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Office of Management and Budget



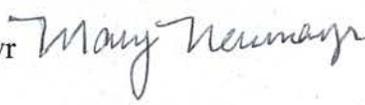
Executive Office of the President
Council on Environmental Quality

June 28, 2019

M-19-20

MEMORANDUM FOR THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

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 Responsible Entities Assuming
Department of Housing and Urban Development Environmental Review
Responsibilities

The purpose of this memorandum is to provide guidance regarding applicability of Executive Order (E.O.) 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects" to responsible entities that have assumed National Environmental Policy Act (NEPA) and other environmental responsibilities under 24 C.F.R. Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," administered by the Department of Housing and Urban Development (HUD).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. For purposes of this Memorandum, responsible entities include States, units of general local government, and Indian tribes (responsible entities).

² E.O. 13807 Section 5(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-wide 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

Section 104(g) of the Housing and Community Development Act of 1974, as amended, authorizes the Secretary of HUD to release funds to responsible entities, including to States, units of general local government, and Indian tribes, that assume all of the Secretary’s responsibilities for environmental review, decision-making, and action under the Community Development Block Grant Program. *See* 42 U.S.C. § 5304(g).⁵ Since 1974, Congress has expanded the Secretary’s authority to condition the release of funds to responsible entities on their assumption of the Secretary’s environmental review responsibilities for other HUD programs, including the HOME Investment Partnerships Program, the Neighborhood Stabilization Program, the Public Housing Program, and the Section 8 Voucher Program.

HUD has consolidated the process for assumption of its environmental review responsibilities in 24 C.F.R. Part 58 (Part 58), which applies broadly to responsible entities that are grantees or are otherwise authorized by statute to assume HUD’s environmental responsibilities under a HUD program. 24 C.F.R. § 58.2(a)(7). Under Part 58, a responsible entity must perform any environmental review, decision-making, and action that would otherwise be required of HUD under NEPA and other laws that further NEPA’s purposes. *Id.* § 58.4(a). Similarly, as part of its assumption of the Secretary’s duties, an officer for the responsible entity must certify its completion of HUD’s environmental review responsibilities, assume the status of Federal official under NEPA, and waive sovereign immunity before receiving HUD funds.⁶ *See id.* § 58.13(a). Under these

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 CEQ NEPA implementing regulations acknowledge HUD’s environmental review assumption authority and define “Federal agency” to include “States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act.” 40 C.F.R. § 1508.12. Section 104(g) of the current statute was originally designated as Section 104(h) of the Housing and Community Development Act of 1974.

⁶ A responsible entity’s certifying official must attest to compliance with Part 58 in HUD Form 7015.15 prior to the responsible entity or grantee receiving Federal funds from a HUD program. HUD Form 7015.15 is available at <https://www.hud.gov/sites/documents/7015.15.pdf>.

authorities, a responsible entity is subject to the same procedural and substantive requirements that would apply if those responsibilities were carried out by the Secretary. Accordingly, when acting as the lead Federal agency, responsible entities should implement the following elements of the OFD policy set forth in E.O. 13807:

- Two-year Goal: Consistent with Sections 2(h) and 4(a)(i)(B) of E.O. 13807, the lead responsible entity 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.
- Establishment of a Permitting Timetable: Consistent with Section 5(a)(ii) of E.O. 13807, the lead responsible entity 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.⁷
- Development of EIS and ROD: Consistent with Section 5(b)(ii) of E.O. 13807, the lead responsible entity should, in coordination with cooperating and participating Federal agencies, develop a single EIS and coordinate a single ROD. The lead responsible entity 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, and other applicable law.
- Process for Issue Resolution: Consistent with Section 5(a)(iii) of E.O. 13807, the lead responsible entity should seek to ensure that it has a 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 responsible entity leadership) for timely resolution, and that it follows such process.

Responsible entities 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.⁸ However, responsible entities are encouraged to track their performance and to take all practicable steps to ensure timely completion of environmental reviews and authorization decisions. HUD should develop guidance, as appropriate, on the application of the interagency OFD MOU announced on April 9, 2018, to responsible entities assigned responsibilities under Part 58.

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

⁷ Cooperating and participating Federal agencies must work with the responsible entity to enter target dates in the milestone fields for all applicable agency actions, including environmental reviews and authorization decisions.

⁸ 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).

APPENDIX 1

