



Executive Order to Accelerate Economic Recovery from COVID-19 Emergency by Expediting Infrastructure Investment

June 17, 2020

On June 4, 2020, the White House released Executive Order (E.O.) 13927, “[Accelerating the Nation’s Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities](#).” It includes directives to specific agencies responsible for funding or authorizing certain types of infrastructure projects or construction-related activities. It also includes directives to the heads of all federal agencies regarding specific environmental laws commonly applicable to construction-related projects subject to federal approval. Broadly, it directs [agencies](#) to take “appropriate steps to use their lawful emergency authorities and other authorities to respond to the national emergency and to facilitate the Nation’s economic recovery.” Additionally, it directs federal agencies to “take all reasonable measures to speed infrastructure investments and to speed other actions ... that will strengthen the economy and return Americans to work, while providing appropriate protection for public health and safety, natural resources, and the environment, as required by law.”

Directives to Specific Agencies

Sections 3-5 direct specific agencies to take the following actions to “facilitate the Nation’s economic recovery” for “all authorized and appropriated” projects they are authorized to “perform or to advance”:

- **Section 3** includes directives to the Secretary of Transportation, which could involve [surface transportation](#) or [airport improvement projects](#) eligible to receive financial assistance via programs administered by the Department of Transportation. Such projects are generally undertaken by municipal, tribal, or state transportation agencies.
- **Section 4** includes directives to the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, to expedite delivery of civil works projects under the purview of the U.S. Army Corps of Engineers, which includes projects authorized by Congress in a [Water Resources Development Act](#) and could include projects undertaken by non-federal project sponsors.

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- **Section 5** includes directives to the Secretaries of Defense, the Interior, and Agriculture to expedite “infrastructure, energy, environmental, and natural resources projects” on federal lands, which could include projects undertaken directly by **federal land management agencies** or the military or projects undertaken by non-federal project sponsors that require authorization to use or cross federal land.

Each section described above differs only with respect to the Secretary and category of projects identified. Specifically, each section requires the respective Secretary to do the following:

- “Use all relevant emergency and other authorities to expedite work on, and completion of, all authorized and appropriated [projects] that are within the authority of the [respective Secretary] to perform or to advance.”
- Within 30 days of the order, provide a summary report listing all such projects “that have been expedited” to the Office of Management and Budget (OMB), the Assistant to the President for Economic Policy, and the Council on Environmental Quality (CEQ).
- Within 30 days after the initial summary report, provide a status report to the same parties listing any additions or changes to the initial list, with additional reports provided at least every 30 days for the duration of the national emergency.

The E.O. does not include a definitions section. To date, the agencies listed above have not publicly interpreted the directives. Until each does so, whether or the extent to which they will accelerate delivery of infrastructure projects may depend on how each agency answers the following questions:

- Do “authorized and appropriated” projects refer only to projects already approved to receive federal program funds or a regulatory authorization requested by the project sponsor?
- Are there “emergency and other authorities” applicable to authorized and approved projects under the current circumstances?
- For projects undertaken by non-federal project sponsors, does the agency secretary have “emergency” or other authority to compel such non-federal entities to expedite work on or complete their projects?
- What sorts of authorized and appropriated projects could be expedited or completed in 30 days?

Directives to All Federal Agencies

Sections 6-8 identify specific, existing “emergency regulations” or other procedures potentially relevant to the following:

- **Section 6.** Compliance with the National Environmental Policy Act (42 U.S.C. §4321 et seq.).
- **Section 7.** Consultations with Secretaries of the Interior or Commerce required under the Endangered Species Act (16 U.S.C. §1531 et seq.).
- **Section 8.** Regulatory authorizations from the Army Corps of Engineers, required under Section 404 of the Clean Water Act (33 U.S.C. §1344), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403), and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. §1413).

In each section, the E.O. directs the “heads of all federal agencies” to do the following:

- Within 30 days of the order, identify “planned or potential” actions that may be subject to relevant “emergency” requirements or other procedures identified in the respective section of the E.O. and provide a summary report listing those actions to OMB, CEQ, the Assistant to the President for Economic Policy, and, as relevant, the agency authorized to implement the laws (identified in Sections 7 and 8).
- To the fullest extent possible and consistent with applicable law, use “emergency” or other procedures identified in the respective section “to facilitate the Nation’s economic recovery.”
- Within 30 days of the initial summary report, provide a status report to the same parties listing the status of any previously reported actions and any new planned or potential actions, with additional reports provided at least every 30 days for the duration of the national emergency.

Section 9 includes similar directives to all federal agencies with respect to “other authorities,” broadly identified as any other “statutes, regulations, and guidance” that may provide for “emergency or expedited treatment (including waivers, exemptions, or other streamlining) with regard to agency actions pertinent to infrastructure, energy, environmental, or natural resources matters.”

Similar to the directives in Sections 3-5, determining whether the directives in Sections 6-9 will expedite compliance with applicable law for a given project may depend on how each federal agency answers the following questions:

- Is it responsible for “planned or potential actions” subject to the E.O.?
- Among such actions, which ones can be carried out in accordance with “emergency regulations” or would already be carried out under the other procedures identified in the E.O.?

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