

Congress of the United States

Washington, DC 20515

September 18, 2017

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Zinke,

Deputy Secretary David Bernhardt issued Order 3355 on August 31, 2017 entitled, “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.’”

As stated in the Order, it was issued “In recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis.” The Order provides no data to support these conclusions or further description of these “impediments,” nor is the phrase “needlessly complex” defined or explained.

Numerous non-partisan entities have examined available data and repeatedly debunked the myth that the NEPA process is an impediment to the development of infrastructure projects. A Government Accountability Office (GAO) review conducted in 2014 concluded that, “Government-wide data on the number and type of most National Environmental Policy Act (NEPA) analyses are not readily available, as data collection efforts vary by agency.”

The GAO Study did find, however, that the Council on Environmental Quality (CEQ), the agency tasked by Congress with overseeing NEPA implementation, “estimates that about 95 percent of NEPA analyses are CEs, less than 5 percent are EAs, and less than 1 percent are EISs. Projects requiring an EIS are a small portion of all projects but are likely to be high-profile, complex, and expensive.”

Further, a 2012 Congressional Research Service (CRS) report on federally-funded highway projects concluded that causes of project delays “are more often tied to local/state and project-specific factors” and that “when environmental requirements have caused project delays, requirements established under laws other than NEPA have generally been the source.”

The directive in the order requires that Environmental Impact Statements (EIS) for which the Department of the Interior (DOI) or its bureaus are the lead agency, “shall not be more than 150 pages or 300 pages for unusually complex projects, excluding appendices.”

In contrast, current federal regulations (40 C.F.R. 1502.7), state that, “The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.”

Further, the Order requires that, “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.”

Existing federal regulations regarding time limits can be found at 40 C.F.R. 1501.8 and state in part that, “The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.”

The discrepancies between the new requirements contained in the Deputy Secretary’s Order and existing federal regulations are alarming, especially given that the basic premise of the Order is at odds with the GAO Report and other efforts to document NEPA implementation.

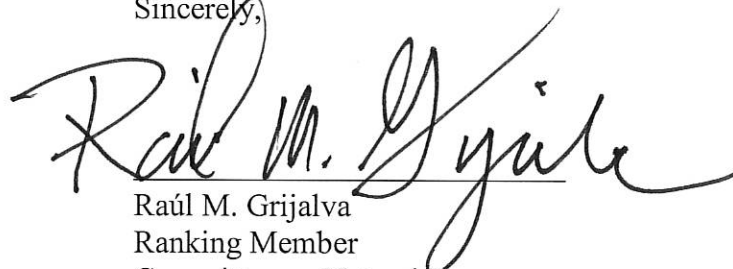
The Committee seeks to better understand the intent and potential effects of Order 3355. In order to assist the Committee, please respond to the following questions and produce the following documentation:

1. Any and all statistical or other data supporting the Deputy Secretary’s “recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis.”
 - a) How does the Department document or quantify such impediments?
 - b) How does the Department determine which NEPA analyses are “needlessly complex”?
 - c) Why was this data not provided to the GAO during its review of NEPA implementation?
2. Any documentation or analysis demonstrating that a mandatory, uniform page limit for EIS documents across all projects and Bureaus within the Department will better achieve the goals established by Congress through NEPA.
 - a) What is the significance of the differences between the Order and current federal regulations regarding page limits?
 - b) What is the current average number of pages for NEPA documents?
 - c) Can the Department identify specific NEPA documents which contain too many pages?
 - d) Are there cases or legal opinions in which a court found that specific NEPA documents included too many pages?
3. Any and all statistical or other data demonstrating that a 1-year time limit is desirable or appropriate for all projects across all Bureaus within the Department.
 - a) What is the significance of the differences between the Order and current federal regulations regarding time limits?

- b) How did the Department determine that 12 months, versus any other number, was appropriate for complying with the legal requirements established by Congress through NEPA?
 - c) What is the current average amount of time necessary to complete NEPA documents?
4. Do the page and time limits required by the Deputy Secretary include or exclude instances where the NEPA process includes actions and analyses necessary to comply with other statutes such as the National Historic Preservation Act, Endangered Species Act, or other laws?
5. Does the 1-year time limit restart, or will it be tolled, in the following circumstances:
- a) the project applicant fails to produce information required to be submitted to the Department by law,
 - b) federal, state, or local funding for the project is delayed, runs out, or is not provided, or
 - c) the project applicant makes significant alterations to the proposed project?
6. A review of litigation outcomes in cases brought pursuant to NEPA implementation, including the number of projects subject to litigation, and of those projects, the number of cases in which a court delayed or halted the project during pendency of the litigation.
7. The Order mandates that any EIS not completed within 15 months after the issuance of a Notice of Intent to prepare an EIS “must be approved by the Assistant Secretary with responsibility for the matter.” If the allotted 15 months elapses before the EIS is complete, and the Assistant Secretary does not grant an extension, will the proposed project move forward?
8. How will DOI ensure that NEPA documents can be completed in a specific time-frame given that the Administration is seeking significant funding cuts for agencies and departments charged with implementation of NEPA?

Thank you in advance for your assistance. Please contact Vic Edgerton or Lindsay Gressard of the Oversight and Investigations Subcommittee staff at (202) 225-6065 with any questions about this request.

Sincerely,



Raúl M. Grijalva
Ranking Member
Committee on Natural Resources