

National
Environmental
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Act

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**EFFECTIVE PUBLIC
PARTICIPATION**
under the
**NATIONAL
ENVIRONMENTAL
POLICY ACT**

Office of NEPA Policy and Assistance
U.S. Department of Energy

December 1994



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United States Government

Department of Energy

memorandum

DATE: December 27, 1994

REPLY TO

ATTN OF: Office of NEPA Policy and Assistance:Lichtman:6-4610

SUBJECT: Guidance on Effective Public Participation under the National Environmental Policy Act (NEPA)

TO: Secretarial Officers and Heads of Field Organizations (list attached)

I am pleased to provide for your use the attached guidance, "Effective Public Participation under the National Environmental Policy Act," that is designed to facilitate DOE's compliance with the requirements and spirit of NEPA. The guidance should aid those responsible for conducting public participation activities related to NEPA 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 guidance incorporates the principles and requirements of the Secretary's Policy Statement on the National Environmental Policy Act, issued June 13, 1994, and the Secretary's Public Participation Policy, issued July 29, 1994. My Office of NEPA Policy and Assistance (formerly the Office of NEPA Oversight) prepared the guidance in consultation with the Office of the Assistant General Counsel for Environment and the Office of Public and Consumer Affairs. The Department's NEPA Compliance Officers, NEPA Contacts, NEPA Document Managers, and Field Counsel provided helpful comments on draft guidance. In addition to a broad distribution within the Department, we also plan shortly to provide copies to external stakeholders. We will revise the guidance as appropriate in response to any comments we may receive.

Implementing this guidance should provide immediate benefits to DOE offices that are planning or conducting public participation activities. This guidance, and any subsequent guidance developed specifically for environmental justice considerations, should be incorporated in public participation plans for your organization.

Please direct any questions and suggestions regarding this guidance to Stanley Lichtman, Director, Waste Activities Division, Office of NEPA Policy and Assistance at 202-586-4610.


Tara O'Toole, M.D., M.P.H.
Assistant Secretary
Environment, Safety and Health

Attachment

**EFFECTIVE PUBLIC PARTICIPATION
UNDER THE
NATIONAL ENVIRONMENTAL POLICY ACT**

**U.S. DEPARTMENT OF ENERGY
ENVIRONMENT, SAFETY AND HEALTH
OFFICE OF NEPA POLICY AND ASSISTANCE
DECEMBER 1994**

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Table of Contents

EFFECTIVE PUBLIC PARTICIPATION UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

PREFACE

1. INTRODUCTION	1
Secretarial Policies	1
NEPA Regulations	1
Definition of "Public Participation"	2
Some Benefits of Public Participation	2
2. HOW TO USE THIS PAPER	4
Sliding Scale	4
3. GENERAL PUBLIC PARTICIPATION ACTIVITIES	5
Involving the Public Early	6
Public Meetings, Hearings, and Workshops	6
Making Information Available	8
Responding to Public Comments	11
Environmental Justice	11
4. THE DOE ENVIRONMENTAL IMPACT STATEMENT PUBLIC SCOPING PROCESS	12
5. THE DRAFT ENVIRONMENTAL IMPACT STATEMENT	15
6. THE FINAL ENVIRONMENTAL IMPACT STATEMENT	18
7. THE SUPPLEMENT ANALYSIS AND SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT	20
8. THE ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT	21
9. THE CATEGORICAL EXCLUSION	23
10. ADDITIONAL RESOURCES	24
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
APPENDIX IV	Department of Energy NEPA Regulations Regarding Public Participation

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 Public Participation Policy and Policy on the National Environmental Policy Act.

The Office of NEPA Policy and Assistance (formerly the Office of NEPA Oversight) prepared this paper in consultation with the Office of the Assistant General Counsel for Environment and the Office of Public and Consumer Affairs. These recommendations should aid those responsible for preparing NEPA documents and others involved in NEPA public participation activities.

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 decisionmaking. 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 decisionmaking processes, which should be open, understandable, and consistently followed, and
- 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 Decisionmaking 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**

Decisionmaking 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 decisionmaking process. The public may identify issues and alternatives that DOE would otherwise overlook.

- **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.

- **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.

- **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.

- **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.

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

- 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 decisionmaking process -- that is, before narrowing alternatives 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.

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 decisionmaking 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 decisionmaking 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 a proposal 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 annex 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.

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.

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.

Newsletters

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

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.

Press Releases

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

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.

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.

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.

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 Home Page was created on the Internet 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 Internet Uniform Resource Locator (address) for the DOE NEPA Home Page is <http://130.20.92.130:8001/esh/nepa/nepa.htm>.

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 low-income and minority groups that may be disproportionately and adversely affected by the proposed action.
- Ensure that information regarding DOE proposed actions is made available to low-income and minority groups, through meetings and programs targeted to reach these groups. This can help to reduce the degree of isolation often experienced by low-income and minority groups.
- Schedule public meetings in locations that are readily accessible to low-income and minority communities, such as local schools and churches.
- Be sensitive to special needs of community members. For a community 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,
- soliciting and considering public comments, and
- making the EIS Implementation Plan available to the public.

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)).

The EIS Implementation Plan briefly documents the results of the public scoping process and must be available to the public for information. DOE must

place copies in the public reading rooms and other appropriate locations for a reasonable time and provide copies upon written request (10 CFR §§ 1021.312(a) and (d)).

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.
- Consider publishing a Notice of Availability for the Implementation Plan in the Federal Register and in effective communication media reaching the interested or affected public.
- When transmitting the Implementation Plan to scoping participants, consider including a cover letter thanking them for their participation and informing them of the next steps in the NEPA process.

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 decisionmaker. 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 Notice of Availability is published in the Federal Register (10 CFR § 1021.315(a)).

Except for interim actions allowed under 10 CFR § 1021.211, DOE may not take an action on a proposal covered by an EIS until the decision has been made public (10 CFR § 1021.315(b)). If DOE decides to take action on a proposal, it must prepare a Record of Decision, publish it in the Federal Register, and make it available to the public as specified in 40 CFR § 1506.6 (10 CFR § 1021.315(c)).

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 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(b), 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 (FONSIs) 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 FONSIs 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 FONSIs 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 Volume II (Reference Book) of 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. 1989. *Risk Analysis: A Guide to Principles and Methods for Analyzing Health and Environmental Risks*. [Available from the National Technical Information Service, Springfield, Virginia 703/487-4650]

Council on Environmental Quality. 1983. *Guidance Regarding NEPA Regulations*. 48 Fed. Reg. 34263-64.*

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

Council on Environmental Quality. 1981. *Scoping Guidance*.*

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 615/576-8401; available to the public from the National Technical Information Service, Springfield, Virginia 703/487-4650]

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, 1-800-7-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., 202/260-9801; and from The Keystone Center, Keystone, Colorado 303/468-5822]

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



The Secretary of Energy
Washington, DC 20585

July 29, 1994

MEMORANDUM FOR: ALL DOE EMPLOYEES
FROM: HAZEL R. O'LEARY *Hazel R. O'Leary*
SUBJECT: GUIDANCE ON IMPLEMENTATION OF THE DEPARTMENT'S PUBLIC PARTICIPATION POLICY

Public participation must be a fundamental component of the Department's program operations, planning activities, and decision-making. The business of the Department must be open to the full view and input of those whom it serves, consistent with applicable laws, regulations, and contracts.

To ensure that we operate in this manner, the Department's Public Participation Policy was developed by a cross-cutting team that included field representatives. This policy marks a clear break with past practice by challenging the Department and its contractors to perform to a new standard of openness and service.

Within this policy framework, each site will develop its own public participation program and plans in consultation with stakeholders and with the concurrence of appropriate Headquarters program offices. In achieving the goals of public participation, managers are responsible for:

- * identifying, planning, funding, supporting, and implementing the appropriate level and scope of public participation activities in their programs;
- * ensuring that public participation principles, values, and processes are fully understood and practiced within their programs and at their sites;
- * providing necessary human, information, systems, and financial resources; and,
- * ensuring that their staff receive basic communication and public participation training, and where appropriate, advanced public participation training.

To promote teamwork, share the benefits of experience and innovation at individual sites, and avoid unreasonable demands on site personnel or stakeholders, program and staff offices will coordinate public participation activities through the Office of Public and Consumer Affairs at Headquarters or with its counterpart in the field. This coordination in no way limits or dilutes field managers' authority to implement effective public participation programs or program managers' responsibility to plan, fund, and support appropriate levels of public participation in their programs.

The effectiveness with which each site/program implements the Department's Public Participation Policy will be assessed annually, and these assessments must include the views and recommendations of stakeholders. Stakeholders will also be invited to participate in the processes used to develop criteria and measures for judging effectiveness. The Director of Public and Consumer Affairs will evaluate these annual assessments and recommend changes to improve the effectiveness of the Department's public participation efforts.

While public participation processes must be tailored to meet specific site, program, and stakeholder needs, the following broad guidance provides a framework to assist management in implementing this policy Department-wide. Using the following critical policy elements and implementing actions as a guide, Headquarters and Field Elements should consult with stakeholders to develop appropriate public participation programs and activities.

CRITICAL POLICY ELEMENTS:

- I. The Department recognizes that honesty and forthrightness in dealing with stakeholders, and consistent, credible, quality performance are the bases upon which to build public understanding and trust.

Implementing Actions:

- * Department officials will be open, honest, and accurate in their public statements and accountable for diligent follow-up and timely results from the commitments they make.
- * Department officials will engage in an open and on-going communication process and consistently listen and respond to suggestions made by the public. The Department will incorporate public input into its decisions where appropriate and feasible and will provide feedback to the public on its reasoning.
- * Department officials will recognize and reward leadership and results in the area of public participation.

- II. Departmental program development, planning, and decision-making processes will be clearly defined, with regular, easily identified access points for public input.

Implementing actions:

- * Senior management will ensure that Department personnel, other Federal, State, and local officials, Tribes, and other stakeholders are appropriately integrated into their planning activities and decision-making processes.
- * Stakeholders and field managers will determine and identify pre-decisional access points for public input.

- III. Headquarters, field offices, laboratories, and facilities will operate as an integrated team in planning local and national public participation programs by combining resources, sharing information, and coordinating activities.

Implementing actions:

- * Headquarters Elements will coordinate their planning of public participation activities with the Office of Public and Consumer Affairs and with affected sites, including the site Public Affairs/External Relations director.
- * Field managers, as those closest to affected communities and stakeholders, will facilitate accommodation between local and national interests.

- IV. The Department will establish and support training and education programs to meet evolving public participation needs, both internally and externally.

Implementing actions:

- * Senior management, at Headquarters and in the field, will identify and coordinate communication and public participation training on a priority basis until all appropriate headquarters and site personnel are trained.
- * In consultation with stakeholders, field managers will make recommendations on the timing and content of needed external education/training programs.

- V. The Department will foster candid information exchanges and ongoing two-way communication using a variety of mediums.

Implementing actions:

- * Whether formal or informal, all public participation activities will be conducted in a spirit of openness, respect for different perspectives, and a genuine quest for a diversity of information and ideas.
- * The Department will work to establish, announce, and manage topical data bases of reliable, timely information available to the public through telephone and computer access.

Attachment

PUBLIC PARTICIPATION POLICY

PUBLIC PARTICIPATION:

Public participation is open, ongoing, two-way communication, both formal and informal, between the Department of Energy and its stakeholders. This steady, interactive communication enables each party to learn about and better understand the views and positions of the other. The Department recognizes the many benefits to be derived from public participation, for both stakeholders and DOE. Public participation provides a means for the Department to gather the most diverse collection of opinions, perspectives, and values from the broadest spectrum of the public, enabling the Department to make better, more informed decisions. Public participation benefits stakeholders by creating an opportunity to provide input and influence decisions.

POLICY:

Public participation is a fundamental component in program operations, planning activities, and decision-making within the Department. The public is entitled to play a role in Departmental decision-making.

PURPOSE:

This policy is intended to ensure that public participation is an integral and effective part of Departmental activities and that decisions are made with the benefit of important public perspectives. This policy provides a mechanism for bringing a broad range of diverse stakeholder viewpoints and values early into the Department's decision-making processes. This early involvement enables the Department to make more informed decisions, improve quality through collaborative efforts, and build mutual understanding and trust between the Department and the public it serves.

SCOPE:

This policy is designed to function as a general framework within which all Department programs shall operate. While it applies to all levels of DOE, its intent is development and implementation of effective public participation programs at each site. In conjunction with its stakeholders and field manager, each site shall develop and implement a public participation program that promotes openness and two-way communication and is tailored to meet specific program, site, and stakeholder needs. This policy is not intended to affect legal requirements imposed by law, regulation, or contractual agreement; neither does it modify any legal rights available to the public under current law.

DEFINITION:

Under this policy, the Department actively seeks, considers, and incorporates or otherwise responds in a timely manner to the views of its stakeholders, thereby providing them an opportunity to influence decisions. Stakeholders are defined as those individuals and groups in the public and private sectors who are interested in and/or affected by the Department's activities and decisions. Public participation is defined as open, ongoing two-way communication, both formal and informal, within the DOE Complex and between the Department and its stakeholders. This communication will vary widely in nature and scope and may include, but is not limited to, informal conversations, scheduled meetings and workshops, legally required hearings, and Federal-State-local-Tribal agreements.

GOALS:

The goals of the Department's Public Participation Policy are:

- I. The Department actively seeks and considers public input, and incorporates or otherwise responds to the views of its stakeholders in making its decisions.
- II. The public is informed in a timely manner about and empowered to participate in the Department's decision-making processes, which are open, understandable, and consistently followed. Access points for public input are clearly defined from the earliest stages of a decision process and provide adequate time for stakeholders to participate.
- III. Credible, effective public participation processes are consistently incorporated into the Department's program operations, planning activities, and decision-making processes, at headquarters and in the field. Every employee within the DOE Complex shares responsibility to promote, practice, and improve public participation.

CORE VALUES:

Though program-specific public participation activities may vary throughout the DOE Complex, each program will be characterized by the following core values:

- Accessibility:** Known avenues to Department leaders who are available, approachable, and open to the public.
- Accountability:** Responsibility to the public for its decisions and a willingness to provide explanations for the rationales behind its decisions.
- Accuracy:** Commitment to the truth.
- Communication:** Open, two-way exchange of information, knowledge, and perspectives between the Department and its stakeholders.

Consistency: Stakeholder interactions marked by regularity and continuity.

Fairness: Objectivity and freedom from favor toward any side.

Honesty: Commitment to fairness, trustworthiness, and straightforwardness.

Innovation: Introduction of new ideas, methods, and approaches.

Openness: Ready accessibility and a willingness to listen to, consider, and respond to stakeholders.

Peer review: Reexamination of key issues and decisions by internal and external peers.

Respect: Consideration and deference in the treatment of stakeholders.

Responsiveness: Timely and empathetic consideration of and response to the needs, wants, and concerns of stakeholders.

Scientific Credibility: Commitment to the pursuit of sound, dependable, leading edge science.

Sincerity: Openness, frankness, and truthfulness in all stakeholder communications.

Time/Timeliness: Adequate amount of time for stakeholders to participate in Department decision-making processes. Timely responses to stakeholder input and requests. Timely Departmental decision-making processes supported but not hindered or delayed by public participation.

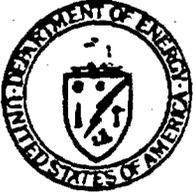
ACCOUNTABILITY: Senior departmental, program, and field managers are accountable for assuring that public participation activities meet the goals of this policy and the needs of stakeholders; are fully coordinated; and reflect Departmental principles and values. Managers are responsible for implementing plans that assure that public participation needs for their programs or projects are identified and satisfied in the decision-making process. Public Participation is a performance element for these managers.

APPENDIX II

NATIONAL ENVIRONMENTAL POLICY ACT POLICY STATEMENT

SECRETARY HAZEL R. O'LEARY

JUNE 13, 1994



The Secretary of Energy
Washington, DC 20585

June 13, 1994

MEMORANDUM FOR SECRETARIAL OFFICERS AND HEADS OF FIELD ELEMENTS

FROM:

HAZEL R. O'LEARY

A handwritten signature in cursive script, appearing to read "Hazel R. O'Leary", written over the typed name.

SUBJECT:

NATIONAL ENVIRONMENTAL POLICY ACT POLICY STATEMENT

Full compliance with the letter and spirit of the National Environmental Policy Act (NEPA), our national charter for protection of the environment, is an essential priority for the Department of Energy, consistent with our core values. We are fully committed to pursuing excellence in all areas of environment, safety, and health, including NEPA activities. The Department's openness initiative underscores the need for public access to information and involvement in our actions. The NEPA process is a valuable planning tool and an opportunity to improve the quality of the Department's decisions and build public trust.

An internal process improvement team and further analysis by the offices of the Assistant Secretary for Environment, Safety and Health and the General Counsel have shown that we must improve our NEPA process. We must approach NEPA as a team--ensuring quality and improving efficiency and thereby making NEPA work better and cost less. Accordingly, with the attached Policy Statement, I am directing a number of actions to streamline the NEPA process, minimize the cost and time for document preparation and review, emphasize teamwork, and make the process more useful to decision makers and the public. Importantly, the Policy Statement requires continuing evaluation of the outcomes of these reforms and allows for additional changes where necessary. I look forward to full participation within the Department, including our contractors, in implementing these important new policies.

ATTACHMENT

SECRETARIAL POLICY STATEMENT
ON THE NATIONAL ENVIRONMENTAL POLICY ACT

The NEPA process is a valuable planning tool and provides an opportunity to improve the Department of Energy decisions and build public trust. Reviews of the Department's NEPA program have shown that the Department must change the way it conducts its business to avoid unnecessary delays and reap the full benefits of the NEPA process. The Department must conduct the process as a team effort to make NEPA work better and cost less. The following new policies will streamline the NEPA process, minimize the cost and time for document preparation and review, emphasize teamwork, and make the process more useful to decision makers and the public. Except where specifically indicated otherwise, these policies are immediately effective.

I. Delegations of Authority

- A. To facilitate early integration of the NEPA process with project planning and decision making, reduce document review times, and foster ownership of NEPA documents, the Heads of Field Organizations listed in Attachment 1 will receive full authority for environmental assessments, findings of no significant impact, and associated floodplain and wetland action documentation requirements relating to their proposed actions. Under certain conditions, Heads of Field Organizations may redelegate these authorities to Heads of subsidiary Field Organizations. For actions not within the purview of a Field Organization, the Secretarial Officers listed in Attachment 1 will receive full authority for the preparation of such documents relating to their actions.**
- 1. The Assistant Secretary for Environment, Safety and Health will grant this delegation upon receipt of a valid request. Heads of Field Organizations should redelegate such authorities to Heads of subsidiary Field Organizations upon receipt of a request. Requests for delegation should confirm that: (i) a NEPA Compliance Officer has been designated, (ii) internal scoping procedures and public participation and quality assurance plans have been prepared, and (iii), in the case of Field Organizations, adequate Department of Energy legal resources are available.**
 - 2. Secretarial Officers and Heads of Field Organizations should submit requests for delegation as soon as practicable; the Assistant Secretary for Environment, Safety and Health will delegate authorities within two weeks of receiving a valid request. Each Secretarial Officer and Head of a Field Organization listed in Attachment 1 is required to submit a valid request no later than December 15, 1994, so that the delegation process can be completed by December 31, 1994.**

- B. To reduce document review times and foster ownership of NEPA documents, Secretarial Officers will approve implementation plans for environmental impact statements for their respective proposed actions, after soliciting comments from the Office of Environment, Safety and Health, in consultation with the Office of the General Counsel. Preparers are reminded that implementation plans are intended to be brief (normally about 20 pages) and to simply establish a road map for the environmental review to follow.**
- C. Each Secretarial Officer and Head of a Field Organization will submit an annual NEPA planning summary to the Assistant Secretary for Environment, Safety and Health by January 31 of each year and will make the summaries available to the public.**
- 1. The annual NEPA planning summaries will describe briefly the status of ongoing NEPA compliance activities and any environmental assessments expected to be required in the next 12 months or environmental impact statements expected to be required in the next 24 months and, if available, the schedule for completion of each NEPA review identified (see Attachment 2).**
 - 2. Every three years starting with the first year, Field Organizations will include in the annual NEPA planning summary an evaluation of whether a site-wide environmental impact statement would facilitate future NEPA compliance efforts.**
 - 3. The Office of Environment, Safety and Health will review the summaries in consultation with the Office of General Counsel and comment as appropriate.**
- D. To maintain the quality of NEPA reviews, the Office of Environment, Safety and Health will provide additional guidance and training to Secretarial Offices and Field Organizations on matters such as the following:**
- 1. Preparation of adequate statements of work to effectively direct the efforts of NEPA contractors;**
 - 2. Improving public participation in the NEPA process (to be provided with the assistance of the Public Affairs Office); and**
 - 3. Application of the Office of Environment, Safety and Health's "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements."**
- E. The Assistant Secretary for Environment, Safety and Health is authorized to direct a Secretarial Officer or Head of a Field Organization to prepare an environmental assessment or environmental impact statement.**
- F. Where multiple Field Organizations or Program Offices would be involved in a proposed action for which an environmental assessment is to be prepared, all involved Offices should consult regarding the assignment of**

responsibility for preparing and approving the environmental assessment. The Assistant Secretary for Environment, Safety and Health will resolve NEPA issues where several Offices are unable to reach agreement.

II. Process Changes

A. The NEPA process should be a team effort. To establish team leadership and ownership of the NEPA process and thereby improve its management, the cognizant Secretarial Officer or Head of a Field Organization will designate a Department of Energy member of the team working on any project requiring NEPA review as the NEPA Document Manager, to manage the document preparation process and keep it on schedule. Among the responsibilities of the NEPA Document Manager are to:

- 1. Consider innovative measures to reduce NEPA process time;**
- 2. Consider requesting variances from Department of Energy NEPA regulations (10 CFR Part 1021) as necessary to meet timing requirements or for other reasons that are permitted under section 1021.343 of the regulations; and**
- 3. Elevate internal disputes for prompt decision.**

The Project Manager or NEPA Compliance Officer may serve this function as appropriate; in any case, the NEPA Document Manager should work closely with these other individuals.

B. To expedite approval of innovative procedures, where appropriate, the Assistant Secretary for Environment, Safety and Health is delegated authority to grant variances from provisions of Department of Energy NEPA regulations, as provided in 10 CFR 1021.343.

C. The NEPA Document Manager will conduct an early internal scoping process for the environmental assessment or environmental impact statement being prepared. The scoping process should involve a team representing all necessary departmental elements. For an environmental impact statement, this internal scoping process should precede the public scoping process that begins with publication of a notice of intent.

- 1. The internal scoping process will include the adoption of a proposed schedule for the preparation of the NEPA document and a public participation plan tailored to the project in question.**
- 2. For each environmental impact statement, the schedule established during the internal scoping process will, absent extraordinary circumstances, provide for completion of a final environmental impact statement within 15 months of the issuance of the Notice of Intent.**
- 3. The NEPA Document Manager will maintain a tracking system to monitor compliance with the schedule. The annual NEPA planning summaries**

will identify NEPA reviews that are behind schedule and the reasons for any delays.

- D. To eliminate multiple cycles of revisions, internal reviews of draft environmental assessments and environmental impact statements will be concurrent, rather than sequential.
1. As a general matter, documents will be revised only after all reviewing offices have submitted their comments and agreement has been reached as to what changes are necessary.
 2. Absent extraordinary circumstances, any subsequent reviews that may occur will be limited to addressing any new material, confirming that previous comments have been adequately addressed, and obtaining management-level concurrence.
- E. To facilitate meeting the environmental objectives of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and respond to concerns of regulators, consistent with the procedures of most other Federal agencies, the Department of Energy hereafter will rely on the CERCLA process for review of actions to be taken under CERCLA and will address NEPA values and public involvement procedures as provided below.
1. NEPA reviews will be undertaken for siting, construction, and operation of treatment, storage, and disposal facilities that, in addition to supporting CERCLA actions, also serve waste management or other purposes.
 2. Department of Energy CERCLA documents will incorporate NEPA values, such as analysis of cumulative, off-site, ecological, and socioeconomic impacts, to the extent practicable.
 3. The Department of Energy will take steps to ensure opportunities for early public involvement in the CERCLA process and will make CERCLA documents available to the public as early as possible.
 4. Notwithstanding the above, the Department of Energy may choose, after consultation with stakeholders and as a matter of policy, to integrate the NEPA and CERCLA processes for specific proposed actions.
 5. For proposed corrective actions under the Resource Conservation and Recovery Act at sites that are listed on the National Priorities List under CERCLA, project managers should consult with the Environmental Management NEPA Compliance Officer, who will involve the Offices of Environment, Safety and Health and General Counsel as necessary to make determinations about how to proceed under NEPA.

III. NEPA Contract Reform

- A. All future contracts for the preparation of environmental assessments and environmental impact statements will contain incentives to encourage superior performance in document quality and timeliness.**
- B. To improve the quality and timeliness of documents, all contractors preparing NEPA documents will be subject to performance appraisals.**
 - 1. Procurement solicitations will include an evaluation criterion for the bidder's past performance of comparable assignments. Measures will include any existing evaluations of NEPA support performance.**
 - 2. At the conclusion of the preparation of each environmental assessment and environmental impact statement, the NEPA Document Manager will evaluate the contractor's performance for timeliness, quality, cost-effectiveness, responsiveness, and application of the Office of Environment, Safety and Health's "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements." The evaluations will be provided to the contractor with an opportunity for rebuttal and made available to Secretarial Offices and Field Organizations for consideration in assigning future work to a contractor.**
 - 3. Management and Operating Contractors and National Laboratories will be subject to the same NEPA evaluation process as other contractors.**
- C. Consistent with the contract reform effort that is underway Department-wide, a quality improvement team comprised of Headquarters and Field project, procurement, NEPA, and legal personnel will be formed to develop innovative contracting mechanisms and incentives suited particularly to NEPA document preparation contracts. The quality improvement team will develop recommendations on the most effective use of different contracting mechanisms, such as fixed price contracts, award fees, indefinite quantity/indefinite delivery contracts, and task order contracts. The team also will recommend specific methods of evaluating a potential contractor's past performance. Finally, the team should consider proposing Department of Energy organizations to participate in pilot projects to test contracting mechanisms and methods of evaluation and to monitor performance of the resulting contracts through appropriate metrics. The team will report its findings and recommendations no later than October 1, 1994.**

IV. Additional Reforms for High Priority Projects

- A. Department of Energy personnel rather than contractors will be used, to the maximum extent practicable, to prepare environmental assessments and environmental impact statements that have short preparation time requirements or present unusually controversial or sensitive issues.**

Where resource limitations do not permit Department of Energy personnel to carry out the entire task, contractors might be used for limited analytical or drafting assignments.

- B. When necessary or helpful in meeting important departmental objectives, the NEPA Document Manager may form a special team, comprised of relevant Field Organization and Secretarial Office personnel and representatives from the Offices of Environment, Safety and Health and General Counsel, to carry out the NEPA process from start to finish. This will ensure that all relevant programmatic, policy, and legal considerations are taken into account from the beginning and that the only necessary review function is obtaining senior management approval.
- C. The NEPA Document Manager is encouraged to consider whether a specific project offers opportunities for innovation in the NEPA process. For example:
 - 1. Using a toll-free number for submission of comments in order to reduce the number of public scoping meetings.
 - 2. Providing the NEPA document on-line as an option for interested parties to provide comments.
- D. The cognizant Secretarial Officer and the Assistant Secretary for Environment, Safety and Health will consult to determine whether delegation of approval authority for a specific environmental impact statement to the Secretarial Officer or the Head of a Field Organization would be appropriate to expedite the review and approval process.

V. Enhanced Public Involvement

- A. NEPA Document Managers will take appropriate action to encourage and facilitate public participation throughout the NEPA process, taking into account Office of Environment, Safety and Health guidance on improving public participation.
- B. Whenever possible, the Department of Energy will provide enhanced opportunities for public involvement in the environmental assessment process, which ordinarily will include at a minimum:
 - 1. Early public notice of the Department of Energy's intent to prepare an environmental assessment (concurrent with state/tribal notification); and
 - 2. Opportunity for interested parties, on request, to review environmental assessments (concurrent with state/tribal review) prior to Department of Energy approval.

VI. Continuing Improvement

- A. One year from now a quality improvement team will be formed to measure the outcome of the NEPA initiatives put forth in this policy statement and to consider what additional reforms are necessary; this team will report its findings and recommendations within 90 days of its formation.**
- B. The Office of Environment, Safety and Health will solicit comments from the NEPA Document Manager, the NEPA Compliance Officer, and team members after completing each environmental impact statement and environmental assessment on lessons learned in the process and will circulate a quarterly summary to all NEPA Compliance Officers and NEPA Document Managers. The Office of Environment, Safety and Health also will revise its "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements", as appropriate, to reflect the lessons learned and will improve Department-wide NEPA policy, directives, guidance, and training accordingly.**
- C. The Office of Environment, Safety and Health will provide NEPA training in order to develop a more knowledgeable and experienced group of Headquarters and Field personnel capable of carrying out NEPA compliance activities.**
- D. The Office of Environment, Safety and Health will consider establishing a NEPA certification program to formally recognize the expertise of personnel who have achieved a specified combination of training and practical experience.**
- E. The Office of Environment, Safety and Health and the Office of General Counsel will monitor the progress of and advise the Secretary on the Department's NEPA compliance program. Metrics will include the cost and time required for NEPA document preparation, the influence of NEPA review on decision making, the evaluations of contractor performance, Environmental Protection Agency ratings of Department of Energy environmental impact statements, public reactions, and litigation experience. Within two years, Secretarial Offices and Field Organizations, with assistance from the Offices of Environment, Safety and Health and General Counsel, will reduce the median process time for environmental impact statements (from notice of intent to final environmental impact statement) to 15 months with no decline in quality. Meeting this objective will, of course, require adjustments to the schedules for environmental impact statements now in preparation.**
- F. In carrying out and improving their NEPA compliance process, Heads of Departmental Elements should make effective use of NEPA Compliance Officers for advice, assistance, training, and coordination.**

* * * * *

This policy statement establishes internal management procedures and, as such, must be followed by Department of Energy personnel. It is not intended to create rights or obligations or any cause of action on the part of any other person.

ATTACHMENT 1
SECRETARIAL OFFICERS *

Assistant Secretaries:

Defense Programs
Energy Efficiency and Renewable Energy
Environmental Management
Fossil Energy
Field Management (Associate Deputy Secretary)

Directors:

Civilian Radioactive Waste Management
Energy Research
Laboratory Management
Nonproliferation and National Security
Nuclear Energy

Administrators:

Bonneville Power Administration
Western Power Administration
Alaska Power Administration
Southeastern Power Administration
Southwestern Power Administration

HEADS OF FIELD ORGANIZATIONS *

Operations Office Managers:

Albuquerque, Chicago, Idaho, Nevada, Oakland, Oak Ridge, Richland, and Savannah River Operations Offices

Managers:

Golden Field, Ohio Field, and Rocky Flats Offices

Directors:

Morgantown Energy Technology Center
Pittsburgh Energy Technology Center
Bartlesville Project Office
Metairie Site Office
Naval Petroleum and Oil Shale Reserves (in Colorado, Utah, and Wyoming)
Naval Petroleum Reserves in California
Yucca Mountain Project Office

Project Manager of Strategic Petroleum Reserve Project Office

* For purposes of applying this policy: Secretarial Officers are heads of departmental elements that report to the Office of the Secretary. Heads of Field Organizations are heads of field departmental elements that report to a Secretarial Officer (or, in the case of Bartlesville Project Office, Metairie Site Office, Naval Petroleum and Oil Shale Reserves, Naval Petroleum Reserves, and the Strategic Petroleum Reserve Project Office, to a Deputy Assistant Secretary). The above list excludes Secretarial Officers and Heads of Field Organizations that generally do not sponsor proposed actions that are subject to NEPA review.

ATTACHMENT 2

**ILLUSTRATION OF CONTENT OF ANNUAL NEPA PLANNING SUMMARY FOR
AN ENVIRONMENTAL IMPACT STATEMENT OR ENVIRONMENTAL ASSESSMENT**

ENVIRONMENTAL IMPACT STATEMENTS:

Appleton Windplant and Wind Farms, Appleton County, Washington

Description: The proposed action would include placement and operation of an estimated 420 wind turbines, collection lines, transmission lines, access roads, turbines and transformer pads, and various other associated facilities. These wind energy projects are proposed for development in Stayman County (Central Washington).

Schedule: NOI: April 1994
Public Scoping Meetings: May 1994
Implementation Plan: July 1994
Draft EIS: December 1994
Final EIS: June 1995
ROD: July 1995

ENVIRONMENTAL ASSESSMENTS:

Wastewater Flow Collection and Treatment System, Mississippi River Plant, Jackson, Mississippi

Description: To construct and operate a collection and treatment system for contaminated wastewaters and groundwaters at the Department of Energy-operated Mississippi River Plant. The system would consist of collection conduits, a flow splitter box, an equalization basin, sedimentation basins, sludge handling and storage facilities, and associated chemical storage and feed equipment.

Schedule: No schedule yet set. In preliminary stages of consideration.

Note: Schedule information should be provided to the extent available.

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 (Section 1502.14 and Section 1502.15) and reducing emphasis on background material (Section 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 (Section 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Section 1508.9(a)(1).

...

(e) Prepare a finding of no significant impact (Section 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 Section 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under Section 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 Section 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 (Section 1508.22) in the Federal Register except as provided in Section 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 Section 1507.3(c). An agency may give notice in accordance with Section 1506.6.**
- (2) Determine the scope (Section 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 (Section 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 Section 1502.25.**
- (7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.**

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

- (1) Set page limits on environmental documents (Section 1502.7).**

(2) Set time limits (Section 1501.8).

(3) Adopt procedures under Section 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 (Section 1502.15) and the Environmental Consequences (Section 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 Section 1502.18(d) and unchanged statements as provided in Section 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 (Section 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Section 1506.9).

40 CFR § 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Section 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 (Section 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 (Section 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 areawide 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 (Section 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 availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Section 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.

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 and shall include such documents, comments, and responses as part of the administrative record.

...

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.

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule. 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.

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 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.

...

(g) A public scoping process is optional for DOE supplemental EISs. 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 § 1021.312 EIS implementation plan.

(a) DOE shall prepare an EIS Implementation Plan to provide guidance for the preparation of an EIS and record the results of the scoping process. DOE shall complete the EIS Implementation Plan as soon as possible after the close of the scoping process, but in any event before issuing the draft EIS. DOE may amend the EIS Implementation Plan to incorporate changes in schedules, alternatives, or other content.

...

(d) DOE shall make the EIS Implementation Plan and any formal revisions available to the public for information. DOE shall make copies available for inspection in the appropriate DOE public reading room(s) or other appropriate location(s) for a reasonable time. Copies of these documents shall also be provided upon written request.

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. 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."

(d) 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 1606.6(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). No action shall be taken until the decision has been made public.

(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.

...

10 CFR § 1021.322 Findings of no significant impact.

...

(c) DOE shall make FONSI's 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.

...