

Executive Order 13807 of August 15, 2017

Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent, it is hereby ordered as follows:

Section 1. Purpose. America needs increased infrastructure investment to strengthen our economy, enhance our competitiveness in world trade, create jobs and increase wages for our workers, and reduce the costs of goods and services for our families. The poor condition of America's infrastructure has been estimated to cost a typical American household thousands of dollars each year. Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment. More efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions.

Sec. 2. Policy. It is the policy of the Federal Government to:

- (a) safeguard our communities and maintain a healthy environment;
- (b) ensure that Federal authorities make informed decisions concerning the environmental impacts of infrastructure projects;
- (c) develop infrastructure in an environmentally sensitive manner;
- (d) provide transparency and accountability to the public regarding environmental review and authorization decisions;
- (e) be good stewards of public funds, including those used to develop infrastructure projects, and avoid duplicative and wasteful processes;
- (f) conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner in order to give public and private investors the confidence necessary to make funding decisions for new infrastructure projects;
- (g) speak with a coordinated voice when conducting environmental reviews and making authorization decisions; and
- (h) make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.

Sec. 3. Definitions. The terms of this order shall be applied consistently with those defined under 42 U.S.C. 4370m and implementing guidance to the maximum extent possible. The following definitions shall specifically apply:

(a) “Authorization” means any license, permit, approval, finding, determination, or other administrative decision issued by a Federal department or agency (agency) that is required or authorized under Federal law in

Start Printed Page 40464

order to site, construct, reconstruct, or commence operations of an infrastructure project, including any authorization under 42 U.S.C. 4370m(3).

(b) “CAP Goals” means Federal Government Priority Goals established by the Government Performance and Results Act (GPRA) Modernization Act of 2010, Public Law 111-352, 124 Stat. 3866, and commonly referred to as Cross-Agency Priority (CAP) Goals.

(c) “Federal Permitting Improvement Steering Council” or “FPISC” means the entity established under 42 U.S.C. 4370m-1.

(d) “Infrastructure project” means a project to develop the public and private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband Internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the FPISC.

(e) “Major infrastructure project” means an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.

(f) “Permitting timetable” means an environmental review and authorization schedule, or other equivalent schedule, for a project or group of projects that identifies milestones—including intermediate and final completion dates for action by each agency on any Federal environmental review or authorization required for a project or group of projects—that is prepared by the lead Federal agency in consultation with all cooperating and participating agencies.

Sec. 4. Agency Performance Accountability. Federal agencies should follow transparent and coordinated processes for conducting environmental reviews and making authorization decisions. These processes must include early and open coordination among Federal, State, tribal, and local agencies and early engagement with the public. Holding Federal agencies accountable for their progress on implementing

the policy set forth in section 2 of this order should, among other things, produce measurably better environmental outcomes with respect to infrastructure development.

(a) Performance Priority Goals.

(i) CAP Goal. A CAP Goal is a Federal tool for accelerating progress in priority areas that require active collaboration among multiple agencies to overcome organizational barriers and to achieve better performance than one agency could achieve on its own. Within 180 days of the date of this order, the Director of the Office of Management and Budget (OMB), in consultation with the FPISC, shall establish a CAP Goal on Infrastructure Permitting Modernization so that, where permitted by law:

(A) Federal environmental reviews and authorization processes for infrastructure projects are consistent, coordinated, and predictable; and

(B) the time for the Federal Government's processing of environmental reviews and authorization decisions for new major infrastructure projects should be reduced to not more than an average of approximately 2 years, measured from the date of the publication of a notice of intent to prepare an environmental impact statement or other benchmark deemed appropriate by the Director of OMB.

(ii) Agency Goals. All Federal agencies with environmental review, authorization, or consultation responsibilities for infrastructure projects shall modify their Strategic Plans and Annual Performance Plans under the

Start Printed Page 40465

GPRA Modernization Act of 2010 to include agency performance goals related to the completion of environmental reviews and authorizations for infrastructure projects consistent with the new CAP Goal on Infrastructure Permitting Modernization. The agencies shall integrate the achievement of these performance goals into appropriate agency personnel performance plans, such as those of the agency Chief Environmental Review and Permitting Officers (CERPOs) or other appropriate officials, consistent with guidance to be provided by OMB, in consultation with the Office of Personnel Management. Progress on these goals shall be reviewed and analyzed by agency leadership, pursuant to the GPRA Modernization Act of 2010.

(b) Accountability. Within 180 days of the establishment of the CAP Goal on Infrastructure Permitting Modernization, as described in subsection (a) of this section, or such longer period of time as determined by the Director of OMB, OMB, in consultation with the FPISC, shall issue guidance for establishing a performance accountability system to facilitate achievement of the CAP Goal.

(i) Tracking of Major Infrastructure Projects. The performance accountability system shall track each major infrastructure project. The performance accountability system shall include, at a minimum, assessments of the agency's performance with respect to each of the following areas, as applicable:

(A) whether major infrastructure projects are processed using the "One Federal Decision" mechanism, as described in subsection 5(b) of this order;

(B) whether major infrastructure projects have a permitting timetable;

(C) whether major infrastructure projects follow an effective process that automatically elevates instances in which permitting timetable milestones are missed or extended, or are anticipated to be missed or extended, to appropriate senior agency officials;

(D) whether agencies are meeting the established milestones in the permitting timetable;

(E) the time it takes to complete the processing of environmental reviews and authorizations for each major infrastructure project; and

(F) the costs of the environmental reviews and authorizations for each major infrastructure project.

(ii) Scoring. The accountability system shall include a scoring mechanism that shall follow, at a minimum, the following procedures:

(A) agencies will submit information to OMB, consistent with existing reporting mechanisms to the maximum extent possible, on the assessment areas described in subsection (b)(i) of this section;

(B) at least once per quarter, OMB will produce a scorecard of agency performance and overall progress toward achieving CAP Goal targets;

(C) where an agency's inability to meet a permitting timetable milestone results in a significant delay of the project timeline, after consulting with the project sponsor and relevant agencies, agencies will submit (based on OMB guidance) an estimate of the delay's costs to the project; and

(D) the Director of OMB will consider each agency's performance during budget formulation and determine whether appropriate penalties, including those authorized at 23 U.S.C. 139(h)(7) and 33 U.S.C. 2348(h)(5), must or should be imposed, to the extent required or permitted by law, for those that significantly fail to meet a permitting timetable milestone or in other situations deemed appropriate by the Director of OMB after considering the causes of any poor performance.

(iii) Best Practices. Agencies shall implement the techniques and strategies the FPISC annually identifies as best practices pursuant to 42 U.S.C. 4370m-1(c)(2)(B), as appropriate. The performance accountability system

Start Printed Page 40466

shall track and score agencies on the incorporation and implementation of appropriate best practices for all infrastructure projects, including the implementation of such best practices at an agency's field level.

Sec. 5. Process Enhancements. In furtherance of the policy described in section 2 of this order, Federal agencies shall follow a more unified environmental review and authorization process.

(a) Processing of Major Infrastructure Projects. In processing environmental reviews and authorizations for major infrastructure projects, Federal agencies shall:

(i) use “One Federal Decision” described in subsection (b) of this section;

(ii) develop and follow a permitting timetable, which shall be reviewed and updated at least quarterly by the lead Federal agency in consultation with Federal cooperating and participating agencies; and

(iii) follow an effective process that automatically elevates instances where a permitting timetable milestone is missed or extended, or is anticipated to be missed or extended, to appropriate senior agency officials of the lead Federal agency and the cooperating and participating Federal agency or agencies to which the milestone applies.

(b) One Federal Decision.

(i) Each major infrastructure project shall have a lead Federal agency, which shall be responsible for navigating the project through the Federal environmental review and authorization process, including the identification of a primary Federal point of contact at each Federal agency. All Federal cooperating and participating agencies shall identify points of contact for each project, cooperate with the lead Federal agency point of contact, and respond to all reasonable requests for information from the lead Federal agency in a timely manner.

(ii) With respect to the applicability of NEPA to a major infrastructure project, the Federal lead, cooperating, and participating agencies for each major infrastructure project shall all record any individual agency decision in one Record of Decision (ROD), which shall be coordinated by the lead Federal agency unless the project sponsor requests that agencies issue separate NEPA documents, the NEPA obligations of a cooperating or participating agency have already been satisfied, or the lead Federal agency determines that a single ROD would not best promote completion of the project's environmental review and authorization process. The Federal lead, cooperating, and participating agencies shall all agree to a permitting timetable that includes the completion dates for the ROD and the federally required authorizations for the project.

(iii) All Federal authorization decisions for the construction of a major infrastructure project shall be completed within 90 days of the issuance of a ROD by the lead Federal agency, provided that the final EIS includes an adequate level of detail to inform agency decisions pursuant to their specific statutory authority and requirements. The lead Federal agency may extend the 90-day deadline if the lead Federal agency determines that Federal law prohibits the agency from issuing its approval or permit within the 90-day period, the project sponsor requests that the permit or approval follow a different timeline, or the lead Federal agency determines that an extension would better promote completion of the project's environmental review and authorization process.

(iv) The Council on Environmental Quality (CEQ) and OMB shall develop the framework for implementing One Federal Decision, in consultation with the FPISC.

(A) The framework should be consistent with the model processes established under 42 U.S.C. 4370m-2, 23 U.S.C. 139, 33 U.S.C. 2348, the 2015 “Red Book” (officially entitled “Synchronizing Environmental

Reviews for Transportation and Other Infrastructure Projects”), and CEQ guidance on efficient and timely environmental reviews under NEPA.

Start Printed Page 40467

(B) The framework shall also include guidance on the development of permitting timetables by the lead Federal agencies, in collaboration with Federal cooperating and participating agencies. Permitting timetables shall identify estimated intermediate and final completion dates for all environmental reviews and authorizations that are reasonably anticipated as being needed for a project, including the process for granting extensions of any established dates. The guidance shall specify that lead Federal agencies need not include the estimated intermediate and final completion dates of any such reviews or authorizations until the design of a project has sufficiently advanced so that they can be developed. In such cases, the guidance shall instruct lead Federal agencies to estimate when the project's design will be advanced enough to determine such dates. The timelines shall account for any federally required decisions or permits that are assumed by, or delegated to, State, tribal, or local agencies and the extent to which any approval or permit to be issued by a Federal agency is dependent upon the issuance of such a decision or permit.

(C) CEQ and OMB shall also 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.

(c) Dashboard. All projects subject to 23 U.S.C. 139 and “covered projects” under 42 U.S.C. 4370m shall be tracked on the Dashboard established under 42 U.S.C. 4370m-2(b). Other projects or classes of projects subject to special environmental review and authorization streamlining processes similar to those referenced in this subsection may also be tracked on the Dashboard at the discretion of the FPISC Executive Director. The dates for milestones of all projects tracked on the Dashboard shall be updated monthly, or on another appropriate timeline as may be determined by the FPISC Executive Director.

(d) Executive Order 13766. For purposes of implementing Executive Order 13766 of January 24, 2017 (Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects), all infrastructure projects that meet the criteria for, and are subject to, 23 U.S.C. 139, 33 U.S.C. 2348, or 42 U.S.C. 4370m-4370m-12 shall qualify as high priority projects under Executive Order 13766. Other projects or classes of projects subject to special environmental review and authorization streamlining processes, similar to those referenced in this subsection as may be determined by the FPISC Executive Director in consultation with OMB and CEQ, shall also qualify as high priority infrastructure projects under Executive Order 13766. The CEQ Chairman's responsibilities under sections 2 and 3 of Executive Order 13766 shall be satisfied by referring the project to the FPISC Executive Director, the Secretary of Transportation, or the Assistant Secretary of the Army for Civil Works, as appropriate.

(e) Council on Environmental Quality.

(i) Directives. Within 30 days of the date of this order, the CEQ shall develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. Such actions should include issuing such regulations, guidance, and directives as CEQ may deem necessary to:

(A) ensure optimal interagency coordination of environmental review and authorization decisions, including by providing for an expanded role and authorities for lead agencies, more clearly defined responsibilities for cooperating and participating agencies, and Government-wide applicability of NEPA decisions and analyses;

(B) ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient;

(C) provide for agency use, to the maximum extent permitted by law, of environmental studies, analysis, and decisions conducted in support

Start Printed Page 40468

of earlier Federal, State, tribal, or local environmental reviews or authorization decisions; and

(D) ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, including by using CEQ's authority to interpret NEPA to simplify and accelerate the NEPA review process.

(ii) Dispute Resolution. Except where dispute resolution processes are otherwise provided for in law, including under 42 U.S.C. 4370m-2, or by Executive Order or other Presidential directive, upon request of a lead Federal agency, cooperating agency, or participating agency, CEQ may mediate interagency disputes arising between Federal agencies concerning Federal environmental review or authorization decisions for any infrastructure project pertaining to any environmental law, regulation, order or policy, and shall facilitate resolution of any conflicting positions of the relevant agencies.

(iii) Agency Procedures. CEQ shall form and lead an interagency working group, consisting of the Director of OMB, agency CERPOs, and such other representatives of agencies as CEQ deems appropriate. The working group shall review the NEPA implementing regulations and other environmental review and authorization processing policies of agencies that are members of the FPISC to identify impediments to efficient and effective environmental reviews and authorizations for infrastructure projects. The working group shall also identify those agencies that require an action plan to address identified impediments. Based on this review, agencies shall develop action plans that set forth the actions they will take and timelines for completing those actions, and they shall submit those action plans to CEQ and OMB for comment. Each agency's action plan shall, at a minimum, establish procedures for a regular review and update of categorical exclusions, where appropriate.

(f) Federal Permitting Improvement Steering Council.

(i) Organizational Support. Unless otherwise determined by the Director of OMB, the General Services Administration (GSA) shall provide necessary administrative and organizational support to the FPISC,

including personnel, procurement, and budget support. The GSA Administrator, or the head of another agency designated by the Director of OMB, may delegate any authority to the FPISC Executive Director necessary for the operation and administration of the FPISC and the Office of the Executive Director, and the Executive Director may redelegate these authorities, as appropriate.

(ii) **Additional Duties.** In addition to the duties and responsibilities charged to the FPISC Executive Director under 42 U.S.C. 4370m-4370m-12 and this order, the FPISC Executive Director may, upon request of a FPISC member agency or a project sponsor, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project regardless of whether the project is a “covered project” under 42 U.S.C. 4370m, including by resolving disputes and promoting early coordination. The FPISC Executive Director, the Director of OMB, or the Chairman of CEQ may establish any appropriate policies or procedures concerning the FPISC Executive Director's facilitation of the environmental review and authorization process under this subsection. Agencies must cooperate with the FPISC Executive Director with respect to the implementation of these additional duties.

(g) **Energy Corridors.** The Departments of the Interior and Agriculture, as appropriate, shall be the lead agencies for facilitating the identification and designation of energy right-of-way corridors on Federal lands for Government-wide expedited environmental review for the development of energy infrastructure projects.

(h) The Department of the Interior shall provide to OMB a strategy and recommendations for a multi-agency reorganization effort that would further

Start Printed Page 40469

the aims of this order. OMB, in consultation with the Department of the Interior, shall coordinate with the heads of other agencies affected to incorporate the strategy, as appropriate, into the comprehensive reorganization plan developed under Executive Order 13781 of March 13, 2017 (Comprehensive Plan for Reorganizing the Executive Branch).

Sec. 6. Executive Order 13690 of January 30, 2015 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), is revoked.

Sec. 7. **General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.

THE WHITE HOUSE, August 15, 2017. Filed 8-23-17; 11:15 am]