




THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

APR 27 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
NEPA Practitioners

From: Deputy Secretary 

Subject: NEPA Document Clearance Process

Purpose:

On August 31, 2017, I issued Secretary's Order 3355 (Order) with the intent of immediately improving the Department of the Interior (Department) National Environmental Policy Act (NEPA) process.¹ The process for obtaining official concurrence on draft documents related to the Environmental Impact Statement (EIS) process, such as Notices of Intent (NOI) and Notices of Availability (NOA), prior to their publication in the Federal Register, is an area that needs improvement because it has become overly burdensome. This concurrence process, known as "surnaming," is intended to provide Department leadership with valuable situational awareness and improve the quality of documents, but I believe there are better ways to meet these objectives while moving decision making further out into the field, reducing duplicated effort, and eliminating unneeded delay. Accordingly, this Memorandum replaces the EIS document surnaming process with a new briefing procedure and a streamlined approval process.²

Directive:

Any proposed Agency action^{3,4} that is determined to require EIS review under NEPA⁵ shall be reviewed according to the procedure outlined below.⁶ Each Bureau shall coordinate with and follow the Office of Environmental Policy and Compliance's (OEPC) protocol for electronically submitting and tracking EIS documents that will be reviewed by Department leadership, which will ensure that the outlined procedures are followed.

1. Initial Action Notice:

¹ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. § 1500-1508.

² This Memorandum withdraws surnaming guidance documents that related to EIS review.

³ See Administrative Procedure Act, 5 U.S.C § 704, § 551.

⁴ 40 C.F.R. § 1508.18.

⁵ National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C)

⁶ EIS review should only occur after fully and properly considering use of a relevant Categorical Exclusion or Environmental Assessment.

- a. When a Bureau or Office determines to move forward with an EIS, either by receipt of a completed application from an external project proponent or an internal determination to pursue an action, a Notice, composed of a 1-2 page description of the proposed action, preliminary purpose and need, challenges to project completion (i.e., social, economic, physical), elected and appointed official perspectives, Tribal perspectives, applicability of the Fixing America's Surface Transportation Act or the One Federal Decision criteria (Briefing Materials), and an estimated NOI date, shall be sent to the Review Team via email. The Review Team shall be composed of the following officials (as appropriate to the EIS subject matter) or their designee(s):
 - i. Regional or State Director;
 - ii. Bureau Director;
 - iii. Assistant Secretary;
 - iv. Director, OEPC;
 - v. Deputy Solicitor;⁷
 - vi. Office of the Deputy Secretary;⁸ and
 - vii. The Chief of Staff.
- b. No action is required of the Review Team at this stage. However, the Review Team shall have 2 days to further inquire into the noticed project or request a single oral briefing for all interested members of the Review Team.

2. Notice of Intent:

- a. Once a NOI is prepared, the EIS Project Team⁹ shall share the proposed NOI text, a briefing PowerPoint presentation, maps, a 1-2 page project description consistent with the Briefing Materials, and a draft congressional notification letter¹⁰ with the Review Team via email. The Review Team shall have 3 business days to provide comments on the NOI or object to its publication.
- b. The first Senior Executive Service (SES) member with line authority over the proposed action shall bear ultimate responsibility for the EIS process. If no objections are raised by the Review Team within its 3 day feedback period, and subsequent to the concurring signature of the assigned solicitor, the SES member with line authority over the project may sign and approve the NOI and send it to the Office of the Executive Secretariat and Regulatory Affairs (OES) for Federal Register publication review. Once the review is complete, OES will notify the Bureau or Office and they will deliver the NOI to the Federal Register for publication. If an objection is raised by the Review Team, then the SES member

⁷ The Deputy Solicitor with authority over the proposed project and/or Bureau shall be the noticed Deputy Solicitor.

⁸ All notices, waiver requests, and communications with the Office of the Deputy Secretary referenced in this Memorandum shall be directed to nepa.depsec@ios.doi.gov.

⁹ EIS Project Teams include but are not limited to Departmental NEPA staff, Senior Executive Service members, project managers, subject matter experts, an attorney from the Office of the Solicitor, contractors, planners, and others who work on the EIS at the field level (EIS Project Team).

¹⁰ See Attachment 1 for a Congressional Notification Letter template.

will either resolve the objection or obtain a decision from the Office of the Deputy Secretary regarding the objection, prior to signing and approving the NOI.

3. Draft EIS Development Briefing:

- a. After an NOI is published and its scoping comment period closes, the designated EIS Project Team shall prepare and schedule an oral briefing to inform the Review Team of the planned development of the Draft EIS. Briefing materials shall be provided to the Review Team one calendar week prior to the briefing date. The briefing shall be held either in person or via teleconference and should highlight the opportunities and challenges presented in moving forward with the EIS process. Ideally, each member of the Review Team should be present in a single briefing, whether in person or via teleconference.
- b. The Review Team shall provide feedback to the EIS Project Team during the briefing and up to 5 business days after the date of the briefing. If no objections are raised by the Review Team, the delegated SES member may direct the EIS Project Team to continue development of the Draft EIS. Members of the Review Team who do not participate in the briefing or feedback period may raise new or otherwise unforeseen issues that materially impact the development of a Draft EIS with the Deputy Secretary in a timely and expeditious manner for resolution with the EIS Project Team.

4. Draft EIS and NOA Clearance:

- a. Upon completion of the administrative Draft EIS, EIS Project Teams shall provide the Review Team, via email, the link to an electronic copy of the Draft EIS and schedule an oral briefing. The oral briefing shall provide an overview of the proposed action, purpose and need, alternatives, salient environmental impacts and resource conflicts, and the significant opportunities and hurdles that exist in completing the project. Briefing Materials shall be provided to the Review Team 1 calendar week prior to the briefing date. In particular, the briefing should address the Secretary's priorities, resolution of resource conflicts, land-use restrictions, transportation or access limitations, elected official views, and inter-jurisdictional considerations.
- b. The EIS Project Teams shall brief the Review Team, collect comments and guidance for amending the Draft EIS, and poll whether there are any objections to approving the Draft EIS for release for public comment. Ideally, each member of the Review Team should be present in a single briefing, whether in person or via teleconference. The Review Team shall provide feedback to the EIS Project Team during the briefing and up to 10 business days after the date of the briefing. Members of the Review Team who do not participate in the briefing or feedback period may raise new or otherwise unforeseen issues that

materially impact the Draft EIS with the Deputy Secretary in a timely and expeditious manner for resolution with the EIS Project Team.

- c. The EIS Project Teams shall also include a draft NOA as part of the briefing package:
 - i. If the only NOA format used is provided by the Environmental Protection Agency (EPA), then the NOA may be submitted directly to the EPA for publication in the Federal Register with the filing of the approved Draft EIS.
 - ii. If the Bureau must (by regulation) or chooses to (by practice) publish a Bureau-specific NOA in addition to the EPA's NOA, then the Bureau-specific NOA will be sent to OES for Federal Register publication review. Following the review, the Bureau or Office will deliver the NOI to the Federal Register for publication following clearance of the Draft EIS, in coordination with the simultaneous (same day) submission of the Draft EIS and publication of the EPA-issued NOA.
- d. If no objections are raised by the Review Team, and subsequent to the concurring signature of the assigned solicitor, the delegated SES member may sign and approve the Draft EIS for publication. If an objection is raised by the Review Team, then the SES member will either resolve the objection or obtain a decision from the Office of the Deputy Secretary regarding the objection, prior to signing and approving the document.¹¹

5. Final EIS and NOA Clearance:

- a. Following the Draft EIS public and inter-agency comment analysis, EIS Project Teams shall prepare: 1) a Final EIS, 2) a Record of Decision (ROD), and 3) NOAs (if required or by practice) for both the Final EIS and the ROD; provide the Review Team, via email, the link to electronic copies of the documents; and schedule an oral briefing.
- b. The EIS Project Teams shall brief the Review Team on the Final EIS and Draft ROD. Briefing materials shall be provided to the Review Team one calendar week prior to the briefing date. The Review Team shall provide feedback to the EIS Project Team during the briefing and up to 5 business days after the date of the briefing. Ideally, each member of the Review Team should be present in a single briefing, whether in person or via teleconference. Members of the Review Team who do not participate in the briefing or feedback period may raise new or otherwise unforeseen issues that materially impact the Final EIS with the Deputy Secretary in a timely and expeditious manner for resolution with the EIS Project Team.

¹¹ Paragraphs 4(c) and 4(d) are defined as 'Approval and Publication Protocol'.

- c. Unless an objection is raised, the delegated SES member may then sign and approve the Final EIS and NOA according to the Approval and Publication Protocol.¹²

6. ROD and NOA Clearance:

- a. After the close of the Final EIS notice period (30 days), the EIS Project Team shall send a one-page notice to the Review Team seeking objections to Final ROD approval. The one-page notice shall include: 1) a brief discussion on any substantive issues that arose during the Final EIS notice period, 2) the Final ROD text, and 3) confirmation that it did not change from what was initially reviewed, or advise of any outstanding issues that need to be addressed, such as protest resolutions or Governor's Consistency Review objections.
- b. No action is required of the Review Team at this stage. However, the Review Team shall have 3 business days to inquire further into the ROD or request a single oral briefing for all interested members of the Review Team. Unless an objection is raised, the delegated SES member may sign and approve the ROD and, if applicable, the NOA, according to the Approval and Publication Protocol.

Judicial Review

This guidance establishes internal Department guidelines only. It does not create any rights, substantive or procedural, enforceable at law by any party.

Effective Date:

Directives and guidance within this Memorandum are effective immediately upon distribution.

¹² This term is subject to bureau specific requirements including Governor's Consistency Reviews and Protest Resolution.

Attachment 1 – Sample Congressional Notification Letter



Department of the Interior
Bureau of Land Management
1849 C St NW # 5660
Washington, DC 20240



To: [Elected Official]
From: [Bureau, Region, Office, etc.]
Subject: [NOI, Draft EIS etc.] Regarding [Project]
[Document Title Including the Name of the Project and its Phase]

Dear [Elected Official]:

This letter is to notify your office that the [Bureau] is taking action on [Project], which will [wholly or in part] take place within your [District/State].

The project's [NOI/NOA/Draft EIS etc.] is attached for you information and convenience. If you have further questions regarding the project, please feel free to contact [first SES member with line authority of over the action] at [phone number] or [email address].

Best regards,

[SES member name]
[e/Signature]

Attachment