Part 502 – Reviews and Approvals

Subpart C – Public and Interagency Review

502.20 Inviting Comments

After preparing a draft watershed project plan-EA or Plan-EIS, including the recommendation of the National Water Management Center review, and before preparing a final watershed project plan-EA or Plan-EIS, the sponsoring local organization (SLO) and NRCS must solicit public and interagency review comments from all of the following:

(1) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce environmental standards
(2) The Governor or agencies designated by the Governor to review watershed project plans
(3) Appropriate State and local agencies that are authorized to develop and enforce environmental standards
(4) Indian Tribes, when the effects may be on a reservation or lands of interest to a Tribe
(5) Any agency that has requested that it receive statements on actions of the kind proposed
(6) The U.S. Department of Interior
(7) Persons or organizations that may be interested or affected

502.21 National Environmental Policy Act (NEPA) Requirements

A. For a Plan-EA, the public must be involved in the development of the Plan-EA.

(1) The public must be informed of the availability of the draft Plan-EA by utilizing the appropriate local and State media.
(2) All planning efforts by NRCS and the sponsors must include well-publicized public meetings to obtain public input and views on the project (7 CFR Section 622.30(c)). A public informational meeting must be held during or immediately before the review period to review the Plan-EA.
(3) The finding of no significant impact (FONSI) must be distributed to potentially affected stakeholders, as appropriate.
(4) For projects where the proposed action is covered by a categorical exclusion, the public will be involved in the development of the plan to the extent the STC deems appropriate. No waiting periods are required for plans covered by a categorical exclusion for purposes of NEPA. The State Conservationist (STC) will require a waiting period if it is determined it would be appropriate or helpful for planning or public involvement purposes.
(5) The U.S. Fish and Wildlife Service must be consulted in the preparation of all plans (Public Law 83-566 Section 12(1)).

B. If the public has been involved in development of the project or the environmental assessment, the agency may take administrative action after issuing of the FONSI and publishing of the notice of availability in appropriate local and State media. In these cases, there is no formal requirement for a waiting period after preparation of the FONSI. However, a 30-day public review period of the EA and FONSI is required in any of the following situations:

(1) When the proposed action would normally require a Plan-EIS
(2) When the proposed action is without precedent
(3) When the proposed action may involve new construction in a wetland where early public review is not afforded (Executive Order 11990)
(4) When the proposed action is proposed, conducted, supported, or allowed to be located in a floodplain (Executive Order 11988)

C. For a Plan-EIS, the public review and administrative decisionmaking waiting periods must be in accordance with NEPA (40 CFR Section 1506.10).

(1) The following minimum public review comment periods are required:
  (i) For a draft Plan-EIS: 45-day public review period
  (ii) For a final Plan-EIS: 30-day public review period
(2) In addition to these public review timeframes, no decision or preparation of the record of decision on the proposed action may be made or recorded by a Federal agency until the later of the following dates:
  (i) For a draft Plan-EIS: 90 days after publication of the notice
  (ii) For a final Plan-EIS: 30 days after publication of the notice

D. To following additional requirements apply to a Plan-EIS:

(1) The STC must provide five hard copies to the Environmental Protection Agency (EPA) Office of Federal Activities and three hardcopies to the regional EPA environmental review office.
(2) EPA must publish notices of availability of the draft Plan-EIS in the Federal Register.
(3) The 45-day comment period for the draft Plan-EIS begins on the date that EPA publishes the notice of availability in the Federal Register.
(4) The 30-day comment period for the final Plan-EIS begins on the date that EPA publishes the notice of availability in the Federal Register.

502.22 Consideration of Review Comments

A. The SLO and NRCS must fully address all substantive comments received during the comment period. Comments must be incorporated into the final Plan-EA or the final Plan-EIS, where possible. For a Plan-EA or Plan-EIS, all substantive comments and responses to the comments must be included in an appendix of the final plan.

B. For a Plan-EIS, comments received from EPA will be accompanied by a rating. EPA reviews the Plan-EIS using an alphanumeric rating system, in which it assigns a numeric rating on the adequacy of the document and an alphabetical rating on the environmental impact of the project.

(1) Comments will be addressed on the draft Plan-EIS in either a revised draft plan or in the final Plan-EIS if the document receives any of the following ratings from EPA: EC (Environmental Concerns), EO (Environmental Objections), EU (Environmentally Unsatisfactory), Category 2 (Insufficient Information), or Category 3 (Inadequate), and substantive comments are attached.
(2) EPA will review the final Plan-EIS to determine whether its comments on the draft Plan-EIS were addressed. As outlined in EPA policy, EPA does not provide a rating on the final Plan-EIS; it simply reviews the final document to determine whether EPA's comments were addressed in the final Plan-EIS.

502.23 Making the Decision

A. In the Case of a Watershed Project Plan-EA

(1) After verifying through documentation in the EA that a Plan-EIS will not be required, the STC must prepare and sign a FONSI and publish a notice of its availability in a local newspaper or, if the action has national significance, publish it in the Federal Register. The watershed agreement in the Plan-EA must then be signed, first by the SLO and then by the STC. NRCS can take action upon preparation and signature of the FONSI unless a 30-day waiting period is required (see Title 390, National Watershed Program Manual (NWPM), Part 502, Subpart C, Section 502.21).

(2) The STC must transmit a manually signed copy to each SLO and inform each SLO that a request for funding authorization will be submitted to the Chief.

B. In the Case of a Watershed Project Plan-EIS

(1) The STC must provide five hardcopies of the final Plan-EIS to the EPA headquarters Office of Federal Activities and three hardcopies to the regional EPA environmental review office. At the same time, the STC must provide copies to the SLO, the Forest Service, other participating agencies, the U.S. Department of the Interior, and each agency, group, or individual who provided substantive comments on the draft. EPA will publish a notice of availability of the final Plan-EIS in the Federal Register. The date that EPA publishes the notice of availability is when the 30-day public review period of the final Plan-EIS begins.

(2) The next step is for the SLO and STC to decide whether to implement the proposed plan. The STC's decision may not be made sooner than 90 days after the Federal Register publication of the notice of availability of the draft Plan-EIS or 30 days after the Federal Register publication of the notice of availability of the final Plan-EIS (CEQ Regulation, 40 CFR Section 1506.10). Thereafter, the STC must prepare and sign a record of decision (ROD), and the SLO and STC must sign the watershed agreement in the final Plan-EIS.

(3) The STC must send a copy of the ROD to all who provided comments on the draft and final Plan-EIS. The STC will also send a notice of availability of the ROD to the Federal Register. Any substantive comments received on the final Plan-EIS may be addressed in the ROD. The notice of availability must clearly indicate what the decision is, such as, "Notification that a record of decision to proceed with the installation of the Elm Creek Watershed Project is available."

(4) The STC will notify the SLO that the plan has been approved by transmitting a manually signed copy to each sponsor.