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U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

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MAR 20 2018

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1005 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Project Acceleration

1. Section 1005 of WRRDA 2014 was completed and signed on 5 March 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Wesley Colemam, Chief, Office of Water Project Review, at (202) 761-4102 or [Wesley.E.Coleman@usace.army.mil](mailto:Wesley.E.Coleman@usace.army.mil).

A handwritten signature in blue ink, appearing to read "J. Dalton".

JAMES C. DALTON, P.E.  
Director of Civil Works

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DEPARTMENT OF THE ARMY  
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MAR - 5 2018

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

SUBJECT: Implementation Guidance for Section 1005 of the Water Resources Reform and Development Act of 2014, Project Acceleration

1. Section 1005 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) (Public Law 113-121) modifies Section 2045 of the Water Resources Development Act of 2007 (WRDA 2007) (33 USC 2348) in general directs that the Secretary shall develop and implement a coordinated environmental review process for the development of project studies. Section 1005 of WRRDA 2014 is enclosed.
2. This guidance applies to all feasibility studies for proposed water resources development projects that will require specific authorization if the feasibility cost share agreement (FCSA) for the study was executed after enactment of WRRDA 2014 (10 June 2014) and for which an environmental impact statement (EIS) is prepared under the National Environmental Policy Act of 1969 (42 USC 4321 et seq.) (NEPA). The guidance also applies to feasibility studies initiated after enactment of WRRDA 2014 but that do not require a FCSA. It may also apply to other project studies initiated after enactment of WRRDA 2014 that require an environmental assessment, categorical exclusion, or other document under NEPA if determined appropriate by the Secretary.
3. Nothing in the implementation of the provisions and guidance outlined below preempts or interferes with: 1) any obligation to comply with the provisions of any federal law including NEPA or any other federal environmental law; 2) the reviewability of any final federal agency action in a court of the United States or the court of any State; 3) any requirement for seeking, considering or responding to public comment; or 4) any power, jurisdiction, responsibility duty, or authority that a federal, state, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.
4. Every project requires a detailed public involvement strategy that is keyed to maximizing public input at each stage of the planning process. As part of this strategy, the project delivery team (PDT) will identify, as early as practicable, all federal, state, and local government agencies and Indian tribes that may have jurisdiction over the project; be required by law to conduct or issue a review, analysis, or opinion for the project; or be required to make a determination on issuing a permit, license, or approval for the project. If the project is within the boundaries of a state, the state, consistent with state law, may choose to participate in the process. The state may subject its agencies to a coordinated review process.

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If the non-Federal sponsor is a state or local governmental entity, the district will determine if the sponsor would like to serve as a joint lead agency with the district in the preparation of any environmental document under NEPA. A request for such designation will be submitted through the HQUSACE Regional Integration Team (RIT) to the Director Civil Works (DCW) for transmittal to the Assistant Secretary of the Army for Civil Works (ASA(CW)) for a decision. As a joint lead agency, the sponsor may prepare any environmental compliance documentation to include NEPA document required in support of any action or approval by the Secretary, subject to the requirements applicable to the Secretary, guidance from the Secretary, and the discretionary supplementation and adoption by the Secretary. For coordination or consultations that must be conducted by the lead federal agency by federal law, the sponsor may prepare documentation and participate in meetings, but the official coordination and consultation shall be retained by the lead federal agency.

5. In accordance with Section 1001(e)(2) of WRRDA 2014, and within 90 days of study initiation, the PDT will convene an interagency meeting of all federal, Tribal, and state agencies that may be required by law to conduct or issue a review, analysis, or opinion on or to make a determination concerning a permit or license for the study. The letter inviting the agencies to the meeting will request that they serve as either a cooperating agency or a participating agency, if applicable.

a. Section 2045, as amended, requires that any federal agency which has jurisdiction by law or special expertise shall be a cooperating agency if requested by the U.S. Army Corps of Engineers (Corps). Section 1501.6 of title 40, Code of Federal Regulations governs the identification and the participation of a cooperating agency. Per WRDA 2007, Section 2045(e)(5), any federal agency that is invited to participate shall be designated as a cooperating agency unless the invited agency informs the lead agency in writing by the deadline specified in the invitation that the invited agency: (A)(i)(I) has no jurisdiction or authority with respect to the project; (II) has no expertise or information relevant to the project; or (III) does not have adequate funds to participate in the project; and (ii) does not intend to submit comments on the project; or (B) does not intend to submit comments on the project. An agency may request the lead agency to designate it a cooperating agency.

b. Any state or local government agencies and Indian tribes may become a participating agency in the environmental review process if they: (1) have jurisdiction over the project; (2) are required by law to conduct or issue a review, analysis, or opinion for the project; or (3) are required to make a determination on issuing a permit, license, or approval for the project.

c. Designation as a participating or cooperating agency does not imply that the participating or cooperating agency supports a proposed project or has any jurisdiction over, or special expertise with respect to evaluation of, the project. However, a

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participating or cooperating agency must comply with Section 2045, as amended, and any schedule established under Section 2045, as amended. It is expected that each participating or cooperating agency will be able to fulfill its obligations under other applicable law and to take actions necessary to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

d. The PDT will work with these entities at the first interagency meeting to develop and implement a plan for coordinated public and agency review process to be conducted, to the maximum extent practicable, concurrently. Section 2045, as amended, requires that the plan be developed after consultation with and with the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable. This process and the schedule will be included in the study's project management plan (PMP).

e. As part of its annual budget submission, districts will identify each applicable study that does not have adequate funding to make substantial progress toward the completion of the project study. Unless otherwise determined by the Secretary, this provision will not apply to studies under the Continuing Authorities Program unless an EIS is required. For each study, the district will provide the estimated amounts necessary to make substantial progress on the project study. The data from this effort will be compiled by HQUSACE and made publically available.

6. The Tentatively Selected Plan (TSP) Milestone meeting marks the Decision-maker's selection of the TSP, or Locally Preferred Plan (LPP) if applicable; and that the decision-maker is prepared to approve the release of the draft report and draft environmental compliance documentation for concurrent public, technical, legal and policy review and Independent External Peer Review (IEPR) (if applicable). The cooperating and participating agencies may be invited to participate in the TSP Milestone, but their participation is not mandatory. Between the Alternatives Milestone and the TSP Milestone, the PDT will continue to coordinate project development with the cooperating and participating agencies as appropriate.

a. The Corps, the cooperating agencies, and any participating agencies shall work cooperatively to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws. In accordance with the tenets of the Corps' planning process, information regarding the environmental and socioeconomic resources located within the study area and the general locations of the alternatives under consideration are to be made available to the cooperating agencies and participating agencies as early as practicable in the environmental review process. In turn, the cooperating and participating agencies are required to identify, as early as practicable, any issues of concern including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the study.

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7. Because the PDT is writing the feasibility study report as the study proceeds, it is expected that a draft feasibility study report and draft NEPA documentation will be largely complete by the milestone meeting and concurrent review by Corps, cooperating and participating agencies will be initiated within 30 days, and no more than 60 days, following the TSP Milestone.

8. If the sponsor is preparing the NEPA document as a joint lead agency, the sponsor must comply with all requirements applicable to the Secretary under NEPA and regulations implementing NEPA such as ER 200-2-2, as well as any specific guidance provided by the Secretary. The ASA(CW) must approve and adopt the document before taking any subsequent action or making any approval based on that document, regardless of whether the action or approval of the ASA(CW) results in federal funding. Notwithstanding that the NEPA document may have been prepared by the non-Federal sponsor, the Corps has the authority and responsibility to take such actions as are necessary and proper to facilitate the expeditious resolution of the environmental review process for the study and to ensure the document is completed in accordance with applicable federal law.

9. For a draft EIS, the comment period will not exceed 60 days after publication of a notice of availability in the Federal Register. For all other comment periods established for agency or public comments in the environmental review process, the comment period will not exceed 30 days after the date on which materials are made available. Either of these deadlines may be modified by agreement of the Corps, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies. The District Commander may extend the deadlines for good cause. The HQUSACE Chief of Planning and Policy must be notified, through the RIT, prior to such extension.

10. As soon as practicable but not later than 45 days after the close of the public comment period on a draft EIS, the PDT will reassess its schedule for completion of the environmental review process, in consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable. The schedule shall consider the responsibilities of participating and cooperating agencies under applicable laws; the resources available to the project sponsor, joint lead agency, and other relevant federal and state agencies, as applicable; the overall size and complexity of the project; the overall schedule for and cost of the project; and the sensitivity of the natural and historical resources that could be affected by the project. The District Commander may lengthen the schedule for good cause and may shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable. The study schedule will comply with Section 1001 of WRRDA 2014.

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11. Any necessary revisions to the project schedule will be incorporated into the decision log and the decision management plan and a revised schedule will be coordinated in accordance with Section 1002 of WRRDA 2014. A copy of the schedule established must be provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and made available to the public.

12. The Agency Decision Milestone (ADM) occurs after completion of the concurrent review of the draft report and NEPA document. In the event that the study requires IEPR, the milestone will be scheduled to follow receipt of the IEPR panel's findings, which could be up to 60 days after the public comment period, or longer if an extension is approved by the Chief of Engineers. The PDT will work to address outstanding issues (technical, policy, or legal) raised during the concurrent review that can be addressed without additional technical analysis or design; issues requiring additional technical analysis or design will be discussed at the ADM but addressed after the meeting. At the ADM, the recommended plan and proposed way forward for the feasibility-level analysis phase are affirmed and the study and project risk that will be used in development of feasibility-level cost and design for inclusion in the final feasibility report are acknowledged.

13. The feasibility-level analysis phase will include additional analyses that are necessary to address comments raised on the draft report and NEPA document and could include analyses necessary for the participating and cooperating agencies to complete their responsibilities under applicable laws.

14. A participating or cooperating agency or the project sponsor may request a meeting to resolve issues that could delay completion of the environmental review process or result in denial of any approval required for the study under applicable laws. Within 21 days of such a request, the appropriate Corps office will convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable and will notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting. In addition, the Corps may schedule the meeting more than 21 days after the request if for good cause. Further, the ASA(CW) or designee may convene an issue resolution meeting at any time, at his or her discretion, regardless of whether a meeting has been requested by a participating or cooperating agency or the project sponsor. . If a resolution cannot be achieved by the Corps within 30 days of an issue resolution meeting, and a determination is made that the issue has to be elevated the ASA(CW) will determine that all information necessary to resolve the issue has been obtained, the ASA(CW) will forward the dispute to the heads of the relevant agencies for resolution.

15. Federal jurisdictional agencies are required to complete any required approval or decision for the environmental review process on an expeditious basis using the

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shortest existing applicable process. Section 2045, as amended, sets the deadline for the completion of the decision as the later of 180 days after the date on which an application for the permit, license, or approval is complete and 180 days after the date on which the Corps issues a decision on the project under NEPA. Because Section 2045, as amended, applies to studies that include an EIS and the NEPA decision on such a study is made via a Record of Decision (ROD) signed by the ASA(CW), and because the ASA(CW) is required under Section 2033 of WRDA 2007 to submit findings to the Congress within 120 days of receiving a final Chief's Report, a date of 180 days after a decision on the project under NEPA cannot be used as the scheduled completion of the approval or decision under the environmental review process. Notwithstanding the requirements of Section 2045, a date for completion of any required approval or decision for the environmental review process will be set as not later than 180 days after the date on which an application for the permit, license, or approval is complete. All required approvals or decisions for the environmental review process must be completed prior to the completion of the final report and NEPA document so that they can be considered in the recommendation of the District Commander before the final report is reviewed and a decision made.

16. Section 2045, as amended, includes penalties to be assessed if the federal jurisdictional agency fails to render its decision within the time constraints. The penalties generally involve the transfer of funds from those made available to support the office of the head of the federal jurisdictional agency to the division of the federal jurisdictional agency charged with rendering the decision. Section 2045, as amended, includes limitations on the fiscal year and total funding that can be transferred. An agency can avoid the penalty if it notifies the Corps, cooperating agencies, and the project sponsor, as applicable, with a supporting explanation, that it has not received all necessary information or approvals; that significant new information, including from public comments, or circumstances, requires additional analysis; or that it lacks the financial resources to complete the review under the scheduled time frame. Lack of financial resources requires a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline. Further, if the agency provides notice that it lacks adequate financial resources, the Inspector General of the agency is required to conduct a financial audit and submit the results to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 90 days after the audit is completed.

17. Per Section 2045, the trigger for the above penalty provisions occurs when the federal jurisdictional agency fails to complete its approval or decision within 180 days after ROD is signed by the decision maker. Because the environmental review process must be completed prior to completion of the final feasibility report, it is expected that the assessment of penalties will be rare. In such instances, the ASA(CW) will be

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contacted for coordination with the federal jurisdictional agency and the DCW will transmit a draft letter to the ASA(CW) for transmittal to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that provides an initial notice of the failure of the federal agency to make the decision. The DCW will provide additional draft notification letters to the ASA(CW) for transmittal to the Congress every 60 days thereafter until all decisions of the federal agency relating to the project study have been made by the federal agency. The additional notification letters will describe the number of decisions of the federal agency that remain outstanding as of the date of the additional letter.

18. If requested at any time by a state or project sponsor, the Corps and other federal agencies with relevant jurisdiction in the environmental review process, will, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the state or project sponsor in carrying out early coordination activities. If requested, a memorandum of agreement may be established between the Corps and the project sponsor, Indian tribe, state and local governments, and other appropriate entities to carry out early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

19. The district will ensure that the sponsor complies with all design and mitigation commitments made jointly by the Secretary and the sponsor in any environmental document prepared by the sponsor, and that any environmental document prepared by the sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

20. Any environmental document prepared in accordance with this guidance shall be adopted and used by any federal agency making any determination related to the project study to the same extent that the federal agency could adopt or use a document prepared by another federal agency under NEPA and parts 1500 through 1508 of 40 CFR (or successor regulations).

21. When practicable, Corps shall use programmatic approaches to carry out the environmental review processes to eliminate repetitive discussion of the same issues and focus on the actual issues ripe for analyses at each level of the review. Application of programmatic approaches to environmental review processes shall comply with NEPA and all other applicable federal laws. When programmatic approaches are initiated, the Corps will consult with relevant federal, state and local governmental agencies, Indian tribes and the public on appropriate use and scope of the programmatic approach. A list of all data that is needed to carry out an environmental review process will be developed. When applying programmatic approaches, the Corps shall emphasize collaboration, promote transparency, use accurate and timely

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information, allow for not fewer than 60 days of public notice and comment, and address any comments received.

22. A publicly available electronic database is being established to report the status and progress of NEPA and other environmental compliance for studies covered by Section 2045, as amended. Reporting requirements will be provided under separate cover. Each district will be required to make available and maintain on the district's public web site a district-specific version of the database. Each Major Subordinate Command (MSC) Commander will ensure compliance with this guidance within his or her division and will include links on the MSC's public web site that consolidate the data from each district within the MSC. The HQUSACE Planning Community of Practice will maintain the national database on the Planning Community Toolbox through links to the MSC web sites.

23. Notwithstanding any other provision of law, a claim arising under federal law seeking judicial review of a permit, license, or other approval issued by a federal agency for a project study will be barred unless the claim is filed within 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the federal law that allows judicial review. New information received after the close of a comment period will be considered if the information satisfies the requirements for a supplemental EIS under title 40, Code of Federal Regulations. The preparation of a supplemental EIS or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental EIS or other environmental document.

24. Section 2045, as amended requires establishment of a program to measure and report on progress made toward improving and expediting the planning and environmental review process. Further guidance on performance measurement will be provided under separate cover.

25. Additional guidance documents will be developed that describe the coordinated environmental review processes that will be used to implement Section 2045, as amended, for the planning of projects, in accordance with the tenets of SMART Planning and all applicable law. These documents will be prepared in consultation with the Council on Environmental Quality and other federal agencies with jurisdiction over actions or resources that may be impacted by a project.

26. This guidance is effective immediately and will be incorporated into ER 1105-2-100 upon the next revision.

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30. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at gib.a.owen.civ@mail.mil or 703-695-4641. Technical questions regarding this implementation guidance may be directed to Wesley Coleman, Chief, Office of Water Project Review at 202-761-4102 or wesley.e.coleman@usace.army.mil.



R. D. JAMES  
Assistant Secretary of the Army  
Civil Works

Encl

**SEC. 1005. PROJECT ACCELERATION.**

**(a) PROJECT ACCELERATION.**

(1) **AMENDMENT.** Section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) is amended to read as follows:

**SEC. 2045. PROJECT ACCELERATION.**

**(a) DEFINITIONS.** In this section:

(1) **ENVIRONMENTAL IMPACT STATEMENT.** The term 'environmental impact statement' means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) **ENVIRONMENTAL REVIEW PROCESS.**

(A) **IN GENERAL.** The term "environmental review process" means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

(B) **INCLUSIONS.** The term "environmental review process" includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) **FEDERAL JURISDICTIONAL AGENCY.** The term "Federal jurisdictional agency" means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).

(4) **FEDERAL LEAD AGENCY.** The term 'Federal lead agency' means the Corps of Engineers.

(5) **PROJECT.** The term 'project' means a water resources development project to be carried out by the Secretary.

(6) **PROJECT SPONSOR.** The term 'project sponsor' has the meaning given the term "non-Federal interest" in section 221(b) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(b)).

(7) **PROJECT STUDY.** The term 'project study' means a feasibility study for a project carried out pursuant to section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282).

**(b) APPLICABILITY.**

(1) **IN GENERAL.** This section

(A) shall apply to each project study that is initiated after the date of enactment of the Water Resources Reform and Development Act of 2014 and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) may be applied, to the extent determined appropriate by the Secretary, to other project studies initiated after such date of enactment and for which an environmental review process document is prepared under that Act.

(2) **FLEXIBILITY.** Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of

an environmental review process for a project study, a class of project studies, or a program of project studies.

(3) LIST OF PROJECT STUDIES.

(A) IN GENERAL. The Secretary shall annually prepare, and make publicly available, a separate list of each study that the Secretary has determined

- (i) meets the standards described in paragraph (1); and
- (ii) does not have adequate funding to make substantial progress toward the completion of the project study.

(B) INCLUSIONS. The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(c) PROJECT REVIEW PROCESS.

(1) IN GENERAL. The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.

(2) COORDINATED REVIEW. The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.

(3) TIMING. The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under subsection (e), establishes with respect to the project study.

(d) LEAD AGENCIES.

(1) JOINT LEAD AGENCIES.

(A) IN GENERAL. At the discretion of the Secretary and subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) PROJECT SPONSOR AS JOINT LEAD AGENCY. A project sponsor that is a State or local governmental entity may

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if

- (I) the Secretary provides guidance in the preparation process and independently evaluates that document;
- (II) the project sponsor complies with all requirements applicable to the Secretary under

- (aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
  - (bb) any regulation implementing that Act; and
  - (cc) any other applicable Federal law; and
- (III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.
- (2) DUTIES. The Secretary shall ensure that
  - (A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and
  - (B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.
- (3) ADOPTION AND USE OF DOCUMENTS. Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under
  - (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
  - (B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).
- (4) ROLES AND RESPONSIBILITY OF LEAD AGENCY. With respect to the environmental review process for any project study, the Federal lead agency shall have authority and responsibility
  - (A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and
  - (B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.
- (e) PARTICIPATING AND COOPERATING AGENCIES.
  - (1) IDENTIFICATION OF JURISDICTIONAL AGENCIES. With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may
    - (A) have jurisdiction over the project;
    - (B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or
    - (C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.
  - (2) STATE AUTHORITY. If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State, the State,

consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that

- (A) have jurisdiction over the project;
- (B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or
- (C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) **INVITATION.**

(A) **IN GENERAL.** The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.

(B) **DEADLINE.** An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) **PROCEDURES.** Section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Water Resources Reform and Development Act of 2014) shall govern the identification and the participation of a cooperating agency.

(5) **FEDERAL COOPERATING AGENCIES.** Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency

- (A) (i) (I) has no jurisdiction or authority with respect to the project;
- (II) has no expertise or information relevant to the project; or
- (III) does not have adequate funds to participate in the project; and
- (ii) does not intend to submit comments on the project;

or

(B) does not intend to submit comments on the project.

(6) **ADMINISTRATION.** A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) **EFFECT OF DESIGNATION.** Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) **CONCURRENT REVIEWS.** Each participating or cooperating agency shall

- (A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and
- (B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(f) PROGRAMMATIC COMPLIANCE.

- (1) IN GENERAL. The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that
- (A) eliminates repetitive discussions of the same issues;
  - (B) focuses on the actual issues ripe for analyses at each level of review;
  - (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that is needed to carry out an environmental review process; and
  - (D) complies with
    - (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
    - (ii) all other applicable laws.
- (2) REQUIREMENTS. In carrying out paragraph (1), the Secretary shall
- (A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;
  - (B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;
  - (C) ensure that the programmatic reviews
    - (i) promote 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, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;
    - (ii) use accurate and timely information in the environmental review process, including
      - (I) criteria for determining the general duration of the usefulness of the review; and
      - (II) the timeline for updating any out-of-date review;
    - (iii) describe
      - (I) the relationship between programmatic analysis and future tiered analysis; and
      - (II) the role of the public in the creation of future tiered analysis; and
    - (iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;
  - (D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and
  - (E) address any comments received under subparagraph (D).

(g) COORDINATED REVIEWS.

(1) COORDINATION PLAN.

(A) ESTABLISHMENT.

- (i) IN GENERAL. The Federal lead agency shall, after consultation with and with the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, establish a plan for coordinating public and agency participation in, and comment on, the

environmental review process for a project study or a category of project studies.

(ii) **INCORPORATION.** The plan established under clause (i) shall be incorporated into the project schedule milestones set under section 905(g)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 2282(g)(2)).

**(B) SCHEDULE.**

(i) **IN GENERAL.** As soon as practicable but not later than 45 days after the close of the public comment period on a draft environmental impact statement, the Federal lead agency, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in subparagraph (A), a schedule for completion of the environmental review process for the project study.

(ii) **FACTORS FOR CONSIDERATION.** In establishing a schedule, the Secretary shall consider factors such as

(I) the responsibilities of participating and cooperating agencies under applicable laws;

(II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;

(III) the overall size and complexity of the project;

(IV) the overall schedule for and cost of the project; and

(V) the sensitivity of the natural and historical resources that could be affected by the project.

(iii) **MODIFICATIONS.** The Secretary may

(I) lengthen a schedule established under clause (i) for good cause; and

(II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.

(iv) **DISSEMINATION.** A copy of a schedule established under clause (i) shall be

(I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and

(II) made available to the public.

**(2) COMMENT DEADLINES.** The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

**(A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS.** For comments by Federal and States agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

**(B) OTHER ENVIRONMENTAL REVIEW PROCESSES.** For all other comment periods established by the Federal lead agency for agency or public comments in

the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(3) **DEADLINES FOR DECISIONS UNDER OTHER LAWS.** In any case in which a decision under any Federal law relating to a project study, including the issuance or denial of a permit or license, is required to be made by the date described in subsection (h)(5)(B)(ii), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives

(A) as soon as practicable after the 180-day period described in subsection (h)(5)(B)(ii), an initial notice of the failure of the Federal agency to make the decision; and

(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project study have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) **INVOLVEMENT OF THE PUBLIC.** Nothing in this subsection reduces any time period provided for public comment in the environmental review process under applicable Federal law (including regulations).

(5) **TRANSPARENCY REPORTING.**

(A) **REPORTING REQUIREMENTS.** Not later than 1 year after the date of enactment of the Water Resources Reform and Development Act of 2014, the Secretary shall establish and maintain an electronic database and, in coordination with other Federal and State agencies, issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.) and any other Federal, State, or local approval or action required for a project study for which this section is applicable.

(B) **PROJECT STUDY TRANSPARENCY.** Consistent with the requirements established under subparagraph (A), the Secretary shall publish the status and progress of any Federal, State, or local decision, action, or approval required under applicable laws for each project study for which this section is applicable.

(h) **ISSUE IDENTIFICATION AND RESOLUTION.**

(1) **COOPERATION.** The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) **FEDERAL LEAD AGENCY RESPONSIBILITIES.**

(A) **IN GENERAL.** The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and

socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) DATA SOURCES. The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) COOPERATING AND PARTICIPATING AGENCY RESPONSIBILITIES. Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION.

(A) IN GENERAL. On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may

(i) delay completion of the environmental review process; or

(ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE. A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION. On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION. If a resolution cannot be achieved within the 30 day-period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY. The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) FINANCIAL PENALTY PROVISIONS.

(A) IN GENERAL. A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE.

(i) IN GENERAL. If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the