

National Environmental Policy Act Modernization & the Public  
February 4, 2021  
Q&A Session

*This webinar continued the discussion on the [revised Council on Environmental Quality \(CEQ\) National Environmental Policy Act \(NEPA\) regulations](#) issued in 2020, with a focus on public involvement. Presented by Jeff Trulick (Office of Water Project Review) and Dr. Kat McCain (RPEDN Environmental Planning Section Chief), the webinar included a discussion with the field to address emerging questions related to public participation, involvement, and comments during the NEPA process. Questions regarding the new regulations should be directed to the HQUSACE NEPA team inbox: [NewNEPA@usace.army.mil](mailto:NewNEPA@usace.army.mil).*



*This summary of the Question / Answer session of the webinar is not a transcription; questions and responses have been edited and reordered for clarity.*

### **Forthcoming USACE NEPA Guidance**

**Will the forthcoming USACE NEPA regulation be an Engineer Regulation (ER)? Will the field have an opportunity to provide input?**

Yes, the forthcoming USACE NEPA regulation will update the existing [ER 200-2-2, Procedures for Implementing NEPA](#). The updated regulations will be codified at [33 Code of Federal Regulations \(CFR\) Part 230](#), meaning they will be part of federal administrative law and not just internal USACE policy.

A team at HQUSACE made up of representatives from Planning, Operations, Regulatory, and other functional areas is currently working on the ER update, with the target of publishing the updates in the Federal Register in June. The field will have an opportunity to review the draft updates and provide input before the draft rule is posted to the Federal Register.

**Will the updated ER 200-2-2 be applicable to Military Programs?**

No. Military Programs follows other regulations; for example, the Department of the Army follows [Army Regulation \(AR\) 200-2, Environmental Effects of Army Actions](#). In general, if USACE is conducting work for another federal agency, that agency's NEPA regulations must be followed.

### **One Federal Decision (OFD) Dashboard**

**The [OFD Dashboard](#) has been helpful to Districts and MSCs in maintaining efficient coordination of environmental reviews with the environmental resource agencies. Are there any plans at HQUSACE to stand up and maintain a similar tracking system, now that the fate of the OFD Dashboard is in question due to [Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis](#)?**

The Office of Management and Budget and CEQ have directed federal agencies to continue the status quo and maintain the OFD Dashboard. If there are new projects added, they will be coded "other" for the time being instead of as "MIP (Major Infrastructure Project)." The Obama Administration placed a strong emphasis on infrastructure and streamlining, so the "good" pieces are not anticipated to go away. Districts and MSCs with projects on the dashboard should continue to keep track of major milestones, keep timelines up to date, and coordinate with the resource agencies.

### **Public Comments: Documentation and “Exhaustion”**

**The revised NEPA regulations indicate that electronic written comments submitted must be accepted “regardless of virtual platform.” Does this mean that comments submitted via social media sites, such as Facebook, must be included as part of the formal record?**

Yes. Study teams are encouraged to engage in an “all of the above strategy,” meaning they should take into consideration the specific modes of communication primarily used by the study area’s impacted communities. For example, some communities are non-wired and will need to submit all or most comments in writing by mail. Other communities are internet-savvy and might prefer to submit comments through a mix of e-mail and social media platforms.

Study teams should be sure to document the process for requesting and accepting comments in their communication plan and be clear with impacted communities from the start about their options for commenting. The end goal is to craft – and execute – a tailored, locally-driven communication plan that will best meet the needs of community members.

**Does the “exhaustion” provision in the revised NEPA regulations (40 C.F.R. § 1500.3(b)) preclude extending public comment timeframes?**

No. Commenting timeframes can be extended for good reason, following which comments must be submitted within the new commenting timeframe. Rather than prohibiting the extension of comment timeframes, the exhaustion provision should be viewed as helping to inform and establish those timeframes. For example, if a draft environmental impact statement (EIS) is relatively straightforward, 45 days should be a reasonable timeframe for comments; for a more complex EIS, 60 days should be a reasonable timeframe. The previous ASA(CW), Mr. James, has suggested that going beyond the 60-day mark for a draft EIS comment period is outside the bounds of “normal government policy.” Therefore, study teams will likely need to request a waiver from the ASA(CW)’s office to extend the comment period beyond 60 days – just as they would to extend the EIS or environmental assessment (EA) page limit or overall time limit.

Regardless of the length, study teams should be sure to communicate the comment timeframe clearly when conducting scoping.

**Does the new exhaustion clause impact USACE obligations regarding Government to Government consultation?**

No. NEPA is just one of the opportunities by which Tribes can communicate their input on a project, as well as indicate if they would like to participate as a cooperating agency, as a participating agency, or if they plan to request Government to Government consultation.

USACE obligations to Tribes go beyond NEPA, including coordination under other policies/laws such as the National Historic Preservation Act and the [USACE Tribal Consultation Policy](#), which emphasizes the consideration of Tribal perspectives in project decisions.

### **EA and EIS Documentation**

**Will an example outline for an integrated feasibility report and EA be made available?**

HQUSACE is currently working to develop an exhibit to include in the revised [Appendix G of the Planning Guidance Notebook, Planning Reports and Programs](#) to show an example integrated feasibility report and EIS. There may be existing examples of integrated reports and EAs that would be helpful for study

teams. Study teams are encouraged to work with their vertical teams and to consider contacting the Planning Centers of Expertise to identify good examples early in the study process.

**Does the total cost of an EIS (as a required element of the documentation) refer to the cost of the federal action, or only the cost to prepare the EIS itself?**

The cost refers to the cost to prepare the EIS, not the cost of the project.

**Have there been any discussions regarding incorporating videos and animations into NEPA documents? In many cases, can help to tell the story better than words can.**

Some teams have and will continue to use story boards or other means of communicating more effectively in NEPA documents, as needed. There is no official stance on this at this time, but study teams should remain aware of the following when considering including videos or animations: people with hearing or vision impairments, English as a second language, and the digital divide or “non-wired” communities. Study teams with those potential challenges should be creative and innovative in their communication and public involvement plans.