

Western States Land Commissioners Association



Secretary of Interior, Ryan Zinke has issued a broad directive for modernizing and streamlining the NEPA process contained in Secretarial Order 3355 (copy attached) which reflects recommendations advanced by diverse industry advocates:

1. Setting timelines: Establishes a one-year target for the completion Environmental Impact Statements; Initial timelines will be established by the lead agency prior to publication of a notice of intent to prepare an EIS; deviations of more than three months by the Assistant Secretary over the lead agency.
2. Page limits: No more than 150 pages with exceptions for unusually complex projects.
3. Environmental Assessments: Each bureau directed to submit time and page limits for smaller Environmental Assessments (EAs).
4. Additional Streamlining Measures: Within 30 days, each Assistant Secretary will provide recommendations for further streamlining actions including:
 - Streamlining the surnaming process
 - Development of additional categorical exclusions from NEPA
 - Best practices and their broader deployment including those established in the recent Executive Order on Infrastructure Projects
 - Regulatory and policy revisions

The Secretarial Order serves, in part, as the Department's efforts to implement the President's recent EO 13807 of Establishing Discipline and Accountability in Environmental Review and Permitting for Infrastructure Projects. The Secretarial Order is not limited to infrastructure projects and extends those principles and streamlining efforts to all of DOI's NEPA-related actions. The true test of this reform is whether NEPA processes conducted under this Order can withstand legal challenges.



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3355

Subject: Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”

Sec. 1 Purpose. This Order is intended to: 1) immediately implement certain improvements to National Environmental Policy Act (NEPA) reviews conducted by the Department of the Interior (Department); 2) begin assessment of additional such opportunities; and 3) begin implementation of Executive Order 13807 of August 15, 2017, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (E.O. 13807).

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Other statutory authorities for this Order include, but are not limited to, NEPA, 42 U.S.C. 4321-4347.

Sec. 3 Background. The Department has broad responsibilities to manage Federal lands and resources for the public’s benefit. The NEPA applies to the execution of many of the Department’s responsibilities with the goal of ensuring that information regarding environmental impacts is available to decisionmakers and the public before decisions are made. The NEPA accomplishes this goal by requiring Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment.

Both the Department and the Council on Environmental Quality (CEQ) have issued regulations to implement NEPA. Because the purpose of NEPA’s requirements is not the generation of paperwork, but the adoption of sound decisions based on an informed understanding of environmental consequences, the regulations encourage agencies to: 1) focus on issues that truly matter rather than amassing unnecessary detail; 2) reduce paperwork, including by setting appropriate page limits; 3) discuss briefly issues that are not significant; and 4) prepare analytic (rather than encyclopedic) documents, among other measures.

In recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis, I am issuing this Order to enhance and modernize the Department’s NEPA processes, with immediate focus on bringing even greater discipline to the documentation of the Department’s analyses and identifying opportunities to further increase efficiencies.

This NEPA-streamlining effort dovetails with E.O. 13807. Among other requirements, E.O. 13807 requires CEQ to take actions to enhance and modernize the Federal environmental review process and to form an inter-agency working group to identify agency-specific

impediments to efficient and effective reviews for covered infrastructure projects. This Order begins implementation of E.O. 13807 in the context of the Department's overall effort to streamline the NEPA process.

Sec. 4 **Directives.**

a. Setting Page and Timing Limitations for Environmental Impact Statements.

(1) To implement the longstanding directives in 43 C.F.R. 46.405, and in 40 C.F.R. 1500.4 and 1502.7, all EISs 1) for which a bureau is the lead agency and 2) that have not reached the drafting stage shall not be more than 150 pages or 300 pages for unusually complex projects, excluding appendices. Approval of the Assistant Secretary with responsibility for the matter, in coordination with the Solicitor, is required to produce an EIS exceeding the above stated page limitations. In instances of EISs prepared with bureaus serving as co-leads, each responsible Assistant Secretary shall approve any deviations from this policy. To meet the page limitations, each preparer should focus on various techniques such as tiering or incorporation by reference.

(2) To ensure timely completion of EISs, and consistent with the timelines established for major infrastructure projects in E.O. 13807, each bureau shall have a target to complete each Final EIS for which it is the lead agency within 1 year from the issuance of a Notice of Intent (NOI) to prepare an EIS. The initial timeline must be developed by the lead bureau before issuing the NOI in accordance with 43 C.F.R. 46.240, taking into account all relevant timing factors listed therein, including any constraints required by cooperating agencies. An updated timeline should be prepared as needed during the development of the EIS (e.g., at the completion of scoping or if additional time is provided for public comment). Timelines exceeding the target by more than 3 months must be approved by the Assistant Secretary with responsibility for the matter. In instances of EISs prepared with bureaus serving as co-leads, each responsible Assistant Secretary must approve any deviations from this policy.

b. Setting Target Page and Timing Limitations for the Preparation of Environmental Assessments. Within 30 days, each bureau head shall provide to the Deputy Secretary through its supervising Assistant Secretary a proposal for target page limitations and time deadlines for the preparation of environmental assessments. Any common impediments to achieving the proposed targets should also be identified. In developing its proposal, each bureau should consider guidance from CEQ on the page length of environmental assessments. (Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,037, Question and Answer 36a. (Mar. 23, 1981)).

c. Additional NEPA-Streamlining Review.

(1) The Deputy Secretary will coordinate a review of the Department's NEPA procedures to identify additional ways to streamline the completion of NEPA responsibilities. The review will include, but is not limited to, the following areas:

(a) bureau/office NEPA regulations, policies, guidance, and processes to identify: 1) impediments to efficient and effective reviews; 2) best practices and whether they can be implemented more widely; and 3) whether the Department should consider establishing additional categorical exclusions or revising current ones;

(b) requirements and process improvements under Title 41 of the Fixing America's Surface Transportation (FAST) Act, 42 U.S.C. 4370m-1(c)(1)(D), to determine whether any best practices can be broadly applied, including to projects beyond the terms of the FAST Act;

(c) requirements and process improvements required by E.O. 13807, to determine whether any best practices can be broadly applied, including to any projects beyond the terms of E.O. 13807; and

(d) CEQ NEPA regulations and guidance to assess whether to recommend changes to facilitate agency processes.

(2) Within 30 days of the effective date of this Order, each Assistant Secretary, in coordination with bureau heads, should provide recommendations for actions to streamline the NEPA process to include potential regulatory revisions, development of revised or additional categorical exclusions, revised or new guidance or policies, and recommendations on streamlining the naming process.

d. Implementation of E.O. 13807. The Deputy Secretary will also coordinate implementation of E.O. 13807.

(1) In order to begin implementation of E.O. 13807, each Assistant Secretary, in coordination with the bureau heads, is hereby directed to identify:

(a) potential impediments to efficient and effective reviews for infrastructure and develop an action plan to address such impediments as a subset of the review required in Sec. 4c(1)(a) above;

(b) potential actions that could be taken by CEQ to facilitate a review of major infrastructure projects, as a subset of the review required in Sec. 4c(1)(d) above; and

(c) pending proposals for major infrastructure projects, as defined in E.O. 13807 and that are not yet the subject of a NOI issued by the Department, that could be candidates for the "One Federal Decision" process.

(2) Within 30 days of the effective date of this Order, each Assistant Secretary, in coordination with the bureau heads, should provide the information requested in Sec. 4d(1)(a)-(c) above.

Sec. 5 Implementation. The Deputy Secretary is responsible for implementing all aspects of this Order, in coordination with the Solicitor and the Assistant Secretaries.

Sec. 6 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting report or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officer or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Expiration Date. This Order is effective immediately and will remain in effect until it is amended, superseded, or revoked, whichever occurs first.

Date: AUG 31 2017

Deputy Secretary
