




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 26, 2018

THE DIRECTOR

M-18-25

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Mick Mulvaney  
Director 

SUBJECT: Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System

On August 15, 2017, the President signed Executive Order (EO) 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” EO 13807 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.

In accordance with EO 13807, through this Memorandum, the Office of Management and Budget (OMB), in consultation with the Council on Environmental Quality (CEQ) and the Federal Permitting Improvement Steering Council, is establishing and issuing guidance to implement a performance accountability system that tracks the environmental review and authorization decision process for major infrastructure projects, engages agency officials in regular reviews of agency performance, and facilitates achievement of the Cross-Agency Priority Goal (CAP Goal) to Modernize Infrastructure Permitting.<sup>1</sup> This Memorandum provides guidance to Federal agencies on how to comply with the new performance accountability system.

**Performance Accountability System Overview**

The performance accountability system established by OMB through this Memorandum requires agencies to track compliance with the One Federal Decision (OFD) policy and related provisions of EO 13807. The information submitted to the system will allow agencies to determine the appropriate focus of resources, diagnose problems, and find opportunities for improvement. Over time, assessments will facilitate agency implementation of strategic objectives and performance plans, inform long-term decision making, and provide a basis for incorporating lessons learned into future agency program goals.

OMB will review agencies’ performance accountability through the new system at least once each quarter and will publish a quarterly scorecard of agency performance and overall progress toward achieving CAP Goal targets. Section 4(b)(ii)(D) of EO 13807 requires the Director of

<sup>1</sup> CAP Goals were established by the Government Performance and Results Modernization Act of 2010, Public Law 111-352.

OMB to “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.”

The accountability system applies to all Federal agencies that have a role in the environmental review and permitting process for major infrastructure projects.<sup>2</sup> It applies to all major infrastructure projects<sup>3</sup> with a notice of intent (NOI) to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., published after August 15, 2017. Agencies’ Chief Environmental Review and Permitting Officers (CERPO), or other senior officials designated by the respective agencies, will be responsible for overseeing the implementation of the accountability system at the agencies.

### **CAP Goal and Plans**

The performance accountability system will facilitate achievement of the CAP Goal to Modernize Infrastructure Permitting<sup>4</sup>, which aims to improve the Federal environmental review and authorization process, while also ensuring that potential impacts on environmental and community resources are considered and managed throughout the planning process, by:

- Reducing the time for the Federal Government's processing of environmental reviews and authorization decisions for new major infrastructure projects to an average of 2 years; and
- Providing consistent, coordinated, and predictable Federal environmental reviews and authorization processes for infrastructure projects.

All Federal agencies with environmental review, authorization, or consultation responsibilities for infrastructure projects<sup>5</sup> must modify their Strategic Plans and Annual Performance Plans under the Government Performance and Results Act (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 to Modernize Infrastructure Permitting.

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<sup>2</sup> Exec. Order No. 13807 § 3(e). Independent regulatory agencies, as defined in 44 U.S.C. § 3502(5), should comply with the Executive Order to the maximum extent practicable, consistent with such agency’s status as an independent agency, statutory requirements, and such agency’s regulations and procedures.

<sup>3</sup> A “major infrastructure project” is “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.” Section 3(e) of EO 13807.

<sup>4</sup> More information on this CAP Goal is available at: [https://www.performance.gov/CAP/CAP\\_goal\\_12.html](https://www.performance.gov/CAP/CAP_goal_12.html).

<sup>5</sup> An “infrastructure project” is “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.” Section 3(d) of EO 13807.

## Agency Reporting

Under the accountability system, in accordance with section 4(b)(ii)(A) of EO 13807, agencies must submit information on the following assessment areas for major infrastructure projects: (1) whether major infrastructure projects are processed using the “One Federal Decision” framework, (2) whether major infrastructure projects have a complete Permitting Timetable; (3) the extent to which agencies are meeting major milestones in the Permitting Timetable for major infrastructure projects; (4) whether delays for major infrastructure projects follow a process of elevation to senior agency officials; (5) the length of time it takes to complete the processing of environmental reviews and authorizations for each major infrastructure project; and (6) the cost of the environmental reviews and authorizations for each major infrastructure project.<sup>6</sup> Following the issuance of this Memorandum, agencies should begin reporting this information as further indicated below.

Agencies should provide information on the six assessment areas by entering it on the Federal Agency Portal (“back-end”) of the Permitting Dashboard. Each “major infrastructure project” must be entered in the Federal Agency Portal. For each project, fields corresponding to each relevant environmental review and authorization decision are designed to capture information necessary for OMB’s accountability assessment. This section explains how each of the assessment areas for which agencies are required to provide data under section 4(b)(ii)(A) of EO 13807 will be tracked through the Federal Agency Portal.

1. One Federal Decision Implementation: Whether major infrastructure projects are processed using the OFD framework.

Lead agencies<sup>7</sup> must verify on the Federal Agency Portal whether each major infrastructure project is being processed in accordance with OFD,<sup>8</sup> and if not, specify the reason the project should not be processed using OFD. The agency must update the OFD implementation status at least quarterly to ensure that it accurately indicates whether each major infrastructure project is being processed using OFD.

Additionally, agencies must separately submit to OMB a quarterly list<sup>9</sup> of all infrastructure-related projects for which they have published NOIs to prepare EISs under NEPA in the

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<sup>6</sup> In addition to these six assessment areas, section 4(b)(iii) of EO 13807 also requires OMB to track agencies on their implementation of best practices from the Federal Permitting Improvement Steering Council’s (FPISC’s) annual “Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects” report. Agencies do not need to submit separate data on this indicator for the accountability system. Agency assessments on this indicator will be based on and align with the best practices report.

<sup>7</sup> For more information about the determination and roles and responsibilities of the lead agency under One Federal Decision, see OMB/CEQ Memorandum M-18-13 to Heads of Federal Departments and Agencies, “One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807” (March 20, 2018).

<sup>8</sup> For more information about One Federal Decision, see EO 13807 and OMB/CEQ Memorandum M-18-13.

<sup>9</sup> OMB will provide a template to agencies.

previous quarter.<sup>10</sup> OMB will use this information to assess the extent to which agencies are processing major infrastructure projects under OFD as appropriate.

2. Permitting Timetables: Whether major infrastructure projects have a complete Permitting Timetable.<sup>11</sup>

Lead agencies will be responsible for uploading the content of each Permitting Timetable to the Federal Agency Portal. The lead agency, in consultation with cooperating and participating agencies, must develop a permitting timetable and enter target dates in the milestone fields for all applicable agency actions as soon as practicable after the project is sufficiently advanced to allow the determination of relevant milestones.<sup>12</sup> A Permitting timetable for major infrastructure projects must be uploaded onto the Federal Agency Portal no later than 30 days after the publication of the NOI. The Federal Agency Portal is pre-populated with the major milestones for each kind of major agency action. The major milestones correspond to the milestones set forth in the most current version of Appendix B of the OMB/CEQ “Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects” (M-17-14). To have a complete Permitting Timetable, agencies must enter the target completion dates for the milestones (and actual completion dates for already completed milestones) for each of the relevant agency actions. OMB will use this information to assess the extent to which major infrastructure projects have complete Permitting Timetables.

3. Meeting Milestones: Extent to which agencies are meeting major milestones in the Permitting Timetable for major infrastructure projects.

Lead agencies, in consultation with cooperating and participating agencies, will be responsible for updating the status of major milestones for all applicable agency actions. Lead agencies may delegate the responsibility of updating milestones for specific environmental reviews and authorization decisions to the cooperating or participating agencies, but remain responsible for approving any changes to the Permitting Timetable. Any changes in milestone target dates must be notated in the entry for that milestone, along with the reason(s) for the change in target date. Additionally, in the event of delays outside of the Federal Government’s control where new milestone dates cannot be determined, agencies can list the status of an environmental review or authorization decision as “Paused.” For example, if an agency is waiting on the project sponsor to submit additional information in order to complete an authorization decision and the project sponsor cannot provide an estimated date for providing the information, the agency can mark the status of the action as “Paused”. Once the agency receives the estimated date for receiving the required information

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<sup>10</sup> Under CEQ regulations, an agency is required to publish an NOI to prepare an EIS as soon as practicable after its decision to prepare one. 40 C.F.R. § 1501.7. Under EO 13807, subject to limited exceptions, every infrastructure project that requires multiple Federal authorizations, and for which an agency has decided to prepare an EIS, should be processed using the OFD framework if the project sponsor has identified the reasonable availability of funds sufficient to complete the project.

<sup>11</sup> A “permitting timetable” is “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.” Section 3(f) of EO 13807.

<sup>12</sup> Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807 (April 9, 2018) § VII.A.

from the sponsor, the agency should change the status of the action back to “In Progress” and update the relevant milestone target dates.<sup>13</sup> OMB will use this information to track each agency’s progress in meeting milestones for each action.<sup>14</sup>

4. Elevation Procedures: Whether delays for major infrastructure projects follow a process of elevation to senior agency officials.

For major infrastructure projects, agencies are required to establish and implement a process that elevates schedule delay issues to senior agency officials when it is anticipated that one or more milestones will be missed or need to be extended such that a delay of more than 30 days of the final target completion date of the relevant agency action will occur.<sup>15</sup> Within 45 days of the issuance of this Memorandum, agencies must submit a summary of their elevation process to OMB. Agencies may submit an existing elevation process if one is already being implemented (e.g., the elevation process outlined in agencies’ One Federal Decision Implementation Plans or in an agency’s statute or internal guidance).

For each such delay or extension, agencies must indicate in the Federal Agency Portal whether the agency used its elevation process to refer the matter to appropriate senior agency officials. OMB will use this information to assess agency performance on elevation procedures.

5. Time to Complete Environmental Review and Authorization Decisions: Length of time it takes to complete the processing of environmental reviews and authorization decisions for each major infrastructure project.

Agencies will not be required to report any additional information in order to comply with this criteria. OMB will track completion times based on the data reported quarterly for other assessment areas, such as the number of days from the publication of the NOI to the signed record of decision (ROD), and the number of days from the ROD to the date of issuance of the final authorization decisions for the project. OMB will use this information to assess agency performance on completion times.

6. Cost of Environmental Reviews and Authorization Decisions: Cost of the environmental reviews and authorization decisions for each major infrastructure project.

At project completion, the lead agency, in consultation with cooperating and participating agencies, must report the estimated cost to the Government for the environmental review and

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<sup>13</sup> On the Federal Agency Portal, agencies will be able to indicate whether the status of an environmental review or authorization decision is “Planned,” “In Progress,” “Paused,” “Cancelled,” or “Complete.” OMB will apply this performance indicator only to milestones in which the action status is “In Progress.” OMB will not consider the milestone missed for this performance indicator if the reason for moving the milestone to a later date is outside of the agency’s control (e.g., project sponsor factor, or date was dependent on another milestone outside of the agency’s control that was not met).

<sup>14</sup> Agencies will have up to five business days to update a milestone target date that has passed (e.g., mark the milestone as complete, change the target completion date) before it is considered a missed milestone.

<sup>15</sup> Agencies will not be required to use the elevation procedure when the missed or extended date is caused by reasons outside of the agency’s control (e.g., project sponsor factor, date was dependent on another milestone outside of the agency’s control that was not met) or if the milestone is associated with an Action that is in “Planned” or “Paused” status.

authorization process. Agencies should include the cost of their Full-Time Equivalent (FTE) hours and contractor costs related to the project.

When calculating costs, agencies should include subject matter experts who participate in a portion of the review or project management, managers or supervisors who have direct or indirect oversight of major infrastructure projects, and attorneys who review documents pertaining to the review. Agencies also should include contractors that are funded directly by the agency and third-party contractors that are supervised by the agency but funded by another party. Agencies will not be required to track and report non-direct staff hours (e.g., administrative support staff or human resources) or other indirect costs (e.g., overhead).

Within 90 days of the issuance of this Memorandum, agencies must submit to OMB for review and approval a methodology of how they plan to calculate the costs of the environmental and authorization decisions for each major infrastructure project and a brief description of the level of effort (e.g., time and resources) that would be required to calculate these costs. Agencies will be required to begin tracking costs for new major infrastructure projects 90 days after their methodologies have been reviewed and approved by OMB.<sup>16</sup>

### **Reporting on Estimated Cost of Delays**

EO 13807 states that “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.”<sup>17</sup> A “significant delay” occurs when the total length of delay is or is expected to be more than 50 percent of the overall length of the original timetable, as measured from the first milestone date of the first action to the final milestone date of the final action listed in the Permitting Timetable. The lead agency, after consulting with the project sponsor and relevant agencies, is responsible for submitting the estimated cost of delay to OMB no later than 60 days after the significant delay is identified on the Permitting Timetable. The lead agency is not required to estimate the cost of delay to a project if the delay is caused by factors outside the Federal Government’s control (e.g., project sponsor factor). The lead agency may submit a cost estimate provided by the project sponsor or submit its own cost estimate using publicly available information, information and estimates provided by the project sponsor, information about similar projects, or a combination.<sup>18</sup> When more precise estimates are not possible, estimates may be submitted in the form of a range of possible costs.

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<sup>16</sup> Agencies will not be required to go back and track costs for major infrastructure projects that were already in progress prior to approval of the agencies’ cost calculation methodology.

<sup>17</sup> Exec. Order No. 13807 § 4(b)(ii)(C).

<sup>18</sup> A lead agency should provide OMB with a list of the source(s) used for the cost estimate, as well as documentation of the methodology, assumptions and types of costs (e.g., social costs, such as health or travel time savings effects) included in the estimate.