

MAY 19 2017



Homeland Security

MEMORANDUM FOR: Component Heads

FROM: Chip Fulghum
Acting Under Secretary for Policy and Planning

SUBJECT: Compliance with the National Environmental Policy Act in the Implementation of Executive Order 13767

(b) (6)

On January 25, 2017, the President issued Executive Order (EO) 13767, *Border Security and Immigration Enforcement Improvements*, in furtherance of securing our Nation's borders and fully enforcing our immigration laws. In many ways, the tasks therein fall to the Department of Homeland Security (DHS) for execution. On February 20, 2017, Secretary Kelly issued a memorandum to U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, the Office of Intelligence and Analysis, the Office of the General Counsel, and the Office of the Under Secretary for Management, directing the actions needed to be in compliance with EO 13767 and all applicable laws. The National Environmental Policy Act (NEPA) is one of those laws.

Following the memorandum will require numerous discretionary decisions, which will irretrievably commit federal resources. These decisions require that the decision maker understand the environmental consequences of the decision at the time it is made. Due to the possibility that the environmental impacts of actions of one Component will affect the environmental impacts of actions of another Component, an overarching strategy for the Department's NEPA compliance is necessary.

Recognizing that no new authorities have been created and no new programs established, Components will continue to follow Department of Homeland Security (DHS) Directive 023-01, Revision 01, and DHS Instruction Manual 023-01-001-01, Revision 01, *Implementation of the National Environmental Policy Act*, along with any approved Component supplemental instructions. Both documents are attached. To ensure Departmental compliance, the following actions will be taken:

1. Component heads will ensure a complete and open flow of communications between operations and facilities staffs, the Environmental Planning Program Manager/NEPA compliance specialists, and counsel within Components. Activities under this EO should be considered of national and congressional interest requiring coordination with the Executive Director (ED), Sustainability and Environmental Programs (SEP), in accordance with Instruction 023-01-001-01, Revision 01.
2. In the event that the Secretary waives compliance with NEPA, as authorized by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as amended, for those activities directly necessary for and expeditious construction and maintenance of a

wall or other covered physical infrastructure (e.g., roads, barriers) in the vicinity of the border with Mexico,

- a. NEPA will be among the laws not applicable to those actions; and
 - b. Components will comply with the requirement of IIRIRA to confer with the Department of the Interior, Department of Agriculture, States, Tribes, local government, and property owners “to minimize the impacts to the environment, culture, commerce, and quality of life.”
3. For all other actions in the vicinity of the border to which NEPA applies, in conducting a NEPA analysis Components will:
 - a. Consider the presence of newly-constructed infrastructure when analyzing the appropriate level of NEPA review for such actions; and
 - b. Conduct a regional geographic analysis to ensure that possible multiple actions within a given locale by one or more Components is not creating the potential for significant impact otherwise unusual for that category of action. This is particularly important when such potential impact would constitute an extraordinary circumstance precluding use of an otherwise applicable categorical exclusion from further NEPA review.
 4. The ED SEP will actively oversee the use of categorical exclusions through the Decision Support System and will act to promote cross-Component information flows.
 5. For any action that requires an Environmental Assessment, the Component taking the action will coordinate with the ED SEP as early as possible to ensure that the assessment includes identification and evaluation of potential cumulative impacts of any other DHS actions within the relevant area.
 6. Components with the authority to sign environmental documents will ensure that the ED SEP is adequately informed to ensure potential cross-Component impacts have been considered prior to signing a Finding of No Significant Impact (FONSI).
 7. In the event that a FONSI cannot be reached, the Component will coordinate with the ED SEP to initiate development of an Environmental Impact Statement that identifies and analyzes potential environmental impacts of the action.
 8. The ED SEP may delegate any responsibilities identified herein to the DHS Environmental Planning and Historic Preservation Program Manager.

This memorandum specifically addresses NEPA compliance due to the complications created by waivers and activities conducted under the waivers. Actions not covered by waivers remain subject to the normal compliance requirements of all applicable laws, regulations, EOs, and other requirements established for the protection and stewardship of the human environment.

Please direct questions to [REDACTED] (b) (6) (b) (7) (C)
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Attachments

Distribution:

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