the Department of Transportation. The statutory language of Section 307 combines certain concepts from both 139(j) and 214. A major difference between 139(j) and Section 307 is that Section 307 applies to public entities receiving financial assistance from any USDOT operating administration[11] for a project or program with a public purpose, while 139(j) applies only to public entities receiving financial assistance from USDOT under title 23 or chapter 53 of title 49. The public purpose requirement in 307 also distinguishes it from 139(j). Like 139(j), the provision of funding to the Corps under Section 307 requires the approval from the Secretary of Transportation, and funding agreements providing for dedicated staffing must include, at a minimum, a process for identification of projects or priorities to be addressed by the agreement. Districts shall consider USDOT approval of a funding agreement as certification that the agreement is compliant with Section 307.

b. Like Section 139(j), activities conducted under a Section 307 agreement must directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultations processes, for the transportation project(s) or program, and, may only be used for activities beyond the Corps' normal and ordinary capabilities under its general appropriations. The activities eligible for funding under Section 307 are also the same as 139(j). Therefore, the guidance in section 4.b and section 6.b of this document pertaining to eligible activities, and the guidance in section 6.c pertaining to establishment of performance metrics, also applies to Section 307 agreements.

c. Section 1312 of the FAST Act required USDOT to issue implementation guidance for Section 307. To date, USDOT has issued an interim guidance[12]. The guidance defines public entities as any state or local government; any department, agency, special purpose district, or other instrumentality of one or more state or local governments; Indian tribes, and; any public or governmental transportation agency. Similar to 214, Section 307 requires that the use of funds under Section 307 does not adversely affect review timeframes for other applicants, and does not impact the Corps' impartial decision-making, either procedurally or substantially. USDOT's guidance requires that each agreement includes language stating that the Corps has determined that the acceptance and use of funds will not adversely affect review timeframes for other applicants, and that all the parties understand that the funding agreement will not

[11] E.g., FHWA, FTA, FRA, National Highway Traffic Safety Administration, Federal Aviation Administration, Office of Inspector General, Pipeline and Hazardous Materials Safety Administration, Federal Motor Carrier Safety Administration, Saint Lawrence Seaway Development Corporation, Maritime Administration.

[12] "Interim Guidance on Application of 49 U.S.C. 307: Improving State and Federal Agency Engagement in Environmental Reviews"; see https://www.transportation.gov/sites/dot.gov/files/docs/1312%20interim%20guidance_2.pdf

impact the Corps' impartial review and independent decision-making authority. All funding agreements executed by the Corps under 307 must be consistent with the USDOT interim guidance on Section 307 implementation (or any subsequent USDOT guidance). Additionally, Section 307 agreements must meet USDOT's standards and the Corps Regulatory HQ implementation guidance requirements, including those for impartiality, to be acceptable.

d. Certain public entities receiving financial assistance from USDOT may be eligible for a Section 307 agreement, a Section 139(j) agreement, and/or a Section 214 agreement. Where appropriate, the Corps should collaborate with the potential parties to the agreement to determine the type of agreement that is best suited to the entity's proposal.

8. This guidance is effective immediately. This document supersedes and rescinds the memorandum from the Director of Civil Works issued 23 March 1999 entitled, "Transportation Equity Act and Federal-Aid Highway Funding Proposals;" the memorandum from the Director of Civil Works issued on 1 October 2008 entitled, "Implementation Guidance for Section 2002 of the Water Resources Act of 2007 (Regulatory Funds Contributed by Non-Federal Public Entities);" the memorandum from the Chief of Operations and Regulatory issued on 21 July 2010 entitled, "Annual Reporting for Regulatory Section 214 Funding Agreements with Non-Federal Public Entities;" and the memorandum from the Director of Civil Works issued September 9, 2015 entitled "Implementation Guidance for Section 1006 of the Water Resources Reform and Development Act of 2014 and Guidance on the Use of Funding Agreements within the Regulatory Program." This guidance remains in effect as long as any of the statutory authorities listed in paragraph 1 remain in effect.

9. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at 202-695-4641 or gib.a.owen.civ@mail.mil. Technical questions should be directed to Sarah Wingert, Regulatory HQ 214/Transportation Program Manager, Operations and Regulatory Division, at 202-761-0108 or sarah.e.wingert@usace.army.mil.

Ryan A. Fisher

RYAN A. FISHER
Acting Assistant Secretary of the Army
(Civil Works)

**Appendix A – Legislative Text of Authorities**

## Section 214 of WRDA 2000, as amended (33 U.S.C. § 2352)

**Note: the "Secretary" referenced below is the Secretary of the Army.**

(a)FUNDING TO PROCESS PERMITS. –

(1) DEFINITIONS. – In this subsection:

(A) NATURAL GAS COMPANY. – The term 'natural gas company' has the meaning given the term in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451), except that the term also includes a person engaged in the transportation of natural gas in intrastate commerce.

(B) PUBLIC-UTILITY COMPANY. – The term 'public-utility company' has the meaning given the term in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451).

(C) RAILROAD CARRIER. – The term 'railroad carrier' has the meaning given the term in section 20102 of title 49, United States Code.

(2) PERMIT PROCESSING. – The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity or a public-utility company, natural gas company, or railroad carrier to expedite the evaluation of a permit of that entity, company, or carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

(3) LIMITATION FOR PUBLIC-UTILITY AND NATURAL GAS COMPANIES. – The authority provided under paragraph (2) to a public-utility company, natural gas company, or railroad carrier shall expire on the date that is 10 years after June 10, 2014.

(4) EFFECT ON OTHER ENTITIES. – To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.

(5) GAO STUDY. – Not later than 4 years after June 10, 2014, the Comptroller General of the United States shall carry out a study of the implementation by the Secretary of the authority provided under paragraph (2) to public-utility companies, natural gas companies, and railroad carriers, including an evaluation of the compliance with the requirements of this section and, with respect to a permit for those entities, the requirements of applicable Federal laws.

(b) EFFECT ON PERMITTING.

(1) IN GENERAL. – In carrying out this section, the Secretary shall ensure that the use of funds accepted under sub-section (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) IMPARTIAL DECISIONMAKING. – In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall–

(A) be reviewed by –

(i) the District Commander, or the Commander's designee, of the Corps District in which the project or activity is located; or

(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(c) LIMITATION ON USE OF FUNDS. – None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) PUBLIC AVAILABILITY. –

(1) IN GENERAL. – The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public in a common format, including on the Internet, and in a manner that distinguishes final permit decisions under this section from other final actions of the Secretary.

(2) DECISION DOCUMENT. – The Secretary shall –

(A) use a standard decision document for evaluating all permits using funds accepted under this section; and

(B) make the standard decision document, along with all final permit decisions, available to the public, including on the Internet.

(3) AGREEMENTS. – The Secretary shall make all active agreements to accept funds under this section available on a single public Internet site.

(e) REPORTING. –

(1) IN GENERAL. – The Secretary shall prepare an annual report on the implementation of this section, which, at a minimum, shall include for each district of the Corps of Engineers that accepts funds under this section –

(A) a comprehensive list of any funds accepted under this section during the previous fiscal year;

(B) a comprehensive list of the permits reviewed and approved using funds accepted under this section during the previous fiscal year, including a description of the size and type of resources impacted and the mitigation required for each permit; and

(C) a description of the training offered in the previous fiscal year for employees that is funded in whole or in part with funds accepted under this section.

(2) SUBMISSION. – Not later than 90 days after the end of each fiscal year, the Secretary shall –

(A) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the annual report described in paragraph (1); and

(B) make each report received under sub-paragraph (A) available on a single publicly accessible Internet site.

## 23 U.S.C. Section 139(j), as amended

**Note: the "Secretary" referenced below is the Secretary of Transportation.**

(j) ASSISTANCE TO AFFECTED STATE AND FEDERAL AGENCIES. –

(1) IN GENERAL. –

(A) Authority to Provide Funds. – The Secretary may allow a public entity receiving financial assistance from the Department of Transportation under this title or chapter 53 of title 49 to provide funds to Federal agencies (including the Department), State agencies, and Indian tribes participating in the environmental review process for the project or program.

(B) Use of Funds. – Funds referred to in subparagraph (A) may be provided only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project or program.

(2) ACTIVITIES ELIGIBLE FOR FUNDING. – Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, activities directly related to the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

(3) USE OF FEDERAL LANDS HIGHWAY FUNDS. – The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

(4) AMOUNTS. – Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

(5) CONDITION. – A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

(6) AGREEMENT. – Prior to providing funds approved by the Secretary for dedicated staffing at an affected agency under paragraphs (1) and (2), the affected agency and the requesting public entity shall enter into an agreement that establishes the projects and priorities to be addressed by the use of the funds.

**Appendix A – Legislative Text of Authorities (cont.)**

## 49 U.S.C. Section 307 (Improving State and Federal Agency Engagement in Environmental Reviews)

**Note: the "Secretary" referenced below is the Secretary of Transportation.**

(a) IN GENERAL –

(1) REQUESTS TO PROVIDE FUNDS. – A public entity receiving financial assistance from the Department of Transportation for 1 or more projects, or for a program of projects, for a public purpose may request that the Secretary allow the public entity to provide funds to Federal agencies, including the Department, State agencies, and Indian tribes participating in the environmental planning and review process for the project, projects, or program.

(2) USE OF FUNDS. – The funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project, projects, or program.

(b) ACTIVITIES ELIGIBLE FOR FUNDING. – Activities for which funds may be provided under subsection (a) include transportation planning activities that precede the initiation of the environmental review process, activities directly related to the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

(c) AMOUNTS. – A request under subsection (a) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to timely conduct the review.

(d) AGREEMENTS. – Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under subsection (a), the affected Federal agency and the requesting public entity shall enter into an agreement that establishes a process to identify projects or priorities to be addressed by the use of the funds.

(e) GUIDANCE. –

(1) IN GENERAL. – Not later than 180 days after the date of enactment of this section, the Secretary shall issue guidance to implement this section.

(2) FACTORS. – As part of the guidance issued under paragraph (1), the Secretary shall ensure –

(A) to the maximum extent practicable, that expediting and improving the process of environmental review and permitting through the use of funds accepted and expended under this section does not adversely affect the timeline for review and permitting by Federal agencies, State agencies, or Indian tribes of other entities that have not contributed funds under this section;

(B) that the use of funds accepted under this section will not impact impartial decisionmaking with respect to environmental reviews or permits, either substantively or procedurally; and

(C) that the Secretary maintains, and makes publicly available, including on the Internet, a list of projects or programs for which such review or permits have been carried out using funds authorized under this section.

(f) EXISTING AUTHORITY. – Nothing in this section may be construed to conflict with section 139(j) of title 23.

**Appendix B – Annual Reporting Template**

**MEMORANDUM FOR CECW-CO-R**

**SUBJECT: FY Reporting for Funding Agreements under Section 214 of WRDA 2000, as amended and/or 23 U.S.C. Section 139(j), and/or 49 U.S.C. Section 307.**

**1. Active Funding Agreements:** Include the number of active funding agreements in the District in the blank.

2. **Funding:** Section 214 of WRDA 2000, as amended, Title 23 U.S.C. Section 139(j), and Title 49 U.S.C. Section 307 allow the Secretary of the Army to accept and expend funds contributed by certain entities to expedite the permit evaluation process. The Regulatory Program's Implementation Guidance for the Use of Funding Agreements within the Regulatory Program ("Implementation Guidance") gives examples of acceptable activities executed under funding agreements, including application reviews, site visits, training, travel, field office set-up costs, coordination activities, additional personnel, and others. Funding may come directly from the funding entity's budget or may be from a grant or other source.

The following outlines the funds accepted and expended by the Corps District during the subject Federal fiscal year (FY):

a. First Agreement: *Include funding entity name(s) and date of the active agreement in the blank.*

i. Total funds accepted during this FY:
ii. Total funds expended during this FY:
iii. Number of Full-Time Employees (FTE):
iv. Name(s) of staff working under the agreement this FY:
v. Statutory authority for the agreement:

b. Second Agreement: *Include funding entity name(s) and date of the active agreement in the blank.*

i. Total funds accepted during this FY:
ii. Total funds expended during this FY:
iii. Number of FTE:
iv. Name(s) of staff working under the agreement this FY:
v. Statutory authority for the agreement:

3.**Assessment:** The goal of funding through an agreement is to expedite the permit evaluation process. This can be accomplished through *qualitative* means, such as dedicating staff for improved communication, ability of the funding entity to prioritize projects with Corps staff, and improved submittals of information. The permit process must be expedited quantitatively for the funding entity, while not adversely impacting the timeframes for review for other applicants within the same district. *Quantitative* improvements can be demonstrated by showing that permit processing times have generally improved since inception of an agreement. Performance measures are a means to show quantitative improvement, and performance relative to any such measures for the subject FY should be provided below.

The following describes how funds have been used to expedite the permit evaluation process:

a. First Agreement: *Include funding entity name(s) in the blank.*

   i. Qualitative description:
   ii. Quantitative description:

b. Second Agreement: *Include funding entity name(s) in the blank.*

   i. Qualitative description:
   ii. Quantitative description:

4. **Impartial Decision-Making:** While funds may be accepted to expedite the permit evaluation process, the funds must not impact impartial decision-making. Reviews must comply with all laws and applicable regulations. The main components of impartial decision-making within the Implementation Guidance include a one-level higher review and signature on all permit decisions (NPR, GP, NW, LOP, SP), peer review by a non-funded regulator on JDs made under a funding agreement, and the posting of all final permit decisions on the internet. The one-level higher reviewer must be a position that is not fully or partially funded under the funding agreement. The Implementation Guidance also states that funding may not be used for enforcement activities, and instruments for mitigation banks or ILF programs must be signed by a non-funded Regulatory branch/division chief, equivalent, or higher-level position.

The following outlines measures that have been taken by the District to maintain impartial decision-making on applications received from a funding entity:

5. **Training:** The Implementation Guidance requires that all wholly or partially funded staff complete annual training on the requirements of the guidance. The following provides a brief description of the training completed during this FY:

Below or attached is a list of all employees that worked under a funding agreement at least part time during this FY, and the date training was completed for each employee during the FY:

6. **Transparency:** By checking the following boxes, I certify that the following has been verified:

☐ The District's Regulatory website contains a functioning link to the Regulatory HQ Section 214/Transportation Information webpage.

☐ The District's Regulatory website contains a functioning link to the WRDA tab on the Regulatory HQ ORM2 public portal.

☐ Any additional Section 214, Section 139(j), or Section 307 information provided on the District's Regulatory website is up-to-date.

☐ All of the District's currently active and up-to-date funding agreements are provided on the Regulatory HQ Section 214/Transportation Information webpage.

7. **Permit Decisions List:** A list of all permit decisions made in the District under any funding agreement this FY, including impact and mitigation data, is attached to this report.

☐ By checking the box, I certify that I have reviewed this data for accuracy and validity, and will assume responsibility for any remaining data entry errors.

**Please attach any letters of satisfaction or performance evaluations received from the funding entity (or entities) regarding the District's agreement(s) for the subject FY.**

APPROVED BY:

Chief, Regulatory