

EFFECTIVE PUBLIC PARTICIPATION

EFFECTIVE PUBLIC PARTICIPATION UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT SECOND EDITION

U.S. DEPARTMENT OF ENERGY
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PREFACE

This paper provides guidance to Department of Energy (DOE) personnel for involving the public effectively and meaningfully in DOE processes conducted under the National Environmental Policy Act of 1969 (NEPA). It was prepared in furtherance of the Secretary of Energy's 1994 Public Participation Policy and Policy on the National Environmental Policy Act.

The Office of NEPA Policy and Assistance prepared this paper in consultation with the Office of the Assistant General Counsel for Environment and the Office of Intergovernmental and External Affairs. These recommendations should aid those responsible for preparing NEPA documents and others involved in NEPA public participation activities by describing techniques and procedures that will enhance the usefulness of the NEPA process to DOE and to its stakeholders. Because each DOE proposed action presents unique circumstances, the paper emphasizes the need for thoughtful case-by-case application of the guidance.

The Assistant Secretary for Environment, Safety and Health issued the first edition of this paper in December 1994. This Second Edition reflects changes to the DOE NEPA regulations in 1996 and other needed updates. The Office of NEPA Policy and Assistance plans to revise this guidance from time to time to address additional issues, approaches, and directives. The Office welcomes suggestions for improvement.

Citations to NEPA regulations are provided throughout the text of this paper for the reader's convenience and relevant regulatory language is contained in the appendices. The reader should be able to understand the paper without examination of the regulations.

EFFECTIVE PUBLIC PARTICIPATION

UNDER THE

NATIONAL ENVIRONMENTAL POLICY ACT

1. INTRODUCTION

Secretarial Policies

This paper provides guidance on effective public participation in DOE National Environmental Policy Act (NEPA) compliance activities. It will help to implement the Secretary of Energy's Public Participation Policy issued on July 29, 1994, which is included as Appendix I. The policy states that public participation is a fundamental component of DOE's program operations, planning activities, and decision making. The goals of the policy are to:

- Actively seek and consider public comments and incorporate the views of stakeholders in making decisions.
- Inform the public in a timely manner about and empower them to participate in DOE' s decision making processes, which should be open, understandable, and consistently followed.
- Incorporate credible, effective public participation processes into all of DOE' s activities, at headquarters and in the field.

This paper also furthers the Secretarial Policy Statement on the National Environmental Policy Act issued on June 13, 1994, included as Appendix II. Under this policy, full compliance with NEPA is an essential priority for DOE. The NEPA Policy Statement includes provisions for enhanced public participation, particularly for environmental assessments.

Public participation in the NEPA process is only one element in DOE' s overall public participation program. Public participation activities conducted through the NEPA process should be coordinated with other DOE public outreach efforts.

NEPA Regulations

Public participation requirements can be found throughout the Council on Environmental Quality' s Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508), and DOE' s NEPA Implementing Procedures (10 CFR Part 1021). While the regulations describe specific requirements, they also state broad goals for public participation in the NEPA process. For example, the Council on Environmental Quality regulations note that public scrutiny is essential to implementing NEPA (40 CFR 1500.1(b)). For this reason, Federal agencies are required, to the fullest extent possible, to encourage and facilitate public participation in agency decisions that affect the quality of the human environment (40 CFR 1500.2(d)). Agencies must also make diligent efforts to involve the public in preparing and implementing their NEPA procedures (40 CFR 1506.6(a)).

Definition of "Public Participation"

The Secretary' s Public Participation Policy Statement defines public participation as open, ongoing, two-way communication, both formal and informal, between DOE and its stakeholders—those interested in or affected by its actions. The purpose of such interactive communication is to enable both parties to learn about and better understand the views and positions of the other. Public participation provides a means for DOE to gather the most diverse collection of options, perspectives, and values from the broadest spectrum of the public, allowing DOE to make better and more informed decisions. In addition, public participation benefits stakeholders by creating an opportunity to provide comment and influence decisions.

In keeping with this definition, this paper uses the word "public" broadly, to include any and all interested or affected parties. The "public" includes: interested or affected private citizens; state, local, and tribal governments; environmental groups; civic and community organizations; business and labor groups; and independent experts from the scientific, technical, and academic communities. Keep in mind as well that seeking comments of Federal agencies with jurisdiction

by law or special expertise is an important aspect of the NEPA process. Further, although effective communication within the DOE complex is certainly essential, this paper focuses on improving the involvement of external stakeholders in DOE' s affairs.

Some Benefits of Public Participation

Open the Decision Making Process and Build Credibility. A good public participation program enables those who are interested in or affected by a proposal to have an opportunity to influence the outcome. Presenting information openly, evaluating issues and alternatives fairly, and following through on commitments all build credibility.

Identify Issues. Decision making can benefit from a diversity of opinion and expertise. When afforded the opportunity, interested citizens with varied backgrounds and experiences can contribute useful information, historical data, and new perspectives to the decision making process. The public may identify issues and alternatives that DOE would otherwise overlook.

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Enhance Mutual Understanding. Public participation activities promote substantive communication and improve understanding on all sides. By responding to comments and questions, DOE can help the public understand the technical aspects of a particular proposal, as well as the broader policy, political, and legal framework within which DOE makes decisions. DOE, in turn, can better understand the effects of its proposed actions on the local community and the environment by listening to those directly affected.

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Make Better Decisions. Public participation helps DOE make informed decisions that take into account public concerns and preferences as well as legal, technical, environmental, economic, and social factors. When a decision acknowledges disparate views and addresses the reasons why other views were not accepted, it stands a better chance of successful implementation.

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decision acknowledges disparate views and addresses the reasons why other views were not accepted, it stands a better chance of successful implementation.

Enhance Community Support and Minimize Delays. An effective public participation program will not necessarily eliminate all conflicts and controversies accompanying a DOE proposal. However, a community that has a voice in the process and is clearly influencing the final decision will be less angry and frustrated with the process than one that feels shut out or ignored. Public workshops, meetings, hearings, and other communications will provide information and help dispel rumors, fears, and misunderstanding. By addressing public concerns up front, DOE may avoid time-consuming litigation or at least strengthen its position in the event of a subsequent legal or regulatory challenge.

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Promote Environmental Justice. Executive Order No. 12898 directs Federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of their programs, policies, and activities on minority and low-income populations. A targeted public participation program can help to identify any disproportionately high and adverse impacts upon these populations.

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2. HOW TO USE THIS PAPER

While this paper describes the explicit requirements for public participation contained in the Council on Environmental Quality and DOE NEPA regulations, it suggests additional activities that may be appropriate to facilitate public participation, consistent with the Secretary's public participation policy and NEPA Policy Statement. This paper is not a comprehensive guide to public participation activities; it should be one tool among many. A list of additional resources is included in Section 10.

The recommendations in this guidance should be applied thoughtfully, taking into consideration the distinctive needs of the agency and the community, and as a supplement to any applicable requirements of NEPA or its implementing regulations. This paper is not intended to create any rights or obligations or any cause of action on the part of any person.

Sliding Scale

Each DOE proposal presents a unique set of circumstances and potential impacts. As noted in "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements" (Environment, Safety and Health, Office of NEPA Oversight, May 1993), the range of alternatives and level of analysis may vary in DOE NEPA documents depending upon the level of potential impacts. Similarly, the extent of public participation opportunities should also vary according to applicable circumstances.

The "sliding scale" approach can often help to determine the appropriate level of public participation, particularly for environmental assessments (EAs). The sliding scale approach recognizes that public participation for some proposed actions needs to be more extensive than for others. In general, the extent of opportunities should increase as the potential for environmental impacts increases. Substantial interest in or controversy regarding a proposed action, despite relatively insignificant potential environmental impacts, may also warrant a higher degree of public participation opportunities. Note that DOE will only know the extent of public interest or controversy if DOE has engaged in open and early communication with potentially interested parties.

3. GENERAL PUBLIC PARTICIPATION ACTIVITIES

This section sets forth general approaches to public participation in the NEPA process. DOE should employ these approaches in accordance with the Secretary's Public Participation Policy Statement, NEPA Policy Statement, and the Council on Environmental Quality and DOE NEPA regulations. It is the responsibility of the NEPA document manager to encourage and facilitate public participation throughout the NEPA process, in coordination with DOE program and site public affairs officials. Innovation is encouraged to maximize the quality of public participation.

The applicability of specific recommendations below and in subsequent sections depends on the characteristics and needs of the community, the nature of the proposed action, and the availability of DOE resources. If the public has many questions and concerns, conducting a variety of public participation activities could be helpful in understanding and addressing them. The sliding scale approach helps to determine which activities to conduct.

Recommendations

General

- **Beginning with the earliest project or program planning, budget for public participation activities.**
- **Consult and coordinate with and through the public affairs officials for the program or affected site. These individuals will be able to help plan and conduct all levels of public participation activities. Through public affairs officers, seek to obtain a good understanding of local issues, values, and interested and affected publics to help anticipate how the public would like to participate in the NEPA process.**

- **Assure that the level and kind of public participation efforts meet the needs of various affected segments of the population, especially taking into account low-income and minority populations (see later discussion on public participation and environmental justice).**
- **Establish working relationships with key audiences such as state, local, and tribal governments; local and national activist organizations; and civic groups.**
- **Actively seek interactions with the public through speaking engagements, civic groups, mall exhibits, workshops, focus groups, etc.**
- **Present alternatives fairly and objectively. Do not exaggerate benefits or minimize costs and potential impacts. Recognize that members of the public may identify additional reasonable alternatives to the proposed action.**
- **Practice active and empathetic listening to understand other points of view.**
- **Encourage the public to provide specific comments rather than simply to express satisfaction or dissatisfaction with the proposed action.**
- **Where possible, conduct NEPA public participation activities in concert with other related public participation programs that may be conducted for the same site or proposal in order to avoid overwhelming the public and decreasing interest in participation. Use an existing forum when appropriate, such as a regularly scheduled civic or local government meeting, rather than a separately scheduled DOE meeting.**
- **At the conclusion of the NEPA process for a particular action, consider seeking public comment on the effectiveness of the public participation efforts and suggestions for improvement.**
- **Behave as you would want a Federal official to behave if the proposed Federal action affected you.**

Involving the Public Early

- **Involve the public early in the decision making process—that is, before narrowing alternative and making other key decisions.**
- **Inform state, local, and tribal governments, civic organizations, and communications media of the proposed action and the NEPA process to be conducted.**

Public Meetings, Hearings, and Workshops

- **While the Council on Environmental Quality and the DOE NEPA regulations refer to public meetings and to public hearings (40 CFR 1506.6(c); and 10 CFR 1021.311(d) and 1021.313(b)), these terms should be considered synonymous in this context, both meaning an open public forum. Some meetings or hearings may be informal, off-the-record informational exchanges between DOE and the public;**

others may have more formal components, including presentation of oral, on-the-record statements.

- **Conduct public meetings and hearings in a manner that encourages discussion and mutual understanding of the NEPA process and the proposed action, even though such meetings may also have more formal components. Whenever possible, meetings, hearings, and workshops should have interactive components to encourage dialogue between DOE and the public.**

While the Council on Environmental Quality and the DOE NEPA regulations refer to public meetings and to public hearings (40 CFR 1506.6(c); and 10 CFR 1021.311(d) and 1021.313(b)), these terms should be considered synonymous in this context, both meaning an open public forum. Some meetings or hearings may be informal, off-the-record informational exchanges between DOE and the public; others may have more formal components, including presentation of oral, on-the-record statements.

Explanation:

- Some of the best results of meetings stem from providing an opportunity for all the parties to meet one another and listen to the concerns of others. Face-to-face meetings are more likely to encourage fruitful discussion than simply providing written responses.
- If members of the public are confident that DOE has listened to their views, they are more likely to be satisfied that the decision making process was fair, even if they disagree with the outcome. People understand that listening is the first step in seriously considering their views in the decision making process.
- Under the Council on Environmental Quality regulations, the following factors may indicate a need for public meetings: substantial environmental controversy concerning the proposed action, substantial interest in holding a hearing or meeting, and a request for a hearing or meeting by another agency with jurisdiction over the action, supported by reasons why it would be useful (40 CFR 1506.6(c)).
- Consider holding pre-meeting briefings to provide state, local, and tribal government officials, DOE employees, and the local media with specific information on the NEPA process, the proposed action, and the schedule of upcoming activities.
- A skillful, well-informed facilitator can substantially enhance informal meetings. Such a facilitator need not be a DOE employee.
- A single large public meeting brings together all the interested parties. However, large meetings can grow unwieldy, limiting the opportunity for discussion, making dialogue difficult, and frustrating participants. In general, informal meetings in small groups are better for eliciting useful information and encouraging interaction with individuals who may not be comfortable speaking before a large audience. Concurrent topical breakout sessions where people can go from room to room are sometimes valuable. Sessions can then be repeated at other times or on other days.
- Note that small, informal discussions in workshops or as part of a larger public meeting are usually not part of the formal comment record. The DOE representatives present should ensure that the members of the public in attendance understand that the comments

they make in those settings are not necessarily part of the formal record. Notwithstanding the informality, notes regarding significant matters discussed in these sessions may be useful.

- Give the logistical and presentation details careful consideration when planning a public meeting. Remember obligations under the Americans with Disabilities Act, including access for physically disabled individuals and sign language interpretation for deaf people. Think about such things as room layout, comfort and safety, accessibility, room temperature, and extraneous noise.
- Seek to understand the public's expectations and needs. Work with local organizations or community groups to help plan meeting formats and locations that will meet their needs and DOE's needs. Consider meeting in community centers, schools, libraries, etc., for the public's convenience.
- Strive to hold at least some meeting sessions during evening or weekend hours.
- In addition to DOE staff, consider asking representatives of the Environmental Protection Agency, the State, and/or local and tribal governments to make a short presentation and to respond to questions. Such officials should also be encouraged to be available in breakout rooms for dialogue with interested people.
- DOE representatives should never argue with meeting participants or disparage any views presented, although it may be appropriate to indicate polite disagreement.
- DOE staff, not contractors, should represent the agency at public meetings.

Making Information Available

- **Disclose information. Unless restricted for national security reasons or eligible for withholding under specific statutory provisions, DOE should make information about proposals readily available to the public.**
- **Note that EAs and Environmental Impact Statements (EISs) that address classified proposals may be safeguarded and restricted from public dissemination in accordance with DOE's regulation applicable to classified information. However, to the maximum extent possible, these documents should be organized so that classified information is included in an appendix and unclassified portions can be made available to the public. 40 CFR 1507.3(c) and 10 CFR 1021.340.**
- **Make information available well in advance of public meetings.**
- **Establish an information repository near the facility to make all information pertaining to the proposed action readily available to interested persons. Such repositories could be in public libraries or other locations that are open during evening or weekend hours.**
- **In addition to publishing notices of events or availability of documents in the *Federal Register*, use media that members of the public are likely to encounter, such as community and school newspapers, radio and television announcements, and notices in public places. The goal is to notify the interested or affected public. The notice can be placed in advertising space to guarantee publication and increase the likelihood that the public will see it. Issuing press releases to the news media may not be enough, because these media often only carry stories that they consider "newsworthy."**

- **Make an effort to enhance the media' s understanding of the issues related to the program, site, or proposed action. This will facilitate the dissemination of accurate information to the public.**

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Mailing Lists

- **Use the latest edition of the "Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act" (Environment, Safety and Health, Office of NEPA Policy and Assistance) to help identify potentially interested or affected groups and government agencies. Remember that the Directory is only meant to supplement a site-specific mailing list or a mailing list established for a particular proposal.**
- **Make use of any established mailing list of persons who should receive or have requested to receive information on site or program activities. This will facilitate providing informational materials such as fact sheets, press releases, and notices to persons who may be interested in a proposed action at the site. Telephone and facsimile numbers may aid in communicating with organizations and government entities.**
- **Establish a specific mailing list for those interested in a particular proposed action to facilitate providing information, draft and final documents, and notices regarding the proposal. Prepare a sign-up sheet at public meetings and other public forums for individuals who want to be on the mailing list. Develop the mailing list at the beginning of the NEPA process and maintain it throughout the life of the project.**
- **Use return-mail postcards and similar devices to tailor future mailings to each stakeholder' s preference for receiving entire documents, summaries, etc.**
- **Mailing informational materials is one-way communication. Provide for two-way communication through direct feedback from the public in meetings, telephone conversations, workshops, open houses, etc.**

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Toll-Free Telephone Number. Consider establishing toll-free 800 telephone and facsimile numbers to provide information and take public comments.

Designate a point of contact to receive these calls in order to maintain consistency.

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Newsletters. Use an existing newsletter to document NEPA process plans and activities that fall within the scope of the newsletter.

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Fact Sheets. Develop fact sheets regarding the program, site, and proposed action. These can be disseminated at public meetings, public libraries, and DOE reading rooms, and provided to citizens seeking general information.

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Press Releases. Issue a press release whenever it would facilitate communication within the community regarding activities at the site.

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Exhibits. Exhibits include visual displays of maps, charts, diagrams, photographs, videotapes, computer displays, and models. Their purpose is to illustrate proposed actions and related issues in a creative and informative way, making technical information more accessible and understandable. Place the exhibit where it is most visible to the interested or affected public, such as a public library, convention hall, or shopping center. Consider displaying a temporary exhibit at public meetings and other public activities.

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Open-Door Policy. With due regard for national security requirements and health and safety precautions, establish an open-door policy to visit DOE facilities, laboratories, and offices for those interested in a major proposal at

a DOE site. Site tours would familiarize the public with the area where the proposed project would occur. Site tours can help improve mutual understanding between the community and DOE.

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DOE Spokesperson. DOE should designate a spokesperson to serve as a point-of-contact for responding to citizens and the media. A spokesperson can provide the community with information on a regular basis.

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Computer Communication. Use computer bulletin boards, e-mail, Internet, and similar forms of communication to provide members of the public that use this medium with easy, inexpensive access to information about DOE activities, including meetings and availability of documents. To this end, the DOE NEPA Web site was created on the World Wide Web to make the NEPA process more useful to decisionmakers and the public. It contains extensive information regarding the NEPA process and related announcements, updates, and documents. The Uniform Resource Locator (address) for the DOE NEPA Web site is <http://www.eh.doe.gov/nepa/>.

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Responding to Public Comments

- **Understand that commenters are expressing sincere concerns, not trying to make your life difficult.**
- **Be timely in responding to public comments. A slow response sends the message that public input is not important and that DOE does not care.**
- **Deal fairly with independent experts. Recognize that people outside of DOE may be highly competent and can contribute valuable perspectives.**

- **Provide clear, definite responses to substantive comments. Differentiate between philosophical and factual differences. Explain why one approach or option was selected over others.**

Environmental Justice

- **Enhance public participation by actively seeking the participation of minority and low-income populations.**
- **Ensure that information regarding DOE proposed actions is made available to minority and low-income populations, through meetings and programs targeted to reach these populations. This can help to reduce the degree of isolation often experienced by minority and low-income populations.**
- **Schedule public meetings in locations that are readily accessible to minority and low-income populations, such as local schools and churches.**
- **Be sensitive to special needs of population members. For a population of non-English speaking residents, consider using a translator during the public meeting. Also, consider translating fact sheets and other background information to accommodate a non-English speaking population.**

4. THE DOE ENVIRONMENTAL IMPACT STATEMENT PUBLIC SCOPING PROCESS

Regulatory Requirements

The Council on Environmental Quality regulations define scoping as an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to a proposed action. Required public participation activities related to the DOE EIS scoping process include:

- disseminating the Notice of Intent,
- holding at least one public meeting, and
- soliciting and considering public comments.

The Notice of Intent to prepare an EIS announces the location and time of public meetings, provides the name and address of a person within DOE who can answer questions about the proposed action and EIS, and invites comments and suggestions on the scope of the EIS (40 CFR 1508.22(b) and (c); 10 CFR 1021.311(a)). The Council on Environmental Quality regulations state that agencies must publish the Notice of Intent in the *Federal Register* as soon as practicable after a decision to prepare an EIS (40 CFR 1501.7). DOE must disseminate the notice in accordance with the Council on Environmental Quality's public notice requirements at 40 CFR 1506.6, which may involve: observance of public notice procedures of the affected state; publication of the notice in local newspapers; issuance of the notice to state and area-wide clearinghouses, Indian tribes, and potentially interested community organizations; direct mailings; and posting (10 CFR 1021.311(a)).

DOE requires at least one public meeting as part of the scoping process for EISs. DOE must invite the participation of Federal, state, local, and tribal governments; the proponent of the action; and other interested persons. DOE must announce the location, date, and time of the public meeting(s) in the Notice of Intent or by other appropriate means, such as additional notices in the *Federal Register*, news releases to the local news media, or letters to affected persons. DOE may not hold the public scoping meeting(s) until at least 15 days after public notification (10 CFR 1021.311(d)).

DOE must allow at least 30 days after the publication of the Notice of Intent for receipt of public comments. DOE must consider all comments received during the announced comment period; DOE may consider comments received after the close of the announced comment period (10 CFR 1021.311(c) and (e)).

Recommendations

- ***The Notice of Intent to prepare an EIS should provide information about the EIS and the proposed action that an interested or affected citizen would want to know. Include a description of the purpose and need, the proposed project, possible alternatives, and potential environmental issues. The Notice of Intent should also state the relationship of the proposed EIS to other EAs and EISs, particularly those that have previously been of interest to the public.***
- ***Treat scoping as a process and not as an event or a meeting.***
- ***Publish the Notice of Intent only after there is sufficient information to invite meaningful comments. Scoping cannot be useful until DOE knows enough about the proposed action to identify the affected parties, to present a coherent proposal, and to suggest a list of environmental issues and alternatives. The first step is to gather preliminary information from the program office or line organization and to compose a clear picture of the proposal.***
- ***If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, consider publishing an Advance Notice of Intent in the Federal Register to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments (10 CFR 1021.311 (b)).***
- ***Design the scoping process individually for each proposal. Be flexible. Tailor the type, timing, and location of public participation activities to the proposal.***
- ***Make clear that DOE has not made a decision on the proposed action.***
- ***Scoping is often the first contact between proponents of a proposal and the public and is a crucial first step toward building public confidence. Therefore, allocate sufficient time and resources to planning productive meetings. Try to include opportunities for the public to interact with DOE representatives.***
- ***Consider providing more than the required minimum of 15 days between the notice of a scoping meeting and the meeting, particularly if the subject being addressed is unusually complex. Take account of holidays and other circumstances that may call for schedule flexibility to avoid inconveniencing the interested public.***

- *Through the scoping process, identify individuals who may already have knowledge about a site or an alternative proposal or a relevant study and encourage them to share their information and ideas.*
- *Consider preparing an information packet with easy-to-understand material. The packet could contain a description of the proposal, an initial list of areas of environmental impact, possible alternatives, maps, drawings, and other material or references that could help the interested public understand the proposed action. Also include a brief explanation of the NEPA process to give potential participants a context for their involvement.*

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5. THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Regulatory Requirements

Required public participation activities related to the draft EIS include:

- writing the draft EIS with the public in mind,
- circulating the draft EIS,
- providing public notice of availability,
- soliciting public comments, and
- holding at least one public hearing.

While writing the draft EIS, DOE must keep in mind that the audience consists of interested members of the public, in addition to the decision maker. In order to make the document useful for the public, DOE must use plain language (40 CFR 1502.8), present environmental impacts of the proposed action in comparative form (40 CFR 1502.14), incorporate material by reference when the effect will be to cut down on the bulk of the EIS without impeding public review (40 CFR 1502.21), and provide a summary section that emphasizes issues raised by other agencies and the public (40 CFR 1502.12).

DOE must circulate the draft EIS, providing the entire document to any person, organization, or agency requesting it. DOE may circulate a summary of the draft EIS to other parties if the draft EIS is unusually long (40 CFR 1502.19).

After completion, DOE files the draft EIS with the Environmental Protection Agency; filing may not precede distribution to the public (40 CFR 1506.9). The Environmental Protection Agency is required to publish each week in the *Federal Register* a Notice of Availability of the EISs filed during the preceding week; the comment period on the draft EIS is calculated from this date of publication (40 CFR 1506.10(a)). The comment period must be at least 45 days (40 CFR 1506.10(c); 10 CFR 1021.313(a)).

DOE must use appropriate means to publicize the availability of the draft EIS. The methods chosen should focus on persons potentially interested in or affected by the proposed action (10 CFR 1021.313(d)).

DOE must request comments on the draft EIS from appropriate state and local agencies authorized to develop and enforce environmental standards, Indian tribes potentially affected by the proposed action, and members of the public. DOE must affirmatively solicit comments from those persons or organizations potentially interested in or affected by the proposed action (40 CFR 1503.1).

DOE must hold at least one public hearing on a draft EIS. The announcement of the public hearing must precede the hearing by at least 15 days, identify the subject of the draft EIS, and include the location, date, and time of the hearing (40 CFR 1506.6(c)(2); 10 CFR 1021.313(b)). DOE must use appropriate means to publicize the public hearing.

Recommendations

- Address every substantive issue and comment raised in the scoping process. Treat insignificant issues with a short explanation, showing that DOE examined the issue but did not consider it significant for one or more reasons.
- Consider establishing a comment period longer than 45 days for a draft EIS that is unusually long or complex or is highly controversial.
- Encourage the public to comment on specific matters and recommend improvements to the proposed action and various alternatives. Reiterate that DOE has not reached a final decision on the proposal itself.
- Make the document readable by writing clearly, succinctly, and avoiding the use of technical jargon. People cannot comment meaningfully on something they cannot understand.
- In addition to the Environmental Protection Agency's *Federal Register* notice of receipt of the draft EIS that lists only the name of the document, consider the usefulness of a DOE notice in the *Federal Register*. A DOE notice of availability will attract the attention of those interested in DOE activities and will provide information that is not contained in the Environmental Protection Agency notice (e.g., background regarding the site, proposed action, alternatives, and potential environmental impacts, and details of the public comment process, such as the times and places of hearings). To facilitate effective public participation, notices should also be placed in local media to reach members of the public who may be interested in or affected by the proposed action.
- Normally, schedule the public hearing on the draft EIS near the end of the comment period (e.g., about two-thirds of the way through). This will provide the public with sufficient time to review the draft EIS before the public hearing and sufficient time after the hearing to provide comments, or to modify or supplement previous comments, based on information obtained at the public hearing.
- Consider providing more than the required minimum of 15 days notice of a public hearing on a draft EIS, particularly if the subject is unusually complex.

- In addition to the required public scoping meeting, consider holding other public meetings during the preparation of the draft EIS. These meetings can take the form of workshops or neighborhood meetings.
- Consider holding a press conference to brief the news media on the draft EIS and to answer questions.
- Draft EISs and referenced support documents should be made available in the relevant public reading rooms.

6. THE FINAL ENVIRONMENTAL IMPACT STATEMENT

Regulatory Requirements

Required public participation activities related to the final EIS include:

- considering and responding to public comments on the draft EIS,
- filing the final EIS with the Environmental Protection Agency and making it available to the public,
- publishing and disseminating the Record of Decision, and
- making copies of any Mitigation Action Plan that is prepared and any relevant monitoring results available to the public.

DOE must assess and consider both oral and written comments received on the draft EIS during the public comment period and must respond to these comments in the final EIS. Possible responses are to: (1) modify alternatives; (2) develop and evaluate alternatives not previously considered; (3) supplement, improve, or modify analyses; (4) make factual corrections; and (5) explain why the comment does not warrant further response (10 CFR 1021.313(c); 40 CFR 1503.4(a)). DOE must discuss at appropriate points in the final EIS any responsible opposing view that was not adequately discussed in the draft statement and must indicate the agency's response to the issues raised (40 CFR 1502.9(b)).

DOE files the final EIS with the Environmental Protection Agency, which publishes each week in the *Federal Register* a notice of the EISs filed with the agency during the preceding week; the filing of the final EIS may not precede distribution to the public (40 CFR 1506.9). DOE must use appropriate means to publicize the availability of the final EIS; the methods of notice chosen should focus on reaching persons potentially interested in or affected by the proposed action (10 CFR 1021.313(d)).

DOE must circulate the final EIS, providing the entire document to any person, organization, or agency that has requested it or has submitted substantive comments on the draft EIS. DOE may circulate a summary of the final EIS to other parties if the final EIS is unusually long (40 CFR 1502.19).

DOE must make the final EIS, the comments received, and any referenced support documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda when a

memorandum transmits a Federal agency' s comments on the environmental impact of the proposed action (40 CFR 1506.6(f)).

DOE may not make a decision on a proposal covered by an EIS during a 30-day "waiting period" following completion of the final EIS, except as provided at 40 CFR 1506.1 and 1506.10(b) and 10 CFR 1021.211. The 30-day period starts when the Environmental Protection Agency' s Notice of Availability is published in the *Federal Register* (10 CFR 1021.315(a)).

Except for interim actions under 40 CFR 1506.1 and 10 CFR 1021.211, if DOE decides to take action on a proposal covered by an EIS, a Record of Decision (ROD) shall be prepared as provided at 40 CFR 1505.2 (10 CFR 1021.315 (b)). DOE RODs shall be published in the *Federal Register* and made available to the public as specified in 40 CFR 1506.6 (10 CFR 1021.315 (c)). No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the *Federal Register* if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media) (10 CFR 1021.315 (d)).

DOE must prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the Record of Decision (10 CFR 1021.331(a)). DOE must make copies of any Mitigation Action Plan available for inspection in the appropriate DOE public reading rooms or in other appropriate locations for a reasonable time and must make copies available upon written request (10 CFR 1021.331(d)). In addition, DOE must make the results of any relevant environmental monitoring available to the public upon request (40 CFR 1505.3(d)).

Recommendations

- If there is uncertainty regarding the meaning of their comments, consult with commenters, especially those who are experts, in the process of considering and preparing responses to comments on the draft EIS. Provide clear, definite responses to substantive comments on the draft EIS. Differentiate between philosophical and factual differences. When there is a difference of opinion, explain the selection of one opinion over others.
- In addition to the Environmental Protection Agency' s *Federal Register* notice of receipt of the final EIS that only lists the name of the document, consider the usefulness of a DOE notice in the *Federal Register* regarding the availability of the final EIS. A DOE notice of availability will attract the attention of those interested in DOE activities and will provide information that is not contained in the Environmental Protection Agency' s notice (e.g., background information regarding the site, proposed action, alternatives, and potential environmental impacts). To facilitate effective public participation, notices should also be placed in local media to reach members of the public who may be interested in or affected by the proposed action.
- Where there is a high level of public interest, consider issuing a press release to announce the publication of the final EIS and holding a press conference to brief the news media on the final EIS. Consider using a similar process when the Record of Decision is issued.
- Final EISs, referenced support documents, and Records of Decision should be made available in the relevant public reading rooms.

7. THE SUPPLEMENT ANALYSIS AND SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

Regulatory Requirements

Required public participation activities related to the Supplement Analysis and Supplemental EIS include:

- making the determination of whether to prepare a Supplemental EIS and the related Supplement Analysis available to the public; and
- for a Supplemental EIS, employing all the public participation activities required for other DOE EISs, except that the scoping process is optional.

When DOE prepares a Supplement Analysis to determine whether a Supplemental EIS is required, DOE must make the determination and the related Supplement Analysis available to the public. DOE must provide copies upon written request and make copies available in the appropriate public reading rooms or other appropriate locations for a reasonable time (10 CFR 1021.314(c)(3)).

DOE must prepare, circulate, and file a Supplemental EIS in the same manner as any other draft and final EIS, except that scoping is optional for a Supplemental EIS (10 CFR 1021.314(d); 40 CFR 1502.9(c)(4)).

If DOE decides to take an action on a proposal covered by a Supplemental EIS, it must prepare a Record of Decision in accordance with the requirements of 10 CFR 1021.315, the same requirements that apply to any other DOE EIS (10 CFR 1021.314(d)).

DOE must incorporate a Supplemental EIS, or the determination whether or not to prepare a supplement and supporting Supplement Analysis, into any related formal administrative record on the action that is the subject of the Supplemental EIS or determination (10 CFR 1021.314(e); 40 CFR 1502.9(c)(3)).

Recommendations

- *A scoping process may be indicated for a Supplemental EIS when the scope of the proposed action has changed since the original EIS was issued, or when the importance, size, or complexity of the proposal warrant scoping.*
- *Another factor to consider when determining whether to employ scoping for a Supplemental EIS is the age of the EIS that is being supplemented and whether the original EIS is out of date in important respects.*

8. THE ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT

Requirements

Required public participation activities related to EAs and Findings of No Significant Impact (FONSI) include:

- notifying the host state and host tribe, affected states and tribes as appropriate, and the general public whenever possible, of a decision to prepare an EA;
- making a draft EA available to host and affected states and tribes, and on request, members of the public for preapproval review;
- making a proposed FONSI available to the public before the final decision in certain circumstances; and
- making completed EAs and issued FONSI available to the public.

DOE must notify the host state and host tribe of a DOE determination to prepare an EA for a DOE proposal. DOE should notify any other state or Indian tribe potentially affected by the DOE proposal (10 CFR 1021.301(c)).

DOE must involve the public to the extent practicable during the preparation of EAs (40 CFR 1501.4(b)). Under the Secretary's NEPA Policy Statement, DOE will ordinarily provide early public notice of the intent to prepare an EA, concurrent with state and tribal notification.

Before approving an EA, DOE must make it available to the host state and host tribe for review and comment. At DOE's discretion, this review period may be from 14 to 30 days (10 CFR 1021.301(d)). In addition, under the Secretary's NEPA Policy Statement, DOE will ordinarily provide an opportunity for interested persons, on request, to review EAs concurrently with state and tribal review.

In certain circumstances, DOE must make FONSI available for public review and comment for 30 days prior to approval. These circumstances arise when the proposed action is similar to one which normally requires an EIS or when the nature of the proposed action is one without precedent (10 CFR 1021.322(d); 40 CFR 1501.4(e)(2)).

DOE must make copies of a FONSI available for inspection in appropriate reading rooms for a reasonable time and must notify the public of its availability in accordance with Council on Environmental Quality's public notice requirements at 40 CFR 1506.6 (10 CFR 1021.322(c)).

Recommendations

- ***Apply the sliding scale approach to determine the extent of public participation opportunities for each EA. In general, the extent of opportunities should increase as the potential for environmental impacts increases. However, substantial interest in or controversy regarding a proposed action, despite relatively insignificant environmental impacts, may warrant a higher degree of public participation opportunities. Note that DOE will only know the extent of public interest or controversy if DOE has engaged in open and early communication with potentially interested parties.***
- ***Whenever possible, provide public notice of the intent to prepare an EA.***

- *Consider inviting comments on the scope of the EA. Also consider holding public scoping meetings for EAs, particularly when the proposed action is highly controversial or when, but for mitigation, the environmental impacts may be significant. When DOE has conducted public scoping for an EA, it will often be appropriate to provide a general public preapproval review opportunity in addition to providing preapproval review upon request.*
- *If, in special circumstances, it is not possible to provide advance notice of DOE' s intent to prepare an EA, try nevertheless to provide adequate public notice of the proposed action before issuing a FONSI.*
- *Whenever possible, provide EAs to any member of the public who specifically requests a preapproval comment opportunity, concurrent with state and tribal preapproval review.*
- *Generally, do not circulate a draft FONSI before the EA is approved, in order to avoid the impression that DOE has already made a decision regarding the significance of the impacts.*
- *EAs, FONSI, and any referenced support documents should be made available in the relevant public reading rooms.*

9. THE CATEGORICAL EXCLUSION

Neither the Council on Environmental Quality nor the DOE NEPA regulations require public participation for categorical exclusion determinations. Indeed, the purpose of categorical exclusions is to avoid "clogging the system" with documentation regarding proposed actions that clearly will have no significant impact on the environment. However, to increase public understanding of DOE' s activities and improve the agency' s credibility, consider periodically (e.g., monthly or quarterly) publishing a list of recent categorical exclusion determinations.

10. ADDITIONAL RESOURCES

Below is a list of additional reference materials concerning public participation. An asterisk indicates that a copy of the item is provided in the NEPA Compliance Guide, issued by the Office of NEPA Policy and Assistance.

Bregman, J.I., and K.M. Mackenthun. 1992. Environmental Impact Statements. Lewis Publishers, Inc., Chelsea, Michigan.

*Council on Environmental Quality. 1997. Environmental Justice Guidance under the National Environmental Policy Act. Washington, DC.**

Council on Environmental Quality. 1989. Risk Analysis: A Guide to Principles and Methods for Analyzing Health and Environmental Risks. [Available from the National Technical Information Service, Springfield, Virginia, 800/553-6847]

*Council on Environmental Quality. 1983. Guidance Regarding NEPA Regulations. 48 Fed. Reg. 34263-64 (July 28, 1983).**

*Council on Environmental Quality. 1981. Scoping Guidance, 46 Fed. Reg. 25461 (May 7, 1981).**

*Council on Environmental Quality. 1981. Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. 46 Fed. Reg. 18026 (March 23, 1981) (Questions 13, 29, 36, 37, and 38).**

Covello, V.T., D.B. McCallum, and M.T. Pavlova. 1989. Effective Risk Communication. Plenum Publishing Corporation, New York, New York.

Department of Energy, Argonne National Laboratory. 1993. Evaluating the Effectiveness of Public Meetings and Workshops: A New Approach for Improving DOE Public Involvement. [Available to DOE and DOE contractors from the Office of Scientific and Technical Information, Oak Ridge, Tennessee 423/576-8401; available to the public from the National Technical Information Service, Springfield, Virginia 800/553-6847]

Department of Energy, Environment, Safety and Health, Office of NEPA Policy and Assistance. Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act. (Revised periodically).

Department of Energy, Office of Environmental Guidance. 1991. Public Participation in Environmental Restoration Activities. DOE Document No. DOE/EH-0221.

Department of Energy, Office of Environmental Management. Public Participation Desk Reference: Policy, Guidance and Headquarters Implementation Plan. (Revised periodically). [Available from the Center for Environmental Management Information, 800-7-EM-DATA or 202/863-5084]

*Department of Energy, Office of NEPA Oversight. 1993. Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements.**

Environmental Protection Agency. 1988. Seven Cardinal Rules of Risk Communication. [Pamphlet No. OPA-87-020]

Environmental Protection Agency, Office of Federal Facilities Enforcement. 1993. Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes. [Available from the Environmental Protection Agency, Washington, D.C., 202/564-2510; and from The Keystone Center, Keystone, Colorado 907/468-5822]

Environmental Protection Agency, Office of Toxic Substances, TSCA Assistance Office. 1986. Explaining Environmental Risk.

Landes, M.M., and D.R. Pescitelli. "Using the Analytical Hierarchy Process in NEPA-Based Public Involvement: A Profile of Success." In S.G. Hildebrand and J.B. Cannon. 1993. Environmental Analysis: The NEPA Experience. Lewis Publishers, CRC Press, Inc., Boca Raton, Florida.

National Research Council. 1994. Building Consensus Through Risk Assessment and Management of the Department of Energy's Environmental Remediation Program. National Academy Press, Washington, D.C.

National Research Council. 1989. Improving Risk Communication. National Academy Press, Washington, D.C.

Schoepfle, G.M., E.J. Szarleta, and S. Schexnayder. "How Severe is Severe: Public Involvement and Systematic Understanding of Wilderness as a Resource." In S.G. Hildebrand and J.B. Cannon. 1993. Environmental Analysis: The NEPA Experience. Lewis Publishers, CRC Press, Inc., Boca Raton, Florida.

APPENDIX I

GUIDANCE ON IMPLEMENTATION OF THE DEPARTMENT'S PUBLIC PARTICIPATION POLICY

SECRETARY HAZEL R. O' LEARY

JULY 29, 1994

APPENDIX II

NATIONAL ENVIRONMENTAL POLICY ACT POLICY STATEMENT

SECRETARY HAZEL R. O' LEARY

JUNE 13, 1994

APPENDIX III

COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS

REGARDING PUBLIC PARTICIPATION

Excerpts from the regulations are presented here for convenience, but the reader may need to consult the complete regulation to understand the full context.

In addition, the reader should be aware that alternative arrangements for NEPA compliance may be made in emergency situations, in consultation with the Council on Environmental Quality. See 40 CFR 1506.11. Further, the Environmental Protection Agency may, upon a showing of compelling reasons of national policy, reduce or extend the time periods prescribed in the Council on Environmental Quality regulations. See 40 CFR 1506.10(d).

40 CFR 1500.1 Purpose.

...

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

40 CFR 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

...

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

...

40 CFR 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

...

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§1502.14 and 1502.15) and reducing emphasis on background material (§1502.16).

...

40 CFR 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

...

(b) If the proposed action is not covered by paragraph (a) of this section [relating to the preparation of EISs or eligibility for categorical exclusions], prepare an environmental assessment (§1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by §1508.9(a)(1).

...

(e) Prepare a finding of no significant impact (§1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in §1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under §1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses)

for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to §1507.3, or

(ii) The nature of the proposed action is one without precedent.

40 CFR 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§1508.22) in the *Federal Register* except as provided in §1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

(2) Determine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in §1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decision making schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§1502.7).

(2) Set time limits (§1501.8).

(3) Adopt procedures under §1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

40 CFR 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

40 CFR 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

40 CFR 1502.9 Draft, final, and supplemental statements.

...

...

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

...

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

40 CFR 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy

(including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

40 CFR 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.

40 CFR 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

- (a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.
- (b) The applicant, if any.
- (c) Any person, organization, or agency requesting the entire environmental impact statement.
- (d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

40 CFR 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

40 CFR 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

...

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

40 CFR 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

40 CFR 1505.1 Agency decision making procedures.

Agencies shall adopt procedures (§1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

...

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

40 CFR 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision....

40 CFR 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§1505.2(c)) and other conditions established in the

environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

...

(d) Upon request, make available to the public the results of relevant monitoring.

40 CFR 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the *Federal Register* and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and area-wide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful.

If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

40 CFR 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

40 CFR 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and §1506.10.

40 CFR 1506.10 Timing of Agency Action.

(a) The Environmental Protection Agency shall publish a notice in the *Federal Register* each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

...

40 CFR 1507.3 Agency procedures.

(a) ...[E]ach agency shall as necessary adopt procedures to supplement these regulations....The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public....

...

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

...

40 CFR 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

- (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
- (2) Aid an agency' s compliance with the Act when no environmental impact statement is necessary.
- (3) Facilitate preparation of a statement when one is necessary.

...

40 CFR 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

- (a) Describe the proposed action and possible alternatives.
- (b) Describe the agency' s proposed scoping process including whether, when, and where any scoping meeting will be held.
- (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

APPENDIX IV

DEPARTMENT OF ENERGY NEPA REGULATIONS REGARDING PUBLIC PARTICIPATION

Excerpts from the regulations are presented here for convenience, but the reader may need to consult the complete regulation to understand the full context.

In addition, the reader should be aware that the DOE NEPA regulations allow the agency to take an action without observing all provisions of the regulations or the Council on Environmental Quality regulations, in accordance with 40 CFR 1506.11, in emergency situations that demand immediate action. DOE may also reduce time periods that are not required by the Council on Environmental Quality regulations. The Secretary of Energy may grant a variance from the requirements of the DOE NEPA regulations, based on the interests of national security or the public health, safety, or welfare. See 10 CFR 1021.343. (Note that, under DOE Order 451.1A, the Secretary has delegated this authority to the Assistant Secretary for Environment, Safety and Health.)

10 CFR 1021.210 DOE decisionmaking.

...

- (c) During the decisionmaking process for each DOE proposal, DOE shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)) and shall include such documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c)).

...

10 CFR 1021.213 Rulemaking.

...

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5 (d)). DOE will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS under §1021.313 of this part. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking that DOE may use to gather information during early stages of regulation development. When engaged in rulemaking for the purpose of protecting the public health and safety, DOE may issue the final rule simultaneously with publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR 1506.10(b).

...

10 CFR 1021.214 Adjudicatory proceedings.

...

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

10 CFR 1021.215 Applicant process.

...

(b) The applicant shall:

...

(3) Consult with appropriate Federal, state, regional and local agencies, American Indian tribes and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

...

(5) Notify DOE of private entities and organizations interested in the proposed undertaking, in order that DOE can consult, as

appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2);

...

10 CFR 1021.216 Procurement, financial assistance, and joint ventures.

...

(h) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. . . . After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

...

10 CFR 1021.301 Agency review and public participation.

(a) DOE shall make its NEPA documents available to other Federal agencies, states, local governments, American Indian tribes, interested groups, and the general public, in accordance with 40 CFR 1506.6, except as provided in §1021.340 of this part.

...

(c) DOE shall notify the host state and host tribe of a DOE determination to prepare an EA or EIS for a DOE proposal, and may notify any other state or American Indian tribe that, in DOE' s judgment, may be affected by the proposal.

(d) DOE shall provide the host state and host tribe with an opportunity to review and comment on any DOE EA prior to DOE' s approval of the EA. DOE may also provide any other state or American Indian tribe with the same opportunity if, in DOE' s judgment, the state or tribe may be affected by the proposed action. At DOE' s discretion, this review period shall be from 14 to 30 days. DOE shall consider all comments received from a state or tribe during the review period before approving or modifying the EA, as appropriate. If all states and tribes afforded this opportunity for preapproval review waive such opportunity, or provide a response before the end of the comment period, DOE may proceed to approve or take other appropriate action on the EA before the end of the review period.

...

10 CFR 1021.311 Notice of intent and scoping.

(a) DOE shall publish an NOI in the *Federal Register* in accordance with 40 CFR 1501.7 and containing the elements specified in 40 CFR 1508.22 as soon as practicable after a decision is made to prepare an EIS. However, if there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.6.

(b) If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, DOE may publish an Advance NOI in the *Federal Register* to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments. This Advance NOI does not serve as a substitute for the NOI provided for in paragraph (a) of this section.

(c) Publication of the NOI in the *Federal Register* shall begin the public scoping process. The public scoping process for a DOE EIS shall allow a minimum of 30 days for receipt of public comments.

(d) Except as provided in paragraph (g) of this section, DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. DOE shall announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the *Federal Register*, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date, or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the *Federal Register* or in other ways as appropriate.

(e) In determining the scope of the EIS, DOE shall consider all comments received during the announced comment period held as part of the public scoping process. DOE may also consider comments received after the close of the announced comment period.

(f) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS, the provisions of paragraphs (a) through (f) of this section shall apply.

10 CFR 1021.313 Public review of environmental impact statements.

(a) The public review and comment period on a DOE draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the *Federal Register*.

(b) DOE shall hold at least one public hearing on DOE draft EISs. Such public hearings shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS and include the location, date, and time of the public hearings.

(c) DOE shall prepare a final EIS following the public comment period and hearings on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4. In addition to the requirements at 40 CFR 1502.9(b), a DOE final EIS shall include any Statement of Findings required by 10 CFR part 1022, "Compliance with Floodplain/Wetlands Environmental Review Requirements."

- a. DOE shall use appropriate means to publicize the availability of draft and final EISs and the time and place for public hearings on a draft EIS. The methods chosen should focus on reaching persons who may be interested in or affected by the proposal and may include the methods listed in 40 CFR 1506.6(b)(3).

10 CFR 1021.314 Supplemental environmental impact statements.

...

(c) When it is unclear whether or not an EIS supplement is required, DOE shall prepare a Supplement Analysis.

...

(3) DOE shall make the determination and the related Supplement Analysis available to the public for information. Copies of the determination and Supplement Analysis shall be provided upon written request. DOE shall make copies available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time.

...

10 CFR 1021.315 Records of decision.

(a) No decision may be made on a proposal covered by an EIS during a 30-day "waiting period" following completion of the final EIS, except as provided at 40 CFR 1506.1 and 1506.10(b) and §1021.211 of this part. The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the *Federal Register*.

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and §1021.211 of this part).

(c) DOE RODs shall be published in the *Federal Register* and made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and §1021.340 of this part.

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the *Federal Register* if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

...

10 CFR 1021.322 Findings of no significant impact.

...

(c) DOE shall make FONSIIs available to the public as provided at 40 CFR 1501.4(e) and 1506.6; DOE shall make copies available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time.

(d) DOE shall issue a proposed FONSI for public review and comment before making a final determination on the FONSI if required by 40 CFR 1501.4(e)(2); DOE may issue a proposed FONSI for public review and comment in other situations as well.

...

10 CFR 1021.330 Programmatic (including Site-wide) NEPA documents.

...

(e) DOE shall evaluate site-wide EAs by means of an analysis similar to the Supplement Analysis to determine whether the existing site-wide EA remains adequate, whether to prepare a new site-wide EA, revise the FONSI, or prepare a site wide EIS, as appropriate. The determination and supporting analysis shall be

made available in the appropriate DOE public reading room(s) or in other appropriate location(s) for a reasonable time.

10 CFR 1021.331 Mitigation action plans.

...

(d) DOE shall make copies of the Mitigation Action Plans available for inspection in the appropriate DOE public reading room(s) or in other appropriate location(s) for a reasonable time. Copies of the Mitigation Action Plans shall also be available upon written request.

10 CFR 1021.340 Classified, confidential, and otherwise exempt information.

...

(b) To the fullest extent possible, DOE shall segregate any information that is exempt from disclosure requirements into an appendix to allow public review of the remainder of a NEPA document.

...



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