

Rules for Evaluations Conducted by Designated Offices

Introduction

Pursuant to its authority under the *Yukon Environmental and Socio-economic Assessment Act*, the Yukon Environmental and Socio-economic Assessment Board has made these Rules for the conduct of evaluations of projects by Designated Offices.

Part 1

Definitions and Interpretation

Citation

- 1 These Rules may be referred to as the “*Designated Office Rules*”.

Terms defined in the Act

- 2 Any word or term defined in the Act has the same meaning when used in these Rules.

Headings

- 3 The headings preceding each section of these Rules are included for convenience only and do not form part of these Rules.

Definitions

- 4 In these Rules,

“Act” means the *Yukon Environmental and Socio-economic Assessment Act*;

“day” means a calendar day;

“Designated Office” means an office maintained under subsection 22(1) of the Act;

“document” has an extended meaning and includes a printed record and a record fixed in a magnetic or digital form;

“electronic transmission” means transmitting the contents of a document by email or an online connection;

“Executive Committee” means the executive committee of the Board established by section 8 of the Act;

“holiday” means New Year’s Day, Heritage Day, Good Friday, Easter Monday, Victoria Day, National Aboriginal Day (being June 21), Canada Day, Discovery Day (being the third Monday in August), Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, December 26, and whenever a holiday other than National Aboriginal Day or Remembrance Day falls on a Saturday or Sunday the expression “holiday” includes the next day that is not a Saturday or Sunday;

“notification list” means the list prepared by a Designated Office under section 58;

“online registry” means the registry established and maintained by the Board under section 9;

“person” includes a body that is not a legal person;

“writing” means words, images, diagrams or other forms of information printed, typewritten, represented or reproduced in a document.

Computing time

- 5 In these Rules,
 - (a) if the time for doing an act falls or expires on a Saturday, Sunday or holiday, the time is extended to the next day that is not a Saturday, Sunday or holiday;
 - (b) if a period of time is expressed as a number of “days”, the first day is excluded and the last day included; and
 - (c) if the period for doing an act is less than 10 days, Saturdays, Sundays, and holidays shall not be included in the computation of time.

If Designated Offices proceed jointly

- 6 Subject to section 7, where two or more Designated Offices are conducting an evaluation jointly, a reference in these Rules to “a Designated Office” or “the Designated Office” shall be interpreted as applying to those Designated Offices jointly, and those offices shall, to the extent practical, coordinate their actions and conduct themselves as if they were a single Designated Office.

Joint evaluation to identify a primary office

- 7 Where two or more Designated Offices are conducting an evaluation jointly, they shall together identify one of them to be the primary office for receiving information in writing from the proponent, and the Designated Office so identified shall notify the proponent accordingly.

Projects grouped under section 52 of the Act

- 8 Where a Designated Office is evaluating two or more projects as a single project pursuant to section 52 of the Act,
- (a) the date for doing an act under these Rules in relation to the evaluation of any of those projects shall be determined based on the date which, under these Rules, applies to the last of the projects for which notice was provided under paragraph 37(a); and
 - (b) unless the context requires otherwise, these Rules shall be interpreted and applied to the projects as if they were a single project.

Part 2

General

Online registry

- 9 The Board shall establish and maintain an online registry accessible through the Internet that includes a separate area for the use of each Designated Office.

Methods for submitting documents

- 10 Subject to section 11 and directives of the Board issued under section 16, a document may be submitted to a Designated Office by hand delivery, mail, fax, or electronic transmission.

Limits on fax transmissions

- 11 A document that exceeds 20 pages in length shall not be submitted by fax unless the Designated Office authorizes its submission by fax.

Receiving a fax

- 12 A document submitted by fax to a Designated Office shall be considered to have been received only if the sender confirms by telephone with the Designated Office that the document was received, or the sender receives from the Designated Office an email or fax confirming that the document was received.

Receiving an electronic transmission

- 13 A document submitted by electronic transmission to a Designated Office shall be considered to have been received only if the sender confirms by telephone with the Designated Office that the document was received, or the sender receives an electronic transmission from the Designated Office confirming that the document was received.

Date fax or email documents received

14 A document submitted to a Designated Office by fax or electronic transmission shall be deemed to have been received as of the date it is confirmed received under section 12 or 13.

Date mail or hand delivered documents received

15 A document submitted to a Designated Office by hand delivery or mail shall be deemed to have been received as of the date it is stamped received by the Designated Office.

Board directives

16 The Board may issue directives prescribing:

- (a) the means by which certain types or sizes of documents shall be submitted, including applications under Part 6;
- (b) the number of copies of a document that must be submitted;
- (c) software or storage media requirements for documents submitted in a digital form;
- (d) dimensions for particular types of documents;
- (e) the form of an application for the purposes of Part 6; and
- (f) the fees payable, if any, for printing or reproducing documents.

Ensuring documents are received

17 It is the responsibility of the person submitting a document to a Designated Office or the Executive Committee to ensure that the document has been received in accordance with these Rules.

Part 3

Preliminary Determinations

Form of project proposal

18 A proposal for a project that is required to be submitted to a Designated Office shall be in "*Form 1 – Project Proposal*", which is attached to and forms part of these Rules.

Project in a single assessment district

- 19 A proposal for a project that will be located in a single assessment district shall be submitted by the proponent to the Designated Office for that assessment district.

Project in two or more assessment districts

- 20 A proposal for a project that will be located in two or more assessment districts shall be submitted by the proponent to a Designated Office in any one of the assessment districts in which the project will be located.

Determining where project located

- 21 Subject to section 23, within two days of receiving a proposal under section 19 or 20 a Designated Office shall determine whether the project will be located solely in its assessment district or in two or more assessment districts.

Project in a single assessment district

- 22 Where a Designated Office concludes under section 21 that a project will be located solely in its assessment district it shall, within eight days of receiving the proposal, determine in accordance with section 32 whether the proposal is complete, and be responsible for the evaluation of the project.

Supplementary information required

- 23 Where, in the opinion of a Designated Office, a proposal does not contain sufficient information to enable it to determine in which assessment district the project will be located it shall, within two days of receiving the proposal, request supplementary information from the proponent, and within two days of the information being provided in writing by the proponent the Designated Office shall determine whether the project will be located solely in its assessment district or in two or more assessment districts.

Supplementary information part of the proposal

- 24 Supplementary information provided pursuant to section 23 shall be appended to and form part of the proponent's proposal.

Project in one assessment district

- 25 Where a Designated Office concludes under section 23 that the project will be located solely in its assessment district it shall, within eight days of receiving the supplementary information required under section 23, determine in accordance with section 32 whether the proposal is complete, and be responsible for the evaluation of the project.

Project in two or more assessment districts

26 Where a Designated Office concludes under section 21 or 23 that the project will be located in two or more assessment districts it shall immediately notify the Executive Committee and the Designated Office in any other affected assessment district.

Notice

27 The notice under section 26 shall include a copy or reasonable details of the proposal.

Designated Offices may decide together

28 Within two days of the date of the notice provided under section 26, the Designated Offices for the assessment districts in which the project will be located may

- (a) authorize one of them on behalf of all of them to determine under section 32 whether the proposal is complete, and to conduct the evaluation of the project; or
- (b) agree to determine jointly under section 32 whether the proposal is complete, and to conduct the evaluation of the project jointly.

29 If at the expiry of the two-day period referred to in section 28, the Designated Offices have not authorized one Designated Office under paragraph 28(a), or agreed to proceed jointly under paragraph 28(b), the proposal shall be considered to be have been automatically referred to the Executive Committee for a determination and the Executive Committee shall, within three days of the referral,

- (a) direct one Designated Office on behalf of all of them to determine under section 32 whether the proposal is complete and to conduct the evaluation of the project; or
- (b) direct the Designated Offices to determine jointly under section 32 whether the proposal is complete and to conduct the evaluation of the project jointly.

Single Designated Office makes determination

30 A Designated Office authorized under paragraph 28(a) or directed under paragraph 29(a) shall, within six days of being so authorized or directed, determine in accordance with section 32 whether the proposal is complete.

Joint determination

31 Where two or more Designated Offices are proceeding jointly pursuant to paragraph 28(b) or 29(b), they shall together, within six days of agreeing or being directed to proceed jointly, determine in accordance with section 32 whether the proposal is complete.

Complete project proposal

32 A Designated Office shall consider a proposal to be complete if, in the opinion of the Designated Office, the proposal

- (a) contains sufficient information to enable it to prepare a statement of the scope of the project under section 45;
- (b) contains sufficient information to enable it to commence the evaluation; and
- (c) complies with the applicable rules.

Incomplete project proposal

33 If a Designated Office determines under section 32 that a proposal is not complete, it shall notify the proponent accordingly in writing as soon as practical and specify in the notice what supplementary information is required.

Reconsider proposal

34 The Designated Office shall, within three days of receiving supplementary information in writing pursuant to a notice under section 33, determine in accordance with section 32 whether the proposal is complete and notify the proponent accordingly in writing, and where the Designated Office determines the proposal is not complete the notice shall specify the deficiencies.

Additional supplementary information

35 Section 34 applies, with the necessary changes, in respect of further supplementary information submitted by the proponent to address deficiencies specified by the Designated Office under that section.

Supplementary information forms part of the proposal

36 Supplementary information provided by a proponent under this Part shall be appended to and form part of the proponent's proposal.

Notice to proponent

- 37 If a Designated Office determines that a proposal is complete, it shall
- (a) notify the proponent and the decision bodies for the project in writing accordingly; and
 - (b) determine whether the project will be located in the territory of a first nation, or might have significant environmental or socio-economic effects in the territory of a first nation.

180 days

- 38 Subject to section 40, if a Designated Office requires supplementary information under this Part, the proponent shall, within 180 days from the date of the notice requiring the information, submit the information or advise the Designated Office in writing when it will be submitting the information.

Deemed withdrawal

- 39 If a proponent does not submit its supplementary information or advise the Designated Office in writing within the 180-day period referred to in section 38, the proponent's proposal shall be deemed to have been withdrawn by the proponent and no further action in reviewing the proposal or conducting the evaluation is required to be undertaken by the Designated Office.

Two years to provide supplementary information

- 40 Notwithstanding any other provision of this Part, unless otherwise agreed to in writing by the Designated Office and the proponent, all supplementary information required from the proponent by a Designated Office under this Part shall be provided to the satisfaction of the Designated Office within two years from the date the proposal is first submitted to the Designated Office.

Deemed withdrawal

- 41 If at the expiry of the two year period referred to in section 40, or any extension of time in an agreement made under that section, the proponent has not submitted the supplementary information requested by the Designated Office, the proposal shall be deemed to have been withdrawn, and the Designated Office shall notify the proponent in writing accordingly and discontinue its consideration of the proposal.

Notice of deemed withdrawal

- 42 The Designated Office shall provide written notice to the proponent at least 45 days prior to a proposal being deemed withdrawn under section 39 or 41.

Submitting a new proposal

- 43 If a proponent decides to proceed with a project that has been deemed withdrawn under section 39 or 41, it shall do so by submitting a new proposal in accordance with the Act and the applicable Rules.

Part 4

Determining the Scope of a Project

Evaluation based on scope of the project

- 44 A Designated Office shall conduct its evaluation of the project based on the scope of the project determined in accordance with the Act and this Part.

Preliminary statement of scope of project

- 45 At the outset of its evaluation a Designated Office shall prepare a statement describing the scope of the project based on the information contained in the proposal and provide a copy of the statement to the proponent.

Determining the scope of the project

- 46 In accordance with section 51 of the Act, the Designated Office shall include within the scope of the project
- (a) any activity identified in the proposal, and
 - (b) any other activity that the Designated Office considers likely to be undertaken in relation to an activity so identified and that it considers sufficiently related to it to be included in the project.

Considerations

- 47 In determining under paragraph 46(b) whether another activity is likely to be undertaken and is sufficiently related to an activity identified in the proposal, a Designated Office shall take into consideration
- (a) whether it is reasonably likely that the activity identified in the proposal would proceed without the other activity being undertaken;
 - (b) whether the decision to undertake the activity identified in the proposal makes it inevitable that the other activity will be undertaken; and
 - (c) the spatial and temporal proximity of the activity identified in the proposal to the other activity.

Modifying the scope of the project

48 The scope of the project described under section 45 may be modified by a Designated Office in the course of conducting its evaluation as a result of supplementary information provided by the proponent, or other information available to or received by the Designated Office relevant to the evaluation.

Notice of change to scope of the project

49 A Designated Office shall provide the proponent, and any person on the notification list, with notice in writing of any material change to the scope of the project made by the Designated Office under section 48.

Final scope of the project included with recommendations

50 At the conclusion of its evaluation the Designated Office shall include in its written reasons provided under section 56 of the Act, a statement setting out its final determination of the scope of the project considered for the purposes of the evaluation.

Part 5

Conduct of Evaluations, including Participation of Interested Persons, the Public and Others

Publishing notice of the evaluation

51 Within six days of sending notice to the proponent under paragraph 37(a), the Designated Office shall publish on the online registry a notice that it is conducting an evaluation of the project.

Contents of notice

52 The notice under section 51 shall

- (a) describe how to view or obtain copies of the proposal, and other documentation produced, collected or received by the Designated Office in relation to the evaluation of the project; and
- (b) invite interested persons and members of the public to submit their views about the project, and information relevant to the evaluation, to the Designated Office in writing within 14 days, unless otherwise provided pursuant to section 53.

Extending time for submissions

53 A Designated Office may, in the notice referred to in section 51, or at any time before the expiry of the 14-day period referred to in paragraph 52(b), extend the time for interested persons and members of the public to submit their views about the project, and information relevant to the evaluation, for a further period of up to 21 days, and shall notify the proponent in writing of any such extension.

Other means of publicizing notice

54 In addition to the notice published under section 51, a Designated Office shall publicize the matters referred to in section 52 by such other method that, in the opinion of the Designated Office, is reasonable and effective, which may include:

- (a) a periodical that, in its opinion, has a large circulation in Yukon;
- (b) a periodical or radio broadcast that, in its opinion, is generally available in the assessment district where the project will be located, or within an area where the project might have significant environmental or socio-economic effects; or
- (c) a notice placed at a prominent location within some or all of the communities in the assessment district where the project will be located, or within an area where the project might have significant environmental or socio-economic effects.

Public meetings

55 In evaluating a project, a Designated Office may hold public meetings to seek views and information relevant to the evaluation, provided that such meetings shall be held within the 14-day period referred to in paragraph 52(b), or within the period of any extension of time made under sections 53 or 62.

Designated Office to determine format of public meetings

56 A Designated Office may determine the format of a public meeting held under section 55, as well as the procedures to be followed at the meeting.

Record of public meeting

57 Where a Designated Office holds a public meeting under section 55, it shall

- (a) provide reasonable notice of the meeting to the public and the proponent;
- (b) invite the proponent to participate in the meeting; and
- (c) prepare, or cause to be prepared, minutes or other reasonable record of the meeting.

Notification list

58 A Designated Office shall prepare a notification list for each evaluation it is conducting that includes:

- (a) any first nation identified under paragraph 37(b);
- (b) any government agency, independent regulatory agency or first nation that has notified the Designated Office under subsection 55(4) of the Act; and
- (c) any person having an interest in the outcome of the evaluation who has requested the Designated Office in writing to be added to the notification list.

Seeking views and information

59 Before making a recommendation or referral under section 56 of the Act, a Designated Office shall seek views about the project, and information relevant to the evaluation, from any person on the notification list and from any Designated Office that it has been authorized or directed under section 28 or 29, as the case may be, to conduct the evaluation on behalf of.

May establish advisory committees

60 A Designated Office may, at any time in the course of conducting its evaluation, establish technical review or advisory committees to seek views or information relevant to the evaluation of the project, and may determine the terms of reference and composition of such committees.

Timing for recommendations

61 Subject to section 62, a Designated Office shall make its recommendation or referral under section 56 of the Act no later than 14 days following

- (a) the expiry of the 14-day period referred to in paragraph 52(b), or
- (b) the expiry of any extension of time under section 53,

whichever is later.

Extending time to complete evaluation

62 Despite the time periods provided under sections 52 and 53, where, in the opinion of a Designated Office, at the expiry of

- (a) the 14-day period referred to in paragraph 52(b), or

(b) any extension of time made under section 53,

additional views or information will be required in order to conclude the evaluation, the Designated Office may extend the period for seeking such views or information for a further period of up to 35 days.

Notice of extension

63 The decision of a Designated Office under section 62 to extend the period of time for seeking views and information relevant to its evaluation shall be made in writing with an explanation and a copy provided to the proponent and any person on the notification list.

Timing for recommendation following extension of time

64 Where the period for seeking views and information is extended by a Designated Office under section 62, it shall make its recommendation or referral under section 56 of the Act no later than 14 days following the expiry the extended period.

Requiring supplementary information

65 Pursuant to section 43 of the Act, a Designated Office may require a proponent to provide supplementary information that the Designated Office considers necessary for the evaluation.

Supplementary information part of proposal

66 Supplementary information provided by a proponent under this Part shall be appended to and form part of the proponent's proposal.

Deemed withdrawal

67 If at the expiry of the 14-day period referred to in paragraph 52(b), or the expiry of any extension of time made under section 53 or 62, the proponent has not submitted the supplementary information requested by the Designated Office, the proposal shall be deemed to have been withdrawn by the proponent, and the Designated Office shall notify the proponent in writing accordingly and discontinue its evaluation of the project.

Submitting a new proposal

68 If a proponent decides to proceed with a project which has been deemed withdrawn under section 67, it shall do so by submitting a new proposal in accordance with the Act and the applicable Rules.

Part 6

Designating and Handling Confidential Information

Application to designate information confidential

69 If a person intending to provide information to a Designated Office in a proposal, or in relation to the evaluation of a project, wishes some or all of the information to be kept confidential, the person shall

- (a) separate the information to be kept confidential from any other information the person is providing to the Designated Office; and
- (b) make an application in accordance with this Part to the Executive Committee to have the information designated confidential information.

Must be traditional knowledge or paragraph 121(b) information

70 An application under paragraph 69(b) may only be made in respect of

- (a) traditional knowledge the person believes should be treated as confidential; or
- (b) information referred to in paragraph 121(b) of the Act.

Form and content of application

71 An application under paragraph 69(b) shall

- (a) be in the prescribed form and the top of each page shall be marked with the word "Confidential";
- (b) indicate whether the application is in respect of information referred to in paragraph 70(a) or (b), and where a person wishes to submit information referred to in paragraph 70(a) and paragraph 70(b), the person shall make a separate application in respect of each category of information;
- (c) set out a complete statement of the information the person is requesting to be designated as confidential;
- (d) set out the justification for having the information designated confidential; and
- (e) include a non-confidential summary of the information the person is requesting to be designated as confidential with sufficient detail to convey a reasonable understanding of the substance of the information.

Justification

72 Where an application is in respect of traditional knowledge, the justification required by paragraph 71(d) shall address the matters referred to in paragraph 74(b), and specify the applicability of subparagraph 74(c)(i) or (ii), as the case may be.

Specify *Access to Information Act* provisions

73 Where an application is in respect of information referred to in paragraph 70(b), the justification required by paragraph 71(d) shall specify the provisions of the *Access to Information Act* (Canada) that, in the view of the applicant, limit or prohibit disclosure of the information under that Act.

Designating traditional knowledge confidential

- 74 On an application respecting traditional knowledge, the Executive Committee may designate the information confidential where, in its opinion,
- (a) the information is relevant to the proposal or the evaluation of the project under consideration;
 - (b) the information is not generally available from a source which is not confidential;
 - (c) disclosure of the information would
 - (i) result in a reasonable expectation of probable harm to a person, place or thing, or
 - (ii) constitute a violation of the cultural value system of the affected first nation; and
 - (d) the non-confidential summary referred to in paragraph 71(e) meets the requirements of that paragraph.

Meaning of “generally available”

75 For greater certainty, information is not “generally available” under paragraph 74(b) solely because it has been made available collectively or communally to persons within the affected first nation, provided that the Executive Committee is satisfied that such information has consistently been held in confidence within the first nation.

Section 121(b) information

- 76 On an application respecting information referred to in paragraph 70(b), the Executive Committee may designate the information confidential where, in its opinion,
- (a) the information is relevant to the proposal or to the evaluation of the project under consideration,
 - (b) it is a type of information referred to in paragraph 121(b) of the Act, and disclosing the information to any other person is prohibited except in accordance with subparagraphs 121(b)(i) and (ii) of the Act, and
 - (c) the non-confidential summary referred to in paragraph 71(e) meets the requirements of that paragraph.

Seeking additional views

- 77 The Executive Committee may seek additional information or views from any person before making its decision whether to designate information confidential under section 74 or 76, provided that, when seeking such information or views, it shall not disclose to any person the information the applicant is requesting to be designated confidential.

For greater certainty

- 78 For greater certainty, when seeking additional information or views under section 77, the Executive Committee may disclose some or all of the information contained in the application except for the information referred to in paragraph 71(c).

Executive Committee decision

- 79 The Executive Committee shall decide whether to designate information confidential under sections 74 and 76 as soon as practical after the application is submitted, and its decision shall be made in writing with reasons and a copy provided to the applicant.

If non-confidential summary inadequate

- 80 If the Executive Committee determines under paragraph 74(d) or 76(c) that the non-confidential summary does not meet the requirements of paragraph 71(e), it shall notify the applicant accordingly in writing and, having regard to the time periods within which the Designated Office is required to complete its evaluation, specify the date by which the applicant must submit a satisfactory summary in writing.

Shall proceed with designation

81 If the applicant provides a satisfactory summary as required under section 80, the Executive Committee shall proceed with its designation under section 74 or 76, as the case may be.

Shall not proceed with designation

82 If the applicant does not provide a satisfactory summary as required under section 80, the Executive Committee shall not designate the information confidential, and sections 87 to 89 shall apply in respect of the application and the information contained therein.

Confidential information provided to the Designated Office

83 If the Executive Committee designates information confidential under section 74 or 76, it shall provide a copy of the application to the Designated Office that is evaluating the project and that office shall consider the information in its evaluation.

No disclosure of traditional knowledge

84 If information is designated confidential under section 74 it shall not be disclosed by the Executive Committee or Designated Office to any other person, and shall be kept or stored accordingly by them.

Disclosure of certain information subject to consent, etc.

85 If information is designated confidential under section 76 it shall not be disclosed by the Executive Committee or Designated Office to any person except in the circumstances described in subparagraphs 121(b)(i) and (ii) of the Act, and shall be kept or stored accordingly by the Executive Committee and Designated Office.

If project referred to Executive Committee

86 For greater certainty, if a Designated Office refers a project to the Executive Committee for screening, the information designated confidential shall be included in documentation provided by the Designated Office to the Executive Committee pursuant to subsection 56(5) of the Act.

Sealing the application

87 If the Executive Committee decides under section 74 or 76 that the information does not qualify to be designated confidential it shall seal the application and the information will not be provided to the Designated Office, or be taken into account in the evaluation of the project, unless the applicant resubmits the information to the Designated Office as non-confidential, or the Designated Office receives the information from a source other than the applicant.

Storing application respecting traditional knowledge

88 When an application respecting traditional knowledge is sealed by the Executive Committee under section 87, the information in that application set out pursuant to paragraph 71(c) shall be deemed to be confidential for the purposes of paragraph 121(a) of the Act and subsection 24(1) of the *Access to Information Act* (Canada), and shall not be disclosed to any person and shall be kept or stored by the Executive Committee accordingly.

Storing application respecting paragraph 70(b)

89 When an application respecting information described in paragraph 70(b) is sealed by the Executive Committee under section 87, the information in that application set out pursuant to paragraph 71(c) shall not be disclosed to any person unless its disclosure is required under the *Access to Information Act* (Canada), and it shall be kept or stored by the Executive Committee accordingly.

Non-confidential summary included on register

90 Where information is designated confidential pursuant to section 74 or 76 the Designated Office shall include the non-confidential summary of that information in the register referred to in section 119 of the Act.

Burden of proof

91 On an application under this Part the burden of proof lies on the applicant to establish that information should be designated confidential.

Part 7

**Integrating Scientific Information,
Traditional Knowledge and other Information into an Evaluation**

Strict rules of evidence do not apply

92 In conducting an evaluation of a project a Designated Office may take into account information, including traditional knowledge, which may not be admissible as evidence in a court of law.

Full and fair consideration

93 A Designated Office shall, in accordance with section 39 of the Act, give full and fair consideration to scientific information, traditional knowledge and other information provided to it or obtained by it in the course of conducting an evaluation of a project.

Relevance and weight of information

94 A Designated Office shall determine the relevance and weight to be given to any information provided to it or obtained by it in the course of conducting an evaluation of a project, and there shall be no presumption that scientific information or traditional knowledge, as the case may be, should be accorded greater weight based solely on the fact that the information is, respectively, scientific information or traditional knowledge.