



Executive Office of the President
Office of Management and Budget

February 26, 2019

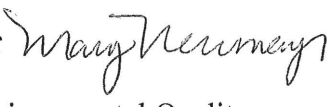


Executive Office of the President
Council on Environmental Quality

M-19-11

MEMORANDUM FOR THE SECRETARY OF TRANSPORTATION

FROM: Russell T. Vought 
Acting Director
Office of Management and Budget

Mary Neumayr 
Chairman
Council on Environmental Quality

SUBJECT: Guidance on the Applicability of E.O. 13807 to States with NEPA Assignment
Authority Under the Surface Transportation Project Delivery Program

Executive Order 13807 (E.O. 13807), "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," seeks to modernize the process for Federal environmental reviews and authorization decisions by making it more coordinated, predictable, and transparent, while protecting public health, safety, and the environment.

The purpose of this memorandum is to provide guidance regarding applicability of E.O. 13807 to State agencies that have been assigned National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program administered by the U.S. Department of Transportation (USDOT).¹ The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) are issuing this guidance pursuant to Section 5(b)(iv)(C) of E.O. 13807, which directs OMB and CEQ to "develop guidance for applying One Federal Decision whenever the lead agency is a State, tribal, or local agency exercising an assignment or delegation of an agency's NEPA responsibilities."²

¹ This Memorandum should be implemented consistent with applicable law, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

² E.O. 13807 Section (b)(iv)(C), 82 Fed. Reg. 40,463 (Aug. 24, 2017).

E.O. 13807 requires Federal agencies to process environmental reviews and authorization decisions for “major infrastructure projects” as One Federal Decision (OFD).³ The order specifically directs lead Federal agencies to develop a schedule, referred to as a “Permitting Timetable,” one Environmental Impact Statement (EIS), and one Record of Decision (ROD), subject to limited exceptions. E.O. 13807 also sets a goal to complete environmental reviews and authorization decisions in not more than an agency average of two years, measured from the date of issuance of a Notice of Intent to prepare an EIS to issuance of the ROD, and directs agencies to have efficient processes in place for timely elevation and resolution of issues that may lead to delays. On March 20, 2018, OMB and CEQ issued guidance and an interagency Memorandum of Understanding for implementation of OFD (OFD MOU), and on April 9, 2018, the President announced the execution of this interagency agreement by eleven Federal agencies and the Federal Permitting Improvement Steering Council (Permitting Council).⁴

Under the Surface Transportation Project Delivery Program established in 2005,⁵ the Secretary of Transportation is authorized to assign, and States to assume, the responsibilities of the Secretary under NEPA with regard to highway, public transportation, railroad, and multimodal projects within the State. 23 U.S.C. § 327. To date, the Secretary has assigned USDOT’s NEPA responsibilities for highway projects to State transportation agencies in Alaska, California, Florida, Ohio, Texas, and Utah, and memorialized these agreements in a Memoranda of Understanding with the States (State MOUs).⁶ Additional States that sign MOUs with DOT for delegation of NEPA responsibilities will be expected to comply with this memo.

Under this program, the Secretary may assign all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project (excluding the Clean Air Act and transportation planning requirements). 23 U.S.C. § 327(a)(2). States assuming the Secretary’s responsibilities are subject to the same procedural and substantive requirements that would apply if those responsibilities were carried out by the Secretary. *Id.* Each of the State MOUs executed to date expressly provides that the assuming State agency shall be subject to

³ See 82 Fed. Reg. 40,463 (Aug. 24, 2017). Under Section 3(e) of E.O. 13807, a “major infrastructure project” is an infrastructure project that requires multiple Federal authorizations, for which a lead agency has decided to prepare an EIS for compliance with the NEPA, and for which the project sponsor has identified reasonable availability of funds.

⁴ The March 20, 2018 Memorandum for Heads of Federal Departments and Agencies (M-18-13) is available at [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_Framework_Guidance_\(M-18-13\)_2018-03-20.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/One_Federal_Decision_Framework_Guidance_(M-18-13)_2018-03-20.pdf). The April 9, 2018 OFD MOU is available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>.

⁵ The Surface Transportation Project Delivery Program was initially established as a pilot program pursuant to Section 6005(a) of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy For Users (SAFETEA-LU (Pub. L. No. 109-59)) and made permanent in 2012 pursuant to Section 1313 of the Moving Ahead for Progress in the 21st Century Act (MAP-21 (Pub. L. No. 112-141)).

⁶ Links to information on the NEPA assignments, including the State MOUs are available at https://www.environment.fhwa.dot.gov/nepa/program_assignment.aspx.

Executive Orders issued by the President of the United States.⁷ Accordingly, State agencies should implement the following elements of the OFD policy set forth in E.O. 13807 for major infrastructure projects:

- Two-year Goal: Consistent with Sections 2(h) and 4(a)(i)(B) of E.O. 13807, the lead State agency should seek to complete environmental reviews and authorization decisions for major infrastructure projects in not more than an average of two years, measured from the Notice of Intent (NOI) to prepare an EIS to the issuance of the ROD. A recommended schedule is attached hereto as Appendix 1.
- Establishing a Permitting Timetable: Consistent with Section 5(a)(ii) of E.O. 13807, the lead State agency should, in coordination with cooperating and participating Federal agencies, develop a Permitting Timetable that includes milestones for applicable environmental reviews and authorizations and is updated at least quarterly.⁸ Consistent with USDOT's current procedures, these schedules should be posted on the Permitting Dashboard.
- Development of EIS/ROD: Consistent with Section 5(b)(ii) of E.O. 13807, the lead State agency should, in coordination with cooperating and participating Federal agencies, develop a single EIS and coordinate a single ROD. The lead State agency should also seek to ensure that all necessary authorization decisions for the construction of the project are completed within 90 days of issuance of the ROD to the extent consistent with Section 5(b)(iii) of E.O. 13807, 23 U.S.C. § 139, and other applicable law.
- Process for Issue Resolution: Consistent with Section 5(a)(iii) of E.O. 13807, the lead State agency should seek to ensure that it has an effective process in place to elevate instances in which a Permitting Timetable milestone is missed or extended, or is anticipated to be missed or extended, to higher level officials (including senior agency leadership) for timely resolution, and that it follows such process.

State agencies are not subject to OMB Memorandum M-18-25 which establishes the accountability system under E.O. 13807 to track Federal agency performance in the processing of environmental reviews and authorization decisions.⁹ However, State agencies are encouraged to track their performance and to take all practicable steps to ensure timely completion of environmental reviews and authorization decisions. USDOT should develop guidance, as appropriate, on the application of the interagency OFD MOU announced on April 9, 2018, to

⁷ Each State MOU includes a Part 5.1.1 which addresses procedural and substantive requirements and states: "Such procedural and substantive requirements include Federal statutes and regulations, Executive Orders issued by the President of the United States"

⁸ Cooperating and participating Federal agencies must work with the state agency to enter target dates in the milestone fields for all applicable agency actions, including environmental reviews and authorization decisions.

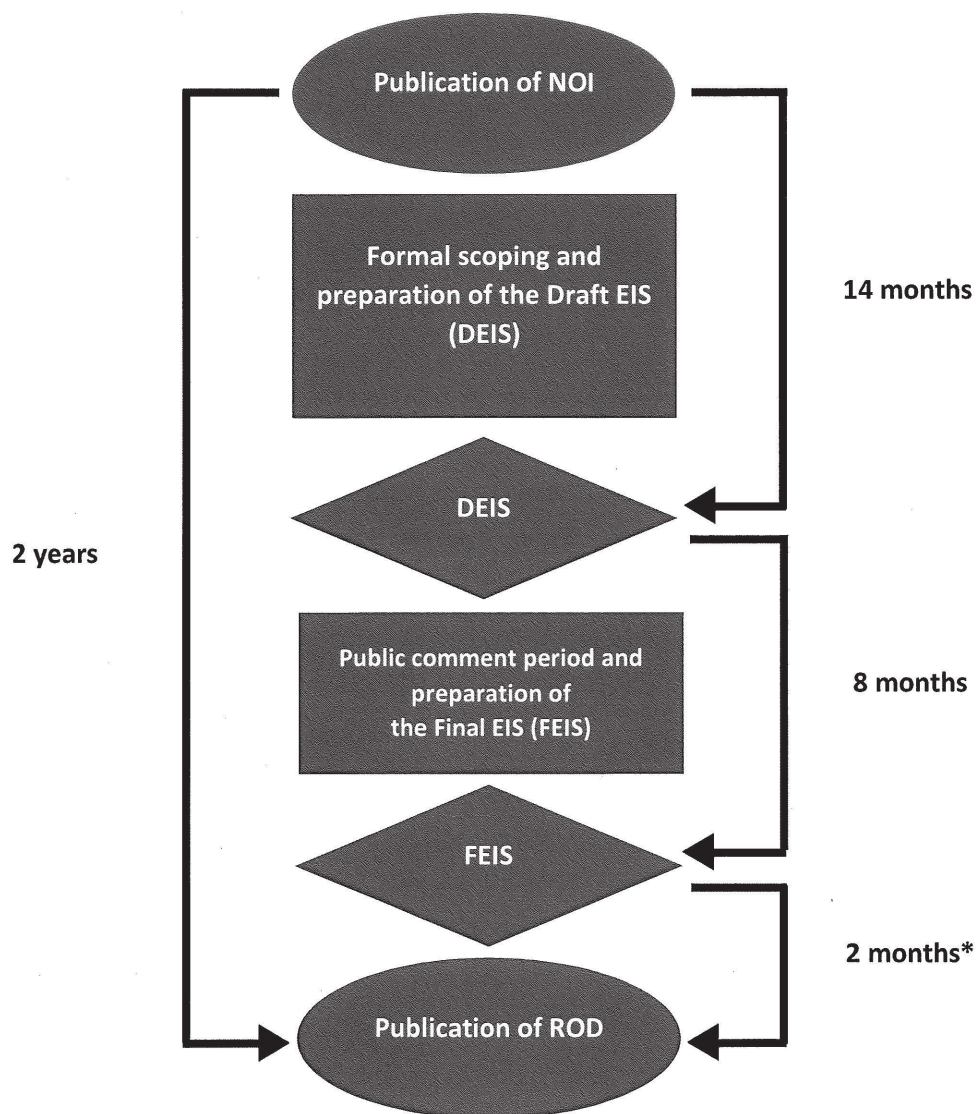
⁹ OMB Memorandum M-18-25 to Heads of Federal Departments and Agencies, "Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System" (September 26, 2018).

State agencies assigned responsibilities under the Surface Transportation Project Delivery Program.¹⁰

If any questions concerning this memorandum arise, please contact Ted Boling at 202-395-5750 or eboling@ceq.eop.gov.

¹⁰ Part 5.1.1 of the State MOUs provides that procedural and substantive requirements may include interagency agreements and other similar documents that relate to the environmental review process.

APPENDIX 1



* FEIS and ROD should be combined to the extent practicable pursuant to 23 U.S.C. § 139.