



Pre-Submission Engagement (PSE) for Executive Committee Screenings

Rules Review – Summary Guide

July 2021

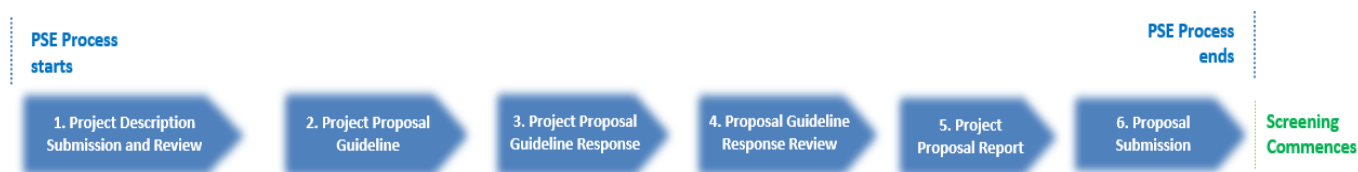


Introduction

The Yukon Environmental & Socio-economic Assessment Board (YESAB) has developed a new Pre-submission Engagement (PSE) process for Executive Committee screenings. PSE is a proactive, front-end process that occurs before a project proposal is submitted for screening by the Executive Committee (EC).

The purpose of pre-submission engagement is to bring interested and affected parties together to review project requirements well in advance of a detailed proposal being submitted for assessment. This helps identify gaps and issues of concern, define values and baseline information requirements and ensure a more timely and certain screening process.

Figure 1 – PSE at a glance



For a more detailed overview of the process and timelines see [Appendix A](#).

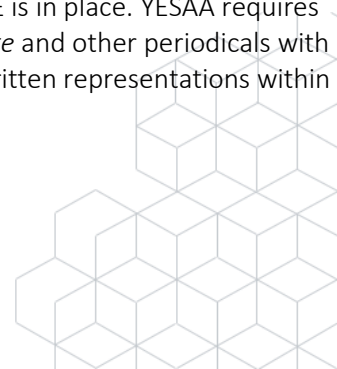
This Summary Guide provides a general overview of the PSE process, based on the new and amended *Screening Rules* that are proposed to implement it. Please note that while every effort has been made to ensure accuracy, this summary is for information only; it is not intended to provide legal advice or direction, and should not be used as a substitute either for the proposed new measures or for the Act (YESAA) and its associated regulations and rules as they currently exist.

PSE Rules Review

Screenings that the EC carries out under the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) are governed by the *Rules for Screenings Conducted by the Executive Committee (Screening Rules)*. YESAB's authority to establish the *Screening Rules* is set out in s.30(1) of YESAA. The *Screening Rules* can be found on YESAB's website (www.yesab.ca)

YESAB has engaged participants on the development of the PSE process since 2019. Engagement activities have included: information sessions, meetings and a focus group on timelines. YESAB has received input on the process from a variety of participants – governments, First Nations, industry groups and non-governmental organizations. More information on the PSE process is available on YESAB's website (www.yesab.ca)

In January 2020, YESAB directed that the *Screening Rules* be reviewed, with the intention to amend them as necessary to implement the PSE process. The scope of the review was limited to those amendments to the existing *Screening Rules* and any new rules required to implement PSE. The other parts of the *Screening Rules* will be addressed in a future comprehensive review once PSE is in place. YESAA requires the Board to publish a notice of the proposed PSE rules in the *Canada Gazette* and other periodicals with local distribution at least 60 days before the rules take effect and to invite written representations within that period.



Proposed Rules

The proposed rules for the PSE process can be found on YESAB's website (www.yesab.ca) in English and French.

The proposed PSE rules establish the Pre-submission Engagement (PSE) process by amending the *Rules for Screenings Conducted by the Executive Committee (Screening Rules)*. The amendments introduce new definitions, replace Part 3 (adequacy review) and make select consequential amendments, to provisions in other parts of the *Screening Rules*, that are required to implement the PSE process. Other than Part 3, Schedule A and the consequential amendments, no change is proposed to the *Screening Rules*¹.

Summary

The proposed PSE rules begin with **new definitions** for the PSE process (e.g. 'proposal', 'participant'); a consequential amendment to notification requirements; and a new provision regarding personal information (s. 8.1). This provision requires that any document submitted to the EC must not include personal information about any individual other than the person making the submission unless the submission includes the individual's consent.

Proposed New Part 3

The proposed new *Part 3* replaces the adequacy review process in the current *Screening Rules*². It sets out the process and requirements in each phase of the PSE process. [Appendix A](#) provides an overview chart of the PSE process and timelines as expressed in the rules.

The following information is a general description of the contents of the proposed new Part 3.

Section 16 sets out the **definitions** of a number of terms used in the PSE process. This section references the key documents created during the PSE process either by the Executive Committee or by the proponent. Specifically,

- Project Description
- Project Proposal
- Project Proposal Guideline
- Project Proposal Guideline Response
- Project Proposal Report

Section 17 affirms that the PSE process is **mandatory**, and that a proponent must comply with all of the applicable requirements in Part 3 before a project proposal can be submitted to the EC.

Section 18 sets out certain **general powers of the Executive Committee** in relation to the PSE process. This includes the ability to modify any aspect of PSE process, such as, waiving a time limit if warranted based on specific circumstances (e.g. the EC might decide in a particular instance to allow additional time for technical advisory committee meetings) and to gather information as may be helpful.

¹ Parts 1,2 and 4-7

² Part 3 – Pre-Screening Adequacy Review of Proposal



Section 19 ensures that the **PSE process is public**: documents collected or received by the EC must be included in a public register (e.g. YESAB Online Registry- YOR), except to the extent that they include information deemed confidential under the *Screening Rules*.

Section 20 deals with **changes to a project** and the **withdrawal of a project during the PSE process**. Changes are a common occurrence over the life of project, and the EC can adapt any procedure or requirements as appropriate, including by extending or adding an additional comment time period. The EC can also revise or replace specific PSE documents (e.g. the Project Proposal Guideline) if required. In making these determinations the EC must have regard to when in the PSE process the change has been made, the relevant views or information provided by participants, and the likely effects of the change on information requirements and baseline information.

A proponent can withdraw from the PSE process at any time. In addition, a proposed project will be deemed to be withdrawn at specific points in the PSE process if a timeline is exceeded (s.20(3)). For instance, a proponent has up to 24 months to prepare the Project Proposal Guideline Response. Their proposed project will be treated as having been withdrawn if the document is not submitted within that timeline. If the proponent wishes to proceed with the proposed project a new Project Description must be submitted.

Rules that Establish the PSE Process

Sections 21 to 32 establish the PSE process and the specific requirements in each phase including documents produced, participant and public comment, and timelines.

Section 21 begins the PSE process with the **submission of a Project Description** that complies with the requirements set out in Schedule A. Before submitting, the proponent must give at least 30 days prior written notice.

Section 22 initiates the review process, after the EC determines that the Project Description complies with the requirements. This includes, notifying participants, providing the Project Description and determining the process and timeline for comments. The EC invites participants to make submissions regarding the process and timing of pre-submission engagement and to provide comments on the Project Description. This gives participants the opportunity to identify any specific requirements or timing needs at the outset of the PSE process.

Section 23 provides an opportunity for participants to make submissions on the process and timing of the PSE process and to comment on the Project Description.

Section 24 places limits on the **time periods** the EC establishes for participants and the public to comment on the proposed project in specific phases of the PSE process. These are:

- For submissions on the process and timing of pre-submission engagement and comments on the Project Description – no more than 40 days (calendar days).
- For comments on the Draft Project Proposal Guideline – no more than 40 days; and
- For comments on the Project Proposal Guideline Response – no more than 60 days.



See Appendix A for an overview of all [timelines](#).

Section 25 deals with the **Project Proposal Guideline** that the EC prepares, based on comments received from participants, legislative requirements and other relevant information. The Guideline is prepared first in draft and then – after allowing the proponent, participants and the public to comment – in final form. It may include requirements related to valued environmental and socio-economic components and baseline information, proponent information acquisition and analysis, cumulative effects considerations and other relevant topics depending on the proposed project.

Section 26 gives the proponent up to 24 months to prepare a **Project Proposal Guideline Response** which sets out how the Project Proposal Guideline requirements are being (or will be) met. Before submitting, the proponent must give at least 30 days prior written notice to the EC.

Section 27 requires the EC to provide the Project Proposal Guideline Response to participants and the public, and to set the **process and timeline for comments** on the Response. The timeline cannot exceed 60 days.

Section 28 directs the EC to prepare and provide, within 60 days after the end of the section 27 comment period, a **Project Proposal Report** which sets out the requirements for the Project Proposal to be submitted by the proponent. This includes requirements set out in the Act³, proponent consultation obligations⁴, the Project Proposal Guideline and any additional or outstanding issues that the proponent must address in the Project Proposal.

Section 29 gives the proponent up to 24 months to prepare the **Project Proposal**. The Project Proposal must meet all the requirements of the Project Proposal Report.

Section 30 requires the EC, within 60 days of receiving the Project Proposal, to determine if the proponent **has met all the requirements**; specifically, compliance with the rules, matters to be considered in the Act, and proponent consultation with First Nations and community residents.

Section 31 mirrors section 30 for **projects that are referred to the Executive Committee** from a designated office under YESAA s.56(1)(d). After a project has been referred, the proponent is required to submit a Revised Proposal to the EC⁵. The pre-submission engagement process as such – that is, apart from sections 31 and 32 – does not apply to referred projects.

Section 32 provides that the EC, if it determines that the Project Proposal (or the equivalent, in the case of a referred project) complies, is to give the proponent **notice that it will screen** the project. If the Project Proposal (or equivalent) is not in compliance, the proponent is notified that a screening will not commence. If the proponent still intends to submit a proposal to the EC, the EC can allow the proponent to revise or replace any submission or otherwise to redo any other aspect of the PSE process.

³ YESAA s. 42(1)(b), (c), and (e) to (h) and 42(2.1) if applicable

⁴ YESAA s.50(3)

⁵ YESAA s. 56(4)



Consequential Amendments

The provisions after s.32 in the proposed PSE rules are **consequential amendments to other provisions in the *Screening Rules*** that are required to implement the PSE process. These amendments include:

- The preparation of a preliminary statement by the EC that describes the scope of the project at the outset of the screening (replacement of s.34).
- Administrative cross-references or corrections to other parts of the *Screening Rules* (notification publications (s.40), notification lists (s.63), terminology (s.67a and s. 83)).
- Application of s.99 - information that is deemed confidential - to the PSE process.
- A new provision enabling the EC to establish an additional public comment period to the screening process (s.48.1) if required. This is to address any material changes to the proposed project that have not been identified or subject to public comment during the PSE process, new information regarding the proposal or its possible effects, or any other exceptional circumstance.

Schedule A – Project Description Requirements

The proposed PSE rules also establish a new **Schedule A** which sets out Project Description Requirements that must be included in the proponent's Project Description. The Schedule lists the requirements and they are further described in the *Project Description Requirements* [\[add link\]](#)

Transition

The proposed PSE rules conclude with **transition provisions** which set out the formal application of the amended Rules, the effective date, and how projects that are already undergoing assessment on the effective date will be managed. The amended Rules will apply on and after the effective date; any proposed projects submitted on or after the effective will go through the PSE process. A project that is undergoing or has undergone adequacy review under the former Rules on the effective date will remain under the former Rules (the PSE process will not apply). For more information on the PSE process effective date please refer to YESAB's website www.yesab.ca

Contact Information

For additional information or questions please contact YESAB:

Telephone: 867-668-6420

Fax: 867-668-6425

Email: yesab@yesab.ca

Toll Free: 1-866-322-4040



Appendix A – Overview – Pre-Submission Engagement Process & Timelines

Project Description Notification & Compliance Check	1. Project Description Submission & Review	2. Project Proposal Guideline (PPG)	3. Project Proposal Guideline Response (PPGR)	4. Proposal Guideline Response Review	5. Project Proposal Report (PPR)	6. Project Proposal Submission
The proponent shall give a minimum of 30 days notice to the EC before it submits a Project Description (PD).	PSE Process officially begins when a Proponent submits a Project Description that complies with the requirements set out in Schedule A of the Rules.	EC preparation of Draft PPG. <i>Within a max. of 60 days</i>	Proponent prepares PPGR [Proponent Time] <i>Withdrawal provision after 24 months</i>	EC actions when the PPGR is received: • Release to participants & public on YOR <i>Within a max. of 7 days</i>	EC preparation of PPR Release to proponent and participants, public on YOR <i>Within a max. of 60 days</i>	Proponent prepares Project Proposal for submission to EC [Proponent Time] <i>Withdrawal provision after 24 months</i>
EC reviews PD to determine compliance with rules Schedule A - PD Requirements. If not, EC provides direction to the Proponent and PD is re-submitted. <i>Within a maximum of 10 days (informal standard – not rule based as the PSE process has not formally commenced).</i>	EC actions when a PD is received: • Identify & notify participants, release on YOR <i>Within a max. of 7 days</i>	EC seeks feedback from participants on input process and sets timeline for draft PPG input. Participants and public provide input. <i>Within a max. of 40 days</i>	The proponent shall give a minimum of 30 days notice to the EC before it submits the PPGR	EC seeks feedback from participants on input process and sets timeline for PPGR input. Participants and public provide input. <i>Within a max. of 60 days</i>		Upon submission EC conducts proposal compliance check as per Rules and YESAA provisions <i>Within a max. of 60 days</i>
	EC seeks feedback from participants on input process and sets timeline for PD input. Participants and public provide input <i>Within a max. of 40 days</i>	EC finalizes PPG based on input. Final PPG released to proponent and on YOR. <i>Within a max. of 30 days</i>				The EC notifies Proponent of its determination and if requirements are met the screening commences. <i>Within a max. of 7 days</i>
Total Timeline Per Phase	Total – Timeline Max days - 47 days	Total – Timeline Max days - 130 days	Total – Timeline Max days – 24 months	Total – Timeline Max days – 67 days	Total – Timeline Max days – 60 days	Total – Timeline: Proposal Submission: Max days –(24 months) After Proposal submitted: Max. days – 67 days

Overall Timeline: *Within a Maximum of 371 days (excluding proponent time)*

Definitions:

EC – Executive Committee

PD - Project Description

PPG – Project Proposal Guideline

PPGR – Project Proposal Guideline Response

PPR – Project Proposal Report

YOR - YESAB Online Registry

Participants:

Decision bodies (Federal, Yukon and First Nations governments), potentially affected First Nations(s), local governments, regulators, and the public