

Management System: Environment, Safety, and Health

Subject Area: Environmental Compliance

Procedure: Conducting Public Participation Under the National Environmental Policy Act (NEPA)

Issue Date and Revision Number: 9/26/16 0	Lead Subject Matter Expert: Pete Yerace	Management System Owner: John Sattler
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1.0 Applicability

This Procedure applies to the EMCBC and Service Level Agreement (SLA) Sites staff who manage or participate in the public participation process under 42 U.S.C. 4321 et seq., National Environmental Policy Act (NEPA) of 1969, as amended. This includes the EMCBC Director, Head of Field Organizations (HFOs) (i.e., Field Operation Site Office Directors and Field Operation Sites Federal Project Directors (FPDs)), NEPA Compliance Officer (NCO), NEPA Coordinator, NEPA Document Manager (NDM), Public affairs/Communications staff, and legal counsel.

2.0 Required Procedure

Step 1	The NCO (for both the EMCBC and SLA sites if they have their own NEPA Program) prepares when necessary a NEPA public participation plan for the organizational unit under his or her responsibility. The EMCBC and SLA sites can use this SAP for determining the level of Public Participation for associated NEPA determinations. In preparing an individual plan, the NCO consults Effective Public Participation under the National Environmental Policy Act, 2nd Edition, and the organizational unit’s general public participation plan (if any exists). The EMCBC NCO will use the NEPA 2 nd Edition when making NEPA public participation decisions.
Step 2	For each NEPA action, the NDM and/or NCO establish the level and type of public participation. It will differ depending upon the type and complexity of the action. Consultation among the NDM, NCO, the

Public Affairs/Communications staff and other NEPA project team members is crucial.
 For Categorical Exclusions (CXs), proceed to Step 3.
 For Environmental Assessments (EAs), proceed to Step 4.
 For Environmental Impact Statements (EISs; includes site-wide and programmatic EISs), proceed to Step 7.
 For Supplemental Environmental Impact Statements (SEISs), proceed to Step 10.

CXs

Step 3

CXs are documented and made available to the public by posting them online to the organization’s Website, generally within two weeks of the determination. This will be for most cases posted on the Field Operation Sites web sites.

The responsible NCO creates the posting and coordinates with the web site owner. The requirement may be met by posting the entire Environmental Checklist, DOE HQ Office of NEPA Policy and Compliance (GC-54)’s Categorical Exclusion (CX) Determination Form, or a similar local CX determination form. Whichever is used, the NCO should ensure that it protects classified information, confidential business information, and/or any other information that DOE would not disclose pursuant to 5 U.S.C. 552, Freedom of Information Act (FOIA). At a minimum, the following supporting information must be included:

1. Determination date,
2. Name of action/description, and
3. CX Number.

All CX determinations/postings must meet the following conditions:

1. Per 10 CFR 1021.410(b)(2), there are no extraordinary circumstances related to the proposed action that may affect the significance of the environmental effects of the proposed action.
2. Per 10 CFR 1021.410(b)(3), the proposed action is not “connected” to other actions with potentially significant impacts.
3. Also per 10 CFR 1021.410(b) (3), the proposed action is not related to other proposed actions with cumulatively significant impacts.
4. The proposed action is not precluded by 40 CFR 1506.1, Limitations on Actions During NEPA Process, or 10 CFR 1021.211, Interim Actions: Limitations on Actions During the NEPA Process.

<i>EAs</i>	
Step 4	<p>Scoping Phase:</p> <ol style="list-style-type: none"> a. During internal scoping, the NDM and the local public affairs/communications specialist develop a plan for public participation. b. During internal scoping, the NEPA project team weighs in on the plan, which the NDM modifies as appropriate. c. The EMCBC Director/SLA FPD is subsequently briefed on the plan. d. If an optional EA implementation plan (IP) is prepared by the NDM and local public affairs/communications Staff, a specific public participation plan may be documented there. e. During internal scoping, the NEPA project team also identifies potential stakeholders. The process begins by consulting the Directory of Potential Stakeholders for DOE Actions under NEPA to identify potential stakeholders. The NDM ensures that a stakeholder database of all interested individuals and groups is started early in EA preparation and maintained throughout the process. f. Public scoping is not required, but if the NDM, NCO, and public affairs official consider it prudent, to a lesser or greater extent it can follow Step 5 and the Scoping Guidance in Memorandum from Council on Environmental Quality to General Counsels, NEPA Liaisons, and Participants in Scoping. g. The NDM must notify host state(s) and tribe(s) in writing of the intent to prepare an EA. h. The NCO should also commence outreach to other Federal and local government officials, and other appropriate stakeholders (if any) identified in the NEPA project team’s stakeholder database. i. The NDM may prepare a Notice of Intent (NOI) as with an EIS (see Step 5), but this should be reserved for those EAs where preparation of an EIS is a possibility. When an NOI is prepared for an EA, it should be written such that if a transition is made to an EIS, a subsequent NOI need not be prepared.

	<p>j. If a floodplain or wetland action is part of the NEPA Federal action, the NDM and local public affairs/communications staff should ensure that a Notice of Proposed Floodplain/Wetland Action required by 10 CFR 1022, Compliance with Floodplain and Wetland Environmental Review Requirements (68 FR 51429), is part of the notification.</p>
<p>Step 5</p>	<p>Draft EA Phase:</p> <p>a. The NDM provides those notified with an opportunity to review and comment on the draft EA. At DOE’s discretion, this review period is from 14 to 30 calendar days. A full 30-calendar-day review and comment period can preclude the need for later schedule extension. Extensions are granted at the discretion of DOE.</p> <p>40 CFR Part 1500 - 1508, Council on Environmental Quality (CEQ): Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), require Agencies to involve the public in the preparation of EAs "to the extent practicable." DOE NEPA policy recommends, “enhanced public involvement”.</p> <p>Suggestions include:</p> <ol style="list-style-type: none"> 1. Early public notice of DOE's intent to prepare an EA (concurrent with state/tribal notification); and 2. Opportunity for interested parties, on request, to review EAs (concurrent with state/tribal review) prior to DOE approval. <p>b. The DOE Policy on Public Involvement in the Environmental Assessment Process requires that, when a DOE office makes a draft EA available for public review, the office shall ensure that the Draft EA is posted on the DOE NEPA web site before the start of the public review period. Note that the Policy allows for instances when DOE chooses not to make a draft EA publicly available. When it does, however, DOE should both post the draft EA (with review instructions) on its own web site and inform the DOE Headquarters (HQ) Office of NEPA Policy and Compliance (GC-54) webmaster that the EA is available for central posting. In the latter case, the NDM provides the necessary electronic files, utilizing the GC-54 Document Certification and Transmittal Form.</p> <p>c. If there is public interest, the NDM may arrange for public meeting. A variety of means should be used to announce the location, date, and time. In addition to including notification in</p>

	<p>letters distributing the Draft to the State and Tribes, notices in the local media, and letters to those individuals and organizations in the stakeholder database can be used.</p>
<p>Step 6</p>	<p>Final EA and Decision-Making Phase:</p> <ul style="list-style-type: none"> a. DOE may make a proposed Finding of No Significant Impact (FONSI) available for a 30 calendar-day comment period to State, Tribal, and other Federal and local government officials, and other appropriate stakeholders (if any) identified in the stakeholder database. Unless a second round of public comment on the draft EA is envisioned, the EA is first finalized before making the proposed FONSI available. In making the proposed FONSI available, the NDM, NCO, and EMCBC Director/SLA Director consider whether: <ul style="list-style-type: none"> o The proposed action is, or is closely similar to one which normally requires preparation of an EIS. o The nature of the proposed action is one without precedent. o The scope and/or intensity of impacts are controversial. o There are any other reasons for further involvement. b. The NDM coordinates with the responsible public affairs/communications staff, and together they ensure that the final EA and final FONSI are made available. The NDM distributes the final EA and FONSI (normally within two weeks of approval) in accordance with 10 CFR 1021.322(c), Findings of no significant impact, and the approach to public participation established during scoping. Distribution must include host State(s)/Tribe(s) and local reading rooms identified in the Directory of Potential Stakeholders for DOE Actions under NEPA. Distribution may also include specific members of the public/organizations and local government officials per the stakeholder database maintained by the project. c. GC-54 posts final EAs and FONSI on the DOE NEPA web site. The NDM provides the necessary hard copies and electronic files, utilizing the GC 54 Document Certification and Transmittal Form. The final EA/FONSI can also be made available on the internet by the applicant and/or the involved organizational units.
<p>EISs (Includes Site-Wide and Programmatic EISs)</p>	
<p>Step 7</p>	<p>Scoping Phase</p> <ul style="list-style-type: none"> a. As part of internal scoping, the NDM and the local public

affairs/communications specialist develop a plan for public participation.

- b. During internal scoping, the NEPA project team weighs in on the plan, which the NDM modifies as appropriate.
- c. The EMCBC Director/SLA Director is subsequently briefed on the plan.
- d. If an optional EIS IP is prepared by the NDM, in conjunction with the local public affairs/communications staff, a specific public participation plan may be documented there.
- e. During internal scoping, the NEPA project team also identifies potential stakeholders. The process begins by consulting the Directory of Potential Stakeholders for DOE Actions under NEPA to identify potential stakeholders. The NDM ensures that a stakeholder database of all interested individuals and groups is started early in EIS preparation and maintained throughout the process.
- f. The NDM prepares an NOI. Previous NOIs should be consulted to determine the most appropriate content and format.
- g. The EMCBC Director/SLA Director (can be delegated) transmits the approved NOI to GC-54 for approval followed by issuance in the Federal Register through the Federal Register Liaison in DOE HQ Office of Deputy General Counsel for Energy Policy (GC-70). The publication date of the NOI begins the scoping period for the EIS. There is a minimum of 30 calendar days from the date the NOI is published for receipt of comments. The concurrence chain for transmitting the NOI is the NCO, field organization Chief Counsel, line program/project manager, the local public affairs/communications manager, and sponsoring EM organization.
- h. The NDM should simultaneously notify host state(s) and tribe(s) in writing the intent to prepare an EIS, including the NOI in the correspondence and inviting comments and suggestions on the scope of the EIS. The NCO should also commence outreach to other Federal and local government officials, and other appropriate stakeholders (if any) identified in the stakeholder database.
- i. The NDM, in conjunction with the local public affairs/communications staff, may publish the NOI concurrently

	<p>with a Floodplain/Wetland Notice of Involvement required by 10 CFR 1022, Compliance with Floodplain and Wetland Environmental Review Requirements (68 FR 51429, Wednesday, 08/27/2003).</p> <ul style="list-style-type: none"> j. Per 40 CFR 1506.6, Public Involvement, the NDM ensures diligent efforts to involve the public. <ul style="list-style-type: none"> 1. The NDM works with the EMCBC or SLA Local Public Affairs Office to determine if a press release is prudent and if so, to prepare and disseminate it. 2. Per 10 CFR 1021.311, Notice of Intent and Scoping, the NDM arranges for at least one public scoping meeting. DOE announces the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the local media, or letters to other interested parties in the stakeholder database. Public scoping meetings are not to be held until at least 15 days after public notification. <p>If DOE changes the location, date, or time of a public scoping meeting, or schedules additional public scoping meetings, DOE publicizes these changes in the Federal Register and notifies those previously notified.</p>
<p>Step 8</p>	<p>Draft EIS</p> <ul style="list-style-type: none"> a. Per 10 CFR 1021.313, Public Review of Environmental Impact Statements, the NDM provides for a public review of the EIS. The public review and comment period on a DOE draft EIS is to be no less than 45 days. b. The NDM, in conjunction with GC-54, ensures that the draft EIS is appropriately filed with the U.S. Environmental Protection Agency (EPA) according to their “Submitting Environmental Impact Statements” instructions. Statements must be filed with the EPA no earlier than they are transmitted to commenting agencies and made available to the public. c. The EPA publishes a Notice of Availability in the Federal Register, at which point the public comment period officially begins. d. DOE must hold at least one public hearing on DOE draft EISs. Such public hearings are to be announced at least 15 days in advance. The Notice of Availability identifies necessary

	<p>background and logistical information.</p> <p>e. DOE may use additional means to publicize the availability of draft EISs and the time and place for public hearings, most importantly, its stakeholder database. The methods chosen are to focus on reaching states, tribes, other Federal and local government agencies, and the public who may be interested in or affected by the proposal and may include the methods listed in 40 CFR 1506.6(b)(3), Public Involvement (see 57 FR 15144, 04/24/1992, As Amended at 68 FR 51432, 08/27/2003). The NDM, in conjunction with the local public affairs/communications staff, must post draft EISs on the DOE NEPA web site, and may place draft EISs on local DOE web sites to facilitate commenting. The GC-54 Document Certification and Transmittal Form is used to forward hard copies and electronic files to that office.</p>
<p>Step 9</p>	<p>Final EIS (FEIS) Distribution</p> <p>a. The NDM, in conjunction with GC 54, ensures that the FEIS is appropriately filed with the EPA according to their "Submitting Environmental Impact Statements" instructions.</p> <p>b. The NDM also makes the FEIS available through distribution to host State(s)/Tribe(s) and local reading rooms identified in the Directory of Potential Stakeholders for DOE Actions under NEPA. Distribution may also include specific members of the public/organizations and local government officials per the stakeholder database maintained by the project.</p> <p>c. The NDM, in conjunction with GC-54, must post the FEIS on the DOE NEPA web site and may place the FEIS on local DOE Websites. The GC-54 Document Certification and Transmittal Form is used to forward hard copies and electronic files to that office.</p> <p>d. The NDM, in conjunction with GC-54, ensures that the FEIS is appropriately filed with the EPA according to their "Submitting Environmental Impact Statements" instructions. Statements must be filed with EPA no earlier than they are transmitted to commenting agencies and made available to the public.</p> <p>e. The EPA publishes a Notice of Availability in the Federal Register.</p> <p>After 30 days, Records of Decision (RODs) can be published. The</p>

	<p>NDM must ensure RODs are posted on the DOE NEPA web site, and may place RODs on local DOE or applicant web sites. The GC-54 Document Certification and Transmittal Form are used to forward hard copies and electronic files of RODs to that office.</p> <p>Similar to proposed FONISs, proposed RODs can be made available for comment prior to approval at the discretion of DOE HQ Office of the General Counsel (GC-1) or the EMCBC Director/SLA Director, if delegated.</p>
Supplemental Environmental Impact Statements (SEIs)	
Step 10	<p>Public outreach for Supplemental EISs is identical to that for EISs except that a public scoping process is optional for Supplemental EISs (See 40 CFR 1502.9[c][4], Draft, Final, and Supplemental Statements).</p>

3.0 References – Forms/Attachments/Exhibits

3.1 References

- Categorical Exclusion (CX) Determination Form
- A Citizen’s Guide to the NEPA: Having Your Voice Heard (12/2007)
- 10 CFR Part 1021, U.S. Department of Energy (DOE): National Environmental Policy Act (NEPA) Implementing Procedures
- 10 CFR Part 1022, Compliance with Floodplain and Wetland Environmental Review Requirements
- 40 CFR Part 1500 - 1508, Council on Environmental Quality (CEQ): Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)
- DOE O 451.1B, Admin. Change 3, National Environmental Policy Act Compliance Program (01/19/2012)
- DOE, NEPA, and You Pamphlet (2011)
- DOE Policy on Public Involvement in the Environmental Assessment Process (Memorandum, 07/16/2010)
- Directory of Potential Stakeholders for DOE Action under NEPA, 29th Edition (07/2012; Revised 08/07/2012)
- Effective Public Participation under the National Environmental Policy Act, 2nd Edition (08/1998)
- NEPA Guidance on EIS Distribution (Memorandum, 06/2006)
- NEPA Guidance on the EIS Comment-Response Process (Memorandum, 10/08/2004)
- Frequently Asked Questions on Filing EISs with EPA's Office of Federal Activities (Letter, 02/15/1994)
- Implementation Guidance for the DOE Policy on Documentation and Online Posting of Categorical Exclusion Determinations: NEPA Process Transparency and Openness, Revision 1 (05/25/2010)

- 74 FR 52129, U.S. Department of Energy, 10 CFR Part 1021, Online Posting of Certain DOE Categorical Exclusion Determinations; Policy Statement (10/09/2009)
- Secretarial Policy Statement on the National Environmental Policy Act, signed by Hazel O’Leary (06/13/1994)
- EMCBC Procedure , Establishing the Level of National Environmental Policy Act (NEPA) Review and Documentation
- EMCBC Procedure , Following the Categorical Exclusion (CX) process
- EMCBC Procedure , Following the Environmental Assessment (EA) Process
- EMCBC Procedure , Following the Environmental Impact Statement (EIS) Process
- Procedures for Submitting Documents for Posting on the DOE NEPA Web Site (www.gc.energy.gov/NEPA) (08/2008)
- Questions and Answers on the Secretarial Policy Statement on the National Environmental Policy Act (07/1994)
- EMCBC NEPA Website
- Scoping Guidance in Memorandum from Council on Environmental Quality to General Counsels, NEPA Liaisons, and Participants in Scoping (Memorandum, 04/30/1981)
- Submitting Environmental Impact Statements Website
- 5 U.S.C. 552, Freedom of Information Act (FOIA)
- 42 U.S.C. 4321 et seq., National Environmental Policy Act (NEPA) of 1969, As Amended

4.0 Records Generated

Records generated by the EMCBC through implementation of this procedure are identified as follows and are maintained by the Office of Technical Support & Asset Management in accordance with the EMCBC Organizational File Plan. SLA and Field Operation Sites shall maintain records generated through implementation of this procedure under the same records category code which is the equivalent to the DOE records disposition authority, and are managed in accordance with their respective site file plan.

Records Category Code	Records Title	Responsible Organization	Quality Records Classification (Lifetime, Non-Permanent, or Not Applicable)
ENV-02-F-01C	National Environmental Policy Act and Related Laws Documentation, Environmental Impact Statements	Office of Technical Support & Asset Management, or applicable SLA or Field Operation Site Office	Not Applicable
ENV-02-F-02C	National Environmental Policy Act and Related	Office of Technical Support & Asset	Not Applicable

	Laws Documentation, Environmental Assessment Records	Management, or applicable SLA or Field Operation Site Office	
ENV-02-F-03C	National Environmental Policy Act and Related Laws Documentation, Categorical Exclusion Records	Office of Technical Support & Asset Management, or applicable SLA or Field Operation Site Office	Not Applicable
ENV-02-F-04	National Environmental Policy Act and Related Laws Documentation, Support Documentation	Office of Technical Support & Asset Management, or applicable SLA or Field Operation Site Office	Not Applicable

EMCBC RECORD OF REVISION

DOCUMENT TITLE: Conducting Public Participation under NEPA

If there are changes to the controlled document before the two-year review cycle, the revision number stays the same; one of the following will indicate the change:

I Placing a vertical black line in the left margin adjacent to sentence or paragraph that was revised; or

I Placing the words GENERAL REVISION at the beginning of the text. This statement is used when entire sections of the document are revised.

If changes and updates occur at the two-year review cycle, the revision number increases by one.

Rev. No.	Description of Changes	Revision on Pages	Date
0	Revised Document to align with new Executive Order 13693 requirements	All	09/26/16