

U.S. Department of the Interior  
Office of Surface Mining Reclamation and Enforcement

# Handbook on Procedures for Implementing the National Environmental Policy Act



July 2019



# **Handbook on Procedures for Implementing the National Environmental Policy Act**



**Prepared by the**

**Office of Surface Mining Reclamation and Enforcement**

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Exercising the Authority of the Director**

## ACRONYMS

ADPS	Assistant Director of Program Support
AML	Abandoned Mine Lands
ASLM	Assistant Secretary of Land and Minerals Management
BLM	Bureau of Land Management
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DM	Departmental Manual
DOI	Department of the Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
E.O. 13807	Executive Order 13807
FACA	Federal Advisory Committee Act
FWS	United States Fish and Wildlife Service
MOU	Memorandum of Understanding
NARF	NEPA Adequacy Review Form
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
OFD	One Federal Decision
OEPC	Office of Environmental Policy and Compliance
OSMRE	Office of Surface Mining Reclamation and Enforcement
PAP	Permit Application Package
POC	Point of Contact
RA	Regulatory Authority
ROD	Record of Decision
SES	Senior Executive Service
SHPO	State Historic Preservation Office
SMCRA	Surface Mining Control and Reclamation Act of 1977

S.O. 3355      Secretarial Order 3355  
THPO          Tribal Historic Preservation Office  
TLO            Tribal Liaison Officer

## PURPOSE AND ORGANIZATION OF THIS HANDBOOK

This handbook provides an overview of the National Environmental Policy Act (NEPA) and its implementing regulations, as well as basic guidance for Office of Surface Mining Reclamation and Enforcement (OSMRE) personnel on how to integrate NEPA into OSMRE decision-making processes. It is intended to be a user-friendly document that outlines OSMRE's NEPA-related regulatory responsibilities in addition to providing practical application of these regulations.

This handbook, along with supplemental guidance to address certain NEPA-related processes is intended to assist you in carrying out your NEPA responsibilities. Although this handbook is intended to be comprehensive, it is not an all-inclusive, step-by-step NEPA "cookbook." This handbook is intended to improve the internal management of NEPA-related processes within OSMRE. It is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. This document creates no rights in third parties.

**Chapter 1: Introduction** provides a general overview of the legal framework (including the applicability of other environmental legislation) that requires OSMRE to integrate NEPA into the decision-making process and Departmental policy and guidance that provides instructions for the implementation of NEPA. This chapter also describes the Department of the Interior's (DOI's) NEPA streamlining initiative and how this effort has improved the Department's NEPA review process.

**Chapter 2: The National Environmental Policy Act Process** provides a general overview of the NEPA process and the pathways of compliance and information on how to determine which circumstances may trigger a specific pathway.

**Chapter 3: Determining When NEPA Applies** identifies OSMRE programs and specific actions that may be subject to NEPA compliance and actions for which NEPA does not apply.

**Chapter 4: Implementing NEPA through Project Management** describes the importance of effective and efficient project management throughout the NEPA process and ways to develop a comprehensive project approach that includes a work plan and efficient schedule.

**Chapter 5: Using Existing Environmental Documents** provides information on how to identify existing environmental documents and determine whether an existing document adequately covers a proposed action. This chapter also describes options for using existing documents to inform other analyses.

**Chapter 6: Categorical Exclusions** provides information about the use of categorical exclusions to meet NEPA review requirements for certain types of OSMRE actions and the process for applying and documenting categorical exclusions.

**Chapter 7: Considerations Prior to Document Preparation** describes what you need and can do before beginning the formal NEPA process including coordination and consultation that may be conducted during the NEPA process before document preparation.

**Chapter 8: NEPA Analysis and Review Process** outlines typical analytical steps in the NEPA process and identifies issues related to NEPA reviews.

**Chapter 9: Environmental Assessments** describes the elements of the NEPA process for environmental assessments (including information on preparing a Finding of No Significant Impact (FONSI)).

**Chapter 10: Environmental Impact Statements** describes the elements of the NEPA process for environmental impact statements (EIS) (including information on preparing a Record of Decision (ROD)).

**Chapter 11: Mitigation, Monitoring, and Adaptive Management** provides information about the role of mitigation, monitoring, and adaptive management as it relates to the NEPA process.

**Chapter 12: Coordinating with Cooperating Agencies, Joint Lead Agencies, and Advisory Committees during the NEPA Process** describes OSMRE's roles and responsibilities when serving as a cooperating agency or joint lead agency within DOI and with other federal agencies. This chapter also provides instructions for working with advisory committees and the Federal Advisory Committee Act (FACA).

This handbook contains numerous references to NEPA, the Council on Environmental Quality (CEQ) NEPA regulations and Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, the DOI NEPA regulations, the Departmental Manual, Secretarial Order 3355 and associated memoranda, and the DOI Office of Environmental Policy and Compliance (OEPC) Environmental Statement Memorandum (ESM) series. The nature of these authorities is discussed in Chapter 1 of this handbook. Although this handbook has been written with these authorities in mind, if a conflict is found between the handbook and these authorities, the authorities take precedence.

In this handbook, "we" and "our" refer to OSMRE, while "you" and "your" both refer to anyone reading this handbook for reference or using this handbook as guidance to prepare documents as part of OSMRE's NEPA implementation process.

## TABLE OF CONTENTS

<b>ACRONYMS</b> .....	<b>ii</b>
<b>PURPOSE AND ORGANIZATION OF THIS HANDBOOK</b> .....	<b>iv</b>
<b>CHAPTER 1: INTRODUCTION</b> .....	<b>1-1</b>
1.1    OSMRE’s Statutory Authority and Mission.....	1-1
1.2    The National Environmental Policy Act .....	1-2
1.2.1    Council on Environmental Quality (CEQ) .....	1-2
1.2.2    Executive Orders Related to NEPA.....	1-3
1.2.3    Major Federal Laws Related to the Environment .....	1-3
1.3    Departmental Policy and Guidance .....	1-4
1.3.1    Departmental Manual.....	1-4
1.3.2    Office of Environmental Policy and Compliance.....	1-5
1.4    OSMRE Policy and Guidance .....	1-5
1.5    OSMRE Roles and Responsibilities.....	1-5
1.6    NEPA Streamlining Initiatives .....	1-7
1.6.1    National Requirements for Streamlining .....	1-7
1.6.2    Department of the Interior Streamlining Requirements.....	1-7
1.6.3    OSMRE Streamlining Requirements.....	1-8
<b>CHAPTER 2: THE NATIONAL ENVIRONMENTAL POLICY ACT PROCESS</b> .....	<b>2-1</b>
2.1    What is the NEPA Process?.....	2-1
2.2    What is Required for NEPA Compliance?.....	2-1
2.3    NEPA Implementation Pathways .....	2-2
2.3.1    Categorical Exclusions.....	2-3
2.3.2    Environmental Assessments .....	2-3
2.3.3    Determining Whether an EA or EIS is Appropriate (Significance) .....	2-5
2.3.4    Environmental Impact Statements .....	2-7
<b>CHAPTER 3: DETERMINING WHEN NEPA APPLIES</b> .....	<b>3-1</b>
3.1    OSMRE Actions Requiring NEPA Compliance .....	3-1
3.1.1    Promulgation of SMCRA Regulations .....	3-1
3.1.2    Title IV of SMCRA - Reclaiming Abandoned Mine Lands.....	3-1
3.1.3    Federal Oversight of State Programs .....	3-3
3.1.4    Title V - Regulatory Programs.....	3-3
3.1.5    Federal Grants.....	3-5
3.1.6    Experimental Practices (Title IV and V) .....	3-7

3.1.7	Lands Unsuitable for Mining .....	3-7
3.1.8	Training and Technical Assistance .....	3-7
3.1.9	Approval of State/Tribal Regulatory Programs .....	3-7
3.2	OSMRE Actions Exempt from NEPA Compliance .....	3-8
3.2.1	Actions Exempted by Statute .....	3-8
3.2.2	Actions Mandated by Statute .....	3-9
3.3	Emergency Actions .....	3-9
<b>CHAPTER 4: IMPLEMENTING NEPA THROUGH PROJECT MANAGEMENT .....</b>		<b>4-1</b>
4.1	Introduction - Comprehensive Project Management .....	4-1
4.2	Managing the Project with an Awareness of NEPA .....	4-1
4.2.1	Interdisciplinary Project Team .....	4-1
4.2.2	Project Team Members .....	4-1
4.2.3	Project Understanding and Kick-Off .....	4-2
4.3	“One Project - One Schedule” .....	4-4
4.3.1	Work Plan and Schedule .....	4-4
4.3.2	Preparing the Work Plan .....	4-4
4.3.3	Developing a Comprehensive Project Schedule .....	4-5
4.3.4	Working with a Project Proponent .....	4-6
4.3.5	Managing Contractors .....	4-6
4.4	Integrating Processes for Informed Decision-Making .....	4-7
4.4.1	OSMRE Program Decision Points and Environmental Regulations .....	4-7
4.4.2	Importance of Coordination and Timing .....	4-8
4.5	Department NEPA and Permitting Database .....	4-8
4.6	Documentation and File Management .....	4-8
4.7	Files and Records .....	4-8
4.8	Information Access - Shared Drives and Folders .....	4-9
4.9	OSMRE Project Coordination and Reviews .....	4-10
4.9.1	Technical Reviews and Quality Assurance .....	4-10
4.9.2	Solicitor Review .....	4-10
4.9.3	OSMRE Region/HQ Coordination Points and Director Briefings .....	4-10
4.9.4	Communications Plans, Press Releases, and Federal Register Notices .....	4-12
<b>CHAPTER 5: USING EXISTING ENVIRONMENTAL DOCUMENTS .....</b>		<b>5-1</b>
5.1	Performing a NEPA Adequacy Review .....	5-1
5.1.1	How to Identify Existing Environmental Documents .....	5-2

5.1.2	How to Review Existing Environmental Documents for NEPA Adequacy.....	5-2
5.1.3	Documenting the Review.....	5-4
5.2	Tiering and Programmatic NEPA Documents .....	5-4
5.3	Adopting another Agency’s NEPA Document.....	5-6
5.4	Supplementing an EA or EIS.....	5-8
5.4.1	When Supplementation Is Appropriate.....	5-8
5.4.2	When Supplementation Is Not Appropriate.....	5-8
5.4.3	The Supplementation Process .....	5-9
5.5	Incorporation by Reference .....	5-9
<b>CHAPTER 6: CATEGORICAL EXCLUSIONS .....</b>		<b>6-1</b>
6.1	Does a Departmental or OSMRE Categorical Exclusion Apply to the Action? .....	6-1
6.2	Identifying Extraordinary Circumstances.....	6-1
6.3	Documentation and Notification Requirements .....	6-2
6.4	Periodic Review of Categorical Exclusions and Extraordinary Circumstances.....	6-3
<b>CHAPTER 7: CONSIDERATIONS BEFORE DOCUMENT PREPARATION.....</b>		<b>7-1</b>
7.1	Early Coordination and Consultation .....	7-1
7.1.1	Consultation with Tribal Governments.....	7-2
7.2	Early Public Involvement Considerations .....	7-3
7.2.1	Public Involvement Plan.....	7-4
7.3	Resources that May Be Affected by Your Project .....	7-4
7.4	Best Practices for Data Collection.....	7-5
<b>CHAPTER 8: NEPA ANALYSIS AND REVIEW PROCESS.....</b>		<b>8-1</b>
8.1	Outline of the Analytical Steps.....	8-1
8.2	Purpose and Need .....	8-1
8.2.1	The Role of the Purpose and Need Statement .....	8-2
8.2.2	Identifying the Decision to be Made.....	8-3
8.3	Scoping .....	8-3
8.4	Issues .....	8-3
8.4.1	Identifying Issues for Analysis .....	8-4
8.4.2	Issues Not Analyzed .....	8-5
8.5	Proposed Action .....	8-5
8.5.1	Description of the Proposed Action.....	8-6
8.5.2	Defining the Scope of Analysis of the Proposed Action .....	8-7
8.6	Alternatives Development .....	8-9

8.6.1	Reasonable Alternatives.....	8-9
8.6.2	No Action Alternative.....	8-10
8.6.3	Alternatives Considered but Eliminated from Detailed Analysis.....	8-12
8.7	Affected Environment and Use of Relevant Data .....	8-12
8.7.1	Affected Environment.....	8-13
8.7.2	Use of Relevant Data .....	8-14
8.8	Environmental Effects .....	8-15
8.8.1	Analyzing General Effects.....	8-15
8.8.2	Analyzing Direct and Indirect Effects .....	8-17
8.8.3	Determining Level of Analysis.....	8-19
8.8.4	Cumulative Effects.....	8-20
8.8.5	Mitigation and Residual Effects.....	8-24
8.9	Issue-Based Environmental Analysis .....	8-25
<b>CHAPTER 9: ENVIRONMENTAL ASSESSMENT.....</b>		<b>9-1</b>
9.1	When to Prepare an EA .....	9-1
9.2	Page Limitations and Timeline for an EA .....	9-1
9.3	Public Involvement Requirements for an EA.....	9-2
9.3.1	Scoping .....	9-2
9.3.2	Review and Distribution of the EA.....	9-3
9.4.	Contents of an EA (40 CFR 1508.9 and 43 CFR 46.310).....	9-4
9.5	Structural layout of an EA .....	9-6
9.5.1	Suggested Organization and Content of an EA .....	9-6
9.6	Content of a FONSI.....	9-10
9.7	When to prepare a FONSI .....	9-11
9.8	Public involvement requirements for a FONSI .....	9-11
9.9	Structural Layout of a FONSI .....	9-12
<b>CHAPTER 10: ENVIRONMENTAL IMPACT STATEMENT.....</b>		<b>10-1</b>
10.1	When to Prepare an EIS.....	10-1
10.2	Time Frame for an EIS .....	10-2
10.3	Public Involvement Requirements of an EIS .....	10-2
10.3.1	Scoping .....	10-3
10.3.2.	Distribution of the Draft EIS and the Departmental Document Clearance Process ... .....	10-6
10.4	Content and Structural Layout of an EIS.....	10-8
10.5	When to prepare a Record of Decision (ROD).....	10-16

10.6	Public Involvement Requirements for a ROD.....	10-17
10.7	Content of a ROD.....	10-17
10.8	Structural layout of a ROD.....	10-18
<b>CHAPTER 11: MITIGATION, MONITORING AND ADAPTIVE MANAGEMENT.. 11-1</b>		
11.1	Mitigation .....	11-1
11.2	Monitoring.....	11-2
11.2.1	Purposes of and Requirements for Monitoring.....	11-2
11.2.2	Developing a Monitoring Plan or Strategy .....	11-3
11.2.3	Implementing Monitoring.....	11-4
11.3	Adaptive Management.....	11-4
<b>CHAPTER 12: COORDINATING WITH COOPERATING AGENCIES, JOINT LEAD AGENCIES, AND ADVISORY COMMITTEES DURING THE NEPA PROCESS..... 12-1</b>		
12.1	Working with Other DOI Bureaus as a Cooperating Agency to Develop NEPA Documents.....	12-1
12.1.1	Determination of Lead Agencies When Working with Other DOI Bureaus .....	12-1
12.1.2	Dispute Resolution Between OSMRE and Other DOI Bureaus .....	12-3
12.2	NEPA Timelines, Schedules, and Document Page Counts for Cooperating Agencies.. .....	12-3
12.3	Cooperating Agency Status with Entities External to DOI in the Development of NEPA Documents .....	12-3
12.3.1	OSMRE as the Lead.....	12-4
12.3.2	Deciding Whether to Be a Cooperating Agency.....	12-5
12.3.3	OSMRE as a Cooperating Agency .....	12-5
12.3.4	Procedures for Working as a Cooperating Agency.....	12-5
12.4	Joint Lead Agencies in the Development of NEPA Documents .....	12-6
12.5	Working with Advisory Committees and the Federal Advisory Committee Act....	12-6
12.5.1	Guidance for Meeting with Groups .....	12-7
12.5.2	Alternatives to Chartered Groups .....	12-7
<b>REFERENCE LIST.....</b>		<b>R-1</b>

## LIST OF FIGURES

Figure 2-1	The NEPA Umbrella.....	2-2
Figure 2-2	The NEPA Process. Adopted from A Citizen’s Guide to the NEPA, 2007.....	2-4

**LIST OF TABLES**

Table 5-1. Questions for Reviewing Existing NEPA Documents for a New Proposed Action....  
..... 5-3

Table 5-2. When to Use Tiering, Adoption, Supplementation, and/or Incorporation by  
Reference ..... 5-11

## CHAPTER 1: INTRODUCTION

Since the enactment of the Surface Mining Control and Reclamation Act (SMCRA) (Public Law 95-87) in 1977, OSMRE has worked to strike a balance between the Act's twin aims of:

(1) protecting the environment and people through the regulation of surface coal mining and the restoration of abandoned mines in the United States, and (2) assuring the coal supply essential to the nation's energy requirements. SMCRA (along with other legislation such as NEPA) defines the legal framework that gives OSMRE the authority to carry out its mission. This chapter outlines the framework of these authorities and identifies regulations, guidance, and policies associated with NEPA and OSMRE's administration and implementation of its programs.

### 1.1 OSMRE's Statutory Authority and Mission

OSMRE is a bureau within DOI whose primary mission is to carry out the requirements of SMCRA in cooperation with states and tribes. SMCRA was enacted for a number of purposes, including the "establish[ment of] a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations" and to "strike a balance between protection of the environment . . . and the Nation's need for coal as an essential source of energy[.]" [30 U.S.C. § 1202](#).

SMCRA created two major programs (Title IV and Title V) which allow OSMRE to balance protection of the environment and the Nation's need for coal. Title IV establishes a reclamation program for abandoned mine lands that were abandoned or inadequately reclaimed before the enactment of SMCRA. Title V creates an environmental protection program to establish standards and procedures for permitting and inspecting surface and underground coal mining and reclamation operations.

Coal mine operators pay fees on each ton of coal produced to fund OSMRE's Abandoned Mine Land program (Title IV). Generally, these funds are either distributed as grants to states or Indian tribes with approved reclamation programs or spent directly by OSMRE for reclamation projects in the states and on Indian lands that do not have an approved reclamation program.

OSMRE's Regulatory program (Title V) requires surface coal mining operations to obtain a permit before mining. In order to receive a permit, the operation must meet minimum performance standards for environmental protection and public health and safety. If OSMRE approves a regulatory program consistent with SMCRA that was submitted by a state or Indian tribe, the state or tribe will become the primary regulatory authority (i.e., primacy). Most coal-mining states or tribes have primacy, and in those states, OSMRE performs primarily an oversight role. OSMRE also partners with states and Indian tribes to regulate mining on Federal lands and to support States' regulatory programs with grants and technical assistance.

In addition to SMCRA, OSMRE also helps implement a portion of the Mineral Leasing Act of 1920 (MLA) related to the mining of federal coal and the Act of August 31, 1954 (for the control and extinguishment of outcrop and underground coal fires).

OSMRE's rules pertaining to SMCRA, the MLA, and the Act of August 31, 1954 are in the Code of Federal Regulations (CFR) under [Title 30 - Mineral Resources, CHAPTER VII - Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Parts 700 to 999](#).

## **1.2 The National Environmental Policy Act**

OSMRE must also comply with other federal laws (including NEPA) relevant to federal agencies. NEPA is the cornerstone of our Nation's environmental laws and was enacted to ensure that information on the environmental impacts of any federal, or federally funded action is available to public officials and citizens before decisions are made and before actions are taken.

NEPA is a "procedural" or process-oriented law rather than a "substantive" or substance-oriented one. The law states the purposes of NEPA include ([42 U.S.C. § 4321](#)):

- declaring a national policy which will encourage productive and enjoyable harmony between man and his environment;
- promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- enriching the understanding of ecological systems and natural resources important to the Nation; and
- establishing the Council on Environmental Quality.

NEPA requires federal agencies to fully consider the impacts of proposals that would affect the human environment before making a decision to take an action. The NEPA process "help[s] public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment" ([40 CFR 1500.1](#)). NEPA and its implementing regulations do not dictate what decision an agency must make about actions affecting the environment. After the NEPA process has been followed, an agency may choose to take an action with adverse environmental impacts, even if those impacts are severe. NEPA also requires federal agencies to involve the interested and affected public in decision-making processes.

### **1.2.1 Council on Environmental Quality (CEQ)**

NEPA established CEQ to ensure federal agencies meet their NEPA obligations. As part of that responsibility, CEQ issued regulations to further clarify agencies' NEPA responsibilities. These "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" are codified in the CFR under Title 40 – Protection of the Environment, Chapter V ([40 CFR 1500 to 1508](#)). These rules set forth the process that federal agencies must follow when proposing to take actions that have environmental impacts. CEQ also publishes [guidance documents](#) that give federal agencies information on various NEPA-related topics and set out processes for implementing NEPA. CEQ also reviews and approves federal agency NEPA procedures, approves alternative arrangements for compliance with NEPA for emergencies, and helps to resolve disputes between federal agencies and with other governmental entities and members of the public. Additional information on CEQ is available on [CEQ's webpage](#).

CEQ's regulations require each federal agency to adopt procedures to implement NEPA. DOI published its final NEPA implementation procedures in 2008 ([43 CFR 46](#)). These regulations supplement CEQ's regulations and set out Departmental procedures for compliance with NEPA.

### 1.2.2 Executive Orders Related to NEPA

The President has issued multiple Executive Orders (EOs) providing direction to federal agencies for administering NEPA and executing other laws as they pertain to environmental reviews. Examples of such EOs include:

- [Executive Order 11514](#) (March 5, 1970) on Protection and Enhancement of Environmental Quality;
- [Executive Order 11593](#) (May 13, 1971) on Protection and Enhancement of the Cultural Environment;
- [Executive Order 11988](#) (May 24, 1977) on Floodplain Management;
- [Executive Order 11990](#) (May 24, 1977) on Protection of Wetlands;
- [Executive Order 12898](#) (February 11, 1994) on Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations;
- [Executive Order 13186](#) (January 10, 2001) on Responsibilities of Federal Agencies to Protect Migratory Birds;
- [Executive Order 13807](#) (August 15, 2017) on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure.

A more exhaustive list of EOs relevant to NEPA is available on the [CEQ Executive Order webpage](#).

### 1.2.3 Major Federal Laws Related to the Environment

An environmental review in compliance with NEPA integrates and incorporates the requirements of other major federal laws related to the environment (*see* Chapter 2, The NEPA Process). Examples of statutes that should be integrated and incorporated into the NEPA process include:

- The American Indian Religious Freedom Act, [42 U.S.C. § 1996 et seq.](#);
- The Archaeological Resources Protection Act of 1979, [16 U.S.C. § 470aa et seq.](#);
- The Bald and Golden Eagle Protection Act of 1940, as amended, [16 U.S.C. § 668-668d](#), and implementing regulations;
- The Clean Air Act, [42 U.S.C. § 7401 et seq.](#), and implementing regulations;
- The Clean Water Act of 1972, [33 U.S.C. § 1251 et seq.](#), and [40 CFR 434](#);
- The Endangered Species Act, [16 U.S.C. § 1531 et seq.](#), and [50 CFR 402](#);
- The Federal Land Policy and Management Act, [43 U.S.C. § 1701 et seq.](#), and implementing regulations;
- The Fish and Wildlife Coordination Act, as amended, [16 U.S.C. § 661-667](#);
- The Migratory Bird Treaty Act, as amended, [16 U.S.C. § 701-718h](#) and 50 CFR [20](#) and [21](#);

- The National Historic Preservation Act of 1966, [16 U.S.C. § 470 et seq.](#), and [36 CFR 800](#);
- The Native American Graves Protection and Repatriation Act, [25 U.S.C. § 3001 et seq.](#);
- The Reservoir Salvage Act of 1960, as amended by the Preservation and Historical and Archaeological Data Act of 1974, [16 U.S.C. § 469 et seq.](#);
- The Resource Conservation and Recovery Act of 1976, [42 U.S.C. § 6901 et seq.](#), and implementing regulations; and
- The Stock Raising Homestead Act of 1916, [43 U.S.C. § 291 et seq.](#)

For a list of other statutes that may require incorporation into a NEPA analysis, please see this webpage from [Carnegie Mellon University](#) or this list from the [Federal Highway Administration](#).

Please note that each statute has various procedures and requirements for compliance. Many of these statutes require coordination with the respective resource stakeholders. These stakeholders may include various federal agencies, Indian tribes, state and local agencies, private organizations, and the public. For example, Section 106 of the National Historic Preservation Act has specific procedures for consultation that are defined by the Advisory Council of Historic Preservation, and includes consultation with state or tribal historic preservation officers. Similarly, to comply with the Endangered Species Act, OSMRE may need to consult with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service.

### **1.3 Departmental Policy and Guidance**

The Department's mission is to conserve and manage the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people, provide scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honor the Nation's trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities to help them prosper. To further this mission, DOI has broad responsibilities for managing Federal lands and resources under its jurisdiction and for complying with NEPA.

In October 2008, DOI codified its procedures for implementing NEPA ([43 CFR 46](#)), which were previously housed in the Departmental Manual (DM). As necessary, DOI also issues directives, policies, and guidance, including Secretarial Orders and Departmental Memoranda. In addition, the Department's Office of Environmental Policy and Compliance issues Environmental Statement Memoranda (ESM) to assist bureaus in complying with NEPA.

#### **1.3.1 Departmental Manual**

The DM describes the organization and functions of the Department's bureaus and offices, documents delegation of the Secretary's authority, and prescribes the policies and general procedures for administrative activities and specific program operations. Bureaus and offices must comply with the provisions of the DM, except to the extent that the provisions are superseded by appropriate authority, e.g., a statute, regulation, Executive Order, Secretary's Order, or court decision (011 DM 1).

The DM provides NEPA-specific guidance for the NEPA process (*see, e.g., [Series 31: Environmental Quality Programs, Part 516](#)*). Chapters 1 through 4 of 516 DM provide implementation guidance for the NEPA process. [Part 516 DM Chapter 13](#) provides supplementary requirements for OSMRE’s implementation of NEPA provisions. Other DM parts containing guidance for specific environmental resource topics include: cultural resources (Part 519), natural resources (Part 520), invasive species (Part 524), and environmental justice (Part 525).

### **1.3.2 Office of Environmental Policy and Compliance**

The Department’s Office of Environmental Policy and Compliance (OEPC) provides guidance to bureaus and offices of the Department to ensure compliance with various pollution control and environmental protection statutes through its [Environmental Memoranda Series](#), along with other guidance documents. OEPC also has responsibility for reviewing and concurring on non-delegated EISs (*see* Section 2.3.4.3). According to Environmental Statement Memoranda 13-2 ([ESM 13-2](#)), a NEPA environmental impact statement (EIS) that requires the approval of more than one Assistant Secretary (such as would be the case for an OSMRE and National Park Service EIS) is considered a “Non-delegated EIS.” A Non-delegated EIS requires notification and coordination with OEPC. In contrast, if the decision authority on the proposed action is a single Assistant Secretary (such as an OSMRE-only document or a joint OSMRE-Bureau of Land Management (BLM) document), the EIS for the decision is considered a “Delegated EIS,” which the specific leading bureau or office can approve without a required OEPC review. (*See* Chapter 2 for more information on Delegated and Non-delegated EISs.)

### **1.4 OSMRE Policy and Guidance**

OSMRE’s policy is to interpret and administer its policies, regulations, programs, and applicable laws in accordance with NEPA. This includes compliance with the Department’s NEPA implementing regulations, [516 DM Chapter 13](#), CEQ issued regulations ([40 CFR 1500 to 1508](#)) to implement NEPA, and other environmental laws and regulations. In addition, OSMRE follows the directives from EOs and Secretarial Orders (SOs) in implementing its activities.

OSMRE issues policy directives in the form of instructions, manuals, notices, guides, policies, and procedures. OSMRE [Directives](#) include multiple forms of guidance for all types of activities and programs to assist employees in effectively performing their jobs. The Directive, Regulatory Program Development-1 (REG-1), provides for the issuance of this handbook.

### **1.5 OSMRE Roles and Responsibilities**

Although every OSMRE employee is responsible for ensuring that federal actions or federally-funded actions within their program comply with NEPA, some employees have formal NEPA responsibilities.

- [Director](#) - The Director is ultimately responsible for NEPA compliance within OSMRE ([516 DM 13.2\(A\)](#)).

- Assistant Director, Program Support (ADPS) - The Assistant Director of Program Support is responsible for overall policy guidance for NEPA compliance for OSMRE. Information about OSMRE NEPA documents or the NEPA process can be obtained by contacting the Assistant Director of the Program Support Division. The ADPS is also responsible for:
  - supervising and coordinating NEPA activities in program areas of responsibility;
  - completing an OSMRE Headquarters review and concurrence process for EISs within their program areas to ensure compliance with policy guidance; and
  - assuring that environmental concerns are identified early in the planning stages and appropriate policy and program guidance is disseminated ([516 DM 13.2\(B\)](#)).
- Regional Directors (RDs) - Regional Directors are responsible for:
  - integrating the NEPA process into all Regional activities and for NEPA compliance activities in their Regions; and
  - designating a staff position to be responsible to the Regional Director for the consistency, adequacy, and quality of all NEPA documents prepared by the Region's staff. The position will also be responsible to the Regional Director for providing information, guidance, training, advice, and coordination on NEPA matters, and for oversight of the Region's NEPA process ([516 DM 13.2\(C\)](#)).

Specific NEPA duties have been delegated to other employees. For the current list of delegations, please see [OSMRE Directive OPM-5, Appendix A, Section C](#).

Other OSMRE employees work directly with NEPA reviews and help those employees with formal NEPA responsibilities perform their functions. These include:

- ***Chief, Division of Regulatory Support*** - The Chief of the Division of Regulatory Support coordinates OSMRE compliance with NEPA and other related environmental laws, regulations, and directives for Title V matters.
- ***Chief, Division of Reclamation Support*** - The Chief of the Division of Reclamation Support is responsible for coordinating OSMRE compliance with NEPA and other related environmental laws, regulations, and directives for Title IV matters.
- ***Headquarters (HQ) NEPA Coordinator(s)*** - The NEPA Coordinator in Headquarters is responsible for keeping OSMRE up-to-date with CEQ's and the Department's current regulations, policies, and guidance related to NEPA and other environmental review requirements. The HQ NEPA Coordinator is the resource for OSMRE staff to consult about NEPA requirements, other environmental reviews, project approaches, and to assist OSMRE as a whole in complying with NEPA.
- ***Federal Preservation Officer*** - The Federal Preservation Officer is responsible for maintaining current guidance from the Advisory Council on Historic Places (ACHP) as it relates to the consultation process required by the National Historic Preservation Act. The Federal Preservation Officer is also the primary resource for OSMRE staff to consult with developing approaches and resolving potential effects to historic and cultural resources in compliance with the National Historic Preservation Act.
- ***Tribal Liaison Officer*** - The Tribal Liaison Officer is officially designated by the Director of OSMRE and responsible for carrying out responsibilities as described in [512 DM 4 - American Indian and Alaska Native Programs](#).

- **Science Integrity Officer** - The Scientific Integrity Officer is responsible for maintaining records of OSMRE’s scientific integrity policy. This policy ensures the integrity of scientific and scholarly activities OSMRE conducts and the science and scholarship it uses to inform management and public policy decisions. The Scientific Integrity Officer conducts inquiries of scientific integrity complaints and serves as OSMRE’s ombudsman on matters of scientific integrity within OSMRE. In addition, the Scientific Integrity Officer serves on the Department’s Scientific Integrity Council ([305 DM 3- Handbook - Scientific Integrity Procedures](#)).
- **Field Office Directors (FODs)** – FODs are responsible for the preparation of NEPA documents for actions originating within their jurisdiction. Also, FODs are responsible for implementing the procedures of this handbook for Field Office originated actions and for final review and approval of EA/FONSI and determinations of categorical exclusion prepared in their Field Offices.

## 1.6 NEPA Streamlining Initiatives

Pursuant to NEPA, decision-makers must engage in a comprehensive environmental review of a project that consolidates environmental regulatory requirements into one review for a proposed action. This consolidated approach provides OSMRE with a tool to make informed decisions and the opportunity to combine various environmental review processes for the most efficient implementation of the action.

The CEQ regulations outline multiple ways and approaches to encourage efficiency throughout the NEPA process. In addition, since the enactment of NEPA in 1969, there have been valuable lessons learned from the experience of multiple federal agencies while implementing the NEPA process. This experience has led to national guidance documents in addition to individual federal agency directives and policies to streamline the NEPA review process.

### 1.6.1 National Requirements for Streamlining

Streamlining the NEPA review process has been a nationwide initiative. On August 15, 2017, the White House published [Executive Order 13807](#), “*Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*” (E.O. 13807), which focused on the coordination of federal environmental review and permitting processes for infrastructure projects. E.O. 13807 changes the way federal agencies process environmental reviews and authorization decisions for infrastructure projects.

Planning, leasing, and the development/expansion of oil and gas development, or any other project type, that does not result in facility construction (which would be the subject of further NEPA review), is not considered an infrastructure project. Mining is not considered “major infrastructure” or “infrastructure” as defined in E.O. 13807, Section 3(d) and (e). Therefore, E.O. 13807 is not applicable to OSMRE.

### 1.6.2 Department of the Interior Streamlining Requirements

On August 31, 2017, DOI’s Deputy Secretary issued Secretarial Order ([S.O. 3355](#)), [Streamlining](#)

[National Environmental Policy Act Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”](#) in direct response to the national NEPA streamlining initiative. The Deputy Secretary issued S.O. 3355 “in recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis” and the need to enhance and modernize the Department’s NEPA processes.

Since the release of S.O. 3355, the Deputy Secretary and OEPC have issued a number of memoranda to provide additional guidance for implementation of S.O. 3355. These supplemental memoranda contain information essential to the implementation of the Department’s requirements for streamlining and improving the NEPA process.

- [Additional Direction for Implementing Secretary’s Order 3355, April 2018](#)
- [NEPA Document Clearance Process, April 2018](#)
- [Compiling Contemporaneous Decision Files, April 2018](#)
- [OEPC Environmental Review Memorandum \(ERM\) 10-9: Entering Information into the Department NEPA and Permit Tracking Database, April 2018](#)
- [Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies, June 2018](#)
- [Reporting Costs Associated with Developing Environmental Impact Statements, July 2018](#)
- [Additional Direction for Implementing Secretary’s Order 3355 Regarding Environmental Assessments, August 2018](#)
- [OEPC ERM 10-11 Determining the Applicable Environmental Review Framework for Infrastructure Projects, August 2018](#)

### **1.6.3 OSMRE Streamlining Requirements**

OSMRE has developed specific requirements to ensure the implementation of NEPA that is consistent with the streamlining directives and guidelines outlined by CEQ and the Department while maintaining the integrity of the process.

In accordance with Departmental policies, the following processes and procedures apply to OSMRE’s NEPA analyses.

***Page and Timing Limitations for EISs and EAs*** - Consistent with S.O. 3355 and the Deputy Secretary’s Memorandum issued on April 27, 2018, “*Additional Direction for Implementing Secretary’s Order 3355*”, OSMRE has limited EISs to 150 pages (up to 300 pages for unusually complex projects) and will complete each Final EIS (including the Record of Decision) within 365 calendar days of publishing the associated Notice of Intent (NOI), unless otherwise authorized by the Department via a waiver request (*see* Appendix 1.1 for the waiver request template). All EISs, exceeding 150 pages or the 365-day timeline, will require a waiver request.

On August 6, 2018, the Deputy Secretary issued guidance about Environmental Assessments. As instructed, OSMRE will prepare EAs no longer than 75 pages and complete each EA (with a conclusion in the form of a signed FONSI or the determination to prepare an EIS) within 180

calendar days.

***Best Practices for Data Collection Prior to Notice of Intent (NOI) Issuance*** - As directed in S.O. 3355, OSMRE reviewed its NEPA policies and procedures and identified opportunities to accelerate or streamline the EIS and EA process. In coordination with the Office of the Solicitor and OEPC, OSMRE also identified best practices for gathering information, coordinating with stakeholders, and preliminary drafting before the publication of an NOI. (See Chapter 7 for more information on best practices for coordination with stakeholders and data collection.)

***Project Schedules and the Department NEPA and Permit Tracking Database*** - As required by the Deputy Secretary's Memoranda "*Additional Direction for Implementing Secretary's Order 3355*" and "*Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments*," OSMRE will upload all EIS and EA (for EAs greater than 75 pages and/or anticipated to exceed the 180 day timeframe) project schedules to the NEPA and Permit Tracking Database (Tracking Database) and consistently update this data when necessary. OSMRE will designate Points of Contact with rights to access, edit and upload information into the Tracking Database. However, all Department employees may view the information in the [Tracking Database](#). (See Chapter 4 for additional information on uploading and updating EIS and EA data in the Tracking Database.)

***NEPA Document Clearance Process*** - As instructed by the Deputy Secretary's Memorandum, "*NEPA Document Clearance Process*," any proposed OSMRE action requiring an EIS (after fully and properly considering the use of relevant categorical exclusions or EAs) will be reviewed by a designated Departmental Review Team at six specific clearance points. This review process replaces the Department's former surnaming process and streamlines the review process. (See Chapter 10 for more information on the NEPA Document Clearance Process.)

***Contemporaneous Decision Files*** - Consistent with the Deputy Secretary's Memorandum "*Compiling Contemporaneous Decision Files*" issued on April 27, 2018, OSMRE has issued guidance requiring contemporaneous compilation of Decision Files for decision-making processes that "will or could result in a 'final Agency action' subject to challenge under the Administrative Procedure Act". The Memorandum further requires each Bureau to establish a system for standardized Decision File tracking. The Directives set forth in the Memorandum identify the specific information that should be contained in the Decision File, including the initial guidance on how the Decision File is created, what it should include, and how it should be maintained throughout the decision-making stages of the action. For more information on OSMRE's guidance and requirements for constructing and maintaining decision files, see [OSMRE Directive INF-1](#), [OSMRE Records Management](#) and [OSMRE Directive INF-2, Administrative Records System](#).

***Intra-Departmental Procedures for Bureaus Working as Cooperating Agencies*** - Consistent with the Deputy Secretary's Memorandum "*Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working together as Cooperating Agencies*" when OSMRE is acting as a cooperating agency with a DOI Bureau, an individual MOU will not be developed. (See Chapter 12 for more information on Intra-Departmental Procedures for Bureaus Working as Cooperating Agencies.)

***OSMRE Program Streamlining Recommendations*** - OSMRE actively seeks opportunities to streamline NEPA reviews. The following are examples of specific streamlining tools that can be used for actions within OSMRE programs:

- Early Stakeholder Coordination (Chapter 7);
  - Utilizing current and available data (Chapter 7);
  - Training (Chapter 3);
  - Co-leading and cooperating with other agencies (Chapter 4);
  - Consolidating other agency requirements so agencies can work together and eliminate duplication (Chapter 4);
  - Implementing NEPA through Project Management (Chapter 4); and
  - Consolidating multiple similar actions into one NEPA review (Chapter 4).
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### **List of Appendices**

*Appendix 1.1*

*Waiver Request Template*

## CHAPTER 2: THE NATIONAL ENVIRONMENTAL POLICY ACT PROCESS

NEPA provides a process intended to help federal agencies make decisions based on understanding environmental consequences, and take actions to protect, restore, and enhance the environment. Its main objective is to create a better decision-making process for implementing federal projects and programs. This chapter describes the NEPA process and the pathways of compliance.

### 2.1 What is the NEPA Process?

NEPA authorizes and directs federal agencies, to the fullest extent possible, to use a systematic and interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment. Specifically, federal agencies must provide a detailed statement of the environmental impacts of their major actions significantly affecting the quality of the human environment, and consider reasonable alternatives to meet the purpose and need of the action. The NEPA process facilitates this effort by directing various levels of environmental analyses and public involvement.

### 2.2 What is Required for NEPA Compliance?

NEPA requires all federal agencies to disclose the potential environmental impacts of projects they authorize and to make determinations as to whether the analyzed actions would "significantly" impact the environment. "Significance" is defined by CEQ and a regulatory version of the definition is found at [40 CFR 1508.27](#). OSMRE evaluates its projects to determine whether or not a categorical exclusion, an environmental assessment (EA), or an environmental impact statement (EIS) is required. Guidance from the [Departmental Manual](#) lists OSMRE actions normally requiring the preparation of an EIS.

OSMRE's environmental documents are prepared in accordance with the laws, regulations, policies and guidance described in Chapter 1. These include NEPA, the CEQ's NEPA regulations ([40 CFR 1500-1508](#)), DOI's NEPA regulations, the Departmental Manual, Secretarial Orders, and this handbook (OSMRE Directive REG-1).

As discussed in Chapter 1, NEPA requires that OSMRE comply with other periphery environmental laws, such as the Endangered Species Act and the National Historic Preservation Act, and integrate environmental reviews and consultation requirements into the NEPA process. Federal agencies must identify and list other federal and state environmental requirements applicable to a proposed action ([40 CFR 1506.2](#)). Agencies must cooperate with State and local agencies "to the fullest extent possible" to reduce duplication between NEPA and State and local requirements, and discuss and inconsistencies of a proposed action with any State or local plan and laws ([40 CFR 1502.25\(a\) and \(b\)](#)). For this reason, NEPA is often referred to as the umbrella law (*see Figure 2.1*). It is the umbrella that facilitates project coordination by integrating compliance requirements that may otherwise proceed independently.



*Figure 2-1 The NEPA Umbrella*

Besides legal authorities, policy, and guidance, OSMRE should also consider information gathered from the public, federal, state, tribal and local agencies, publicly available literature, and in-house OSMRE sources when analyzing the effects of an action.

### **2.3 NEPA Implementation Pathways**

OSMRE must comply with NEPA before approving, authorizing, or carrying out proposed OSMRE actions. The first step in complying with NEPA is to identify the proposed action. It is important to remember that the federal action creates the requirement for and is the focus of NEPA compliance. After the proposed action has been identified, your analysis, which may include a preliminary assessment of the scope and magnitude of the effects of the proposed action, should assist you in determining the appropriate type of NEPA compliance.

Proposed OSMRE actions can comply with NEPA in the following four ways:

- Statutory exemption (*see* Chapter 3);
- Categorical exclusion (*see* Chapter 6);
- Preparation of an environmental assessment (EA), and a finding of no significant impact (FONSI) (*see* Chapter 9); and

- Preparation of an environmental impact statement (EIS) and Record of Decision (ROD) (*see* Chapter 10).

The type of NEPA documentation depends on the nature of the action and its anticipated environmental impacts. Figure 2.2 provides an overview of the major decision points within the NEPA process.

### **2.3.1 Categorical Exclusions**

A categorical exclusion is a category of actions which do not individually or cumulatively have a significant effect on the human environment and have been found by the agency to have no such effect. Categorical exclusions are developed through a multi-stage process that includes publication in the *Federal Register*, public notice, and a comment period ([75 FR 75628](#)). There are two lists of categorical exclusions that may be relevant to OSMRE actions—DOI and OSMRE categorical exclusions ([43 CFR 46.210](#) and [516 DM 13.5](#)). *See* Appendix 6.1 and 6.2. Some federal actions are statutorily excluded. That is, if OSMRE is required by law (statute) to take an action, NEPA may not be triggered. Also, if there is a clear and unavoidable conflict between NEPA compliance and another statutory authority, NEPA compliance is not required (*see* Chapter 3 for more information).

If the proposed action you are reviewing falls within one of these categorical exclusions, you do not need to prepare an environmental assessment or an environmental impact statement ([40 CFR 1508.4](#)) unless extraordinary circumstances exist. Extraordinary circumstances include twelve categories, each of which must be individually evaluated ([43 CFR 46.215](#)).

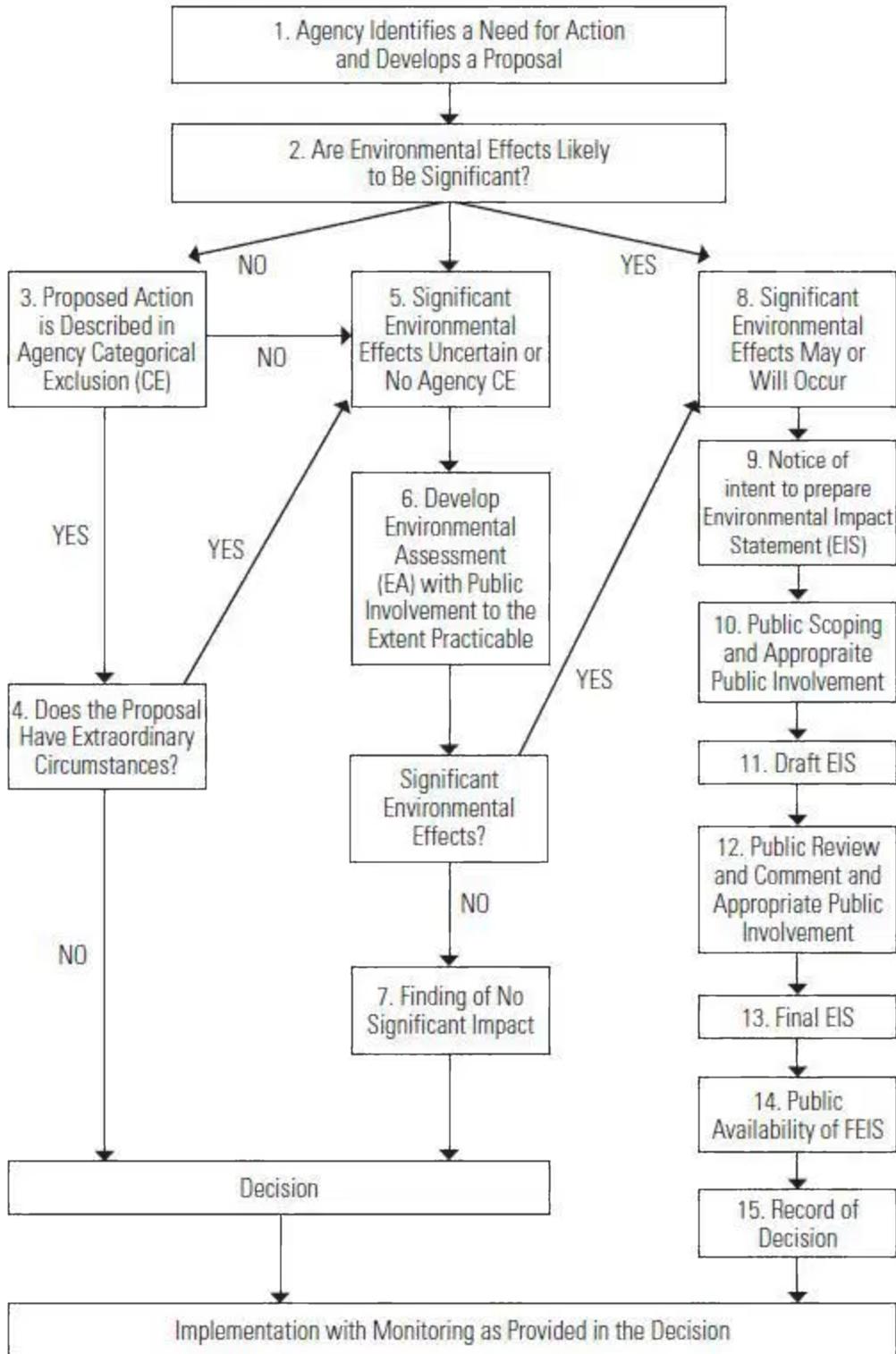
Details related to OSMRE’s use of categorical exclusions and extraordinary circumstances can be found in Chapter 6.

### **2.3.2 Environmental Assessments**

If the proposed action is *not* statutorily or categorically excluded, an EA should be prepared unless the action is listed as normally requiring an EIS ([516 DM 13.4](#)) or would clearly have significant impacts. If no significant impacts are identified through preparation of an EA, a FONSI should be prepared. If the EA finds that significant impacts would occur, an EIS is required for the proposed action ([40 CFR 1508.9](#)). The purpose and preparation of an EA for an OSMRE action are discussed in Chapter 9.

Keep in mind that an EA may be used to evaluate any action (no matter how simple) at any time to assist in planning and decision-making. This evaluation may not lead to a decision to prepare an EIS, but it could provide the decision-maker with information on environmental issues and effects that may be incorporated upfront into a proposal.

## The NEPA Process



**Figure 2-2** *The NEPA Process. Adopted from A Citizen's Guide to the NEPA, 2007*

### 2.3.3 Determining Whether an EA or EIS is Appropriate (Significance)

If a major Federal action (40 CFR 1508.18) will significantly (40 CFR 1508.27) affect (40 CFR 1508.3, 1508.8) the quality of the human environment (40 CFR 1508.14), you must prepare an EIS ([40 CFR 1502.3](#)). If it is unclear whether the action will have a significant effect, you may prepare an EA ([40 CFR 1508.9\(a\)](#)). If the analysis in an EA shows the action will not have a significant effect, a “Finding of No Significant Impact” (FONSI) will need to be prepared to document that there is no need for an EIS ([40 CFR 1508.13](#)). In contrast, if the analysis in the EA shows the action will have a significant effect that cannot be mitigated, you must prepare an EIS.

It is important to understand some fundamental differences between EAs and EISs. An EIS is a “detailed written statement” analyzing the environmental impacts of major actions significantly affecting the environment ([40 CFR 1508.11](#)). Its fundamental purpose is to promote detailed consideration and disclosure of the environmental impacts of a proposed action. An EA is a concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI ([40 CFR 1508.9](#)).

Whether an action must be analyzed in an EA or EIS depends upon a determination of the significance of the effects. The term “significance” has specific meaning in the NEPA context, and you must use only this meaning in NEPA documents. The CEQ regulations refer to both significant effects and significant issues (for further information, *see* [40 CFR 1502.2\(b\)](#)). The meaning of significance should not be interpreted one way for issues and another way for effects.

The CEQ regulations explain in [40 CFR 1508.27](#):

- “Significantly” as used in NEPA requires consideration of both context and intensity:
  - **Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected (40 CFR 1508.3) region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, significance for a site-specific action would usually depend upon the effects in the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.
  - **Intensity.** This refers to the severity of impact. Note that to determine the severity of impact, you must look at direct, indirect, and cumulative impacts ([40 CFR 1508.25\(c\)](#)).

The CEQ regulations include the following ten considerations or factors for evaluating intensity.

**Factor 1: Impacts That May Be Both Beneficial And Adverse ([40 CFR 1508.27\(b\)\(1\)](#)).** In analyzing the intensity of effects, you must consider that effects may be both beneficial and adverse. Even if the effect of an action will be beneficial on balance, significant effects may exist. For example, abandoned mine land reclamation may have long-term beneficial effects on an endangered fish species. However, the process of construction on site may disturb waterways and have short-term adverse effects on the fish that may rise to the level of significant.

**Factor 2: Public Health And Safety** ([40 CFR 1508.27\(b\)\(2\)](#)). You must consider the degree to which the action would affect public health and safety which may require, for example, evaluation of hazardous and solid wastes and air and water quality. In the context of evaluating significance, consideration of these resource effects should describe their relation to public health and safety. Economic or social effects are not intended by themselves to require preparation of an environmental impact statement ([40 CFR 1508.14](#)).

**Factor 3: Unique Characteristics Of The Geographic Area in Proximity to the Proposed Action** ([40 CFR 1508.27\(b\)\(3\)](#)). Unique characteristics, like those listed below, are generally limited to those that have been identified through the land use planning process or other legislative, regulatory, or planning process; for example:

- Historic or cultural resources;
- Park lands;
- Prime and unique farmlands ([7 CFR 657.5](#), [Section 510\(d\) of SMCRA](#));
- Wetlands;
- Designated caves ([43 CFR 37](#));
- Wild and Scenic Rivers, both designated and suitable for designation;
- Designated Wilderness areas and Wilderness study areas; and
- Areas of critical environmental concern designated under [43 CFR 1610.7-2](#).

**Factor 4: Degree To Which Effects on the Quality of the Human Environment Are Likely To Be Highly Controversial** ([40 CFR 1508.27\(b\)\(4\)](#)). You must consider the degree to which the effects are likely to be highly controversial. Controversy in this context means disagreement about the size, nature, or effect of a major Federal action, not the amount of public opposition to the proposed action or preference among the alternatives. For some actions (e.g., rulemakings), there may be some disagreement about the nature of the effects. In those cases, the decision-maker must exercise some judgment in evaluating the degree to which the effects are likely to be highly controversial. Substantial disputes within the scientific community about the effects of the proposed action would indicate that the effects are likely to be highly controversial.

**Factor 5: Degree To Which Effects on the Human Environment Are Highly Uncertain Or Involve Unique Or Unknown Risks** ([40 CFR 1508.27\(b\)\(5\)](#)). You must consider the degree to which the effects are likely to be highly uncertain or involve unique or unknown risks. As with controversy, there may be some uncertainty about the effects of our actions, and the decision-maker must exercise some judgment in evaluating the degree to which the effects are likely to be highly uncertain. Similarly, it may be impossible to remove all risk, but the decision-maker must consider whether the risks are unique or unknown.

**Factor 6: Consideration Of Whether The Action May Establish a Precedent For Future Actions With Significant Impacts** ([40 CFR 1508.27\(b\)\(6\)](#)). You must consider the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. You must limit this consideration to future actions that are reasonably foreseeable, not merely possible.

**Factor 7: Consideration Of Whether The Action Is Related To Other Actions With Individually Insignificant but Cumulatively Significant Impacts** ([40 CFR 1508.27\(b\)\(7\)](#)). You must consider whether the action is related to other individually insignificant actions with cumulatively significant effects ([40 CFR 1508.27\(b\)\(7\)](#)). Other actions are related to the action if they are connected (40 CFR 1508.25(a)(1)) or cumulative (40 CFR 1508.25(a)(2)) actions. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. Regardless of who undertakes the other actions, you must analyze the effect of past, present, and reasonably foreseeable future other actions in the cumulative effects analysis for the proposed action. This analysis provides the context for understanding the effects of the proposed action. You should avoid confusing cumulative actions (40 CFR 1508.25(a)(2)) with cumulative impacts (40 CFR 1508.25(c)). In determining the significance of the proposed action, you assess only the effects of the OSMRE action together with the effects of connected and cumulative actions to the extent that the effects can be prevented or modified by OSMRE decision-making.

**Factor 8: The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resource** ([40 CFR 1508.27\(b\)\(8\)](#)). This factor represents a specific subset of the factor, “unique characteristics of the geographic area.” Significance may arise from the loss or destruction of significant scientific, cultural, or historical resources. For resources listed in or eligible for listing in the National Register of Historic Places, significance depends on the degree to which the action would adversely affect these resources.

**Factor 9: Threatened Or Endangered Species And Their Critical Habitat** ([40 CFR 1508.27\(b\)\(9\)](#)). Significance depends on the degree to which the action would adversely affect species listed under the ESA or their designated critical habitat. A determination under the ESA that an action would adversely affect a listed species or critical habitat does not necessarily equate to a significant effect in the NEPA context. The NEPA analysis and ESA effects determinations have different purposes and use different analytical approaches (for example, there are differences when analyzing connected actions, reasonably foreseeable actions, and cumulative effects).

**Factor 10: Any Effects That Threaten A Violation Of Federal, State, Or Local Law Or Requirements Imposed For The Protection Of The Environment** ([40 CFR 1508.27\(b\)\(10\)](#)). This factor will often overlap with other factors: for example, violations of the Clean Water Act or Clean Air Act could involve effects that would adversely affect public health and safety.

#### **2.3.4 Environmental Impact Statements**

If a major Federal action has the potential for causing significant impacts on the quality of the human environment, an EIS is required. An EIS analyzes the context and intensity of the impacts on the environment that would result from the proposed action and its reasonable alternatives ([40 CFR 1502.2\(d\)](#)). The purpose and preparation of an EIS are discussed in Chapter 10.

### 2.3.4.1 Types of Environmental Impact Statements

The type of EIS prepared by a federal agency should correspond in focus and level of specificity to the particular proposed action ([40 CFR 1502.2, 1502.3, and 1502.4](#)). Generally, an EIS is prepared for single proposed actions that focus on implementation of a specific project. However, federal agencies sometimes prepare a broad, overarching EIS. These overarching EISs are called programmatic EISs.

***Project-Specific EISs*** - The majority of EISs prepared by OSMRE are project or proposal-specific. As the name indicates, these EISs focus on individual projects or proposals. This type of EIS focuses on the direct, indirect, and cumulative environmental impacts of a proposal and is limited to the proposed action's geographic scope.

***Programmatic EISs*** - Programmatic EISs consider environmental impacts of broad agency actions, such as the adoption of a regulation, policy, plan, or program ([40 CFR 1502.4\(b\)](#)). OSMRE has prepared programmatic EISs for:

- Promulgation of the regulatory program under [Section 501\(b\) of SMCRA, 30 U.S.C. § 1251](#) . (OSMRE, 1979)
- Establishment of two Title IV programs, the federal reclamation program ([Section 402\(g\)\(3\) of SMCRA, 30 U.S.C. § 1232](#)) and the State and Indian reclamation program ([Section 405\(d\), \(f\) and \(k\) of SMCRA, 30 U.S.C. § 1235](#)) (OSMRE, 1980); and
- Approval of State and Indian tribe grant applications under [Title IV of SMCRA, 30 U.S.C. § 1231](#) . (OSMRE, 1983)

Under certain circumstances, programmatic EISs may be sufficient for subsequent, related, site-specific NEPA compliance documents for use as tiering resources (*see* Chapter 5 for more information on tiering.)

### 2.3.4.2 Delegated EISs

Departmental guidance, as described in [ESM 13-2](#), defines a delegated EIS as one for which the decision authority on the proposed action is delegated to a single DOI Assistant Secretary or a subordinate officer.

For delegated projects involving activities within the regions, such as mining plans, lands unsuitable petitions, and experimental practices, the RDs will approve the initiation of the EIS process, oversee the analysis and document preparation, approve the printing and publication of the Draft and Final EIS and sign the ROD ([OSMRE Directive OPM-5](#)). The RD or designee will sign all *Federal Register* notices and is responsible for the Document Clearance Process outlined in the Deputy Secretary of the Department of Interior Memorandum "*NEPA Document Clearance Process*" issued on April 27, 2018. (*See* Chapter 10 for additional information.) Once the EIS has been cleared, the RDs will sign the *Federal Register* notice and provide copies to ADPS along with electronic files of the EIS suitable for e-filing with EPA and for posting on OSMRE websites.

If a rulemaking EIS is a delegated EIS, the ADPS will approve the initiation, oversee the preparation, approval, printing, and publication of the Draft and Final EIS and sign the ROD ([OSMRE Directive, OPM 5](#)).

For delegated EISs the ADPS will coordinate the publication of the *Federal Register* notice and the e-filing of documents with EPA.

### **2.3.4.3 Non-delegated EISs**

A “non-delegated EIS” is one for which any one of the following applies:

- The decision authority on the proposed action requires the approval of more than one Assistant Secretary (or bureaus under more than one Assistant Secretary).
- The decision authority is reserved or elevated to the Secretary (or Office of the Secretary) by expressed interest of the Secretary, Deputy Secretary, the Chief of Staff, the Solicitor, or the Assistant Secretary for Policy, Management and Budget, or
- The decision authority is so designated at the discretion of the Secretary, Deputy Secretary, or the Assistant Secretary for Policy, Management and Budget.

The RD or designee will sign all *Federal Register* notices and is responsible for the Document Clearance Process outlined in the Deputy Secretary of the Department of Interior Memorandum “*NEPA Document Clearance Process*” issued on April 27, 2018. (See Chapter 10 for additional information.) Once the EIS has been cleared, the RD will sign the *Federal Register* notice and provide copies to ADPS along with electronic files of the EIS suitable for e-filing with EPA and for posting on OSMRE websites.

For all non-delegated EISs the ADPS will coordinate the document clearance process and the approval and publication of the *Federal Register* notice and the e-filing of documents with EPA.

Signature of the ROD for non-delegated EISs will vary according to the project. ADPS will coordinate determining the anticipated responsible official to sign the ROD.

For additional information on the purpose, content, and utility of the EIS within OSMRE, see Chapter 10.

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### **List of Appendices**

*NONE*

## CHAPTER 3: DETERMINING WHEN NEPA APPLIES

Section 102 of NEPA requires federal agencies to utilize a systematic, interdisciplinary approach, which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making, which may have an impact on man's environment. The purpose of this chapter is to provide background information on how NEPA applies to federal actions and programs conducted as part of OSMRE's statutory and regulatory responsibilities. While not an all-inclusive list, this chapter includes typical actions within OSMRE programs that are subject to or exempt from NEPA review. The level of environmental review is dependent on the magnitude of the action and its potential to affect the environment, which is addressed further in Chapter 2.

### 3.1 OSMRE Actions Requiring NEPA Compliance

Many OSMRE actions can comply with NEPA utilizing a Categorical Exclusion (CE). If analysis beyond a CE is required, see Chapter 2 for significance determination. Keep in mind that existing NEPA documents may be sufficient for covering your action (*see* Chapter 5). If you are conducting NEPA analysis beyond a CE and existing NEPA documents are not sufficient to cover your action, refer to Chapters 4, 7, 8, 9 (EAs) and 10 (EISs) for detailed information on further NEPA analysis. This section describes typical actions within OSMRE programs that trigger a NEPA review.

#### 3.1.1 Promulgation of SMCRA Regulations

SMCRA authorizes OSMRE to promulgate regulations necessary to carry out the purposes and provisions of SMCRA. 30 U.S.C. §§ [1211\(c\)\(2\)](#) and [1242\(a\)](#). OSMRE prepared an EIS (OSMRE, 1979) when it first developed its SMCRA regulations. Any modifications, deletions, or additions to these regulations will require compliance with NEPA.

However, some types of regulatory revisions are categorically excluded from detailed environmental review (*see* Section 3.2). For the proposed regulation or change where a categorical exclusion is not applicable, the NEPA process will be used to assess the potential impacts of the proposed regulatory changes.

The level of review for a regulatory action is dependent on the type, complexity, and potential to affect the environment (*see* Chapter 2). Regulatory actions could be minor clarifications in existing rules with little to no potential impacts or they could substantially revise the regulatory program established by Title V or the Abandoned Mine Land program established by Title IV.

#### 3.1.2 Title IV of SMCRA - Reclaiming Abandoned Mine Lands

Title IV of SMCRA, as amended, establishes the AML program. A central component of the AML program is the Abandoned Mine Land Reclamation Fund (AML Fund), which is funded by reclamation fees paid by current coal mining operations ([30 CFR 870](#)). OSMRE awards grants from the AML Fund and general Treasury receipts to states and tribes to carry out their approved reclamation plans. OSMRE also operates a Federal Reclamation Program, awards grants to

community groups through the watershed cooperative agreement program, and transfers funds to three health care plans within the United Mine Workers of America Health and Retirement Fund.

During its early years, OSMRE completed two programmatic EISs analyzing the environmental impacts of the AML program: OSM-EIS-2, Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation Under Title IV of the Surface Mining Control and Reclamation Act of 1977 (OSMRE, 1980), and OSM-EIS-11, Approval of State and Indian Reclamation Program Grants Under Title IV of the Surface Mining Control and Reclamation Act of 1977 (OSMRE, 1983). These programmatic EISs describe generic categories of AML projects, the impacts typically associated with AML sites, and typical reclamation techniques.

Specifically, OSM-EIS-2 laid out the groundwork for establishing standardized procedures for completing future NEPA documents. OSM-EIS-11 set the foundation for approval of grants for funding from the AML Fund. Although these documents are dated, and we do not recommend incorporation by reference or tiering directly from these documents, we do recommend that states, tribes, and OSMRE Field Offices maintain a copy of these EISs as they provide useful information that could be used to assist with newer NEPA documents for AML projects.

### **3.1.2.1 State and Tribe AML Projects**

***Non-Emergency Projects*** - Non-emergency AML projects are those that do not meet the definition of an emergency project found in [30 CFR 700.5](#) (*see* Section 3.3 for more information on emergency AML projects). If a CE is applicable, non-emergency AML projects may use a CE to comply with NEPA (*see* Chapter 6).

***Maintenance of Previously Reclaimed Property*** - Some reclamation projects, particularly those involving long-term water treatment, require periodic, planned maintenance. This maintenance should be analyzed in the NEPA document before the project is authorized. The state or tribal agency will also need to ensure that any future maintenance projects comply with the NHPA, ESA, and other applicable laws and regulations.

Sometimes reclamation projects encounter circumstances that require maintenance that was unknown or unplanned at the time of the project approval. When this occurs, you will need to determine if the maintenance action was sufficiently analyzed under the original NEPA document. If it was, there is no need to do additional NEPA. If the maintenance was not directly analyzed, you will determine if the maintenance will result in any new significant impacts not considered in the prior NEPA document. If so, additional NEPA analysis may be required.

### EXAMPLE

**First Scenario** - An AML project will be conducted to replant trees on a previously reclaimed AML site. Replanting of trees that were already planted on the site may not have been spelled out directly in the original NEPA document. The area where the trees need to be replanted may be easily accessible and not incur any new impacts. This would likely be covered under the original NEPA document and not require a new authorization to proceed (ATP). However, this area may now support endangered species (that were not considered in the original NEPA document) and thus require Endangered Species Act (ESA) consultation with the U.S. Fish and Wildlife Service. This may not change the original NEPA document but could require consultation under the ESA.

**Another Scenario** - Involves the same site, but the area where trees need replanting will require a small access road to access the area. These impacts were not analyzed under the original NEPA document and may require a new NEPA analysis and determination.

**OSMRE AML Reclamation Projects** - In instances where a state or tribe does not have an approved reclamation program, OSMRE may implement the Federal Reclamation Program in order to reclaim high priority AML projects ([30 CFR 886](#)). Federal reclamation high priority projects generally conform to the same requirements as described above for state and tribal non-emergency projects. Federal reclamation high priority projects may comply with NEPA using a CE (DOI Departmental Manual, [516 DM 13.5\(B\)\(33\)](#)). Also, *see* Chapter 6.

**State and Tribal AML Reclamation Plans** - Section 405 of SMCRA authorizes a state or tribe with an approved regulatory program (and the States of Tennessee and Missouri) to assume exclusive responsibility for reclamation activity within the state or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a reclamation plan) for the reclamation of abandoned coal mines. Any alteration of an approved state or tribal reclamation plan must be reviewed and approved by OSMRE. As stated in [30 CFR 884.15](#), state reclamation plan amendments can also be required when changes to SMCRA or the federal rules result in an approved state or tribal plan no longer meeting the requirements of SMCRA or the federal rules. Amendments to state or tribal reclamation plans comply with NEPA under a CE, which is documented in the DOI Departmental Manual, [516 DM 13.5\(B\)\(29\)](#).

### 3.1.3 Federal Oversight of State Programs

OSMRE's oversight activities are conducted in a manner that recognizes that states and tribes are authorized by SMCRA to exercise exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within their borders except as provided in sections 521 (dealing with OSMRE enforcement), and 523 (dealing with Federal Lands), and Title IV. [30 U.S.C. § 1253\(a\)](#). Federal oversight of state programs includes inspection and enforcement activities, ten-day notices, cessation orders, etc., and those oversight activities generally comply with NEPA under one or more CEs. *See* Chapter 6.

### 3.1.4 Title V - Regulatory Programs

This section outlines three federal programs administered by OSMRE. The first is OSMRE's administration of Title V programs in states without primacy. The second is for the

administration of a Federal lands program, and the third is the administration of an Indian lands program. NEPA compliance is required for all of these programs.

***Federal Regulatory Programs*** - As required by section 504 of SMCRA ([30 U.S.C. § 1254](#)), OSMRE directly regulates surface coal mining and reclamation operations in a state if the state does not submit and receive approval of its own program pursuant to section 503 of SMCRA. As of the date of this document, OSMRE operates Federal regulatory programs in 12 states (Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington), although only Tennessee and Washington have active mines.

***Federal Lands Program*** - SMCRA requires OSMRE to promulgate and implement a Federal lands program, which is applicable to all surface coal mining operations taking place pursuant to any Federal law on any Federal lands. [30 U.S.C. § 1273\(a\)](#). “Federal lands” are defined as “any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands ....” [30 U.S.C. § 1291\(4\)](#).

If a state has primacy, OSMRE and the state may enter into a cooperative agreement to provide for state regulation of surface coal mining and reclamation operations on Federal lands within that state. [30 U.S.C. § 1273\(c\)](#). Each State-Federal Cooperative agreement is unique and sets responsibilities for each state and OSMRE. More information on State-Federal cooperative agreements can be found at [30 CFR 745—State-Federal Cooperative Agreements](#) and each State-Federal Cooperative Agreement is published in [30 CFR 901-950](#).

Section 7(c) of the Mineral Leasing Act and the implementing federal regulations at 30 CFR 740-746 require the Assistant Secretary for Land and Minerals Management (ASLM) to approve, disapprove, or approve with conditions an operation and reclamation plan, also known as a “mining plan,” for leased federal coal. OSMRE is responsible for making a recommendation to the Assistant Secretary about whether a mining plan or mining plan modification should be approved, disapproved, or approved with conditions. OSMRE’s recommendation is contained in a Mining Plan Decision Document (MPDD), which is submitted to the ASLM for the final decision.

The NEPA documentation prepared by OSMRE for a mining plan decision is dependent on the conditions and potential impacts outlined in Chapter 2 and can be an EA when anticipating a Finding of No Significant Impact or an EIS if there is the potential for significant impacts.

***Indian Lands Program*** - For the purposes of this handbook, “Indian lands” refers to all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe ([30 U.S.C. § 1291\(9\)](#)). Although Indian tribes may apply for primacy ([30 U.S.C. § 1300\(j\)](#)), as of the date of this handbook no tribe has primacy. Consequently, OSMRE maintains Title V Regulatory SMCRA authority on Indian lands under [30 CFR 750](#). The December 2001 Memorandum of Understanding between OSMRE, BIA, and BLM with respect to [Management of Coal Mining](#)

[on Indian Lands](#) provides additional guidance on the regulation of surface coal mining operations on Indian lands.

OSMRE's SMCRA responsibilities on Indian lands generally include:

- **Permitting** - Permitting actions on Indian lands require NEPA analysis. The type of NEPA analysis can vary by the specific permitting action. Start by reviewing the information in Chapter 6 of this document to see if your action can be completed as a categorically excluded action.
- **Inspection and Enforcement** - Inspection and Enforcement actions on Indian Lands can generally comply with NEPA as a categorically excluded action. *See* Chapter 6.
- **Civil Penalties Projects** - A reclamation project completed with civil penalty funds is defined as a civil penalties project. Civil penalties projects are not covered by a CE (*see* Chapter 6), therefore refer to Chapter 2 for determination of potential significance. Keep in mind that existing NEPA documents may be sufficient for covering your action, *see* Chapter 5.

### 3.1.5 Federal Grants

OSMRE uses the [Federal Assistance Manual \(FAM\)](#) to show how OSMRE and its grantees manage federal grants, including regulatory program and abandoned mine land (AML) grants. The FAM provides policies and procedures to manage grants and cooperative agreements awarded by OSMRE.

As the awarding office for grant funds, OSMRE is responsible for the environmental document for each funded project. The state or tribal agency may prepare the document, but the awarding office must ensure that it adequately complies with NEPA. To prepare the document, the state or tribal agency should follow the procedures in this handbook. *See* Chapter 6 to determine whether the action is categorically excluded. (*See* Appendix 6.6 for the AML Categorical Exclusion Determination form.) If not categorically excluded, *see* Chapter 9 for information related to the development of an EA and FONSI or Chapter 10 for an EIS and ROD. Following the completion of the document, the state or tribal agency must send the document to the appropriate OSMRE awarding office for review. *See* Appendix 3.1 for information on OSMRE's review process for the document.

**Regulatory Grants** - Title V of SMCRA authorizes states and tribes to develop and assume regulatory primacy, act as a regulatory authority, and operate its coal regulatory program. OSMRE ([30 CFR 735](#)) provides regulatory financial assistance under several programs including: (1) interim grants to fund the initial regulatory program; (2) program development grants to assist states and tribes to develop a permanent program; (3) administration and enforcement grants to states and tribes to operate an approved permanent regulatory program; (4) federal lands cooperative agreements to states that elect to administer their approved regulatory program on federal lands; and (5) Small Operator Assistance Program operational grants to states to assist small coal mine operators to meet their permit requirements.

Regulatory grants are generally categorically excluded from the NEPA process. Please refer to 516 DM Chapter 13.5B (specifically categorical exclusions 8, 23, and 25, as well as categorical exclusions 2, 4, and 24).

**AML Grants to States/Tribes** - Title IV of SMCRA established the AML Fund, supported by reclamation fees paid by current coal mining operations. It authorizes OSMRE to use funds from the AML Fund and Treasury to provide financial assistance to states and tribes to carry out their approved reclamation plans.

AML funds are authorized for reclamation of abandoned coal mines following the priorities of section 403(a) of SMCRA (30 U.S.C. § 1233) for water supply restoration projects, non-coal reclamation requested under section 409(c) of SMCRA (30 U.S.C. § 1239), deposits into acid mine drainage set-aside accounts, land acquisition under section 407 of SMCRA (30 U.S.C. § 1237), maintenance of the AML inventory, and general AML program administration.

AML grants are generally categorically excluded. Please refer to 516 DM Chapter 13.5B (specifically categorical exclusions 23, 25, 31, and 32 as well as categorical exclusions 2, 4, 6, and 24). The following are examples of the types of AML grants funded by or through OSMRE:

- **Watershed Cooperative Agreements** - The Watershed Cooperative Agreement Program (WCAP) partners with other funding sources to assist groups, such as small watershed organizations, to complete local acid mine drainage reclamation projects. Because the WCAP grant money comes from the AML Fund, projects must meet AML eligibility criteria and ensure NEPA compliance. As with other AML grants, WCAP grants are generally categorically excluded. However, this determination should be considered on a project-by-project basis.
- **Applied Science Cooperative Agreements** - OSMRE provides funding through applied science cooperative agreements for projects that develop and demonstrate improved technologies to address environmental issues related to surface coal mining and land reclamation after mining. Applied science cooperative agreements are generally categorically excluded. However, this determination should be considered on a project-by-project basis.
- **AML Reclamation Economic Development Pilot Program** - Starting in 2015, as part of its annual appropriation to OSMRE, Congress authorized the AML Reclamation Economic Development Pilot Program (AML Pilot) (Pub. L. Nos. 114-113, 115-31, and 115-141). OSMRE grants AML Pilot funds to states “for the reclamation of abandoned mine lands in conjunction with economic and community development and reuse goals”. Each year’s appropriation act identifies states and tribes eligible to receive AML Pilot funds. Due to this federal funding, each AML Pilot project is considered a federal action and requires NEPA compliance. The AML Pilot projects vary in size and complexity. Because pilot projects vary in size and complexity, they may not be covered by OSMRE’s established categorical exclusions. Because an analysis beyond a CE is required, *see* Chapter 2 for significance determination. Refer to Chapters 4, 7, 8, 9 (EAs) and 10 (EISs) for detailed information on further NEPA analysis.

### **3.1.6 Experimental Practices (Title IV and V)**

OSMRE regulations at [30 CFR 785.13](#) allow for variances from the environmental protection performance standards established in [30 CFR Subchapter K](#) and the regulatory program, for experimental or research purposes, or for alternative postmining land use. To receive a variance, proposed practices must encourage advances in mining or reclamation or allow an industrial, commercial, recreational, residential or public postmining land use. Operators applying to use an experimental practice must ensure that the practice is at least as environmentally protective as the federal performance standards and must monitor and analyze the effectiveness of the practice in achieving its potential benefits.

Because experimental practices are unique (by definition), they typically will not be covered by OSMRE's established categorical exclusions. If analysis beyond a CE is required, *see* Chapter 2 for significance determination. An experimental practice usually requires an EA, though in certain situations an EIS could be required. Refer to Chapters 4, 7, 8, 9 (EAs) and 10 (EISs) for detailed information on further NEPA analysis.

### **3.1.7 Lands Unsuitable for Mining**

Citizens may submit petitions to OSMRE asking that certain lands be designated as unsuitable for mining. [30 U.S.C. § 1272](#); [30 CFR 732](#). When this occurs, OSMRE reviews the petition in accordance with statutory and regulatory criteria. There is not a CE applicable to this action. Because an analysis beyond a CE is required, *see* Chapter 2 for significance determination. Refer to Chapters 4, 7, 8, 9 (EAs) and 10 (EISs) for detailed information on further NEPA analysis.

### **3.1.8 Training and Technical Assistance**

OSMRE maintains a national training program (National Technical Training Program/Technical Innovation and Professional Services). The national training program is designed to assist state programs in the development, administration, and enforcement of their state programs. As mining and engineering information technology continues to improve and regulatory requirements (including NEPA-related policies) change, OSMRE continues to provide the most up-to-date information, technical training, technical assistance, and technology transfer to states and tribes. Additionally, regional and field offices may provide additional technical assistance, including specific tools or software that may assist in the administration and enforcement of state and tribal programs.

Training and technical assistance generally comply with NEPA under a CE (DOI Departmental Manual, 516 DM 13.5(B)(24) assistance to states in the development, administration, and enforcement of State programs). *See* Section 6.1.

### **3.1.9 Approval of State/Tribal Regulatory Programs**

SMCRA establishes a program of cooperative federalism that allows a state or tribe to enact and administer its own regulatory program within limits established by federal minimum standards

and with oversight authority exercised by OSMRE. A state may assume primary jurisdiction (“primacy”) over the regulation of surface coal mining and reclamation operations within its borders. [30 U.S.C. §§ 1253](#) (states) and [1300\(j\)](#) (tribes).

In order to assume primacy, a state or tribe must demonstrate that its “rules and regulations [are] consistent with regulations issued by the Secretary pursuant to this Act.” [30 U.S.C. § 1253\(a\)\(7\)](#). Once a state or tribe demonstrates its capability to carry out applicable provisions of SMCRA, OSMRE will approve its regulatory program. State regulatory activities that are not federally funded are not considered federal actions and consequently do not require compliance with NEPA. However, OSMRE must comply with NEPA for all federally funded projects. Please consult the Office of the Solicitor if there are questions concerning the application of NEPA for activities associated with state or tribal regulatory authorities or funding sources.

### **3.2 OSMRE Actions Exempt from NEPA Compliance**

NEPA has broad-reaching applicability, and situations where actions are exempt from NEPA are rare. If you believe a particular action or proposal may be exempt from NEPA review, you should consult with the Office of the Solicitor. It is worth noting that in some unique circumstances where an action is exempt from NEPA or if alternative arrangement procedures are used, you may still need to analyze that action as part of a cumulative effects analysis for a future action (*see* Chapter 8).

#### **3.2.1 Actions Exempted by Statute**

Congress has exempted some agency actions from NEPA compliance by passing statutes that specifically list exempt actions.

SMCRA expressly exempts two activities from NEPA:

- adoption of interim program regulations ([30 U.S.C. § 1251\(a\)](#)); and
- approval of state programs, including state program amendments ([30 U.S.C. § 1292\(d\)](#)).

Any alteration of an approved state or tribal program must be reviewed and approved by OSMRE. As stated in [30 CFR 732.17](#), state program amendments may be required when, as a result of changes to SMCRA or the federal rules, the approved state program no longer meets the requirements of SMCRA or the federal rules. State program amendments are statutorily exempted from NEPA compliance by [30 U.S.C. § 1292\(d\)](#).

These types of exemptions are uncommon, and the exemptions are interpreted narrowly. Before relying on a statutory exemption, you should carefully review the relevant statutory language to determine the extent and scope of the action being exempted and consult with the Office of the Solicitor. Actions that are outside the scope of a statutory exemption will require appropriate NEPA analysis.

### 3.2.2 Actions Mandated by Statute

If OSMRE is required by law (statute) to take an action, NEPA may not be triggered. Also, if there is a clear and unavoidable conflict between NEPA compliance and another statutory authority, NEPA compliance is not required.

Such exemptions are rare for OSMRE actions. Therefore, before concluding that NEPA is not required due to a statutory mandate, you should carefully review the relevant statutory language and consult with the Office of the Solicitor.

### 3.3 Emergency Actions

As defined in [30 CFR 700.5](#), an emergency is a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures. Actions taken in response to an emergency are not exempt from NEPA review. However, the CEQ and DOI NEPA regulations provide procedures for taking emergency response actions, when necessary, without first completing a NEPA review.

In accordance with DOI NEPA regulations, the Responsible Official determines whether an emergency exists. If an emergency exists that will result in immediate impacts, immediate actions may be taken to mitigate harm to human life, property, or important natural, cultural, or historic resources ([43 CFR 46.150](#)). When taking such action, the probable environmental consequences of the action must be taken into account and mitigated to the extent practical ([43 CFR 46.150\(a\)](#)). For further information, see [ESM 13-3, NEPA Compliance in Emergency Situations](#).

The Responsible Official is required to document in writing that an emergency exists and describe the actions taken in response to the emergency ([43 CFR 46.150\(b\)](#)). This documentation should include:

- the nature and scope of the emergency;
- the actions necessary to control the immediate effects of the emergency;
- the potential adverse effects of the proposed action;
- the components of the NEPA process that can be followed and that provide value to decision-making (e.g., coordination with affected agencies and the public);
- the duration of the emergency; and
- the potential mitigation measures.

If it is determined that the proposed emergency response actions are not likely to have significant environmental impacts, the Responsible Official should document that determination in an EA and a FONSI, unless the action is categorically excluded ([43 CFR 46.150\(c\)](#)). If an EA cannot be concluded with a FONSI, the Responsible Official, in consultation with ADPS, will consult with the Office of Environmental Policy and Compliance about a documented alternative arrangement for NEPA compliance ([43 CFR 46.150\(c\)](#)). See [ESM 13-3](#).

If it is determined that the proposed emergency response actions are likely to have significant environmental impacts, the Department should consult with CEQ as soon as possible about alternative arrangements for NEPA compliance ([43 CFR 46.150\(d\)](#)). The Department and CEQ will limit such arrangements to actions necessary to control the immediate impacts of the emergency, with all other actions remaining subject to NEPA review ([40 CFR 1506.11](#)).

***Emergency State and Tribe AML Projects*** - The objective of an emergency reclamation project is to stabilize the emergency aspects of the problem by eliminating the immediate danger to public health, safety, and welfare. Any remaining reclamation should then be accomplished as part of a regular non-emergency AML project. Emergency AML projects are not exempt from NEPA. If possible, NEPA should evaluate the entire project, including both non-emergency and emergency reclamation activities. Emergency AML projects may comply with NEPA under a CE (DOI Departmental Manual, 516 DM 13.5(B)(33) specifically CE 33). *See* Chapter 6.

***Federal Emergency Programs*** - Similar to federal reclamation high priority projects, where a state or tribe does not have primacy, OSMRE may implement the Federal Reclamation Program in order to reclaim appropriate emergency AML projects. Emergency reclamation will only be conducted to the extent necessary to stabilize the emergency aspects of the problem by eliminating the immediate danger to public health, safety, and general welfare. Any remaining reclamation should then be accomplished as part of a regular, non-emergency AML project that is subject to NEPA review. The Federal Reclamation Program generally conforms to the requirements described above for state and tribal emergency projects. Federal emergency projects may comply with NEPA under a CE (DOI Departmental Manual, 516 DM 13.5(B)(33)). *See* Chapter 6.

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## **List of Appendices**

*Appendix 3.1*

*OSMRE Review Process for Environmental Documents*

## **CHAPTER 4: IMPLEMENTING NEPA THROUGH PROJECT MANAGEMENT**

Implementing and documenting the NEPA process within a project management framework is vital to effectively complying with NEPA and essential for meeting project schedules.

### **4.1 Introduction - Comprehensive Project Management**

In order to avoid affecting a project's schedule, each proposed project should have an integrated project schedule that is all inclusive and proactively addresses issues. The schedule should outline the timing for analysis, interim reviews, documentation requirements, and any required outside agency review or approval; the schedule should also consolidate NEPA review tasks and the OSMRE's program requirements, including the AML Reclamation Economic Development Program (AML Pilot Program) and initiatives such as the Watershed Cooperative Agreement Program (herein referred to as OSMRE Programs). This combination should result in one comprehensive project schedule.

### **4.2 Managing the Project with an Awareness of NEPA**

Managing a project with an awareness of NEPA's requirements and the basic intent of the statute is essential; an experienced NEPA practitioner's input at the beginning stages of the project will support timely compliance with the process and eliminate backtracking through earlier project discussions and considerations. A NEPA practitioner (with the rest of a project team) can proactively identify not just issues and legal requirements but also specific timing requirements and processes required for the various agencies, permits, and laws needed to implement the project effectively.

[Section 102\(A\) of NEPA \(42 U.S.C. § 4331\)](#) states that an agency of the federal government shall "utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment." In summary, NEPA requires federal agencies to have a process for making informed decisions about their major actions, which includes consideration of the environment and welfare of the public.

#### **4.2.1 Interdisciplinary Project Team**

OSMRE's responsibility as a federal agency is to conduct its business in the interest of the public and maintain its mission to carry out the requirements of SMCRA in cooperation with states and tribes. OSMRE is responsible for operating objectively and conducting impartial reviews of applicant proposals in accordance with all relevant laws, including SMCRA, Mineral Leasing Act, NEPA, etc. (See Chapter 1 and 2 for more detailed discussions on applicable statutes and federal regulations).

#### **4.2.2 Project Team Members**

The Project Team should include a diverse group of experts to ensure that major issues are addressed; studies are scientifically supported; and that the expertise applicable to the project

scope is reflected in the evaluation of the proposal. The composition of the project team will depend upon the scope and complexity of the proposed action.

**Project Manager** - responsible for the comprehensive project schedule, assembling an interdisciplinary OSMRE project team and developing quality deliverables. The project manager must also contact the Office of the Solicitor to have a project solicitor assigned to a complex project requiring NEPA review (typically EAs and EISs). Project managers should proactively request general legal advice on NEPA compliance or associated environmental laws when there are potential issues or questions associated with evaluations or decisions associated with the proposed action.

**NEPA Practitioner** - responsible for developing the project approach that effectively includes compliance with relevant laws and efficiently documents the agency's review and decision-making process. The NEPA practitioner, in coordination with the project manager and project solicitor (as needed), will identify the type of required NEPA review by completing the template - Evaluation of a Proposed Action for NEPA Compliance - provided in Appendix 4.1 and submit that form to HQ before initiating any external kick-off or scoping meetings. In addition, the NEPA practitioner, in consultation with the project solicitor, is responsible for ensuring the NEPA compliance is conducted in accordance with all procedural and substantive legal requirements.

**Project Solicitor** - responsible for reviewing NEPA documents for legal sufficiency and providing advice for questions related to legal responsibilities, such as the procedural requirements of NEPA and other federal laws.

**Scientists/Technical Experts** - responsible for preparing, conducting, reviewing methodologies, assessing data integrity and accuracy of study results, environmental findings, and evaluations. These experts may include, but are not limited to:

- Mining/Permitting/Inspector/Reclamation Specialist(s);
- Geologist;
- Hydrologist (Clean Water Act);
- Air Quality Expert (Clean Air Act);
- Biologist/Natural Resource Specialist (ESA);
- Cultural Resource Specialist (National Historic Preservation Act); and
- Tribal Coordinator (Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments).

**Additional Team Members** – added when specific expertise is needed based on the project scope, location, project area, sensitive resources, schedule, and issues.

### 4.2.3 Project Understanding and Kick-Off

Thinking through some of the questions below provides a good outline of information needed to initiate or “kick-off” the project. The answers (or lack of answers) to these questions can help to outline the information needed for a thorough understanding of the proposal, potential red-flags

to proactively schedule, and the expertise needed to address the issues. In addition, this list of questions will also identify data needed to evaluate the project proposal for both NEPA compliance and OSMRE program requirements.

- What is the proposal, and why is it needed?
  - Can you clearly state what the proposal is?
  - Why is the proposal being made?
  - What situation is it resolving, or what are its benefits?
- Where is the proposal?
  - What is in the project area?
  - What is adjacent to the project area?
  - Are there other projects in the vicinity of the project area?
- What will it take to develop the proposal and how will it continue after development?
  - What is the federal action?
  - Which and what programs, laws, and regulations may the proposal involve?
  - How will the approvals for the various laws, requirements, and permits be coordinated and scheduled?
  - Are there specific processes or procedures required or needed?
- What are the issues?
  - What resources are in the project area?
  - Are there specific red flag issues?
  - Are there specific regulatory processes or data needs that could affect the schedule?
  - Do you anticipate any conflicts with other agencies or stakeholders, and if so, how can those be resolved?
- Are there any issues that can be resolved early?
- Who and how many specific task leads need to be on the project team?
- Who and what agencies and organizations need to be informed or consulted?
  - Are there different stakeholder interests at the various stages of the development of the project?
  - What specific expertise is needed?
  - Are there specific agencies to involve formally or informally?
  - Are cooperative agreements or third party agreements needed to define the level of assistance on the project?
- How should the timing of tasks and events be scheduled?
  - When is the agency and public input on the project most meaningful to OSMRE's decision-making process?
  - Are there timing concerns related to some approvals, i.e., do some approvals have to happen before others?
  - Does the time of year affect any of the studies or project completion?
  - Is there a "mandatory" schedule, and what dictates this?
- What information is needed?
  - What data is needed to start?
  - Who will provide that data and how?
  - Are there time sensitive issues in obtaining the required data?
  - What specific deliverables are needed or required to share information and analyses?

- How will project documentation be managed and records maintained?
  - How will pertinent correspondence be documented?
  - What type and format will be used for the documentation, (i.e., subject lines, shared drives, emails, etc.)?
  - Who will have access to data?
  - How will request for data be managed?
  - What final products are required, and how will this be documented?
  - How will the approvals and final decisions be recorded?
- What reviews are required?
  - Who are the reviewers for data, technical, decisions, etc.?
  - How will reviews be implemented?
  - What are the timelines requirements for reviews?
- How will comments be addressed?
- What approvals are needed?
  - What information and format is needed to coordinate approvals?
  - What are the decision points in the project?
  - What is the approving agency, and who is the official that will approve?

### **4.3 “One Project - One Schedule”**

Comprehensive project management requires the development of one schedule that incorporates all the required program review tasks and NEPA related processes from initiation to implementation. There will be many steps, including internal and external review processes involved to complete the NEPA review and obtain approval of the proposed project through the program; all these steps should be incorporated into one schedule.

#### **4.3.1 Work Plan and Schedule**

Proposals with the potential to significantly impact the environment (e.g., larger scale, or complex or projects likely to generate strong opposition requiring an EIS or EA) require a formal project work plan with a schedule to ensure an efficient and effective deliverable. The project manager and NEPA practitioner are essential in proactively generating a comprehensive work plan that clearly states the project scope and objectives with a complete coordinated schedule. Although the information in this section is intended for larger, complex or projects likely to generate strong opposition, it can be used as a guide or checklist for smaller scale activities to assist with developing the project team and setting up the steps needed for a project.

#### **4.3.2 Preparing the Work Plan**

The project manager should prepare a work plan, the details of which will vary based on the size and complexity of the project. A work plan is a concise document that comprehensively sets for the needs of the project and provides:

- A clear project description;
- A defined project scope;
- Agency and project objectives;
- A list of project team members with contact information;

- A description of roles and responsibilities;
- A communications plan;
- An outline of the project approach and rationale for the NEPA path;
- A list of required studies and methodologies;
- An agency coordination plan;
- A public involvement and participation plan;
- Any necessary agreements (e.g., MOUs), disclosure statements, and contracts;
- A list of major issues and/or potential constraints;
- A list of specific regulations and approvals needed to complete the project; and
- A list of deliverables.

In addition, the work plan should identify any known schedule constraints, requirements, and essential sequencing of tasks to define the critical path for meeting the schedule. A thorough work plan coordinated with the project team should address as many issues as possible upfront to allow the project team to work efficiently through the schedule.

### **4.3.3 Developing a Comprehensive Project Schedule**

A comprehensive project schedule for conducting OSMRE programs includes sequencing tasks associated with the requirements of NEPA and other statutory and regulatory requirements. In order to develop this type of schedule, an understanding of the proposal and OSMRE's role is required.

**Start of Project Versus Start of NEPA Study** - The project manager is responsible for initiating the project and ensuring appropriate information is received from the proponent. OSMRE may coordinate with the proponent about a proposal before and during the time the proponent is revising and ultimately submitting a complete application for the proposal. These early project discussions do not necessarily start the NEPA process, just as, the completion of the NEPA process does not necessarily mean all the work on the project is complete. For example, as shown in the Federal Lands Flowchart (Appendix 4.2-2), the final NEPA decision document is required as part of the Mining Plan Decision Document. Therefore, the NEPA review start and end dates are different than the overall project start and end dates. Because of these potential differences in timing, the schedule needs to be developed collaboratively between the project manager and NEPA practitioner. The project solicitor should also be consulted.

The NEPA review start of study date does not begin until all the existing conditions, base information for the analysis is collected, inventoried, and checked. This NEPA review start date is referred to the Notice of Start of Study for the EA, and the Notice of Intent for the EIS. This is the start date for the schedule defined in SO 3355 and needs to be uploaded into the OSMRE Project List and the Tracking Database by the NEPA practitioner.

**Scheduling Regulatory and Review Processes** - The project manager and NEPA practitioner need to develop a schedule that sequences all of the required statutory and regulatory processes so that information is available when needed. Examples of items requiring specific timing in a schedule include:

- Section 7 consultation under ESA (informal or formal);
- Section 106 consultation under NHPA;
- Other necessary permits if they require NEPA coverage or are necessary for the NEPA analysis;
- Surveys required and necessary field work windows for species or weather considerations;
- Public comment periods;
- Solicitor reviews;
- Cooperating agency reviews;
- Headquarter coordination points (*see* Appendix 4.3-1 and Appendix 4.3-2 for examples);
- DOI briefings (including scheduling, delivery of meeting materials, resolution of comments, etc.); and
- *Federal Register* reviews (internal and external) and for NOAs. Keep in mind that the EPA generally releases its NOAs in the *Federal Register* only on Fridays.

**Schedule Formats** - Depending on the available resources, the project manager's preference, and the complexity of the project, the schedule could range from a simple list of tasks and dates to the more detailed and expansive format of a Gantt chart that shows all the tasks, resources, and dates for every relevant process being conducted for the project. Example schedules for an EIS and EA can be obtained from the HQ NEPA Coordinator(s).

#### **4.3.4 Working with a Project Proponent**

A project proponent is an applicant or entity that requests approval or seeks federal funding from OSMRE for a project. Common proponents include a mining company, an operator, a permittee, a state, a tribe, an organization, an academic institution, or a person. To the extent necessary, the project team should work with the proponent to clarify the scope of a proposal and request information necessary for OSMRE's review. However, the proponent must not be part of the project team or otherwise participate in the independent NEPA review or decision-making process of the project.

In all cases, even if a primacy state or tribal AML program prepares the environmental review, OSMRE is responsible for providing the required notice, addressing issues, responding to inquiries from the public and other agencies, and independently evaluating information received from the proponent.

#### **4.3.5 Managing Contractors**

The CEQ regulations provide instructions for using contractors to prepare an EA or EIS ([40 CFR 1506.5\(b\) and \(c\)](#)). Under these regulations, when an applicant or contractor prepares the information for the EIS or EA, OSMRE must independently evaluate the information submitted, its accuracy, and the environmental issues. The contractor may prepare the environmental review materials, but OSMRE is responsible for the scope and content of the EA and EIS.

When using third-party contractors for any NEPA-related service, an MOU may be required between OSMRE, the proponent, and the contractor to clarify roles and communication protocols between OSMRE and the contractor, and ensure limited access to the impact analysis. The MOU

should clearly state that there are no conflicts of interest. As stated in Chapters 9 and 10, a conflict of interest disclaimer must be included in the EIS ([40 CFR 1506.5\(c\)](#)) and it is recommended that this clarification be included in the EA as well. The project solicitor should review the MOU before it is entered into by the parties to the MOU.

At a minimum, the MOU must:

- Establish the roles and responsibilities of each party;
- Establish that the proponent is not part of the project team that assesses data, conducts environmental analyses and evaluations, or makes decisions;
- Include a communications plan and or procedures; and
- Specify that all costs of using a contractor in the preparation of the NEPA document will be borne by the applicant.

#### **4.4 Integrating Processes for Informed Decision-Making**

OSMRE is responsible for determining the consequences of our decisions and actions by conducting NEPA reviews for proposals made from within the agency, for proposals submitted by others, and for proposals that are part of its regulatory and abandoned mine lands programs.

##### **4.4.1 OSMRE Program Decision Points and Environmental Regulations**

OSMRE’s decision-making process for a proposed action has multiple decision points, which need to be documented. These decision points, in many cases, require input and, sometimes, decisions related to other laws from other federal agencies. The decision points, especially if other agencies are involved, need to be identified early in the project approach and included in the work plan as scheduled milestones.

As discussed in Chapter 2, NEPA compliance also encompasses “other regulatory processes,” such as ESA and NHPA, that also have specific requirements and process steps. An efficient work plan will integrate and coordinate the milestones for the OSMRE program reviews, NEPA decision points, and other environmental regulatory processes into one project workflow and schedule.

Flowcharts included in Appendix 4.2 illustrate tasks by state and tribal regulatory authorities, OSMRE, and operators required for implementing an action through several specific OSMRE processes related to our programs. As a general guide, milestones and decision points are included within a timeline on each flowchart. These milestones and timelines are not shown tied to specific tasks because they are determined on a project-by-project basis by the project manager and NEPA practitioner. Deliberately identifying the decision points and timelines helps ensure that an efficient and compliant NEPA process is conducted and documented.

The following OSMRE processes are illustrated in Appendix 4.2:

##### ***SMCRA Title V – Regulatory***

1. Federal Regulatory Program – Permitting Approval Process

2. Federal Coal - Mining Plan Decision Document Approval Process
3. Federal Lands Program – Mining Plan Modification Process
4. Indian Lands Program – Permitting Approval Process

#### ***SMCRA Title IV – AML Program***

5. State Regulatory Authority AML Reclamation Process
6. Emergency AML Reclamation Process
7. OSMRE (Federal) AML Reclamation Process
8. Indian Lands Emergency and Non-Emergency AML Reclamation Process –
9. AML Reclamation Economic Development Pilot Process (AML Pilot)– ([OSMRE Guidance](#) for Project Eligibility under the AML Reclamation Economic Development Pilot Program)

#### **4.4.2 Importance of Coordination and Timing**

The flowcharts include an estimated sequence of when these steps need to be considered for applicable laws and processes. By considering these requirements and their timing, the project team can implement these processes sequentially or in tandem as needed to streamline the project schedule and ensure all requirements are met before a final decision is made on the project. In addition, integrating these regulatory and agency coordination milestones into the project schedule helps ensure all required factors are available and considered so that OSMRE can make a fully informed decision.

#### **4.5 Department NEPA and Permitting Database**

The Tracking Database is maintained by all DOI bureaus and offices to provide reports on the schedule, status, and project team members for all EISs and certain complex EAs. The NEPA practitioner is responsible for inputting and maintaining the information in the Tracking Database. Information and guidance for using the [Tracking Database](#), is available in [ERM 10-9](#).

#### **4.6 Documentation and File Management**

The project manager will ensure that decisions made for the project as it progresses through the work plan and the NEPA review are adequately documented and that all files are organized in a logical manner. [OSMRE Directive INF-1](#), *Administrative Records System* outlines OSMRE’s policy for complying with both federal and Departmental record requirements and provides procedural guidance on how to organize, maintain, use, preserve, and ultimately dispose of records consistent with the Federal Records Act.

#### **4.7 Files and Records**

It is crucial to begin compiling and organizing the project file (also called a decision file) in the early stages of the project. Confidential information should be marked and maintained separately to prevent unauthorized disclosure.

Official file copies of OSMRE environmental documents and supporting documents must be maintained by the responsible OSMRE office. Environmental documents include:

- Environmental Assessment (EA);
- Finding of No Significant Impact (FONSI);
- Environmental Impact Statement (EIS);
- Notice of Intent (NOI); and
- Record of Decision (ROD).

Supporting documents consist of material generated or relied on in the preparation of environmental documents. As a guiding principle, these supporting documents should demonstrate both the process and information used to reach the final decision. Such documents include, but are not limited to:

- Mailing lists;
- Agency coordination correspondence;
- Summaries of public meetings (including attendance lists);
- Records pertaining to consultations;
- Documents or studies incorporated by reference;
- Environmental study methodologies and findings;
- Alternative evaluations;
- Technical reports prepared by or directed by OSMRE;
- Materials submitted by applicants;
- Public comments; and
- Records of contractual work related to the project.

At least one copy of the final document (including Draft, Final, and Supplemental EISs and ROD or the Draft and Final EA and FONSI) must be available in the lead Regional Office and Washington D.C. Headquarters Office.

#### **4.8 Information Access - Shared Drives and Folders**

Providing continued access to project information for the project team is the responsibility of the project manager. It can be useful to setup shared drive folders to help distribute information, including large files such as the PAP or baseline studies. Remember to restrict access to either certain folders or sites that are draft and deliberative from the general public and applicant until documents are finalized for release.

When releasing documents for internal review, it can be useful to setup a tracking sheet to help document when each review is completed, which files are outstanding, and which chapters still have comments to be resolved. The project manager can use multiple tabs for methodology reviews, baseline data reviews, draft chapter reviews, etc. so the information can be consolidated into one file. To help expedite comment resolution, the project manager may schedule a conference call with the project team and other reviewers. A teleconference call can assist in the resolution process and eliminate back and forth questions and edits.

## **4.9 OSMRE Project Coordination and Reviews**

In addition to organizing the project team and filing system, the project manager is responsible for providing appropriate time in the schedule to complete all necessary reviews and analyses, addressing comments, performing quality control checks, and coordinating both internally and externally.

### **4.9.1 Technical Reviews and Quality Assurance**

Technical reviews from the start of data collection through the completion of the analyses and evaluations of the project are to be led by the project manager. Technical data used for the project needs to be from a reputable source and contain the most recent and relevant data and findings as practicable. Before relying on a study, at least one technically qualified member of the project team should review the methodology used to conduct the analysis and confirm that such methodology meets the needs of the analysis. Questions concerning data provided or its use should be addressed early, preferably before starting the NEPA review process; the project team should coordinate with OSMRE's Science Integrity Officer, who can assist with the assessment of the methodology or recommend additional resources.

The project team should use technical reports and/or memoranda and coordinate review with cooperating agencies or other experts as needed before finalizing the NEPA documents. The project manager should also maintain a record of the quality checks that have been conducted on data, analyses, and evaluations that contribute to the major decisions for the project.

### **4.9.2 Solicitor Review**

Coordination with the project solicitor should be implemented at major milestones in the project to ensure their review is efficient and effective. The major deliverables for a project will require their approval and surname before issuing any information to the public. Any project schedule should build in sufficient time for solicitor review, and time for OSMRE to address to any comments from the project solicitor.

### **4.9.3 OSMRE Region/HQ Coordination Points and Director Briefings**

The Director is ultimately responsible for NEPA compliance within OSMRE [516 DM 13.2(A)]. Throughout the development of NEPA documents, Headquarters (HQ) Division of Regulatory (Title V) or Reclamation Support (Title IV) will provide guidance at critical project milestones. The following critical decision coordination points supersede the December 19, 2018 memo, *Assuring Compliance with Departmental and CEQ Guidelines for NEPA*, from the Deputy Director Exercising the Authority of the Director of OSMRE.

- For CEs:

For eligible AML projects, the Categorical Exclusion Determination form is to be completed and submitted to the HQ NEPA Coordinator (s). For all other projects, the project manager submits the "Evaluation of Proposed Action for NEPA Compliance Form" (NEPA Form) to the HQ NEPA Coordinator (s) as soon as a proposed action is

identified. The Categorical Exclusion Determination form is available in Appendix 6.6 and the NEPA Form is provided in Appendix 4.1. Approval of these forms from HQ OSMRE Program Support Directorate (PSD) is *not* required. The information in the Categorical Exclusion Determination form and the NEPA Form will be used to track CEs and to meet OSMRE reporting requirements to the Department and CEQ.

- For EAs:

- EAs for common or small projects (e.g., typical AML reclamation projects, including state prepared environmental reviews; and minor permit modifications).

The project manager must provide the NEPA Form to the HQ NEPA Coordinator (s). (For Title IV projects, the NEPA Form is required at the first submittal of a request for authorization to proceed). Approval of the NEPA Form from PSD is *not* required. The information in the NEPA Form will be used to meet OSMRE reporting requirements to the Department and CEQ.

- EAs for complex, unique, or larger projects (e.g., new permits, major permit modifications, mining plan approvals, and AML Pilot Projects).

The project manager must provide the NEPA Form to the HQ NEPA Coordinator(s) to obtain PSD concurrence at the following milestones:

- Internal OSMRE Project Kickoff Meeting;
  - Internal draft EA Review;
  - Agency and Public Comments and Responses; and,
  - Internal draft Final Decision Document Review.
- For EISs:

The project manager must submit the NEPA Form to the HQ NEPA Coordinator (s) and coordinate the work plan and schedule with PSD at each milestone below to obtain concurrence and meet the Department requirements:

    - Internal OSMRE Project Kickoff Meeting;
    - Notice of Intent Review (Federal Register);
    - Development of the Draft EIS (Meeting following scoping process);
    - Draft EIS and Notice of Availability Clearance (Draft EIS Review, Department Clearance Process);
    - Draft EIS Comment/Response Review;
    - Final EIS and Notice of Availability Clearance (Final EIS Review, Department Clearance Process); and
    - Record of Decision Review (ROD Review, Department Clearance Process).

It is imperative that the HQ NEPA Coordinator (s) and Regional NEPA staff work

collaboratively as a team throughout each project in order to ensure the timely development of quality NEPA documents. Our goal is to have concurrence at critical decisions points before moving forward with the project. If concurrence between the HQ NEPA Coordinator (s) and Regional NEPA staff cannot be reached in a timely manner, the Regional Director and the ADPS should consult to resolve.

#### **4.9.4 Communications Plans, Press Releases, and Federal Register Notices**

Major projects with active public and agency involvement require coordination with OSMRE Communications. A communications plan and draft press release are to be provided to the Office of Communications for coordination with the Director before publishing any formal notices in the *Federal Register* or at major milestones in the NEPA process as needed. OSMRE will generally publish a *Federal Register* notice concurrently with EPA's publication of a Notice of Availability for a Draft EIS and Final EIS. In addition, all congressional letters and contact are to be coordinated through the OSMRE Congressional Representative in the Office of Communications. This includes contacts on the mailing list for NEPA reviews and notices of availability of the NEPA documents.

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#### **List of Appendices**

<i>Appendix 4.1</i>	<i>Evaluation of a Proposed Action for NEPA Compliance Template</i>
<i>Appendix 4.2</i>	<i>OSMRE Program/NEPA Flowcharts</i>
<i>Appendix 4.3-1</i>	<i>EA Process Coordination Points</i>
<i>Appendix 4.3-2</i>	<i>EIS Coordination Points</i>

## CHAPTER 5: USING EXISTING ENVIRONMENTAL DOCUMENTS

It is sometimes appropriate to use existing environmental analyses to support a new proposed action. In fact, the DOI NEPA regulations require that we incorporate by reference and tier to documents to the extent possible ([43 CFR 46.405](#)) in an effort to remain within the normal page limits stated in 40 CFR 1502.7. Important differences exist between the two techniques as discussed below. In addition, it may also be possible to meet our NEPA requirements by adopting an environmental analyses prepared by another agency.

This chapter describes the options and procedures for using existing NEPA analyses to meet a current proposal's NEPA documentation and analysis requirements, either in full or in part. Both the CEQ ([1502.20](#); [1502.21](#)) and DOI NEPA regulations ([43 CFR 46.120](#)) encourage the use of existing NEPA analyses to help reduce unnecessary analysis and paperwork. This chapter discusses several ways of doing so.

### 5.1 Performing a NEPA Adequacy Review

Not every new proposed action will require a new environmental analysis. In some instances, an existing environmental analysis document may be relied upon in its entirety and a new NEPA analysis is not necessary. OSMRE should review existing NEPA documentation and adequacy for any new or modified project requiring a decision by OSMRE. *See* Sections 5.1.2 and 5.1.3 for information on completing and documenting your review.

NEPA analysis and documentation have a “shelf-life” beyond which we should take another look to determine if the circumstances of either the project or the affected environment have changed sufficiently to invalidate our conclusions within the original documentation. Generally, if a project has not been implemented within 5-years from the completion of the NEPA analysis or if new information about the project or the affected environment is available, you should re-examine the original NEPA documentation to verify its continued adequacy and supplement or replace information if it is no longer valid. *See* Question 32 in the CEQ's *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, [46 Fed. Reg. 18026](#) (March 23, 1981). This timeframe is only a guideline; it may be necessary to redo the NEPA documentation before the general 5-year timeframe based on the availability of significant new information such as, a newly discovered presence of a protected species, a significant change to the boundaries of an action, or if you discover that a particular affected resource was not adequately covered by the prior NEPA analysis. In other instances, we may also review the NEPA documentation on a more frequent cycle to coincide with the timing of other environmental documentation. If that is the case, be sure to document each review so that the record shows your most recent review and analysis.

The following are examples of some of the typical situations in which you may be able to rely on existing environmental analysis in its entirety.

### **EXAMPLE 1**

*A proposed federal coal lease is analyzed in an EIS and approved in a ROD. If the proposed mining plan that follows the federal coal lease is consistent with the ROD, you should review the leasing EIS to determine if its analysis adequately addresses the specific effects of the individual mining plan and ensure there is no new information about the project related to the affected environment since the time the leasing EIS was completed. If there is no new significant information about the resources or effects of mining and the EIS continues to adequately address the environmental consequences of mining, you should be able to rely on the leasing EIS in its entirety.*

### **EXAMPLE 2**

*An applicant requests a SMCRA permit for a surface mining operation in a federal program area, which is analyzed in an EA, approved in a decision document, and implemented. Later, the market conditions are such that the operation temporarily ceases for a period of time. Upon notification that the operator is going to reinitiate mining, review the existing EA to determine if it continues to adequately address the environmental consequences of the mining or if new significant information and resource concerns have arisen that would change the significance determinations and be useful for the decision-maker.*

To determine if existing documents are adequate, identify and review each relevant environmental document, as described below.

#### **5.1.1 How to Identify Existing Environmental Documents**

A new proposed OSMRE action may rely on a single or multiple existing NEPA documents. The NEPA documents that may be relevant include:

- EISs associated with BLM Resource Management Plans or U.S. Forest Service Management Plans;
- EISs or EAs on OSMRE programmatic actions, particularly rulemaking;
- EISs or EAs associated with OSMRE projects or permit approval actions;
- EISs or EAs prepared by other agencies, including those on programmatic, land use, and activity or project-specific or activity plans or actions, when the OSMRE is a cooperating agency; and
- EISs or EAs prepared by other agencies when the OSMRE is not a cooperating agency.

If the existing document is an EIS or EA prepared by another agency, OSMRE must adopt the EIS or EA in order to use it for NEPA compliance. In these cases, follow the procedures for adoption rather than for a NEPA Adequacy Review (NAR) (*see* Section 5.3, Adopting Another Agency's NEPA Analyses).

#### **5.1.2 How to Review Existing Environmental Documents for NEPA Adequacy**

Review existing environmental documents and consider the questions listed in Table 5.1.2 when determining if they adequately cover a proposed action currently under consideration.

Table 5-1. Questions for Reviewing Existing NEPA Documents for a New Proposed Action

#	Question	If response is Yes	If response is No
1	Is the new proposed action a feature of, or substantially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain what makes them substantially different?	Move on to question 2	OSMRE must prepare an EA or EIS
2	Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?	Move on to question 3	OSMRE must prepare an EA or EIS
3	Is the existing analysis valid in light of any new information or circumstances (such as recent endangered species listings, new policy or legal requirements, etc.)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?	Move on to question 4	OSMRE must prepare an EA or EIS
4	Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?	No additional NEPA is required	OSMRE must prepare an EA or EIS

Your answers must be substantive, detailed, and contain specific citations to the existing EA or EIS (*see* Section 5.1.3). If you answer “yes” to all of the above questions, additional analysis will not be necessary. If you answer “no” to any of the above questions, a new EA or EIS must be prepared. However, it may still be appropriate to tier to or incorporate by reference from the existing EA or EIS or supplement the existing EIS. Detailed information is provided in Sections 5.1.3 – 5.5.

When using an Interdisciplinary Team (IDT) for a NEPA adequacy review, it is important to set review priorities including expectations for how and when comments are delivered and whether or not the review is being completed for NEPA compliance, technical adequacy, and document quality and readability. It should be made clear to the reviewer if the document is in draft format and has not yet undergone any document formatting or style guide checks to help eliminate comments related to grammar, spelling, and file format. Reviews of content for technical adequacy should aim to provide actual text revisions versus a comment bubble with additional questions. Any questions the reviewer may have should be brought to the attention of the Project Manager before submitting a “completed review” so the questions can be resolved ahead of time.

In addition to answering the above questions, you will evaluate whether the public involvement and interagency review associated with existing EAs or EISs are adequate for the new proposed action. In general, where the new proposed action has not already been discussed during public involvement for the existing EA or EIS, some additional public involvement for the new proposed action may be appropriate.

If you conclude that additional public involvement may be appropriate, the type of public involvement is at the discretion of the decision-maker. Public involvement may include any of the following: external scoping, public notification before or during your review of the existing EA or EIS, public meetings, or public notification or review of a completed NEPA Adequacy Review Form (NARF) (*see* Section 5.1.3).

Some actions may be appropriate to implement with either a NARF and FONSI or ROD or categorical exclusion. When the new proposed action is clearly a feature of an action analyzed in an existing NEPA document and the existing analysis remains valid, a NARF would generally be preferable to using a categorical exclusion because a NARF would rely on additional NEPA analysis to support decision making.

### **5.1.3 Documenting the Review**

The NARF worksheet is not itself a NEPA document and must be used in conjunction with a decision document (FONSI or ROD). Instead, the NARF documents you review to determine whether the existing NEPA documents can satisfy the NEPA requirements for the proposed action currently under consideration. The NARF can be found in Appendix 5.1, NEPA Adequacy Review Form (NARF).

When relying on an existing environmental analysis for a new proposed action, it is essential that you document the review using the NARF. This documents OSMRE's review of the existing environmental analysis, makes a determination that it is adequate for the decision, and states that no additional NEPA is required for the proposed action.

When evaluating new circumstances or information before issuance of a decision, as described in section 5.1, NEPA Adequacy Review Form, you must document your review using the NARF or in other documents, such as decision documentation or responses to comments.

## **5.2 Tiering and Programmatic NEPA Documents**

Depending on the situation, it may be appropriate to conduct a programmatic NEPA review in order to provide a basis for a broad decision and a later, site-specific NEPA review to provide a basis for implementing a particular component of that decision. This stepped approach to planning and compliance is called "tiering." Tiering ([40 CFR 1508.28](#) and [43 CFR 46.140](#)) occurs when we rely on the decision made for a NEPA document with a broader scope and therefore analyze a more focused scope of issues for the current specific proposed action.

We might tier to a programmatic or broader-scope EIS to allow the preparation of an EA and a FONSI for the individual proposed action, as long as any previously unanalyzed effects are not significant. The FONSI, in such circumstances, would be, in effect, a FONSI for your site-specific action *but not for* the broader action analyzed in the EIS to which the EA is tiered. The FONSI in these circumstances may also be called a "finding of no new significant impact (FONNSI)." ([43 CFR 46.140\(c\)](#)). Using tiering, we can prepare an EA FONNSI for a proposed action with significant effects, whether direct, indirect, or cumulative, if the EA is tiered to a

broader EIS that fully analyzed those significant effects.

Before you tier to a NEPA document, evaluate the broader NEPA document to determine if it sufficiently analyzed site-specific effects and considered the current proposed action. If so, a NARF will be more appropriate than a subsequent, tiered NEPA document (*see* Section 5.1).

Take the following actions when preparing a tiered NEPA document ([40 CFR 1502.20](#) and [1502.21](#)):

- State that it is tiered to another NEPA document and state where the document is available for review;
- Describe the NEPA document to which it is tiered; and
- Incorporate by reference the relevant portions of the NEPA document to which it is tiered (cite and summarize, as described in Section 5.5, Incorporation by Reference).

You may tier to a NEPA document for a broader action when the narrower action is clearly consistent with the decision associated with the broader action. In the tiered document, you do not need to reexamine alternatives analyzed in the broader document. Focus the tiered document on those issues and mitigation measures specifically relevant to the narrower action but not analyzed in sufficient detail in the broader document.

Tiering can be particularly useful in the context of the cumulative impact analysis. A programmatic EIS will often analyze the typical effects anticipated as a result of the individual actions that make up a program, as well as the total effects of the overall program. An EA prepared in support of an individual action can be tiered to the programmatic EIS. You may prepare an EA for an action with significant effects, whether direct, indirect, or cumulative, if the EA is tiered to a broader EIS that fully analyzed those significant effects. Tiering to the programmatic EIS would allow the preparation of an EA and perhaps also a FONSI for the individual action, so long as the remaining effects of the individual action are not significant. If there are new circumstances or information that would result in significant effects of an individual action not considered in the EIS, tiering to the EIS cannot provide the necessary analysis to support a FONSI for the individual action (*see* Chapter 9 for guidance on the elements of an EA and FONSI).

Note that in some instances, a broader EIS might fully analyze significant effects on some resources affected by the individual action but not all resources. The tiered EA for the individual action need not re-analyze the effects on resources fully analyzed in the broader EIS but may instead focus on the effects of the individual action not analyzed in the broader EIS. A FONSI for such an individual action could rely on the analysis in the broader EIS as well as the tiered EA, and would explain which parts of the EIS it is relying upon and why the individual action would not have significant impacts either through mitigation measures or the previous analysis. An EIS should be prepared for an individual action only if significant effects exist that have not been analyzed in the broader EIS or have not been adequately reduced to non-significant effects by using mitigation measures committed to in a FONSI (commonly referred to as a mitigated FONSI).

### EXAMPLE

*If an OSMRE EIS analyzed the effects of re-mining within an area otherwise designated as unsuitable for mining operations, a subsequent individual re-mining proposal within the designated area would generally be expected to have no significant effects beyond those already analyzed in the overall EIS. However, more information, including information about a specific site within the area designated as unsuitable for mining operations, may become available at the time of the subsequent proposal and the tiered document would focus on those issues.*

In such instances, focus the EA on determining if, and how, any new circumstances or information would change the effects anticipated by the EIS. The EA in such instances may also consider mitigation of effects analyzed in the EA or already analyzed in the broader EIS, including reducing or avoiding effects that are not significant.

For more information, see Chapter 2 and [CEQ guidance: Effective Use of Programmatic NEPA Reviews](#).

Tiering is not the same as incorporation by reference (*see* Section 5.5). Because tiering relies on previous analysis used to make a decision, you can only tier to a final document for which a decision was reached (i.e., through a FONSI or ROD). Tiering allows you to narrow the scope of the subsequent analysis, and focus on issues that are ripe for decision-making. Conversely, incorporation by reference only cites and refers to relevant material that helps provide foundation for your NEPA analysis but itself reaches no conclusion. You may only tier to EAs or EISs, but you may incorporate by reference from any type of document. All tiered documents must be listed in a bibliography ([43 CFR 46.135\(c\)](#)) and copies of tiered materials should be included in the decision file.

### 5.3 Adopting another Agency's NEPA Document

“An agency may adopt a Federal Draft or Final [EIS] or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these [the CEQ] regulations” ([40 CFR 1506.3\(a\)](#)). Adopting another agency's EIS reduces paperwork, eliminates duplication, and makes the process more efficient.

When available, OSMRE should use existing NEPA documents and analyses to evaluate the impacts of a proposed action and any alternatives. OSMRE may adopt an EA or EIS prepared by another agency or entity, including an applicant, as the basis for an OSMRE decision if the document meets all NEPA requirements applicable to OSMRE and OSMRE takes full responsibility for its content. When determining whether an existing EA or EIS is sufficient for purposes of an OSMRE action under consideration, OSMRE must consider whether new circumstances, new information, or changes in the action or its impacts not previously analyzed may result in different significant environmental effects. After a legal and technical adequacy review is completed, you may determine that it is appropriate for OSMRE to adopt the other agency's original document. If you do not determine it to be legally or technically adequate, you should not adopt another agency's NEPA document (*see* Section 5.1.2). Adoption would require a decision document (a FONSI for an EA or a ROD for an EIS). [*CEQ Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34263 (July 28, 1983)].

Scoping is not required when OSMRE adopts another agency's EA or EIS ([40 CFR 1506.3\(c\)](#)). However, OSMRE is expected to consult, cooperate, and coordinate with other federal, state, local, and tribal governments and other bureaus and federal agencies whenever possible. Furthermore, when adopting another agency's EA or EIS, OSMRE is responsible for providing the appropriate level of public review, as discussed further below, and for completing other required consultation processes (such as ESA Section 7, NHPA Section 106, and tribal consultations).

If OSMRE is a cooperating agency in the preparation of an EIS or EA, we may adopt it without recirculating the EIS or EA if we conclude that our comments and suggestions have been satisfied ([40 CFR 1506.3\(c\)](#)). Under these circumstances, OSMRE must prepare a decision document (ROD or FONSI) and a NARF. Once these documents are signed and a decision issued, the materials must be placed on OSMRE's website. A public notification campaign is not required once these documents are issued. In certain limited circumstances, we must publish or otherwise make the FONSI available for public review for thirty days (*see* Chapter 9). The ROD and notice of adoption must be filed with EPA. This filing is not an opening of a public comment period. [EPA's website](#) contains information about how to file an adoption notice.

In accordance with the Secretary's Streamlining Initiative, a ROD briefing must be completed following steps 1 (*Initial Action Notice*) and 6 (*ROD and NOA Clearance*) as outlined in the [April 27, 2018 DOI Clearance Memorandum](#). If the document being adopted is the subject of ongoing legal action, the ROD or FONSI must disclose this to the public. This would not preclude OSMRE from adopting the document unless a legal proceeding has issued a "stay" or decision to vacate the current NEPA analysis.

If the OSMRE is not a cooperating agency in the preparation of an EIS, we may adopt it after recirculating the document consistent with the following requirements:

- OSMRE may adopt a federal Draft or Final EIS or portion thereof provided that the EIS or portion thereof meets the standards for an adequate statement under these regulations ([40 CFR 1506.3\(a\)](#)).
- OSMRE may adopt the EIS after recirculating the document as a Final EIS if the proposed action is substantially the same as the action covered by the other agency's EIS. When recirculating the Final EIS, we must identify the agency's preferred alternative ([40 CFR 1506.3\(b\)](#)).
- If OSMRE participated as a cooperating agency, OSMRE may adopt without recirculating the EIS of a lead agency when, after an independent review of the EIS, OSMRE concludes that its comments and suggestions have been satisfied. OSMRE is then required to issue its own ROD ([40 CFR 1506.3\(c\)](#)).

If OSMRE is not a cooperating agency in the preparation of an EA, we may adopt it after recirculating the document if OSMRE determines it meets the standards for an adequate NEPA analysis and the proposed action is substantially similar to the action covered by the other agency's EA.

If OSMRE decides to adopt an EIS that is not final by the lead agency that prepared it or if the action the EIS assesses is the subject of a CEQ agency referral or if the adequacy of the EIS is the subject of judicial action that is not final, OSMRE must indicate this status in the recirculated Draft and Final EIS ([40 CFR 1506.3\(d\)](#)).

#### **5.4 Supplementing an EA or EIS**

Supplementing an existing document is a form of tiering ([40 CFR 1508.28\(b\)](#)). You must prepare a supplement to a Draft or Final EA or EIS if, after circulation of the Draft or Final but before initiation of the Federal action:

- Substantial changes are made to the proposed action that are relevant to environmental concerns ([40 CFR 1502.9\(c\)\(1\)\(i\)](#));
- A new alternative is added that is outside the spectrum of alternatives already analyzed (*see Question 29b, CEQ, [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#), March 23, 1981*); or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects ([40 CFR 1502.9\(c\)\(1\)\(ii\)](#)).

A supplemental EA or EIS must provide a basis for rational decision-making and give the public and other agencies an opportunity to review and comment on the analysis of the changes or new information ([40 CFR 1502.9\(c\)\(4\)](#)). Supplementing is used to meet the purposes of the NEPA as efficiently as possible, avoiding redundancy in the process.

##### **5.4.1 When Supplementation Is Appropriate**

“Substantial changes” in the proposed action may include changes in the design, location, or timing of a proposed action that are relevant to environmental concerns (i.e., the changes would result in significant effects outside of the range of effects analyzed in the EA or Draft or Final EIS).

“New circumstances or information” are “significant” and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the Endangered Species Act of a species that was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in significant changed circumstances, rendering the cumulative effects analysis inadequate. Adding a new alternative requires preparation of a supplement if the new alternative is outside the spectrum of alternatives already analyzed and not a variation of an alternative already analyzed.

##### **5.4.2 When Supplementation Is Not Appropriate**

Supplementation is not necessary if you make changes in the proposed action that are not substantial (i.e., the effects of the changed proposed action are still within the range of effects

analyzed in the Draft or Final EIS).

If a new alternative is added after the circulation of a Draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the Draft EIS or is a minor variation of an alternative analyzed in the Draft EIS. In such circumstances, the new alternative may be added in the Final EIS.

#### **EXAMPLE**

*A Draft EIS for a mining plan analyzed the effects of surface mining conducted within a permit boundary of 500, 1,000, and 5,000 acres of a 10,000 lease area. The addition of a 3,000-acre alternative could be analyzed in the Final EIS without a supplemental Draft EIS because it is within the scope of the original 5,000 acre alternative.*

Supplementation is not appropriate when new information or changed circumstances arise after the Federal action has been implemented. If the new information or changed circumstances impedes the use of the EIS for subsequent tiering for future decision-making, prepare a new EIS or EA and incorporate by reference relevant material from the old EIS.

### **5.4.3 The Supplementation Process**

Supplemental EAs or EISs will vary in scope and complexity depending upon the nature of the proposed changes or new information or circumstances. Supplemental EISs are prepared, circulated, and filed with the same requirements as EISs, except that supplemental EISs do not require scoping ([40 CFR 1502.9](#)). The supplement may incorporate by reference the relevant portions of the document being supplemented or may circulate the entire original document along with the supplement.

When a supplement is prepared after circulation of a Draft EIS, but before preparation of a Final EIS, you must prepare and circulate a Supplemental Draft EIS and then prepare a Final EIS. When a supplement is prepared after circulation of a Final EIS, you must prepare and circulate a Draft Supplemental EIS and then prepare and circulate a Final Supplemental EIS, unless alternative procedures are approved by CEQ ([40 CFR 1502.9\(c\)\(4\)](#)). Consult with the OPEC and the Office of the Solicitor before proposing alternative arrangements to the CEQ. Similar procedures are warranted for supplemental EAs.

### **5.5 Incorporation by Reference**

Incorporation by reference is the citation and summary of reasonably available material that addresses actions, issues, resources, or impacts that are relevant to the actions under consideration in your NEPA review. Incorporation by reference allows such material to be briefly summarized rather than extensively repeated in the NEPA document. The purpose of incorporation by reference is to “cut down on bulk without impeding agency and public review of the action” ([40 CFR 1502.21](#)). Incorporation by reference can be useful to help reduce the overall number of pages of a NEPA document and maintain the project schedule.

Many different types of material may be incorporated by reference, including written material of

all kinds, conversations, taped public meetings or workshops, etc. Specific examples of materials that might be incorporated by reference into a NEPA document include other NEPA documents, species lists relevant to the project area, scientific studies, monitoring data, and environmental reviews prepared by state and local governments. For material to be incorporated by reference, the analysis and assumptions used in the incorporated document must be appropriate for the analysis at hand ([43 CFR 46.135\(a\)](#)). In addition, the incorporated material must be “reasonably available for inspection by potentially interested persons within the time allowed for comment” on the NEPA document ([40 CFR 1502.21](#)). There are many options available to make referenced material readily available, such as placing material on OSMRE’s website (preferred option), notifying the public that the referenced material is available at an OSMRE office upon request, and placing materials in local libraries or facilities accessible to the public. OSMRE must make every effort to ensure that materials are available to Environmental Justice communities (including translated materials when appropriate) and making documents 508 accessible. OSMRE should also make every effort to place incorporated materials on OSMRE’s website and refer the public to an OSMRE office, library, or facility only when absolutely necessary. Material that is not or cannot be made reasonably available, such as proprietary information, may not be incorporated by reference ([40 CFR 1502.21](#)).

Incorporating by reference is accomplished through two steps: (1) citing the incorporated material, and (2) summarizing its content. Citation consists of identifying the material in as specific a manner as possible to inform the reader of what material is being incorporated. Summarizing the material consists of briefly describing its content and placing the material and its use in the context of your specific NEPA review. Citations of specific information or analysis from incorporated material should include pertinent page numbers or other relevant identifying information ([43 CFR 46.135\(b\)](#)). All documents incorporated by reference must be listed in a bibliography ([43 CFR 46.135\(c\)](#)) and copies of materials incorporated by reference should be included in the decision file. OSMRE can incorporate by reference existing NEPA and non-NEPA technical environmental documents by other Federal agencies within and outside DOI as well as those prepared by the State Regulatory Authorities or other entities.

**Table 5-2. When to Use Tiering, Adoption, Supplementation, and/or Incorporation by Reference**

Question	If response is Yes, the Entire Proposed Action is Covered	If response is Yes, Part of the Proposed Action is Analyzed in a Previous NEPA Document	If response is No
Is there an existing programmatic or broad-scale NEPA document that includes all or part of the proposed action?	<p>For an OSMRE prepared NEPA document the project manager should use a NEPA Adequacy Review Form to document and no additional NEPA is required.</p> <p>For a non-OSMRE prepared NEPA document, OSMRE may adopt the other agencies NEPA document. See sections 5.3 for differences when OSMRE is a cooperating agency.</p>	<p>Tiering and incorporation by reference may be an option. These options would allow OSMRE to focus on the site-specific impacts of the proposed action and incorporate by reference all previous analysis that is still applicable.</p> <p>In the tiered document, you do not need to reexamine alternatives analyzed in the broader document. Focus the tiered document on those issues and mitigation measures specifically relevant to the narrower action but not analyzed in sufficient detail in the broader document.</p>	OSMRE must prepare an EA or EIS
Is there an existing NEPA document (EA or EIS) that includes an analysis of the entire proposed action?	<p>OSMRE may adopt the other agencies NEPA document. If OSMRE is a cooperating agency, OSMRE is not required to recirculate the Final EIS and may issue their own ROD (including filing the ROD with EPA).</p> <p>If OSMRE is not a cooperating agency, OSMRE is required to recirculate the Final EIS and issue their ROD no earlier than 30 days after the recirculation of the Final EIS.</p>	Although allowed to adopt in part under CEQ regulations, it is recommended that OSMRE prepare an EA or EIS incorporating by reference all previous analysis that is still applicable.	OSMRE must prepare an EA or EIS
Have there been substantial changes or new information/circumstances regarding an OSMRE proposed action?	<p>If there have been substantial changes to all of the proposed action or new information/circumstances that would change the previous significance determinations made in NEPA documents a supplemental NEPA analysis would be required.</p> <p>Supplementation is not appropriate when new information or changed circumstances arise after the Federal action has been implemented.</p>	<p>Even if only a portion of the proposed action has been substantially changed or there is new information/circumstances surrounding a portion of the proposed action a supplemental NEPA analysis is likely required.</p> <p>Supplementation is not appropriate when new information or changed circumstances arise after the Federal action has been implemented.</p>	OSMRE must prepare an EA or EIS

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**List of Appendices**

*Appendix 5.1*      *NEPA Adequacy Review Form*

## CHAPTER 6: CATEGORICAL EXCLUSIONS

Categorical exclusions (CEs), also commonly abbreviated as CXs or CATEXs, are categories of actions that federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an EA nor an EIS is required ([40 CFR 1508.4](#)). Use of a CE does not make a proposed action exempt from NEPA; instead, a CE is a form of NEPA compliance that does not require the level of analysis contained in an EA or an EIS ([43 CFR 46.205\(a\)](#)). Even if an action is ordinarily covered by a CE, a CE cannot be used if an extraordinary circumstance exists. In addition, a CE does not exclude compliance with other statutory requirements, such as the Endangered Species Act, the National Historic Preservation Act, and tribal consultation.

To reduce delay, applicable CEs should generally be used to provide NEPA compliance for a proposed project ([40 CFR 1500.5\(k\)](#)). However, you may prepare an EA or EIS for a proposed action that would otherwise be subject to a CE if you believe that an EA or EIS would be helpful in planning or decision-making ([40 CFR 1501.3](#)) or if there is a high level of public interest in the project. You may seek the input of other federal and state agencies or the public (for example, through notification or scoping) before deciding whether to apply a CE. Public and external agency comments may be valuable in determining whether an extraordinary circumstance exists that would prevent the use of a CE or whether, despite the potential for using a CE, the decision-maker would benefit from an EA or EIS. You will need to provide documentation in the decision file that explains your rationale for completing an EA when a CE could be used.

### 6.1 Does a Departmental or OSMRE Categorical Exclusion Apply to the Action?

In order for a proposed federal action utilize a CE, you must verify that the proposed action fits within at least one Departmental CE ([43 CFR 46.210](#)) or an OSMRE CE ([516 DM 13.5](#)). Also, *see* Appendix 6.1 and 6.2.

CEs are specific, and you will need to clearly demonstrate that one of the CEs applies to project or proposal before using it. If more than one CE applies to a project, you should select the CE that most closely matches the objectives of the proposed action and is the most specific. (For additional information to assist in determining if an EA or EIS would be more beneficial to the decision-maker, *see* Appendix 6.3)

### 6.2 Identifying Extraordinary Circumstances

Extraordinary circumstances preclude the use of a Departmental or OSMRE CE. Extraordinary circumstances are those circumstances for which the Department has determined that further environmental analysis is required for an action, and, therefore, an EA or EIS must be prepared ([43 CFR 46.202\(c\)\(1\)](#)). All categorically excluded actions must be reviewed to determine if any of the extraordinary circumstances apply. *See* [43 CFR 46.215](#) (*see* Appendix 6.4) for the list of extraordinary circumstances.

If any of the extraordinary circumstances apply to the proposed action, you will determine whether the proposal can be modified to alleviate or resolve the circumstances that are considered extraordinary. If this can be done, and the proponent agrees to the change, then the proposed action may be modified and categorically excluded. If the proposed action cannot be modified or the proponent refuses to accept a proposed change, you will prepare an EA or EIS. If an extraordinary circumstance indicates there are significant effects, then an EIS must be prepared (*see* Chapter 2 for a discussion of significance determination).

Some actions may require considerable review to determine whether any extraordinary circumstances apply. For example, a significant impact on a threatened or endangered species is an extraordinary circumstance (*see* [43 CFR 46.215](#)). It might be readily determined that an action would have some effect on a threatened or endangered species; however, determining whether that effect would be significant might require considerable review. If there is uncertainty about whether one or more of the extraordinary circumstances apply, we recommend that you prepare an EA to determine whether an EIS is required.

If none of the extraordinary circumstances apply to the proposed action (or modified action), then it may be categorically excluded. You will need to provide documentation in the decision file that explains your rationale explaining why each of the extraordinary circumstances do not apply.

### **6.3 Documentation and Notification Requirements**

For actions covering AML (*see* Appendix 6.5 for instructions for determining when a categorical exclusion applies and Appendix 6.6 for the AML Categorical Exclusion Determination Form) and mine-specific projects that are categorically excluded, you will need to document which categorical exclusion applies. For actions requiring documentation, the documentation should explain how the project falls within the applicable CE and the lack of extraordinary circumstances and be placed in the project Decision File.

Other actions and programs will generally not require documentation. These include, but are not limited to:

- Actions with no environmental effects (e.g., assessment of civil penalties (516 DM 13.5(B)(16)); issuance of cessation orders for coal mining and reclamation operations (516 DM 13.5(B)(18)), annual grants programs to States for program development, administration, and enforcement (516 DM 13.5(B)(23)); personnel actions ([43 CFR 46.210\(a\)](#));
- Routine financial transactions ([43 CFR 46.210\(c\)](#), *see also, e.g.*, collection of reclamation fees (516 DM 13.5(B)(4)); and
- Actions with negligible environmental effects (e.g., findings of fact and entries on land adversely affected by past coal mining (516 DM 13.5(B)(5)), routine inspection and enforcement activities (516 DM 13.5(B)(14)); nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities) ([43 CFR 46.210\(e\)](#)).

As stated in CEQ’s Memorandum for Heads of Federal Departments and Agencies (2010), *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*, CEQ strongly recommends that “agencies post key information about their NEPA procedures and implementation on a publicly available website. The website should include, among other things, information on agencies’ use of categorical exclusions for proposed actions, particularly in those situations where there is a high level of public interest in a proposed action”. Accordingly, for transparency it is recommended that the public be notified of your decision to use a CE, especially if there is public interest in your action.

#### **6.4 Periodic Review of Categorical Exclusions and Extraordinary Circumstances**

OSMRE will review its CEs and extraordinary circumstances every seven years (as recommended by CEQ) to avoid CEs from becoming outdated and to add new CEs and extraordinary circumstances as appropriate. If you identify CE or extraordinary circumstances that need updating or removal or believe a new CE or extraordinary circumstance should be added, please notify the HQ NEPA Coordinator (s) to facilitate this review.

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#### **List of Appendices**

<i>Appendix 6.1</i>	<i>Department of Interior Categorical Exclusions (43 CFR 46.205)</i>
<i>Appendix 6.2</i>	<i>OSMRE Categorical Exclusions (516 DM Chapter 13)</i>
<i>Appendix 6.3</i>	<i>Things to Consider When Determining Whether an EA or EIS is Appropriate</i>
<i>Appendix 6.4</i>	<i>Extraordinary Circumstances (43 CFR 46.215)</i>
<i>Appendix 6.5</i>	<i>AML Program-Specific Instructions for Categorical Exclusion Determination</i>
<i>Appendix 6.6</i>	<i>AML Categorical Exclusion Determination Form</i>

## CHAPTER 7: CONSIDERATIONS BEFORE DOCUMENT PREPARATION

OSMRE has identified best practices for gathering information, coordinating with stakeholders, and preparing document drafts before initiating the formal NEPA process (i.e., before the official NEPA commencement date outlined in [S.O. 3355](#) and [Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments](#)). Best practices include:

- Identifying Project Team members (section 4.3.2 Project Team Members), at the start of all projects requiring either an EIS or an EA;
- Early interagency or intergovernmental coordination and consultation;
- Establishing a public involvement plan before beginning the formal NEPA process; and
- Identifying potentially affected resource areas to help guide preliminary data collection, analysis, and document drafting.

It is up to the Project Manager and decision-maker to determine which, if any, of the best practices outlined in this chapter are useful before initiating a project.

### 7.1 Early Coordination and Consultation

Early coordination and consultation is the process of gathering internal and external input on the issues, impacts, and potential alternatives that may be considered. Formal or informal, early coordination and consultation are critical to identifying actions by others that you may need to consider and will help you identify the geographic and temporal boundaries, potential alternatives, baselines, and thresholds. A variety of federal, state, and local environmental reviews exist that have, or may be occurring, at a similar location as the project you are evaluating. Important early considerations are actions that have, are, or may be related or have applicability under peripheral environmental laws, regulations, and executive orders other than NEPA (*see* Chapter 1 and 4).

OSMRE should identify points of contact at federal, state, and tribal agencies that are involved with the project or have particular expertise, including potential cooperating agencies. OSMRE should also identify points of contact at agencies that have worked with the project proponent on activities similar to the proposed action. OSMRE should invite participation by these identified points of contact and execute MOUs as necessary. Keep in mind that cooperating agency MOUs between DOI agencies are no longer necessary unless exceptional circumstances exist per the Department's June 11, 2018 [Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies](#).

The responsible OSMRE official may develop an agreement with a state or Indian tribe to coordinate with all or some of the federal agencies that have expertise or jurisdiction in related environmental laws and to document the results. An OSMRE official must carry out certain consultations with other federal agencies, required by laws outside of NEPA, when necessary. If a state or tribal agency will be the primary NEPA project manager, the responsible official must ensure the consultation occurs properly and the results are documented as part of the project submittal to OSMRE.

Some consultations, such as consultation under Section 7 of the Endangered Species Act, cannot be delegated to a state or tribal agency, and some of those consultations can substantively affect the NEPA process. For example, the U.S. Fish and Wildlife Service could issue a biological opinion indicating jeopardy or adverse modification of critical habitat. Such a finding would indicate the potential for significant impacts and would therefore generally preclude the preparation of a FONSI.

Similarly, if OSMRE, in consultation with the State Historic Preservation Office (SHPO)/Tribal Historic Preservation Office (THPO), determines that a historic property may lose its eligibility for inclusion in the National Register as a result of a proposed action, or if OSMRE and the SHPO/THPO do not agree on mitigation of an adverse effect to a historic property, preparation of a FONSI may be precluded. A FONSI can however, always be prepared as long as the proposed action is modified to avoid any potentially significant impacts (also known as the mitigated FONSI). In this example, a mitigated FONSI could contain mitigation measures sufficient to allow:

- The U.S. Fish and Wildlife Service biological opinion to no longer indicate jeopardy or adverse modification of critical habitat, and
- The SHPO/THPO to agree that mitigation of adverse effects to historic properties was sufficient and the action would not result in a historic property losing its eligibility for inclusion in the National Register.

In addition, with regard to Indian sacred sites, as defined by [E.O. 13007](#) (Indian Sacred Sites) and [512 DM 3](#) (Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites), the FONSI must include a statement that no impacts that would adversely affect the physical integrity of such sites will occur and access to, or ceremonial use of, such sites would not be restricted, or a statement describing the anticipated effects or restrictions. The statement should also include information on the Indian sacred site, including access. If impacts are anticipated, an explanation must also be provided as to why such impacts cannot be avoided in accordance with [E.O. 13007](#).

The document should include similar information for environmental justice (E.O. 12898, Environmental Justice).

### **7.1.1 Consultation with Tribal Governments**

It is important to engage in early consultation with tribal governments, for any proposed action that might have an effect on an Indian tribe; this will help you identify any potential issues before the formal NEPA process begins. As mandated by the U.S. Constitution and federal treaties, statutes, executive orders, and Departmental and bureau policies, OSMRE must engage with Indian tribes on a government-to-government basis. Federal agencies must meet this obligation through *early, often and meaningful consultation with Indian tribes*. If an OSMRE decision would have substantial effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or the distribution of power and responsibilities between the federal government and Indian tribes, OSMRE must initiate government-to-government consultation with affected tribes. See [E.O. 13175](#) and [S.O. 3317](#). Government-to-

government consultation typically takes place between the OSMRE Tribal Liaison Officer (TLO) and tribal leaders. Although [E.O. 13175](#) only requires consultation under limited circumstances, OSMRE will, in general, consult with potentially affected tribal governments to the greatest extent practicable any time a proposal could affect those tribes.

OSMRE Directive [REG-18](#) sets forth OSMRE's specific policies, procedures, and responsibilities for tribal consultation. Consultations with tribal governments must be open and candid so that all interested parties may evaluate, for themselves, the potential impact of the proposal on Indian lands and tribal trust resources. OSMRE will consult with Indian tribes as early as possible when considering an action with tribal implications. Requests for consultation will be made in writing by the TLO, or other appropriate individuals, and will describe the specific action with tribal implications. OSMRE may conduct a meeting or other forms of interaction with tribes in order to receive comments and evaluate them as part of the initial planning stage. In the event that an Indian tribe chooses not to engage the TLO, OSMRE is not relieved of its obligation to engage in consultation as described by OSMRE Directive [REG-18](#). If OSMRE initiates consultation with a tribe but does not receive a response, OSMRE will make reasonable and periodic efforts to repeat the invitation and, whenever feasible, will allow an Indian tribe to join an ongoing consultation. These engagement efforts will be appropriately documented. OSMRE may use multiple methods to contact tribal government as needed, e.g., letters, phone calls, and potential third party connections such as the National Congress of American Indians. OSMRE will work with other federal agencies, where appropriate, to avoid duplicative consultations.

## **7.2 Early Public Involvement Considerations**

The CEQ regulations require agencies to involve the public to the fullest extent possible in decisions that would have environmental impacts ([40 CFR 1500.2\(d\)](#)). OSMRE must always make a diligent effort to involve interested parties and the affected public ([40 CFR 1506.6](#)) in its analysis and document preparation. The level of public involvement varies with the different types of NEPA compliance and decision-making. Public involvement will begin early in the formal NEPA process and continue throughout the preparation of the analysis and the decision. Give careful thought to the level of public involvement that may be appropriate with respect to the decision to be made and the analysis of the environmental consequences of that decision.

A primary goal of public involvement is to ensure that all interested and affected parties are aware of your proposed action. Knowing your community well is the first step in determining the interested and affected parties and tribes. You may already have a core list of those individuals and groups interested in and potentially affected by the OSMRE's proposed actions; this may provide a good starting point. Work with your public affairs officer and other OSMRE staff, community leaders, and governmental agencies (federal, state, and local) to help determine interested and affected parties and tribes. In many cases, people attending field trips and public meetings will be interested or affected parties. Make sure that you have attendance sheets that capture contact information at your field trips and meetings; these will provide you with a list of people who may want to be contacted and involved in the NEPA process. In these cases, you should reach out to those individuals, parties, or tribes.

### 7.2.1 Public Involvement Plan

Consider providing public involvement opportunities very early in the process. It is helpful to prepare a public involvement plan that allows you to determine the appropriate amount and nature of public participation throughout the analysis process. We recommend that the public involvement plan identify: tribes, individuals, organizations, and other agencies known to be interested or affected by the proposed action; agencies with special expertise or jurisdiction by law; possible cooperating agencies; the role, if any, of the Interstate Mining Compact Commission (IMCC); schedules of any scoping opportunities, including public meetings, and timing of electronic and postal mail notifications; the process for tracking and recording public involvement and developing contact lists. Ensure the public involvement plan is sensitive to language or cultural differences. We recommend that you describe all planned activities in the public involvement plan and that the plan remain flexible as it will likely be updated throughout the formal NEPA process. Public involvement strategies must be coordinated with the OSMRE Office of Communications. For detailed information *see* “Public Involvement Plan” Example (Appendix 7.1) and “Involving and Notifying the Public” (Appendix 7.2).

### 7.3 Resources that May Be Affected by Your Project

Before beginning the NEPA process, you should systematically assess individual environmental resources that *may* be impacted by a proposed action. These considerations include indirect and cumulative factors or concerns that, when combined, could lead to resource effects. Assessing individual resources areas will allow you to evaluate essential information to help identify information you may already have, recognize information gaps, and determine how you will gather the additional necessary information before beginning the formal NEPA process.

You should focus on environmental resources, factors, or concerns that *need* to be considered. You may not need to include resources that are *not* expected to be affected or you may decide to give these resources less consideration so as not to divert attention from issues that do require detailed analysis. You may want to consider the following environmental resources, factors, and concerns listed below when you determine the expected level of analysis for each resource.

Keep in mind that you do not need to consider all the resources listed below for all projects. Conversely, this list is not all-inclusive, and you may want to evaluate additional resources for some projects, as appropriate:

- Air quality - National Ambient Air Quality Standards (NAAQS), visibility, Hazardous Air Pollutants (HAPs) and Greenhouse Gases (GHGs) and Climate Change;
- Socioeconomics (population, income, employment, housing, and sociocultural resources);
- Public services (infrastructure and resources needed for growth, e.g., transportation and utilities);
- Noise and ground vibration;
- Recreational resources;
- Topography, geology and soils;
- Hydrology (e.g., surface and groundwater quantity and quality, floodplains, wetlands);

- Land use (e.g., prime farmlands, wilderness areas, refuse lands, natural landmarks, ecologically significant areas);
- Vegetation, Fish and Wildlife Resources (e.g., threatened and endangered species and critical habitats);
- Historic and Cultural Resources (archeological, paleontological, religious, cultural etc., including Indian Trust responsibilities and sacred sites);
- Aesthetics and Visual Resources;
- Environmental Justice;
- Solid and Hazardous Wastes (coal mine waste, coal combustion residuals, etc.); and
- Health and Public Safety (public access, blasting, use of public roads, subsidence, flooding, etc.).

#### **7.4 Best Practices for Data Collection**

As appropriate for the specific project, the Project Manager will ensure the following information (as applicable to the project) is collected and available before beginning the formal NEPA process:

- Clearly defined Proposed Action and Purpose and Need statement;
- Confirm the goals for the Proposed Action are technically feasible and financially achievable;
- Administratively complete Permit Application Package (applies to mining plans for federal coal);
- Technically adequate Permit Application Package (applies to permit applications in Washington, Tennessee and on Indian Lands)
- Conflict of Interest statements and Completed Three-Party Agreements are in place, if NEPA will be prepared by a third-party contractor;
- Baseline surveys and mapping for project area, including potential buffer zones for certain resource areas (e.g., biological resources, water resources, etc.) with associated GIS data files;
- Preliminary alternative documentation of coordination with regulatory authorities, applicable state agencies, and the applicant including: technical and economically feasible alternatives considered previously by the applicant or other federal agencies with supporting studies, preliminary engineering reports, and other supporting information. For EAs: Documentation outlining the development of the Proposed Action;
- Chronology and package of previously issued data files (including previous NEPA, SMCRA, and Mineral Leasing Act documentation for other associated federal actions, such as leasing, previous permits, previous commitments and consultations etc.) for mine operations including the proposed action;
- List of anticipated project issues or concerns;
- Methodology of technical studies with confirmation the data is available and meaningful evaluations of the effects are feasible, including the historical/projected data for end use of coal (coal combustion and coal ash);
- Quality Assurance with OSMRE and any third-party contractor ensuring needed information is available from the most recent studies with a resolution plan for any data gaps;

- Coordinated Work Plan with Approved Schedule, including defined critical paths, sufficient prioritized staff, communications, and consultation strategies (see Chapter 4);
  - A NOI and OSMRE *Federal Register* publication approved through the current Department and OSMRE clearance process; and
  - Drafts of sections of the document (where applicable) may be prepared when information is available.
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### **List of Appendices**

<i>Appendix 7.1</i>	<i>Public Involvement Plan Example</i>
<i>Appendix 7.2</i>	<i>Involving and Notifying the Public</i>

## CHAPTER 8: NEPA ANALYSIS AND REVIEW PROCESS

This chapter outlines the steps of the NEPA analysis and review process. A variety of ways exist to comply with NEPA; the scope of your analysis and documentation will depend on your proposal and its environmental effects. This chapter is broadly focused on NEPA analysis, not on documentation requirements. This chapter describes NEPA concepts and outlines typical steps of the NEPA analysis. For detailed documentation and format requirements for EAs and EISs, see Chapter 9, *Environmental Assessment* and Chapter 10, *Environmental Impact Statement*.

The steps of the NEPA analysis are much the same for all OSMRE actions, however, some programs have unique requirements. Program-specific requirements for AML, Federal Lands, Federal Regulatory Programs, Lands Unsuitable for Mining Petitions, and Experimental Practices are addressed in Chapter 3, *Determining when NEPA Applies*. Consult applicable program-specific guidance at the beginning of the NEPA process.

It is important to establish the Project Team (including a Project Solicitor) that will provide the expertise to define both the proposed action and alternatives as well as the science underlying the NEPA analysis before beginning the analytical steps in Section 8.1 below. Refer to Section 4.3 of this handbook for additional information on establishing interdisciplinary teams.

### 8.1 Outline of the Analytical Steps

The typical steps for NEPA analysis are as follows:

- Identify the purpose and need and describe the proposal to the extent known;
- Develop a scoping strategy and conduct initial scoping;
- Identify issues requiring analysis;
- Refine the proposed action;
- Develop reasonable alternatives to the proposed action;
- Identify, gather, and synthesize necessary data;
- Analyze and disclose the impacts of each alternative; and
- Identify potential mitigation measures to reduce adverse impacts.

Many of these steps are iterative; for example, developing alternatives may lead to the identification of additional issues requiring analysis. At several points in the process, you may need to return to an earlier step to make refinements.

### 8.2 Purpose and Need

The CEQ regulations direct that an EIS “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” ([40 CFR 1502.13](#)). The CEQ regulations also direct that EAs “shall include brief discussions of the need for the proposal....” ([40 CFR 1508.9\(b\)](#)).

Defining the purpose and need statement is a key step in the NEPA process because the purpose and need provides the foundation for determining which alternatives will be considered

reasonable and for selecting the preferred alternative ([40 CFR 1502.13](#)). It is important to develop a purpose and need statement that is clear, well-supported, and defensible.

The CEQ regulations do not differentiate the “purpose” of the action from the “need” for the action. However, distinguishing the “purpose” and the “need” as two separate aspects of the purpose and need statement may help clarify why OSMRE is proposing an action.

#### EXAMPLE

*The “need” for modifications to our regulations on baseline data requirements might be that recent science has shown a potential impact from a parameter for which our current regulations do not require data; the “purpose” might be to ensure that sufficient data exists for the regulatory authority to make required decisions about permit approval.*

*Another example, the “need” expressed for removing a highwall on an abandoned mine land site might be that the current conditions are dangerous because the highwall is adjacent to a public facility with uncontrolled access to the area; the “purpose” is to remove the danger that the highwall poses to the public.*

Regardless of whether the “purpose” and the “need” are treated as distinct or synonymous, the purpose and need statement as a whole must describe the problem or opportunity to which OSMRE is responding and what the parties involved intend to accomplish by the action. The purpose and need is specific to OSMRE and not the project proponent’s purpose and need.

### 8.2.1 The Role of the Purpose and Need Statement

A carefully crafted purpose and need statement can be an effective tool in controlling the scope of the analysis and thereby increasing efficiencies by eliminating unnecessary analysis and reducing delays in the process. The Office of the Solicitor will be consulted during the development of the purpose and need statement for an EIS and should be consulted, during the development of the purpose and need statement for an EA.

The purpose and need statement defines the reasons for the action, helps identify what problems need a solution, and is the first step in developing a range of alternatives because action alternatives are not “reasonable” if they do not respond to the purpose and need for the action (*see section 8.6.1, Reasonable Alternatives*). The broader the purpose and need statement, the broader the range of alternatives that must be analyzed. However, agencies must not put forward a purpose and need statement that is so narrow as to “define competing ‘reasonable alternatives’ out of consideration (and even out of existence)” ([CEQ Guidance](#)).

#### EXAMPLE

*In the highwall removal at an AML project, reasonable alternatives might include fencing the area instead of limiting alternatives to only the removal of the highwall. Depending upon the how broad the purpose and need statement is, a fencing alternative may or may not meet the purpose and need.*

Draft the purpose and need statement early in the NEPA process. Including a draft purpose and need statement with scoping materials will help focus internal and external scoping comments. If necessary, you can reexamine and update your purpose and need statement after scoping and if additional needs are realized during the NEPA review.

### **8.2.2 Identifying the Decision to be Made**

You may include in the purpose and need statement a description of the decision(s) to be made based on the NEPA analysis. Tying the purpose and need of the proposal to the decision helps establish the scope of the NEPA analysis. A clear explanation of the decision(s) at hand is also helpful in public involvement; it helps to set expectations and explain the focus of OSMRE NEPA analysis. It is important to note the regulatory requirements for the decision to be made.

For externally generated actions, the description of the decision(s) to be made helps differentiate your role in the action from the external proponent's role. For NEPA documents prepared with cooperating agencies with jurisdiction by law, we recommend that you explicitly identify the decisions to be made by each agency (*see* Chapter 12 Coordinating with Cooperating Agencies, Joint Lead Agencies, and Advisory Committees during the NEPA Process).

### **8.3 Scoping**

Scoping is the process of gathering internal (OSMRE) and external (other federal and State agencies, the public, and other interested stakeholders) input to identify issues, impacts, and potential alternatives that will be addressed during the NEPA process ([40 CFR 1501.7](#)). Scoping can be a useful tool for discovering alternatives to a proposal or potentially significant impacts that may have been overlooked. The scoping process stresses early consultation with resource agencies, other State and local agencies, tribal governments, and any federal agency whose approval or funding of the proposed project will be required for completion of the project. Scoping is considered an effective way to bring together and resolve the concerns of other agencies potentially affected by the project as well as other interested persons, such as the general public. Additionally, scoping can help provide a rationale for eliminating topics from further analysis ([40 CFR 1500.4\(g\)](#)).

Scoping for an EIS is a formal process that must be done in compliance with the specific requirements established in the implementing regulations for NEPA (*see* Section 10.3.1, Scoping). Formal scoping requirements do not apply to EAs or CEs; however, “scoping” in these contexts could be thought of as all of the interactions with external stakeholders, including potential informal public scoping ([40 CFR 46.305\(a\)\(2\)](#)). *See* section 9.3.1, *Scoping* for a discussion of when external scoping is appropriate for an EA.

### **8.4 Issues**

Although the CEQ regulations do not define this term, CEQ's regulations often refer to “issues.” For example, in order to prepare NEPA documents that are “concise, clear, and to the point,” analyses must “focus on significant environmental issues and alternatives” and should be discussed in proportion to their significance ([40 CFR 1501.7\(a\)\(2\)](#), [40 CFR 1501.7\(a\)\(3\)](#), [40](#)

[CFR 1502.1](#), [40 CFR 1502.2\(b\)](#)). Similarly, NEPA reviews should focus on the issues that are truly significant to the action in question, “rather than amassing needless detail” ([40 CFR 1500.1\(b\)](#)). Thus, the description of the affected environment must be no longer than is necessary to understand the effects of the alternatives. As such, insignificant issues or unaffected resources should only be discussed briefly to explain why further analysis is not warranted ([40 CFR 1502.2\(b\)](#)). Discussion of both significant and insignificant issues should be written in plain language to be useful to both decision-makers and the general public.

Although not defined in the CEQ regulations, an issue:

- has a cause and effect relationship with the proposed action or alternatives;
- is within the scope of the analysis;
- has not been decided by law, regulation, or previous decision; and
- is amenable to scientific analysis rather than conjecture.

Identifying significant issues related to a proposed action is an important part of scoping ([40 CFR 1501.7\(a\)\(3\)](#)). In the context of NEPA reviews, “issues” or “environmental issues” can be problems, concerns, conflicts, obstacles, or benefits that would result if the proposed action or alternatives, including the no-action alternative, are implemented. Issues point to environmental effects; as such, issues can help shape both the proposal and the alternatives. Issues may also lead to the identification of design features that are then incorporated into the proposed action or to development of mitigation measures (*see* Chapter 11). Identification and discussion of issues can greatly help to focus the discussion contained within the NEPA document and identify where greater analysis is warranted.

#### **8.4.1 Identifying Issues for Analysis**

Preliminary issues are frequently identified during the development of the proposed action through internal and external scoping. Additionally, other authorities that provide procedural or substantive responsibilities relevant to the NEPA process may help identify issues requiring analysis including, but not limited to, Endangered Species Act, Clean Water Act, National Historic Preservation Act. Issues not relevant to the proposal at hand should not be addressed.

Issues may be raised by OSMRE, other agencies, tribal governments, or the public. You should use an interdisciplinary approach to identify issues during internal scoping and throughout the analysis. In many cases, it may be helpful to begin thinking about issues in terms of what resources would be affected by the proposed action and alternatives under consideration.

Identifying issues will allow you to emphasize the important environmental concerns related to a proposal and will help focus your impact analysis. When describing issues, you should do so in terms of the relationship between the potential impacts of an action and specific resources that would be affected.

As a general rule, issues should be retained for consideration and discussed in detail if:

- the environmental impacts associated with the issue are central to the proposal or of critical importance;
- a detailed analysis of environmental impacts related to the issue is necessary to make a reasoned choice between alternatives;
- the environmental impacts associated with the issue are a big point of contention among the public or other agencies; or
- there are potentially significant impacts to resources associated with the issue.

Public opposition to a project, when the environmental effects are relatively undisputed, should not be considered an environmental issue. However, if the public is opposed to a project because of concerns about certain environmental impacts, such as impacts to water quality or increased traffic in a neighborhood, the NEPA review should consider those issues.

Ultimately, it is important for decision-makers and the public to be able to understand the impacts that each of the alternatives under consideration would have on specific resources. Therefore, even though a NEPA review should focus on significant issues, when preparing a NEPA document, you should clearly indicate those resources that would be affected by each issue and organize the discussions of the affected environment and environmental consequences by resource.

#### **EXAMPLE**

*OSMRE is analyzing the effects of proposed designation of an area as unsuitable for mining. “Wildlife” is not considered an issue – this is too broad for reasonable analysis, and it is not clearly related to the effects of the action. Instead, an explicit statement of one of the wildlife related issues might be: “Would prohibiting mining in the petition area cause more mining activity in designated critical habitat for a listed species outside the petition area?”*

#### **8.4.2 Issues Not Analyzed**

If none of the considerations in Section 8.4.1 apply to an identified issue, you should dismiss it from detailed analysis. When dismissing an issue, you will indicate those specific resources or impact topics that were dismissed for that issue. While you may decide not to carry an issue forward for detailed analysis, environmental impacts to specific resources can still be discussed in some detail in your dismissal, as appropriate. The level of detail for a dismissal will vary according to the nature of the issue, but remember that the CEQ regulations emphasize that NEPA reviews should be focused on the important issues and that the treatment of issues dismissed should be limited to a brief discussion of why related environmental impacts do not warrant detailed analysis.

#### **8.5 Proposed Action**

The CEQ regulations state that a “proposal” exists at that stage in the development of an action when an agency subject to NEPA has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully

evaluated ([40 CFR 1508.23](#)). The phrase “proposed action” suggests that an identified need(s) is to be met via a proposed policy, plan, program, project, or permit. For example, where OSMRE is the regulatory authority, an administratively complete permit application may be considered a *proposal*; however, the *proposed action* would be developed through the review process and finalized with issuance of a permit after the application is considered technically adequate.

When developing the proposed action, it is important to understand how it will be used in the environmental analysis. A preliminary description of the proposed action can be used during scoping to focus public involvement. The proposed action is generally only one possible option to meet the purpose and need. Alternatives are also developed to meet the purpose and need of the proposed action.

### **8.5.1 Description of the Proposed Action**

A detailed description of the proposed action at the outset of the analysis process is beneficial for many reasons. Clearly described proposed actions can result in:

- more focused and meaningful public input;
- more focused and meaningful internal discussions;
- more complete identification of issues;
- development of reasonable alternatives;
- sound analysis and interpretation of effects;
- focused analysis; and
- a sound and supportable decision.

Detailed descriptions of proposed actions typically include five elements:

1. “Who” is the federal agency that is going to guide the analysis and make the decision. If there is more than one federal decision, there could be multiple federal agencies identified. Even for externally generated projects, such as mining plans or federal permitting, OSMRE will make the decision to recommend or authorize an action. For externally proposed projects, it is important to identify the external proponent and their role in implementing the decision.
2. “What” is the specific activity or activities proposed. You must provide sufficient detail in the description of the activities so that the effects of the proposed action may be compared to the effects of the alternatives, including the No Action alternative ([40 CFR 1502.14\(b\)](#)). That comparison provides a clear basis for action chosen by the decision-maker.
3. “How” relates to the specific means by which the proposal would be implemented. Include applicable project design features, including construction activities, operations, schedules, and sufficient history of proposal development. It may also be appropriate to include maps, photographs, and figures. Means, measures, or practices to reduce or avoid adverse environmental impacts may be included in the proposed action as design features.

4. “When” is the timeframe in which the project will be implemented and completed. If the proposed action has identifiable phases, describe the duration of those phases. The timing related to monitoring is integral to the proposed action and should also be described.
5. “Where” is the location(s) the proposed action will be implemented and should be described as specifically as possible. Provide maps at a relevant scale to support the narrative.

## **8.5.2 Defining the Scope of Analysis of the Proposed Action**

After the initial development of the proposed action, evaluate whether connected or cumulative actions exist that must be considered in the same NEPA document ([40 CFR 1508.25](#)). In addition, evaluate whether similar actions exist that you wish to discuss in a single NEPA document. When defining the scope of a NEPA analysis, the CEQ regulations specify that agencies shall consider connected actions, cumulative actions, and similar actions in addition to the Federal action(s) that triggered the NEPA analysis.

Additionally, the defined scope may also depend on the level of federal “control” over any “non-federal” aspects of the larger underlying project. When the components of the action, including those that are not under federal control, are highly interrelated and functionally interdependent, the entire project needs to be assessed under the NEPA mandate. Whether a non-federal activity is connected is highly fact-specific. If you are unsure, contact the Office of the Solicitor.

### **8.5.2.1 Connected Actions**

Connected actions are those actions that are “closely related” and should be analyzed in the same NEPA document ([40 CFR 1508.25\(a\)\(1\)](#)). Actions are connected if they automatically trigger other actions that may require an EIS; cannot or will not proceed unless other actions are taken previously or simultaneously; or if the actions are interdependent parts of a larger action and depend upon the larger action for their justification ([40 CFR 1508.25\(a\)\(1\)](#)). Connected actions are limited to actions that are currently proposed (ripe for decision). Actions that are not yet proposed are not connected actions but may need to be analyzed in cumulative effects analysis if they are reasonably foreseeable.

Connected actions, regardless of who proposes them, must be considered as part of the broader proposed action analyzed in a single NEPA document ([40 CFR 1508.25\(a\)\(1\)](#)). When the connected actions are the responsibility of a federal agency other than OSMRE, consider the timing of the other agency action and the capabilities of the other agency to act as a cooperating agency or joint lead agency (*see* Sections 12.1 and 12.3).

#### EXAMPLE

*OSMRE proposes to approve a permit that allows surface mining, the coal from the action will be transported via railway. Any improvements or new construction such as a railroad spur to the transportation system by State or federal government entities that would not happen without this mining activity are considered connected actions and should be included in the proposed action. The non-OSMRE agencies involved should participate in the NEPA process of the proposed action as joint leads, where appropriate, or cooperating agencies.*

Describe all connected actions and their relationship to the proposed action, including the extent to which the connected action and its effects can be prevented or modified by OSMRE decision-making on the proposed action. If timing or other reasons have resulted in the connected action being addressed in a separate NEPA document, it may be useful to incorporate by reference portions of the NEPA document completed for the connected action, if available, into the NEPA document of the proposed action. (See Section 5.5 for more information on incorporation by reference.)

#### 8.5.2.2 Cumulative Actions

Cumulative actions are proposed actions that potentially have a significant impact when considered together with other proposed actions and should be analyzed in the same NEPA document ([40 CFR 1508.25\(a\)\(2\)](#)).

If the cumulative action is an OSMRE or other federal proposed action, you may include both actions as aspects of a broader proposed action, analyzed in a single NEPA document, as described above for connected actions.

#### EXAMPLE

*OSMRE proposes reclamation of an abandoned mine land site to remove dangerous highwall conditions and improve the public safety and environmental conditions. The removal of the highwall requires site disturbance that would contribute sediment to a nearby stream. The site adjacent to the AML site is a public school facility that proposes to construct a new ballfield during the same timeframe that reclamation activities will occur at the AML site. The ballfield construction would contribute sediment to the same stream. The ballfield replacement and the AML project would therefore have cumulative impacts on the stream.*

At a minimum, demonstrate that you have considered all cumulative actions in the NEPA document for the proposed action by describing the cumulative actions and analyzing the effects of the cumulative actions in the cumulative effects analysis of the proposed action.

It may be useful to incorporate by reference portions of the NEPA document completed for the cumulative actions, if available, into the NEPA document for the proposed action.

Non-federal actions which potentially have a cumulatively significant impact together with the proposed action, must be considered in the same NEPA document ([40 CFR 1508.25](#)). Identifying an action as a cumulative non-federal action is a component of your cumulative effects analysis of the proposed action.

### 8.5.2.3 Similar Actions

Similar actions are proposed or reasonably foreseeable federal actions that have similarities that provide a basis for evaluating their environmental consequences together with the proposed action ([40 CFR 1508.25\(a\)\(3\)](#)). Similarities are not limited to the type of action and can include common timing, geography, or purpose.

#### EXAMPLE

*OSMRE is required to evaluate a mining plan in accordance with the Mineral Leasing Act to provide a recommendation to the Assistant Secretary for Lands and Mineral Management on Federal lands. If two mining plans are identified within the same general area and considered to be reasonably foreseeable, OSMRE's analysis could encompass both mining plans within the same NEPA analysis. Therefore, the NEPA analysis would be more comprehensive in evaluating all environmental consequences of the mining plans in the same analysis.*

You may include similar proposed actions as aspects of a broader proposed action, analyzed in the same NEPA document if a single NEPA document would improve the quality of analysis and efficiency of the NEPA process, and/or provide a stronger basis for decision-making.

Similar actions are those that can proceed independently from the proposed action. If other federal actions with a common timing or geography are interdependent with the proposed action, they are considered as connected actions. If other federal actions with common timing or geography have a cumulative effect together with the proposed action, they are considered as cumulative actions.

If you include similar actions as aspects of a broader proposal, analyzed in a single NEPA document, evaluate the purpose and need and the range of alternatives to ensure that they adequately address the similar actions.

## 8.6 Alternatives Development

The alternatives represent different means of solving problems and meeting the goals articulated in the purpose and need for the action. Alternatives are distinguished from each other based on differences in their approach to resolving the purpose and need for the action and the environmental impacts of implementing each of them. Alternatives should not be distinguished merely on differences in cost or technical elements.

### 8.6.1 Reasonable Alternatives

Reasonable alternatives are those alternatives that meet the purpose and need for the action and are feasible ([43 CFR 46.420\(b\)](#)). An alternative is not considered reasonable if technical, economic, or jurisdictional obstacles make the ability to implement the alternative remote and speculative.

Reasonable alternatives must be rigorously explored and objectively evaluated during the decision-making process ([40 CFR 1505.1\(e\)](#); [43 CFR 46.420\(c\)](#)). When developing alternatives, you should not exclude an alternative because it is not the easiest, cheapest, or most popular solution. An alternative is not rendered unreasonable simply because it would be challenging or expensive to implement. In some situations, it may be appropriate for you to consider a proposed action or alternative that may be outside OSMRE jurisdiction.

For externally generated actions, the range of alternatives will typically include at least a No Action alternative that would proceed without approval of the proposed action, the applicant proposed alternative (proposed action), and other alternatives that would meet the purpose and need.

#### **EXAMPLE**

*An EIS for a proposed mining plan modification has a purpose and need to determine whether to approve mining operations conducted in a certain manner on federal coal within the project area consistent with existing leases and the permit application package. The EIS may analyze the following alternatives:*

- *No Action, which would entail no new mining of federal coal beyond what is currently covered by the previous mining plan;*
- *The proponent's proposal for revision of the mining plan; and*
- *The proponent's proposal with additional or different design features to reduce environmental effects. This alternative would include design features that differ from the proponent's proposal, such as alternative access routes, additional timing or spacing constraints, offsite mitigation, different methods for treating produced water, different planting and site preparation techniques during reclamation, or other technologies.*

### **8.6.2 No Action Alternative**

A No Action alternative must always be evaluated. Because the No Action alternative is the basis to which all other alternatives are compared, it is often presented first, so the reader can easily compare the other alternatives to it. "No Action" represents a projection of current conditions and reasonably foreseeable actions to the most reasonable future responses or conditions that could occur during the life of the project without implementation of any action alternative.

The No Action alternative provides a useful baseline for comparing environmental effects (including cumulative effects) and reveals the expected outcomes of the status quo or failure to meet the purpose and need of the action (*see* Section 9.4 for further discussion of the No Action alternative).

The No Action alternative should not automatically be considered the same as the existing condition of the affected environment because reasonably foreseeable future actions may occur whether or not any of the project action alternatives are chosen. When the No Action alternative is different from the existing condition, as projected into the future, the differences should be clearly defined.

The description of the No Action alternative depends on the type of action proposed:

- For OSMRE-generated actions: the No Action alternative is maintaining the status quo to not take the action. For example, regulatory actions that propose to continue implementing the regulatory program but revise the regulations, either through regulatory revision or change in guidance or policy, should be treated as an action alternative, not as the No Action alternative.
- For externally generated proposals or applications: the No Action alternative is generally to reject the proposal or deny the application. (The sole exception may be for renewal of a SMCRA permit because the successive right of renewal in SMCRA means that the No Action alternative would be issuance of a new permit with the same terms and conditions as the expiring permit). The analysis of the No Action alternative must only analyze what is reasonably foreseeable if the application is denied ([see Question 3, CEO, Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981](#)).

The No Action alternative may constitute a benchmark at one end of the spectrum of alternatives. Therefore, defining the No Action alternative might require reference to the action alternatives that will be analyzed. A No Action alternative that is outside of OSMRE jurisdiction or contrary to law or regulation might be useful to consider as a baseline for comparison. The analysis of such an alternative provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives ([see Question 3, CEO, Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981](#)).

#### **EXAMPLE**

*When revising a permit for an active operation, the revision application does not include design features that would return the permitted area to approximate original contour. This revision application has a deficiency. Analysis of the application package including the cut and fill grading plan, with the approximate original contour deficiency, may provide useful insight between the action alternatives under consideration and the No Action because an explanation will need to be provided to explain how the action alternative was developed including the resolution of the approximate original contour deficiency.*

If the proposal is to improve existing conditions, the impacts of No Action are particularly important to describe because they help to define the need for OSMRE action. If implementing the No Action alternative would “result in predictable actions by others,” this impact should be part of the effects of No Action ([see Question 3, CEO, Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981](#)).

### EXAMPLE

*If your document analyzes the impact to wildlife of a proposal to reclaim an abandoned mine site that has re-vegetated and is currently supporting wildlife use, the impacts to wildlife of No Action (e.g., from the vegetation remaining undisturbed by construction and wildlife continuing to use the site) are distinctly different from the temporary impacts that would occur during the clearing, site work, and replanting of the site under the reclamation project. Compared with the expected impacts of the proposed action, the unreclaimed site in the first case may have less of a temporary adverse impact than in the second but would probably have less beneficial impact over the long-term.*

Impacts of No Action also provide an assessment of absolute, or total, impact to a resource. In the example above, the impacts of the proposed reclamation project, when added to those of habitat enhancement projects nearby, may provide greater benefits for wildlife than the proposed reclamation project by itself.

Accurately and completely describing existing impacts is critical to understanding the context, duration, and intensity of new impacts. For this reason, all OSMRE EISs and EAs must contain a full analysis of the No Action alternative even when no other unresolved or resolved conflicts exist concerning alternative uses of available resources that may require consideration of additional alternatives.

### 8.6.3 Alternatives Considered but Eliminated from Detailed Analysis

If you consider alternatives during the NEPA analysis but opt not to analyze them in detail, you must identify those alternatives and briefly explain why you eliminated them from detailed analysis ([40 CFR 1502.14](#)). If an alternative is proposed by the public or another agency, explain why you eliminated that alternative from detailed analysis. We recommend you do the same in an EA.

You may eliminate an action alternative from detailed analysis if it:

- is ineffective (it would not respond to the purpose and need);
- is technically or economically infeasible (consider whether implementation of the alternative is likely given past and current practice and technology; this does not require cost-benefit analysis or speculation about an applicant's costs and profits);
- is inconsistent with the basic policy objectives for the management of the area (such as, not in conformance with surface owner's land management plan);
- is speculative or remote in its implementation; or
- is substantially similar in design or effects to an alternative that is analyzed.

### 8.7 Affected Environment and Use of Relevant Data

The affected environment serves as the baseline for predicting changes to the human environment that could occur if any of the alternatives under consideration, including the No Action alternative, are implemented. The affected environment is separate and distinct from the No Action alternative, and it too, must be based upon relevant data.

### 8.7.1 Affected Environment

The affected environment section succinctly describes the existing condition of the human and natural environment that may be affected by implementing the proposed action or an alternative. The CEQ regulations defines “human environment” to include the natural and physical environment and the relationship of people with that environment; the term broadly relates to biological, physical, social, and economic elements of the environment ([40 CFR 1508.14](#)). Your descriptions of the specific elements should be quantitative wherever possible and be of sufficient detail to serve as a baseline against which to measure the potential effects of implementing an action.

The affected environment section is defined and limited by the identified issues. In other words, there is no need to discuss a resource in the affected environment unless it is directly or indirectly related to an identified issue or a major resource that could be affected.

Describe the baseline condition of the affected resources within the identified geographic scope to provide a reference condition for the cumulative effects analysis. The boundaries of the geographic scope will vary depending on the resource under consideration. For example, you should base the spatial extent of the wildlife resource discussion on the species and habitats present within the defined geographic scope but the area of concern for the water quality discussion may be a larger, smaller, or different geographic area and may be confined to a particular watershed.

Identifying past and ongoing actions that have contributed to existing conditions will be helpful in the cumulative effects analysis. Additionally, identify any applicable regulatory thresholds and characterize what is known about stresses affecting the resources and biological or physical thresholds. These biological or physical thresholds are often poorly understood. It is helpful to identify, as part of the analysis, the resource threshold conditions beyond which change could cause significant impacts, although it may not be possible for many resources due to incomplete or unavailable information ([40 CFR 1502.22](#)).

Your descriptions of the affected environment must be no longer than is necessary to understand the effects of the alternatives. The level of data and analyses in a statement must be commensurate with the importance of the impact; with less important material, you may summarize, consolidate, or simply reference the material ([40 CFR 1502.15](#)).

Below are two examples from a mining plan decision document that addressed the affected environment as it relates to prime farmland soils. The first example provides too much irrelevant detail; while the second is a streamlined version that provides just the necessary information.

### LONG EXAMPLE

*Existing soil resources within the proposed project area are mapped by the United States Department of Agriculture–Natural Resources Conservation Service (NRCS) as Carnasaw-Clebit 8 to 30 percent slopes, Carnasaw-Clebit–Pickens 30 to 45 percent slopes, Carnasaw-Pirum complex 3 to 8 percent slopes, Carnasaw-Pirum-Clebit 3 to 12 percent slopes, Counts silt loam 1 to 3 percent slopes, Neff and Rexor silt loams, frequently flooded, Shermore fine sandy loam, and Stigler silt loam 1 to 3 percent slopes. Only Caransaw-Clebit, Caransaw-Clebit – Pickens, Neff and Rexor silt loams, Shermore fine sandy loam, and Stigler silt loam are located within the area to be disturbed. Carnasaw-Pirum complex, Carnasaw-Pirum-Clebit, and Counts silt loam are located within the permit boundary, but outside the disturbance boundary, and should not be impacted.*

*The most common use of the soil mapping units in the permit is undeveloped woodland. None of the soils show signs of recent intensive management.*

*Even though the NRCS classifies Stigler silt loam as Prime Farmland (PFL) soil, this soil has a “negative determination” for SMCRA prime farmland reclamation requirements. Prime farmland is defined at 30 CFR 701.5 as “lands which are defined by the Secretary of Agriculture...and which have historically been used as cropland.” Land historically used for cropland is defined under the same section as “lands that have been used for cropland for any 5 years or more out of 10 years immediately preceding the acquisition...of the land for the purpose of conducting or allowing...the conduct of surface coal mining and reclamation operations....” State regulation parallels these definitions. This soil has not been recently managed as cropland.*

*None of the soils in the proposed project have cropland as a pre-mining or post-mining land use.*

### SHORT EXAMPLE

*Current soil classifications are depicted in the figure below. The most common use of the soil mapping units in the permit is undeveloped woodland. None of the soils show signs of recent intensive management and these soils provide a negative determination for SMCRA’s prime farmland reclamation requirements; therefore, none of the soils in the proposed project have cropland as a pre-mining land use.*

## 8.7.2 Use of Relevant Data

The CEQ regulations require federal agencies to obtain information “relevant to reasonably foreseeable significant adverse impacts,” if it is “essential to a reasoned choice among alternatives,” and if “the overall cost of obtaining it is not exorbitant” ([40 CFR 1502.22](#)). If information essential to a reasoned choice is unavailable or if the costs of obtaining it are excessive or beyond reason, you must provide an explanation in the EIS or EA. The explanation must discuss what effect the missing information may have on your ability to predict impacts to the particular resource. If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, you must include within the EIS or EA:

- a statement that this information is incomplete or unavailable;

- a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- a summary of existing credible scientific evidence relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- an evaluation of these impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

The term “reasonably foreseeable” includes impacts that have catastrophic consequences even if their probability of occurrence is low. But the analysis of the impacts must be supported by credible scientific evidence, must not be based on pure conjecture, and must be within the rule of reason ([40 CFR 1502.22\(b\)](#)).

For additional information about the use of relevant data, please contact OSMRE Scientific Integrity Officer (see Section 1.5).

## **8.8 Environmental Effects**

To focus your analysis of effects, you will rely on the identified issues. Early identification of the issues will help to determine the scope of the effects and analysis. Additionally, early identification of issues will help focus the analysis on factors that help discern differences between alternatives.

To help decision-makers completely understand how a resource will be affected, you must consider context, intensity, duration, and timing ([40 CFR 1508.27](#)). Analyze relevant short-term and long-term effects and disclose both the beneficial and adverse effects in the NEPA analysis. We recommend defining the duration of long-term and short-term effects, as those categories can vary depending on the action and the scope of analysis. You must consider and analyze three categories of effects for any OSMRE proposal and its alternatives: direct, indirect, and cumulative ([40 CFR 1508.25\(c\)](#)).

The effects analysis must also identify possible conflicts between the proposed action (and each alternative) and the objectives of federal, State, regional, local, and tribal land use plans, policies, or controls for the area concerned ([40 CFR 1502.16\(c\)](#)).

And finally, beneficial effects are also important to disclose, particularly when they may assist in the comparison between the alternatives ([40 CFR 1508.8](#)); however, disclosure of effects should discuss both positive and adverse impacts. The balance should not be tilted in favor of disclosing only the positive impacts.

### **8.8.1 Analyzing General Effects**

The effects analysis must demonstrate that OSMRE thoroughly analyzed the potential impacts of the proposed action and alternatives. The level of detail must be sufficient to allow the decision-maker to make reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives ([40 CFR 1502.1](#)).

Avoid making conclusory statements; always provide the rationale for conclusions even if that rationale is merely qualitative. The hypothetical conclusion below needs additional support on effects to wildlife habitat from an AML project.

**EXAMPLE**

*The proposed action would have minor impacts on wildlife because the effects would be temporary.*

The scientist in this example may know this to be true because of her experience with similar projects in similar areas, but the document needs to explain why.

Here is an example of what the supporting statements might include:

**EXAMPLE**

*The proposed action would have minor impacts on wildlife due to temporary displacement, noise, and loss of habitat. Displacement of wildlife during the window of site clearing and construction activity would occur but the areas immediately adjacent to the site contain similar habitats therefore displaced animals may relocate to these adjacent areas. No protected species or rare ecosystems exist within the project boundaries. Consequently, the incidental loss of individual plants or animals would not threaten the continued existence of a rare species or ecosystem. Noise impacts to animal behaviors, such as resting and feeding, would be limited to the most intense periods of operation linked to earth moving and would affect only a very limited area immediately adjacent to the site. Long-term effects would be positive through the restoration of grassland habitat (the original habitat type) and developing habitat of higher quality than is now present.*

This example also shows why it is important to identify issues early in the discussion. For example, a project may involve using explosives or operating equipment over an extended time period. In these instances, you would need to address proximity to sensitive receptors, noise, and safety in terms of the effects on both people and wildlife. If, for instance, blasting was not anticipated, there is no need to analyze the effects of blasting on people or wildlife.

In analyzing environmental effects, incorporate the elements listed below. Use the introduction of the environmental effects section to describe how and why your analysis was conducted for each resource as explained below:

- **Methodology** - Your NEPA document must sufficiently describe the analytical methodology that you used so that the decision-maker can understand how the analysis was conducted and why the particular methodology was used ([40 CFR 1502.24](#)). This explanation must include a description of any limitations inherent in the methodology or data. If substantial dispute exists over models, methodology, or data, you must recognize the opposing viewpoint(s) and explain the rationale for your choice of analysis. You may place discussions of methodology in the body of the document or in an appendix. We recommend, to the extent possible, that you quantify the analysis of impacts. This section is also a good place to define or explain to the reader how to interpret the data. In other words, you should define terms such as “minor,” “major,” “short-term,” or “long-

term” for a particular impact. If relevant, explain the reasoning behind this interpretation. For example, why might 100 ppm of a particular analyte be a “major” impact but 50 ppm of another a “minor” impact? To help explain these terms, your discussion might present applicable state water quality standards to help provide the context and help the reader understand the difference.

- **Assumptions** - We recommend your NEPA document describe the analytical assumptions that you used, including the geographic and temporal scope of the analysis, which may vary by issue, the analysis baseline, as well as the reasonably foreseeable future actions. You must explain any assumptions you make when information critical to the analysis was incomplete or unavailable ([40 CFR 1502.22](#)). See Section 8.7.2 for more discussion of incomplete or unavailable information.
- **Regulations and Policies Section** - Following the discussion of analytical assumptions, you should include a separate section that details relevant laws, regulations, or policies pertinent to each impact topic. This section should clarify why a particular impact topic is important to discuss and help support the reasoning used in the impact threshold discussion of the methodology section. This section should be placed in the Alternatives chapter or, if more appropriate, in the Purpose and Need chapter.

## 8.8.2 Analyzing Direct and Indirect Effects

A NEPA document must identify, analyze, and describe the direct and indirect effects of the proposed action and alternatives on the quality of the human environment ([40 CFR 1508.8](#)).

**Direct Effects** are those effects of the proposed action and alternatives “which are caused by the action and occur at the same time and place” ([40 CFR 1508.8\(a\)](#)).

**Indirect Effects** are those effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on water and air and other natural systems, including ecosystems” ([40 CFR 1508.8\(b\)](#)).

### EXAMPLE

*Effects occurring within the SMCRA permit boundary, and during the mining and reclamation activity, are obvious direct effects because they occur at the same place and time. Effects occurring after bond release are “later in time” and may be more appropriately considered as indirect.*

*Indirect effects of the mining operation, those farther removed in distance, could include effects occurring outside the SMCRA permit boundary. Examples include increased turbidity downstream, noise and dust associated with transporting coal from the mining operation along public routes, or air and water emissions associated with the transport or burning of the coal.*

It is also important to distinguish between effects closely connected to the proposed action and those actions that occur as an indirect effect of the proposed action. This distinction helps determine how far “downstream” the analysis should look.

### EXAMPLE

*For an analysis of a mining action where the coal is transported to a power plant that is not dependent on the mining action to continue but where there is no federal action at the power plant, including funding or permitting:*

- *Estimate emissions of all construction activities on the permitted site, including transportation to the power plant.*
- *Estimate emissions only from combustion of the coal from the action (and not all emissions associated with the total plant operation) and provide that information for each alternative to allow comparison of the alternatives.*
- *The effects of the emissions from the power plant are an effect of the total power plant operation which is not a federal action or a connected action.*

*For federal actions with a federal action at the power plant (like the Four Corners Power Plant and Navajo Mine Energy Project EIS) or in which the power plant would not continue to operate but for the proposed action, your analysis of the mining action must:*

- *Estimate emissions of all construction activities on the permitted site, including transportation to the power plant;*
- *Evaluate the combustion of the coal at the power plant and the effect of the emission, and;*
- *Consider the effects of the emissions because they are indirectly related to the proposed action.*

In either instance, the analyses are still limited by the completeness and availability of the information ([40 CFR 1502.22](#)). CEQ regulations demand information that is of “high quality” and professional integrity ([40 CFR 1500.1](#), [1502.24](#)). When information is incomplete or unavailable, the document must explain that fact, must summarize existing credible science relevant to the potentially significant foreseeable impacts, and must evaluate the impacts based on accepted theoretical or research based approaches ([40 CFR 1502.22\(b\)](#)).

For example, we often will not know the ultimate disposition of the coal mined under a proposed action. The ultimate end use might include combustion at a number of different power plants or export overseas. In these instances, it is appropriate to use existing data and models (such as data from the U.S. Energy Information Administration) to support assumptions and make projections.

As required by [40 CFR 1502.16](#), the environmental effects discussion in an EIS should include information on any irreversible or irretrievable commitments of resources that cannot be avoided, should the proposed action or reasonable alternative(s) be implemented. A commitment of a resource is considered irreversible when the primary or secondary impacts from its use limit the future options for its use. It applies primarily to the impacts of use of nonrenewable resources, such as minerals or cultural resources, or to those factors, such as soil productivity, that are renewable only over long periods of time. An irretrievable commitment refers to the use

or consumption of a resource that is neither renewable nor recoverable for use by future generations. This discussion is not required in an EA.

### **8.8.3 Determining Level of Analysis**

For every proposed project, site- or resource-specific issues may exist, requiring a more intense or focused analysis to enable a determination on the significance of impacts to particular resource(s). The main impetus of focusing or intensifying an analysis on a particular issue or resource correlates with the potential for a proposed project to have significant impacts on a resource. Issues or resources that are of great concern to the public (identified through the scoping process) may also warrant an additional analysis of potential impacts associated with that issue or resource. Court decisions pertaining to a particular aspect of an impacts analysis may be another reason to complete a more robust analysis of particular impact. If you think a court decision may affect your document, please consult with the Office of the Solicitor.

As a best practice, quantitative data (when available) should support the analysis of all three levels of effects. In general, a direct effects analysis should be highly quantitative because it is likely that the required data may be more readily available. An indirect effects analysis may be more qualitative due to the fact that, while caused by the proposed project, indirect effects are removed in distance or time resulting in the likelihood that the data is not readily available. A cumulative effects analysis is usually more qualitative as data for reasonably foreseeable developments can be difficult to obtain and is likely to be less applicable. However, the level of analysis ultimately depends on the intensity of the potential impacts and impacts should be analyzed appropriately regardless of whether or not the impact is direct, indirect, or cumulative.

To the extent possible, we recommend that the analysis of impacts be quantified. We recommend that your NEPA document also state the analytical assumptions, including the geographic and temporal scope of the analysis (which may vary by issue), the baseline for analysis, as well as any reasonably foreseeable future issues.

#### **8.8.3.1 Determining Whether to Analyze Issues in Detail**

Analysis in an EA or EIS should focus on significant issues (meaning pivotal issues or issues of critical importance) and only discuss insignificant issues briefly. Therefore, you should determine whether issues that are identified should be retained for detailed analysis or dismissed. When doing so, you should use an interdisciplinary approach to ensure that all relevant concerns are considered. During scoping, you may initially identify numerous issues associated with a proposal and will make an initial determination regarding whether or not to retain them for detailed analysis. It is important as you progress through the NEPA review to revisit issues, as necessary, to determine whether you should reconsider your initial determination based on new information. Likewise, you should consider whether there are additional issues associated with the proposal that were not identified during the scoping phase that should be addressed.

As a general rule, issues should be retained for consideration and discussed in detail if:

- The analysis of that issue is necessary to make a reasoned choice between alternatives;

- The analysis is needed for the decision-maker to fully understand trade-offs between alternatives and make a reasoned choice;
- The issue is “significant” or where analysis is necessary to determine the significance of impacts; or
- There is a disagreement about the best way to use a resource, or resolve an unwanted resource condition, or potentially significant effects of a proposed action or alternative.

Other considerations may include if there is a cause and effect relationship with the proposed action and alternatives and the issue; if the issue is within a geographic and temporal scope of the analysis; if the issue has not already been decided by law, regulation, or previous decision; if it is possible to analyze rather than simply speculate on the potential effects; if the analysis was not sufficient in a previous document to which you are tiering; or if the environmental impacts associated with the issue are central to the proposed action or of critical importance.

If none of the considerations above apply to an issue, you should dismiss it from detailed analysis. When dismissing an issue, you should be sure to indicate which specific resources or impact topics are included in the dismissal for that issue. While you may decide not to carry an issue forward for detailed analysis, environmental impacts to specific resources can still be discussed in some detail in your dismissal, as appropriate. Not all issues discussed by an interdisciplinary team need to be explicitly dismissed in a NEPA document. You should only include a dismissal of the issues that were initially thought to be relevant to your NEPA review but were later determined to be insignificant. Under such circumstances, you should document your rationale for that dismissal in the decision record

#### **EXAMPLE**

*If an AML construction project is reclaiming a dangerous highwall in a highly disturbed area, the project team may have briefly discussed whether hunting opportunities would be impacted during construction; however, there is no need to explicitly dismiss impacts to hunting opportunities if there are no issues or impacts related to hunting opportunities from the proposed reclamation because all work would be conducted outside of hunting seasons. Nonetheless, you should consider documenting that rationale in the decision record, especially if you receive a public comment on impacts related to hunting opportunities.*

#### **8.8.4 Cumulative Effects**

The CEQ regulations define cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such actions” (40 CFR 1508.7). The CEQ’s [\*Considering Cumulative Effects Under the National Environmental Policy Act\*](#) provides steps to guide the process of thinking through cumulative effects.

The following sections lay out steps in the cumulative effects analysis. This is not a required format for documentation but is a useful way to think through the process ensuring an adequate and robust analysis.

#### 8.8.4.1 Cumulative Effects Issues

A cumulative effects issue only exists if a proposed action or alternative under consideration impacts the same resource as another separate, outside action or actions. Therefore, the cumulative effects discussion need only discuss those resources that are impacted by the proposed action or alternatives. Be aware that minor direct and indirect effects can potentially contribute to synergistic cumulative effects and may require a more robust analysis.

##### EXAMPLE

*OSMRE could revise its regulations to specifically address the placement of coal combustion residues (CCRs) on SMCRA sites. In that event, the NEPA document must analyze the direct, indirect, and cumulative effects of CCR placement under the proposed regulatory alternatives versus the No Action alternative of continuing under existing regulations. An alternative that would place the CCR material well below the depth of biological activity in soils would result in no uptake of the CCRs into plants growing on the surface and is not expected to have any impacts surface waters available for wildlife, thereby eliminating indirect effects on wildlife from browsing on the plants or water consumption. For this alternative, the NEPA document would not need to discuss cumulative effects on wildlife from other actions that would affect wildlife.*

#### 8.8.4.2 Geographic Scope of the Cumulative Effects Analysis

Establish and describe the geographic scope for each cumulative effects issue (see Section 8.7.1). Describe in your EA or EIS the rationale for establishing the geographic scope. The geographic scope is generally based on the natural boundaries of the resource affected rather than jurisdictional boundaries. The geographic scope will often be different for each cumulative effects issue. The geographic scope of cumulative effects will often extend beyond the scope of the direct effects but not beyond the scope of the direct and indirect effects of the proposed action and alternatives. As noted above, if the proposed action and alternatives will have no direct or indirect effects on a resource, you need not analyze cumulative effects on that resource.

##### EXAMPLE

*If a proposal affects water quality and air quality, the appropriate cumulative effects analysis areas may be, respectively, the watershed and the airshed.*

#### 8.8.4.3 Time Frame of the Cumulative Effects Analysis

Establish and describe the time frame of each cumulative effects issue—that is, define long-term and short-term, and incorporate the duration of the anticipated effects into the cumulative effects analysis. Long-term could be as long as the longest lasting effect. Time frames, like geographic scope, can vary by resource. For example, the time frame for economic effects may be much shorter than the effects time frame for vegetation. Base the time frames on the duration of direct and indirect effects of the proposed action and alternatives, rather than the duration of the action itself. Always explain the rationale for the time frame you choose.

#### 8.8.4.4 Past, Present, and Reasonably Foreseeable Actions

The cumulative effects analysis considers past, present, and reasonably foreseeable future actions that affect the resource of concern within the geographic scope and analysis time frame. In your analysis, you must consider other OSMRE actions, other federal actions, and non-federal (including private) actions ([40 CFR 1508.7](#)).

You must consider past actions within the geographic scope to provide context for the cumulative effects analysis ([40 CFR 1508.7](#)). Past actions can usually be described by their aggregate effect without listing or analyzing the effects of individual past actions (CEQ, [Guidance on the Consideration of Past Actions in Cumulative Effects Analysis](#), June 24, 2005). Summarize past actions adequately to describe the present conditions (*see* Section 8.7.1).

In some circumstances, past actions may need to be described in greater detail when they bear some relation to the proposed action. For example, past actions similar to the proposed action might have some bearing on the anticipated effects from the proposed action or alternative(s). You should clearly distinguish between the analysis related to *direct* and *indirect effects* from past actions and *cumulative effects* from past actions.

You must also consider the effects of present actions occurring within the defined geographic scope ([40 CFR 1508.7](#)). Present actions are actions that are ongoing at the time of your analysis.

You must include reasonably foreseeable future actions within the geographic scope and the analysis time frame ([40 CFR 1508.7](#)). You cannot limit reasonably foreseeable future actions only to those that are approved or funded. On the other hand, you are not required to speculate about future actions. Reasonably foreseeable future actions are authorized by existing decisions, that have funding, those for which there are formal proposals, or that are highly probable, based on known opportunities or trends. Considering reasonably foreseeable development scenarios may greatly assist OSMRE in its cumulative effects analysis. When considering reasonably foreseeable future actions, it may be helpful to ask the following questions:

- Is there an existing proposal, such as the submission of permit applications?
- Is there a commitment of resources, such as funding?
- If it is a federal action, has the NEPA process begun (for example, publication of an NOI)?

Analyzing future actions, such as speculative developments, is not required but may be useful in some circumstances. Including assumptions about possible future actions may increase the longevity of the document and expand the value for subsequent tiering.

#### EXAMPLE

*An EA for an AML construction project may exceed current funding levels and may be phased through several years of construction. The EA would need to include all reasonably foreseeable future phases of the construction in one NEPA analysis, not just the current year's proposed phase. There may exist other AML features within the general area that are outside the reasonably foreseeable future and may be considered speculative. Analyzing those speculative future actions is not required but may be useful in increasing the longevity of the document that could be tiered to for these speculative future actions.*

#### 8.8.4.5 Analyzing the Cumulative Effects

For each cumulative effects issue, analyze the direct and indirect effects of the proposed action and the alternatives together with the effects of the other actions on the same resources, regardless of who is taking or proposes to take the other action. Cumulative effects analysis will usually be addressed separately for each alternative because each alternative will have different direct and indirect effects.

CEQ regulations do not support agencies segmenting their proposals into pieces that result in a lower potential for significant impact if analyzed alone rather than cumulatively – the requirement to analyze cumulative impacts is more comprehensive. A complete picture of the past, current, reasonably foreseeable future, and cumulative influences acting upon a particular environmental resource is essential in making reasonable decisions about the management of that resource. If impact sources currently exist (on public or private land) when combined with impacts from the proposed action, provide both decision-makers and the public with a clear understanding of the “absolute” impact on the resource.

Although a multitude of actions may contribute infinitesimal impacts to a resource that the proposal is expected to affect, only include those with clear impact contributions, or those that can feasibly be analyzed. As a general rule, the farther removed an action is from the project area or the project start date, the less need there is for detailed and exact analysis of the action's cumulative impacts.

The following format may be used in constructing the cumulative effects analysis.

For each cumulative effect issue describe:

- the existing condition (see Section 8.7.1);
- the effects of other present actions;
- the effects of reasonably foreseeable actions;
- the effects of the proposed action and each action alternative;
- the interaction among the various effects described above; and
- the relationship of the cumulative effects to any technical or regulatory thresholds.

The existing condition is defined as the combination of the natural condition and effects of past actions. The natural condition is the naturally occurring resource condition without the effects of human actions. Detailed description of the natural condition may not be possible for some

resources because of incomplete or unavailable information ([40 CFR 1502.22](#)) or may not be applicable for some resources. Describe the effects of past actions, either individually or collectively, to understand how the existing condition has been created.

The analysis of the No Action alternative describes the cumulative effect of past, other present, and reasonably foreseeable actions, without the effect imposed by the proposed action or action alternative(s). The analysis of the proposed action will include the current cumulative effects, as well as the effects of the proposed action, and should demonstrate the incremental difference resulting from the proposed action. Regardless of how you present the analysis, you must be able to describe the incremental differences in cumulative effects as a result of the effects of the proposed action and alternatives ([40 CFR 1508.7](#)).

The cumulative effects analysis provides a basis for evaluating the cumulative effects related to any regulatory, biological, socioeconomic, or physical thresholds. Describe how the incremental effect of the proposed action and each alternative relates to any relevant thresholds.

#### **BEST PRACTICES**

*Case law related to the level of NEPA analysis for direct, indirect, and cumulative impacts related to climate change and greenhouse gas emissions continues to evolve. The Office of the Solicitor has experience and knowledge of the latest trends in this area, and the project solicitor should be consulted in developing an appropriate NEPA analysis for direct, indirect, and cumulative impacts related to climate change and greenhouse gas emissions.*

#### **8.8.5 Mitigation and Residual Effects**

Mitigation measures and environmental commitments needed to reduce impacts below significance should be incorporated into the alternatives, where appropriate. These mitigation measures then become an integral part of the alternative. In other words, if mitigation measures are needed to implement the alternative, the alternative needs to describe the mitigation measures. See Chapter 11 of this handbook for a more detailed discussion of mitigation.

#### **EXAMPLE**

*Stream/wetland mitigation in response to U.S. Army Corps of Engineers Clean Water Act 404 permitting would be included in the proposed action for a permit or AML construction project; whereas, a reduced area of impact on a mining plan to reduce environmental impacts may not be part of the proposed action.*

In an EIS, you must develop and analyze mitigation “even for impacts that by themselves would not be considered significant” ([see Question 19a, CEO, Forty Most Asked Questions Concerning CEO’s NEPA Regulations, March 23, 1981](#)). All “relevant, reasonable mitigation measures that could improve the project are to be identified,” even if they are outside the jurisdiction of the agency ([see Question 19b, CEO, Forty Most Asked Questions Concerning CEO’s NEPA Regulations, March 23, 1981](#)). You must also analyze the effectiveness of mitigation measures proposed, and the resulting impacts if the project were to proceed without mitigation. For instance, it should be clear whether mitigation is integral to the project and therefore included as

part of the alternative or is dependent on factors such as funding or permission from another agency.

CEQ ([40 CFR 1508.20](#)) defines mitigation measures as:

- avoiding the impact altogether by not taking a certain action or parts of an action;
- minimizing impact by limiting the degree of magnitude of the action and its implementation;
- rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- compensating for the impact by replacing or providing substitute resources or environments.

Because EAs and EISs are analytical documents, simply identifying mitigation measures does not commit OSMRE or other involved agencies to adopt or implement them. If mitigation is integral to an alternative, and that is clearly stated, adopting the alternative in the FONSI automatically means the mitigation is required. Any mitigation that is dependent on funding or other factors must be identified as such in the FONSI. Attach a matrix or table to the FONSI to itemize mitigation measures, critical milestones, and identify the responsible party.

Requirements of NEPA other laws such as and SMCRA or MLA should be differentiated. Although including mitigation in the FONSI may not create a legally binding requirement, including it in a SMCRA permit or mining plan decision document will make the requirement legally binding.

## **8.9 Issue-Based Environmental Analysis**

An “issue-based” environmental analysis refers to the process OSMRE uses to identify and eliminate issues from detailed analysis in a NEPA document. The determination is based on each issue’s significance or importance to the decision. Issue-based environmental analysis concentrates the analysis on issues that are most germane to the decision-maker, namely those that are of interest to the public or otherwise central to the proposed decision, and deemphasizes analysis on secondary resources and issues. Using this approach can help meet the page limits and time goals associated with NEPA document preparation established by S.O. 3355.

When conducting an issue-based analysis, it is important to ensure a focused view on an issue identified through internal and external scoping and not a resource (*see* Section 8.3). An issue is a very specific concern regarding effects to a resource from a proposed action, not the resource itself (*see* Section 8.4). An identified issue must relate directly to the purpose and need of the action. This will help guide your analysis in identifying significant issues. As such, issues of critical importance require detailed analysis; where insignificant issues may be eliminated from further detailed analysis (*see* Section 8.8.3.1). Insignificant issues should be summarized within the NEPA document and an explanation provided as to why they were eliminated from further detailed analysis (*see* Section 8.8.3.3) Linking the proposed action, identified purpose and need, and alternatives, with the issue(s) at hand is vitally important in developing a defensible environmental analysis.

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**List of Appendices**

*NONE*

## CHAPTER 9: ENVIRONMENTAL ASSESSMENT

An EA will provide sufficient information to determine if an EIS or a FONSI is needed. An EA should be written in a clear, concise fashion based on the necessary environmental analysis and kept as brief as possible, using referenced and incorporated material as practicable. Every attempt should be made to avoid overly technical language. The text, appropriate tables, and figures should be presented so the decision-makers and the public can readily understand them. It is rare that an EA will be finalized if it indicates that significant effects will result from the proposed action. Typically, once it is determined that a proposed action will have significant impacts that cannot be mitigated, the EA will be stopped and an EIS initiated. The EIS process is discussed in considerable detail in Chapter 10. When this occurs, any analysis prepared for the EA may be used in the EIS and be independently evaluated by OSMRE.

OSMRE is responsible for the adequacy, completeness, and processing of all EAs involving OSMRE decisions. In instances where proponents require OSMRE approval, the proponent will normally supply the appropriate information for any required NEPA document. If a contractor develops an EA for the proponent, OSMRE should participate in the consultation with the contractor before the EA is prepared. In addition, the EA must meet OSMRE standards. The CEQ provides guidance for contracting EAs and EISs at [40 CFR 1506.5\(b\) and \(c\)](#). When a contractor prepares an EA, OSMRE must independently evaluate the information submitted and the environmental analysis for accuracy as the responsible party for the content of the EA. While the CEQ only requires a conflict of interest disclaimer for EISs, we recommend including such statements in your contractor prepared EAs as well.

### 9.1 When to Prepare an EA

An EA must be prepared when the proposed action cannot be statutorily or categorically excluded, when it is unknown whether or not the proposed action would result in potentially significant impacts, or when the proposed action does not meet the EIS criteria listed in 516 DM 13 (*see* Chapter 10 of the handbook for a more detailed discussion of when an EIS is required). If the proposed action would clearly result in significant impacts to one or more resources in the analysis area, you will prepare an EIS without preparing an EA first.

### 9.2 Page Limitations and Timeline for an EA

Per the direction in the August 6, 2018 Deputy Secretary Memorandum - *Additional Direction for Implementing Secretarial Order 3355 Regarding Environmental Assessments*, developing an EA should start as early as possible following definition of the proposed action and can be developed concurrently with other data-gathering activities such as surveying and monitoring (Refer to Chapter 7 for a more detailed description of information gathering practices). If a party other than a Federal agency proposes an action, you must work with that party to develop a schedule with sufficient time for EA preparation and develop a budget for the completion of the EA. The schedule you develop must conform with the time frame for the EA process dictated by [Secretarial Order 3355](#) and its [relevant guidance](#), which is described in greater detail in Chapter 1 of this handbook. EA guidance for implementation of S.O. 3355 directs that all EAs be completed in 180 days. According to this guidance, the 180-day timeline can begin either once

OSMRE receives a completed application from a project proponent or receives or obtains sufficient information to analyze the proposed action; or publishes a Notice of Proposed Rulemaking in the *Federal Register*; or internally determines to pursue action planning.

Keep in mind that an EA's timeline may be significantly affected by the separate processes associated with NHPA compliance, Fish and Wildlife Conservation Act requirements, consultation under the ESA, and others. These factors need to be considered when developing an EA timeline. EA schedules must be entered into the [DOI Tracking Database](#) if it is known or expected that the project cannot be completed within the 180 day Departmental requirement or exceed the required 75 page limit (not including appendices) (See Section 1.6.3 OSMRE Streamlining Requirements for more detailed information on page and time limits).

### **9.3 Public Involvement Requirements for an EA**

The following sections describe public involvement requirements for an EA including scoping, public review of the EA and distribution of the EA.

#### **9.3.1 Scoping**

EA scoping should be separated into two categories: internal (or informal) scoping and external (or formal) scoping. Internal scoping should be conducted by the lead agency to define the potentially significant issues raised by the proposed project and help define the analysis scope of the EA. Internal scoping helps you to formulate the purpose and need; identify connected, similar, and cumulative actions associated with the proposed project; begin preparation of the cumulative effects analysis; determine the appropriate level of analytic documentation; and prepare a public participation strategy. Such informal scoping should always involve appropriate resource specialists within the lead agency as well as other federal, tribal, state, and local government agencies depending upon the complexity of, and issues raised by, the proposed project.

External scoping, or formal public scoping, and associated public review is not required for an EA ([40 CFR 1501.7](#)), but the lead agency is directed by CEQ ([40 CFR 1506.6](#)) to, at a minimum, provide public notice that environmental documents are available for review upon completion. At the EA scoping stage, no document is available; therefore, public notice is not required. If deemed necessary, the agency may publish a notice informing the public that it is preparing an EA for a proposed action. The notice is published in venues such as local newspapers and/or the agency's website.

It is up to the lead agency to determine the need for external scoping and the level at which it is conducted. If the proposed action is likely to generate high levels of opposition, substantial public interest, or one that usually requires an EIS, formal public scoping may include notice and a public comment period, public scoping meeting, or both. When evaluating the need for scoping, consider factors such as: the size or scale of the proposed action; whether the proposal is routine or unique; who might be interested or affected; and whether or not external scoping has been conducted for similar projects and what the results have been. The EA should include the agency's rationale for determining whether or not to conduct external scoping.

If you conduct external scoping, document the process, comments received, issues identified, and how issues and comments were addressed in the development of the EA. You must ensure the public involvement strategy is sensitive to language or cultural barriers of the local communities, which can include holding meetings in ways that accommodate cultural traditions, values, and methods of communication (e.g., visual aids, in-person meetings, interpreters, etc.) You may summarize numerous comments; however, be sure to retain the comments and document their disposition in the Decision File.

All potentially significant issues identified during internal and external scoping should be considered to determine whether or not the issue will be analyzed fully in the EA. In the EA, you must explain your rationale for selecting the scoping issues you carry forward and those issues you have chosen to dismiss.

### **9.3.2 Review and Distribution of the EA**

Similar to scoping, review of the completed EA is separated into two categories: internal and external. Internal review is conducted with a preliminary assessment of impacts on resource areas and helps define the scope of geographic and analytical scope of the proposal. No requirement exists for external or public comment of an EA, but the lead agency is required to provide a public notice that the NEPA document is completed and available for review ([40 CFR 1506.6\(b\)](#)).

The distribution of a completed EA can be a formal or informal process. For example, an EA for a minor routine action may be published via a Notice of Availability (NOA) but without any formal public review process. However, the action may still warrant consultation with various agencies and affected interests, including Indian tribes. For an EA on a complex action with substantial public interest it may be advisable to engage in one or more of the public involvement actions, such as:

- News releases through newspapers, newsletters, and the Internet;
- Allowing the public to comment on the EA and FONSI; and/or
- Public meetings.

Before the release of the EA, the relevant lead agency specialists, cooperating agencies with special expertise or jurisdiction over a part of the proposed project, and other interested federal, tribal, state, and local agencies should conduct an internal review of the document. The agency should make an effort to address all comments received during the internal review and document any associated revisions made to the EA in the Decision File.

The lead agency has the discretion to publish the EA for public review and comment. No minimum number of days is required for the public comment period for an EA, but 30 days is common. As with scoping, the need for a public comment period depends on factors such as: the size or scale of the proposed project; whether the proposal is routine or unique; who might be interested or affected; and whether or not a public review has been conducted of similar projects

and what outcomes were realized by the public comments. Holding public meetings for the proposed project may be advisable if there is a high level of public interest.

Your goal should be to ensure that all interested parties are notified, regardless of the mechanism used. Generally, the NOA for an EA and the request for comments are published in local newspapers, the agency website, social media, and/or mailed as letters to stakeholders requesting project notifications. A public notice can be as informal as a press release or as formal as a *Federal Register* notice, depending upon the specific situation. The EA must be made accessible to the public either through hard copies at pre-identified public locations, hard copies mailed upon request, digital media provided upon request, by a digital format that is compliant with Section 508 of the Rehabilitation Act of 1973, such as a PDF that can be downloaded from OSMRE's website, or other accessible means, as appropriate.

The EA should summarize the public involvement and should include, if applicable, a summary of the public comments received with the total number of comments and main points of concern. A table describing the substantive comments in more detail and agency's responses should be included as an appendix to the EA. The agency should make every effort to respond to all substantive comments received during the public comment period. Any revisions made to the EA as a result of public comments should be noted in the associated responses in the substantive comments appendix. All revisions to the EA should be made before signing the FONSI.

#### **9.4. Contents of an EA ([40 CFR 1508.9](#) and [43 CFR 46.310](#))**

CEQ and DOI regulations require that the EA include, at a minimum, a brief discussion of:

- the proposal;
- the need for the proposal;
- the environmental impacts of the proposed action;
- the environmental impacts of the alternatives considered; and
- a list of agencies and persons consulted.

The EA should be prepared by an interdisciplinary team rather than a single individual. If it is not possible to assemble a team, a range of applicable disciplines should be contacted to provide appropriate information and analysis. This team may include a Project Solicitor.

An EA will reach a conclusion as to whether an EIS or a FONSI should be prepared. An unmitigated FONSI must not contain any statement that describes any impact as significant.

The level of detail and depth of the impact analysis should be no more than that needed to determine if significant impacts will occur. Only those factors of the existing environment that might influence or be significantly affected by the proposed action needs discussion. A statement identifying why other factors were not discussed should be included.

Conclusions and analysis should be based upon an unbiased, objective evaluation of data and information presented in the EA. Opinions, justifications, and unsupported “statements of fact” should be avoided.

Information not considered to be general knowledge should be supported by:

- information that can be found in published material;
- information readily available for review in the area or regional office;
- data collected by OSMRE, other Federal agencies, contractors, or other technically qualified agencies or organizations; and/or
- information incorporated by reference ([40 CFR 1502.21](#)).

You must review the accuracy of all information submitted by applicants, petitioners, proponents, or OSMRE officials. For example, permit application packages contain information on the existing environment and direct and indirect impacts in accordance with permitting requirements found in SMCRA and the Mineral Leasing Act. (See OSMRE regulations, [30 CFR 740.13\(b\)](#)). After drafting the proposed action, you may want to contact the proponent, as necessary, to ensure the EA accurately describes the proposed action and request additional background information if needed.

When preparing an EA, you should draw upon existing analysis by reviewing previous EAs or EISs and tiering or incorporating them by reference as appropriate (*see* Chapter 5 for a more detailed description for using existing environmental documents). Material incorporated by reference should be summarized as appropriately as possible to provide clarity and continuity ([40 CFR 1502.21](#)). In certain cases, you may adopt an existing NEPA document ([40 CFR 1506.3](#)) even if the adopted EA needs to be augmented or supplemented. Reviewing existing NEPA documents also may help you identify issues, provide relevant analysis, and allow you to be technically consistent with comparable situations.

Besides existing NEPA documents, there are other potential sources of information for preparing an EA. These include, but are not limited to:

- A proponent’s permit application package (PAP);
- BLM Resource Recovery and Protection Plan (R2P2);
- BLM Maximum Economic Recovery Report;
- Documentation demonstrating compliance with the applicable requirements of federal laws, regulations, and executive orders other than NEPA;
- Comments, recommendations, or concurrence of other federal agencies and the public;
- Findings, recommendations, and contractual commitments and requirements of BLM with respect to the Federal Coal Lease, the R2P2, and the Mineral Leasing Act;
- Findings and recommendations of the SMCRA state regulatory authority with respect to a permit revision application;
- AML priority documentation forms;
- e-AMLIS problem area descriptions;
- AML eligibility criteria;
- AML project description;

- Site investigation reports; or
- Findings and recommendations of OSMRE with respect to the additional requirements of 30 CFR Chapter VII, Subchapter D ([30 CFR Parts 740](#) to [746](#));

## 9.5 Structural layout of an EA

The following is a format template:

- Title page;
- Table of contents;
- Purpose and Need for the Proposal;
- Proposed Action and Appropriate Alternatives;
- Affected Environment;
- Environmental Impacts;
- Consultation and Coordination; and
- References Cited.

Cases may occur in which a modified outline would facilitate the presentation of environmental information and analyses. Any format, however, must include the required elements discussed in Section 9.4 of this handbook and may be limited to just those five required elements.

### 9.5.1 Suggested Organization and Content of an EA

Below you will find an example of how to organize your EA by chapter. Under each chapter heading you will find suggestions for content to include in that chapter.

- **Chapter 1:**
  - The proposed action: The EA should give a succinct description of the proposed project and any relevant project history.
  - Listing the following information in Chapter 1 of the EA is optional, but may be helpful to fully define the need: Required federal permits, licenses, approvals, and entitlements necessary to implement the project, and ongoing actions that may affect or be affected by the proposed project. This discussion should be kept brief and focused on the need.
  - The need for the Proposed Action: Every EA must contain a statement identifying the need for the proposal (Refer to Section 8.2 of this handbook for a more detailed description of the purpose and need). This section will present a brief statement of what the proposal is and why the action is being considered (i.e., what the underlying needs are to which the agency is responding). You must include the agency's need for the action, and it may be helpful to identify the purpose of the action as well as the proponent's need for the action if the proponent's proposal is triggering the agency action.
  - Once developed, the need statement serves as an important screening criterion for determining which alternatives are reasonable. *See* Chapter 8 Section 2 for a detailed description of the role of the need statement. Develop the agency's need statement

- very early in the NEPA process and include it in scoping. All reasonable alternatives examined in detail must meet the defined purpose and need.
- It can be helpful to include a section in the EA that describes the “Decision(s) to be Made.” Describing the decision to be made clearly spells out OSMRE’s decision space and the focus of the NEPA analysis. In addition, it may serve as a vehicle for describing the nature of other decisions that will be made by other entities in order to implement the proposed action and alternatives.
  - If an EA was released for public comment, this chapter should also include a summary of substantive comments and a description of how OSMRE disposed of those comments, including whether any changes were made to the EA before the FONSI was signed.
- **Chapter 2:**
    - Chapter 2 should include a description of the Proposed Action and Alternatives, including:
      - No Action Alternative (*See* Section 8.6.2 of this handbook for a more detailed description of the No Action Alternative);
      - Proposed Action (*See* Section 8.5 of this handbook for a more detailed description of the Proposed Action and Alternatives); and
      - Other Reasonable Alternatives (*See* Section 8.6 of this handbook for a more detailed description of reasonable alternatives);
    - Alternatives outside the agency’s authority to implement may be considered if reasonable. If such an alternative becomes the preferred alternative, implementation would depend on a change in authorization, a change of the lead Federal agency to one with the appropriate authority, or a transfer of the project to a non-Federal entity. It could also lead to the cancellation of the project. When describing the alternatives, including the No Action alternative, you may discuss one or more of the following items where appropriate:
      - Geographic location of alternatives if substantially different than the Proposed Action and differentiating project features of the alternatives, including legal description, aerial photography, and a map;
      - Amount and ownership of lands to be affected;
      - Area to be disturbed if substantially different than the Proposed Action;
      - Numbers, locations, and photographs or drawings of structures to be constructed, including utilities;
      - Description of project operations;
      - Mitigation and/or restoration plans; and
      - Modifications or removal of existing facilities or structures.
    - Mitigation measures and environmental commitments needed to reduce impacts below significance should be incorporated into the alternatives, where appropriate. These mitigation measures then become an integral part of the alternative. In other words, if mitigation measures are needed to implement the alternative, the alternative needs to describe the mitigation measures. *See* Chapter 11 of this handbook for a more detailed discussion of mitigation.
    - Alternatives Considered but Eliminated from Detailed Analysis: The EA should contain a description of alternatives to the proposed action that were considered but

not analyzed in detail, which may include alternatives recommended by the public or other agencies. You will also explain the reasons for dismissing an alternative in the EA.

- **Chapter 3:**

- Affected Environment (*see* Chapter 8 of this handbook for a more detailed description of the affected environment): An “Affected Environment” section is not required for an EA. However, you may include this section because of its usefulness in analyzing the context and intensity of the impacts. The affected environment chapter explores the existing condition of the human environment in the affected areas. In describing the affected environment, care should be taken to identify the environmental trends that currently exist and the areas of concern that may be impacted by the action or alternatives. The discussion of the affected environment should not simply be an inventory of resources.
- The affected environment discussion should describe only those resource areas that may be impacted by the proposed project and only to the extent necessary to enable an understanding of the intensity of anticipated impacts. A brief discussion of critical environmental issues—such as Historical Properties, Indian sacred sites, environmental justice, cultural resources, and threatened and endangered species—is necessary to show that these issues have been considered, even if there are no impacts or only minor impacts. Where ongoing activities have effects in these areas, the discussion should summarize both the context and intensity of the ongoing effect and what specific ongoing activity is causing the effect.

- **Chapter 4:**

- Environmental Consequences (*see* Chapter 8 of this handbook for a more detailed description of environmental consequences): The “Environmental Consequences” chapter forms the scientific and analytic basis for the comparison of alternatives, including the proposed action and No Action alternative. The analysis should briefly describe facts and information but avoid conclusions about significance; conclusions about significance should be found either in a FONSI or an EIS. It is important that analyses are presented in a clear, concise discussion, and only for meaningful project impacts. If the project will have no impact on critical environmental areas or such issues as those involving wetlands and endangered species, this information should also be stated. Note that all impacts to Cultural and Historical resources, and Environmental Justice need to be considered and addressed, whether minor or potentially significant, in accordance with OSMRE’s [Directive REG 18](#) procedures, and guidance.
- The impact analysis should focus on those resources that may be affected in a significant way by the proposed action. Other resources may need examination as well, depending upon the site-specific nature of the proposal.
- Potential beneficial and adverse impacts should be presented. The EA should address short- and long-term impacts, direct and indirect impacts, irreversible and irretrievable commitments of resources, and residual or net (those remaining after all mitigation measures are implemented) impacts. If appropriate, the EA should also discuss potential cumulative impacts resulting from actions taken by OSMRE, other

Federal agencies, and State and local agencies, and how those impacts relate to the action being considered. *See* Chapter 8 of this handbook for a more detailed discussion of direct, indirect, and cumulative impacts.

- Mitigation should be addressed following the review of impacts for each resource component being evaluated and presented for each alternative. Mitigation measures address impacts not eliminated through avoidance of adverse effects. Mitigation measures necessary to reduce impacts should be considered environmental commitments and should be clearly integrated into the alternatives. *See* Chapter 11 of this handbook for a more detailed discussion of mitigation.

- ***Chapter 5:***

- A list of agencies and persons consulted: This section must include a list of parties consulted including Federal agencies, States and Tribes, cooperating agencies, and other members of the public ([43 CFR 46.155](#)). It should also document field reviews of the project site or location of proposed development, as appropriate. *See* Chapter 1 of this handbook for a more detailed discussion of potential stakeholders to be consulted.
- This section should include a record of compliance with other applicable statutes (ESA, Clean Water Act, etc.) and any public involvement activities. To the extent practicable, efforts should be made to involve appropriate Federal, tribal, State, and local governmental entities, as well as private organizations and individuals with an interest in the proposal ([40 CFR 1506.6](#) and [43 CFR 46.305](#)). This section should document, in chronological order, the meetings, news releases, and other consultation and coordination activities leading to the selection and development of the action or project.
- To the maximum extent possible, an EA should integrate any surveys and studies required by the National Historic Preservation Act, Fish and Wildlife Conservation Act, ESA, other environmental laws and Executive Orders, and other appropriate tribal, State, and local laws. A discussion of related laws and Executive Orders should be included either as an attachment or in Chapter 1. The discussion of related laws and Executive Orders should be integrated with the description of the respective impacted resources.
- A table listing required permits (Federal, tribal, State, and local) necessary to carry out each alternative, along with a determination of who will be responsible for obtaining these permits, should be included in this section of the EA or as an appendix to the EA. Some of the actions that may require permits are as follows:
  - Impacts to water quality;
  - Changes to nonpoint sources of pollution from agriculture, silviculture, mining, and construction;
  - Storage of oil and hazardous substances; and
  - Placing fill in waters of the United States.

- ***References and Appendices:***

- Bibliography or References Cited: A bibliography or references cited section is encouraged. The EA should refer to any methodologies used and should make explicit reference to any scientific or other sources used. Citations of specific topics

- should include the pertinent page number and follow American Psychological Association style guidelines.
- List of Environmental Commitments: A list of environmental commitments for the proposal should be prepared and included in the EA. This list is usually included as an appendix to the EA and contains all mitigation measures integrated into the proposed action. Refer to Chapter 11 of this handbook for a more detailed discussion of mitigation.
  - Distribution List: A distribution list may be included in the consultation and coordination section or as a separate attachment or appendix. The affected and interested parties should be placed on the distribution list. In identifying the “affected” parties, those individuals should be considered who are directly or indirectly affected, as well as those who have expressed an interest in the action.

## 9.6 Content of a FONSI

CEQ regulation [40 CFR 1508.13](#) defines a FONSI as a: “document by a Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded, will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.”

The FONSI is an agency finding supported by the impacts discussion in the EA. The FONSI does not authorize implementation of the proposed action; it merely states the decision about the significance of impacts. The FONSI should explicitly address every impact identified in the EA and present reasons why those impacts are not significant for the preferred alternative. It can be useful to discuss significance in terms of the context and intensity of the impact ([40 CFR 1508.27](#)). Conclusions about the intensity of impacts should be expressed as briefly and concisely as possible and should cover the major issues found in the EA.

Topics not covered by the analysis in the EA should not be introduced in the FONSI. If significant new environmental information is developed or plans are substantially changed between the time the EA is prepared and the FONSI is scheduled to be signed, the EA should be revised to include the new information before the FONSI is signed. Once the FONSI is signed, new information or a modification to the proposal before the action is completed should trigger a review of the EA/FONSI. This review could result in a determination that no new analysis is needed, otherwise known as a finding of no new significant impact (FONNSI), a revision of the existing EA/FONSI, a new EA, or (very rarely) an EIS, depending upon the site-specific circumstances.

Mitigation measures and other environmental commitments should be described in the FONSI (See Section 9.7 When to Prepare a FONSI for more detailed information on the mitigated FONSI). The FONSI must note any other relevant environmental documents related to the findings and must be signed and dated by the decision-maker ([40 CFR 1501.7\(a\)\(5\)](#) and [40 CFR 1508.13](#)). No action can be taken until there is a final FONSI that addresses the entire proposed action.

FONSIs may be approved and signed by the Field Office Director ([OSMRE Directive OPM-5](#))

## 9.7 When to prepare a FONSI

If, based on the EA, the responsible official decides that the impacts of the proposed action are not significant and do not warrant preparation of an EIS, a FONSI will be prepared.

There are three situations when a FONSI is prepared:

- EA analysis shows that the action would have no significant effects.
- EA analysis shows that the action would have no significant effects beyond those already analyzed in an EIS to which the EA is tiered (see Chapter 5 for a more detailed description of tiering). You may find that your action has significant effects and still reach a finding of no new significant impact (FONNSI), provided that those significant effects were fully analyzed in the EIS to which your EA tiered. See Chapter 5 of the handbook for a more detailed discussion of tiering. In this case, a FONNSI would be prepared, and it is recommended that you state in the FONNSI that there are no significant impacts beyond those analyzed in the EIS to which this EA is tiered.
- EA analysis shows that mitigation measures are available, can be enforced, and will reduce effects below significance.

An agency can also use mitigation allowing the agency to comply with NEPA's procedural requirements by issuing an EA and FONSI, or "mitigated FONSI," based on the agency's commitment to ensure the mitigation that supports the FONSI is performed, thereby avoiding the need to prepare an EIS ([40 CFR 1508.20](#)).

## 9.8 Public involvement requirements for a FONSI

You must notify the public of the availability of an EA and any associated FONSI once they have been completed. ([43 CFR 46.305\(c\)](#); [40 CFR 1506.6\(b\)](#)). A signed FONSI, including the attached EA, should be distributed to appropriate Federal, State, and local agencies; Indian tribes; affected Indian Tribes; individuals; organizations; and agencies involved in the preparation of, or who commented on, the EA, and to the general public, upon request. This notice may be accomplished by posting the FONSI in a version that is compliant with Section 508 of the Rehabilitation Act of 1973 to the OSMRE website, if appropriate. However, the methods for providing public notification and opportunities for public involvement are ultimately at the discretion of the Responsible Official. ([43 CFR 46.305\(a\)](#); [43 CFR 46.30](#)).

Except in limited circumstances described below, comments on a FONSI do not need to be solicited. ([43 CFR 46.305\(c\)](#)). Moreover, neither scoping on an EA, nor publication of a "draft" EA are required. ([43 CFR 46.305\(a\)\(2\)](#); [\(b\)](#)). Notwithstanding, you may seek comments on an EA if you determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants, and you may revise the EA based on comments received without need of initiating another comment period. ([43 CFR 46.305\(b\)](#)). If, based on your EA, you anticipate issuing a FONSI, you may also release an unsigned FONSI with the EA, if you choose to release the EA for public comment. If you choose to release an unsigned FONSI with the EA for public comment, you should make clear that no final decision on a FONSI will be made until

the public review is completed and all comments considered.

The regulations do not specify the length of time that the EA or FONSI should be made available for public comment; you should use your discretion to base this decision on project specific factors. Consider the complexity of the project and issues, as well as the level of public interest, in determining the length of review and comment period. Under typical circumstances, an appropriate length of time for a public comment period for an EA would be no less than 7 days and no more than 30 days.

In limited circumstances, some FONSI must be made available for a 30-day public review before the determination of whether to prepare an EIS. Those circumstances exist when: (1) The proposed action is, or is closely similar to, one which normally requires the preparation of an EIS under the procedures adopted by the agency pursuant to [40 CFR 1507.3](#), or (2) The nature of the proposed action is one without precedent. ([40 CFR 1501.4 \(e\)\(2\)](#); [40 CFR 1501.4 \(e\)\(1\)](#)) and CEQ *“Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact”* (Jan. 14, 2011). A 30-day minimum public review is also recommended if or when:

- The proposal is a borderline significant (such as when there is a reasonable argument for preparation of an EIS);
- It is an unusual case, a new kind of action, or a precedent-setting case, such as a first intrusion of even a minor development into a pristine area;
- Scientific or public controversy exists over the effects of the proposal;
- The proposal would require the use of a mitigated FONSI; or
- It involves a proposal that is similar to one that normally requires preparation of an EIS.

You must also allow a period of public review of the FONSI if the proposed action is constructed in a wetland or is located in a floodplain. ([Question 37b, CEQ, \*Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981, citing E.O. 11990, sec. 2\(b\) and E.O. 11988, sec. 2\(a\)\(4\)\*](#)).

## 9.9 Structural Layout of a FONSI

The following organizational structure can be used to ensure that all the necessary elements are included to allow the agency to show the decision-maker and interested public that the preferred alternative would not result in significant impacts.

- **Introduction** - Succinctly describe the project history/background to include, but not limited to, the most current description of the proposal.
- **Statement of Environmental Significance of the Preferred Alternative** - Succinctly disclose that the preferred alternative would not have significant impacts and that an EIS is not required. The FONSI must also disclose all action alternatives evaluated in the EA and how the preferred alternative was selected.
- **Reason** - Re-state the need. Provide a brief description of the preferred alternative. Describe the context and intensity (per CEQ) and provide an explanation for each of the 10 significance criteria defined in [40 CFR 1508.27\(b\)](#). Rationale and supporting

information must be incorporated by reference into the FONSI from the EA (*See* Chapter 8 for a more detailed description of supporting information).

- ***Mitigation Measures*** - Any mitigation measures that OSMRE has committed to enforcing should be described in this section.
  - ***Signature Block*** - The appropriate official's signature must be placed here to complete the NEPA process.
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### **List of Appendices**

*NONE*

## CHAPTER 10: ENVIRONMENTAL IMPACT STATEMENT

An EIS provides the decision-maker and the public with a fair and full discussion of significant environmental impacts, both beneficial and adverse, that would result from a proposed action and its reasonable alternatives ([40 CFR 1502.1](#)). An EIS should provide concise, clear, and to the point analyses and conclusions that are helpful to the decision-maker. Technical analyses and data may be an important part of EIS preparation but generally are not included in the text; you should summarize such material in the text and place any material needed to substantiate statements in an appendix.

Once you determine that an EIS will be prepared, you should designate a Project Manager who will be responsible for managing the EIS preparation. You should then assign an interdisciplinary team of resource specialists to assist with EIS preparation. The Project Manager should contact the HQ NEPA Coordinator (s) and Regional or Field Office Solicitor's Office about the decision to prepare an EIS.

If you plan to use a third-party contractor to prepare the EIS, *see* Chapter 4 for more details on acquiring a contractor to assist with preparation of the EIS.

### 10.1 When to Prepare an EIS

OSMRE will prepare an EIS in three situations.

- First, if you expect a proposed action to have significant impacts not fully covered in an existing EIS, you must analyze those impacts in a new or supplemental EIS. The actions in the list below have been identified by OSMRE as normally requiring preparation of an EIS due to their potential to have significant impacts ([516 DM 13.4\(A\)](#)). Although this list describes actions normally requiring an EIS, you may choose to prepare an EA for any of these actions if “it is anticipated that an EIS is not needed based on potential impact significance[.]” ([516 DM 13.4\(B\)](#)).
  - Approval of a proposed mining and reclamation plan that includes any of the following:
    - Mountaintop removal operations;
    - Mining within high use recreation areas;
    - Mining that will cause population increases that exceed the community's ability to absorb the growth; or
    - Mining that would require a major change in existing coal transportation facilities.
  - Approval of a proposed mining and reclamation plan for a surface mining operation that meets the following:
    - The environmental impacts of the proposed mining operation are not adequately analyzed in an earlier environmental document covering the specific leases or mining activity; and
    - The area to be mined is 1280 acres or more, or the annual full production level is 5 million tons or more; and
    - Mining and reclamation operations are proposed to occur for 15 years or more.

- Second, you must also prepare an EIS if, after preparation of an EA, you determine that the effects of the proposed action would be significant and cannot be mitigated below the level of significance. If you determine during preparation of an EA that the proposed action would have significant effects and those effects cannot be mitigated below the level of significance, you should not finish the EA before beginning preparation of an EIS.
- Third, OSMRE may elect to prepare an EIS for an action that does not have significant effects if the EIS would assist in planning or decision-making. In such cases, you will explain in the Notice of Intent and the EIS why you are electing to prepare an EIS.

## 10.2 Time Frame for an EIS

You will begin preparing an EIS as early as possible after you have a defined proposed action. Once a clear proposed action has been developed OSMRE should begin reviewing existing data and reports, identify data gaps, and begin any necessary data collection. If the EIS analyzes a project submitted by a proponent, or if a party other than a Federal agency proposes an action, you must work with that party to develop a schedule with sufficient time for EIS preparation and develop a budget for the completion of the EIS. The EIS timeframe process is dictated through Secretarial Order 3355 and the Department of the Interior NEPA Streamlining Initiative, which is described in greater detail in Chapter 1 of this handbook. In accordance with Secretarial Order 3355, an EIS must take no more than one year to complete (through issuance of the ROD) from the release of the NOI. The time frame can be significantly affected by the separate processes associated with NHPA compliance, consultation under the ESA, and others. These factors should be taken into consideration when developing a timeline. OSMRE is required to upload all EISs into the [Office Of Environmental Policy And Compliance Environmental Management Information System \(EMIS\)](#). In order to enter a new EIS into EMIS you will need login information which can be requested for first time users through the EMIS Login page. The NEPA database requires you to enter the following information for a new EIS including, but not limited to:

- Project Title;
- Bureau/Office;
- Project Location;
- Project Status;
- Project Manager Contact Information;
- Brief Project Description;
- Bureau NEPA Team Members; and
- Important EIS Milestones (NOI, DEIS, FEIS, ROD).

The NEPA practitioner will be responsible for ensuring that the information in EMIS remains up to date.

## 10.3 Public Involvement Requirements of an EIS

NEPA requires that environmental information is available to public officials and citizens before decisions are made or before actions are taken ([40 CFR 1500.1](#)). NEPA requires that agencies

make diligent efforts to involve the public in preparing and implementing their NEPA procedures. The level of public involvement will vary depending on the geographic location, size, and type of project OSMRE is analyzing. Commonly in EISs, public involvement includes scoping, release of the Draft EIS, release of the Final EIS, and release of the ROD ([40 CFR 1506.6](#)).

### 10.3.1 Scoping

Scoping is the process required by CEQ that obligates OSMRE to solicit input on the issues raised by and effects of a proposed action. The intent of scoping is to focus the analysis in the EIS on significant issues and reasonable alternatives, to eliminate extraneous discussion, and to reduce the length of the EIS.

EIS scoping should be separated into two categories: internal (or informal) scoping, and external (or formal) scoping. Internal scoping should always involve appropriate resource specialists within the lead agency as well as other federal, tribal, state, and local government agencies depending upon the complexity of, and issues raised by, the proposed project. Internal scoping helps you to formulate the purpose and need; identify connected, similar, and cumulative actions associated with the proposed project; begin preparations for the cumulative effects analysis; determine the appropriate level of documentation; and prepare a public participation strategy. Internal scoping should include the project solicitor. External scoping should always involve notification of the project to the public and solicitation of comments on the scope of analysis and potential alternatives through issuance of an NOI.

The CEQ regulations at [40 CFR 1501.7](#) require the OSMRE to do the following actions in connection with the scoping process:

- Invite participation from affected federal, state, local, and tribal organizations and interested persons;
- Determine the scope or extent of the EIS and the significant issues to be analyzed (scoping is valuable in identifying connected, cumulative, and similar action);
- Eliminate those issues raised that are not related to potentially significant impacts or those that have been covered in other environmental documents;
- Make assignments for EIS preparation between the lead and cooperating agencies;
- Identify any environmental documents being prepared that have relevance to, but are not part of, the scope of the potential EIS;
- Identify other environmental review and consultation requirements related to peripheral regulations, directives, and/or policies; and
- Discuss the relationship between the timing of the EIS preparation and the agency's tentative planning and decision-making schedule.

***Internal Scoping - Develop Work Plan*** - Internal scoping is an opportunity for OSMRE to begin collecting information about existing environmental documentation, the proposed action and alternatives, and to outline how the entire EIS process should be conducted. A useful tool during internal scoping is a work plan (*See Section 4.3.1 Work Plan and Schedule of this handbook for more detailed information on the work plan*).

***Internal Scoping - Develop a Strategy for Public Involvement and Interagency/Intergovernmental Coordination and Consultation***

Public involvement and an interagency or intergovernmental coordination and consultation strategy is an integral part of the EIS process. Informal internal scoping may occur before the formal scoping period begins.

Your public involvement strategy will identify: tribes, states, local governments, individuals, organizations (and other agencies known to be interested or affected by the proposed action); possible cooperating agencies (*see* Chapter 12); schedules for scoping (including public meetings and timing for electronic and postal mail notifications); the process for tracking and recording public involvement; and contact lists. You must ensure the public involvement strategy is sensitive to language or cultural barriers of the local communities, which can include holding meetings in ways that accommodate cultural traditions, values, and methods of communication (e.g., visual aids, in-person meetings, interpreters, etc.).

In preparing your public involvement strategy, you must also be aware of the requirements of the Federal Advisory Committee Act of 1972 (FACA). *See* Chapter 12 for additional information on the FACA or contact the Office of the Solicitor.

The public involvement strategy will likely be updated during the EIS process.

***External Scoping*** - Scoping provides valuable information in identifying issues related to cumulative effects. CEQ regulations at [40 CFR 1501.7](#) require OSMRE to hold an “early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” Formal public scoping begins following publication of an NOI for an EIS. Public notice must be provided for any EIS-related meetings or hearings ([40 CFR 1506.6\(b\)](#)). No guidance is provided by the CEQ on the length of scoping periods; however, OSMRE should exercise its discretion in determining the appropriate amount of time for a comment period, and articulate its rationale for why that amount of time chosen is appropriate.

In addition to publishing the NOI in the *Federal Register*, a notice announcing the beginning of the formal scoping process should be posted on the agency website, published in local newspapers, announced on local radio stations, flyers posted in local community, and mailed to interested agencies, organizations, and other stakeholders. OSMRE must develop a mailing list for interested agencies, organizations, and other stakeholder letters. The mailing list can be developed using previous OSMRE project mailing lists, public comments received on similar OSMRE projects, and from cooperating agency mailing lists. The mailing list should be updated to reflect any recent changes (including changes to elected leaders) before distribution and be continually updated throughout the project based on new information or requests from the public. In addition, you may announce the comment period through social media platforms. OSMRE must prepare a communications plan and press release for the OSMRE Office of Communications. The communications plan outlines the date of release, notification letters, OSMRE tweets, newspaper notices, and press releases to be issued. The OSMRE Office of Communications is responsible for coordinating the release of the tweet(s) and press release.

***External Scoping - Publish the Notice of Intent (NOI) to Prepare an EIS*** - The NOI process begins with a determination that an EIS will be prepared. The Project Manager must prepare a Notice of Intent for publication in the *Federal Register* ([40 CFR 1501.7](#) and [1508.22](#)). The NOI must be published before the formal scoping process for the EIS begins ([40 CFR 1501.7](#)). The NOI is published by OSMRE and is not filed through EPA (unlike the filing of the Notice of Availability (NOA) for the Draft and Final EISs). The preparing office will send a copy of the NOI to DOI's OEPC. The NOI should be sent to sister bureau agencies pursuant to page 3 of ESM 13-2. Note that non-delegated EIS notification to OEPC should occur. The Project Manager will send a copy of the NOI to OSMRE HQ, which will then send the NOI to DOI's OEPC. The NOI documentation must contain:

- the EA, if prepared;
- other supporting analyses or documents, if prepared; and
- the *Federal Register* NOI.

The NOI may be combined with other notices related to the proposed action if such notices are published in the *Federal Register*.

Publishing a NOI in the *Federal Register* begins the formal scoping process and serves as the official legal notice that OSMRE, and other agencies if there are cooperators, are preparing an EIS. As required by [40 CFR 1508.22](#), the NOI must include:

- A description of the draft proposed action and possible alternatives, if available. For some OSMRE-initiated actions, where the proposed action has not yet been developed in detail, the reason for initiating the EIS must be clearly stated.
- A description of the agency's proposed scoping process; this should include, when and where any scoping meetings will be held. If the time and place of scoping meetings is not yet known, the NOI must state how the time and place will be announced.
- The name and address of the OSMRE contact for the proposed action and EIS.

A revised NOI may be required if any substantial changes are made to the proposed action or if substantial new circumstances or information arise that relate to the proposal or its impacts, such that OSMRE would essentially be starting over with the NEPA process. Minor changes may be addressed in the NOA for the Draft EIS.

The DOI Memorandum, "[NEPA Document Clearance Process, April 27, 2018](#)," outlines the process for submitting the NOI and associated materials for review and approval to obtain clearance to publish the NOI in the *Federal Register*. Any proposed agency action that is determined to require agency review under NEPA must be reviewed according to the procedures outlined in the memorandum. In accordance with the memorandum, the NOI is under Stage 2: Notice of Intent. Stage 2 Clearance requires the Project Manager to share the following items with the DOI Review Team:

- NOI text;
- Briefing PowerPoint presentation;
- Maps;

- 1-2 page project description consistent with the briefing materials; and
- Draft congressional notification letter.

The DOI Review Team has 3 business days to provide comments on the NOI or object to its publication.

### **10.3.2. Distribution of the Draft EIS and the Departmental Document Clearance Process**

You must provide public notification of the Draft EIS availability, and the notification must include publication of a NOA in the *Federal Register* ([40 CFR 1506.6\(b\)](#)). DOI's Memorandum "NEPA Document Clearance Process, April 27, 2018" outlines the process for submitting the Draft and Final EIS and NOA and associated materials for review and approval to obtain clearance to publish the NOA in the *Federal Register*. Any proposed agency action that is determined to require agency review under NEPA must be reviewed according to the procedures outlined in the memorandum. In accordance with the memorandum, the Draft EIS is under Stage 3: Draft EIS Development Briefing and Stage 4: Draft EIS and NOA Clearance. Under Stage 3 Clearance, following the close of the scoping period the project lead must prepare and schedule an oral briefing to the inform the DOI Review Team of the planned development of the Draft EIS. "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." Under Stage 4 Clearance, after completion of the administrative Draft EIS, the Project Manager will provide the DOI Review Team with an electronic copy of the Draft EIS and schedule an oral briefing. The briefing will include an overview of the following:

- Proposed action;
- Purpose and need;
- Alternatives;
- Salient environmental impacts and resource conflicts;
- Significant opportunities and hurdles that exist in completing the project;
- The Secretary's priorities and how they relate to the proposed action;
- Resolution of resource conflicts;
- Land-use restrictions;
- Transportation or access limitations;
- Elected official views; and
- Inter-jurisdictional considerations.

No content or format requirements exist for an NOA other than those associated with the preparation of notices for publication in the *Federal Register*. In addition to announcing the availability of a document and the public review period, where applicable, the NOA generally identifies the purpose and need of the action, describes the proposed action and alternatives, and indicates the dates and location of public meetings on the document.

The public comment period for a Draft EIS must be at least 45 days ([40 CFR 1506.10 \(c\)](#)). A press release is usually prepared for national media, local media, or both to announce the availability of the Draft EIS and to announce any public meetings or hearings. The OSMRE Project Manager must prepare a communications plan and press release for the OSMRE Office

of Communications. The communications plan outlines the date of release, notification letters, OSMRE tweets, newspaper notices, and press releases to be issued. The OSMRE Office of Communications is responsible for coordinating the release of the tweet(s) and press release. The OSMRE regional office is responsible for coordinating the release of the letters, radio announcements, community flyers, and newspaper notices.

You may hold public meetings or hearings to receive comments on the Draft EIS. You must maintain records of public meetings and hearings, including a list of attendees (as well as addresses of attendees who wish to be added to the mailing list) and notes or minutes of the proceedings in the decision record. Public meetings are the most common type of public outreach conducted by OSMRE for a Draft EIS. There are various ways to organize public meetings to suit the needs of the individual project. Consult [455 DM 1](#) for procedural requirements related to public hearings. The Department Manual states that notice of a meeting should be published in the *Federal Register* at least 30 days before the date of the meeting; OSMRE should thoroughly consider all aspects of the meeting and project in order to obtain the maximum amount of information and views from the public with reasonable dispatch which will afford maximum participation by the public. Also check individual program guidance to determine any program specific requirements for public meetings and hearings (e.g., NEPA related public meetings can be coordinated to occur at the same time as public hearing requests for SMCRA significant revisions or BLM Fair Market Value).

Provide hard or electronic copies (such as DVDs, flash drives, or other electronic media) of the Draft EIS according to the planned distribution as outlined in the project's work plan (e.g., mailing to local repositories for the public to read and for those on the mailing list that have indicated they require a hard copy or a certain type of electronic media). Plan to distribute hard or electronic copies of the Draft EIS before or on the same day copies are published in the *Federal Register* by EPA and OSMRE. OSMRE HQ Program Support Division (PSD) will file the Draft EIS with the EPA for publication in the *Federal Register*. The Draft EIS is filed with the EPA through the e-NEPA portal. The EPA has specific filing guidance on its [website](#). Requirements include:

- PDF files submitted must be no greater than 50MB (if they are larger they will need to be broken down into smaller files by chapters or subchapters);
- Use the Full EIS Title as the File Name; and
- All documents must be searchable, contain metadata, and include bookmarks.

The date the EPA notice appears in the *Federal Register* initiates the public review period. OSMRE will issue its own NOA in the *Federal Register* the same day as it is published by EPA. To allow posting on the OSMRE website, ensure that the NEPA documents are fully compliant with Section 508 of the Rehabilitation Act of 1973 ([29 U.S.C. § 794d](#)).

**Issuing the Final EIS** - Once the Final EIS is prepared, you must print it, file it with the EPA, and distribute it to the public. You must provide public notification of the availability of the Final EIS, and that notification must include publication of a NOA in the *Federal Register* for actions with effects of national concern ([40 CFR 1506.6\(b\)](#)). The date the EPA notice appears in the *Federal Register* initiates the required minimum 30-day availability period. Although this is

not a public comment period, you may receive comments. If you receive any comments during the availability period, you should review them to determine if they have merit. For example, if any of the comments identify significant new circumstances or information relevant to environmental concerns that affect the proposed action, the decision-maker must determine whether to supplement the Draft or Final EIS or if minor changes can be made to the FEIS. In addition, you may choose to respond to comments in the ROD. All comments received on the Final EIS should be retained in the Decision File.

Also note that while you may have requested comment from cooperating agencies during internal reviews of the administrative Draft EIS and Final EIS, you do not need to delay preparation and issuance of the Final EIS when such agencies do not comment within the prescribed time frame ([43 CFR 46.415](#)).

#### **10.4 Content and Structural Layout of an EIS**

This section outlines a suggested EIS format, although the specific elements and their order should remain flexible. For example, in some instances it may be desirable to combine chapters three and four into a single chapter.

Per the DOI's Memorandum "[Additional Direction for Implementing Secretary's Order 3355, April 27, 2018](#)," the text of an EIS should not exceed 150 pages. For proposals of unusual scope or complexity, the lead agency can submit a page-limit waiver requesting approval to increase the page limit of the EIS to a maximum of 300 pages. See Chapter 1 of the handbook for a more detailed discussion of the Memorandum.

**Front Page** - The front page will not exceed one page and will include:

- Name of Lead Agency(s);
- Project Title;
- Stage of EIS (Draft or Final);
- Date (Month/Year);
- Lead Agency(s) Address; and
- Cost and hours of preparing the EIS (includes cost of Applicant, Contractor, and Agency).

**Cover Sheet** - The cover sheet will not exceed one page and will include:

- List of responsible agencies including the lead agency and any cooperating agencies;
- Title and location of the proposed action that is the subject of the EIS;
- Name, address, and telephone number of the OSMRE contact person;
- Designation of the EIS as a draft, final, or supplemental;
- One-paragraph abstract of the EIS that identifies significant impacts and alternatives to the proposed action or proposal; and
- Date by which comments must be received. ([40 CFR 1502.11](#))

You may choose to include the name and title of the person responsible for preparing the EIS

(i.e. OSMRE Project Manager) and the decision-maker for the action.

**Dear Reader Letter** - You may use a letter signed by the decision-maker responsible for preparing the EIS to request review and comment on the draft. You may use this letter to inform the reader of other details pertinent to the review. For example, if you anticipate an abbreviated Final EIS, the letter may suggest that the reader retain the draft for reference. Make sure you include the appropriate privacy language. Be specific about what you want the reader to focus on.

**Executive Summary** - An EIS must contain a summary identifying the areas of controversy (including issues raised by agencies and the public), the issues to be resolved (including the preferred choice among alternatives), and the major conclusions of the analysis. The summary normally must not exceed 15 pages, and will focus on the key points of each section ([40 CFR 1502.12](#)). A suggested format for the Executive Summary:

- Section 1 Background and Overview
- Section 2 Purpose and Need
- Section 3 Agency Authority and Actions
- Section 4 Alternatives Analyzed
- Section 5 Protective Measures, Standard Operating Procedures, and Best Management Practices Applicable to All Action Alternatives
- Section 6 Comparison of Potential Environmental Effects of Each Alternative
- Section 7 Mitigation Measures
- Table: Impacts of Alternatives by Resource Area

**Table of Contents** - Ensure that the table of contents is sufficiently detailed to allow the reader to quickly locate major subject matter in the EIS, particularly specific impact topics and alternatives analyzed in the document. This section should list Chapters and Sections, Appendices, Tables, and Figures.

**Chapter 1 Purpose and Need** - This chapter includes the following:

- Purpose and need and identification of the decisions to be made. *See* Chapter 8 of the handbook for a more detailed discussion of purpose and need;
- General project location, including maps when appropriate;
- Major authorizing laws and regulations;
- A brief summary of the scoping report should be included in Chapter 1. After scoping has finished, you will prepare a scoping report that discusses the issues raised during the scoping process, the issues identified in scoping that will be addressed in the EIS, the issues identified in scoping that will not be addressed in the EIS and why they will not be addressed, a list of participants in the scoping process, and a summary of the substantive comments raised of those participants;
- Explanation of the relationship of the proposed action to OSMRE policies, plans, and programs and to non-OSMRE policies, plans, and programs—including discussions of any land use planning or zoning statutes or requirements that may affect or limit the proposal. You must identify or reference any germane land use planning or zoning

statutes or requirements ([40 CFR 1502.16\(c\)](#), [40 CFR 1506.2\(d\)](#)). An exhaustive list of all applicable laws and regulations is not appropriate;

- List of all federal permits, licenses, and other entitlements that must be obtained in implementing the proposal ([40 CFR 1502.25\(b\)](#)). You may also list authorizing actions by State and local entities. To the fullest extent possible, the environmental analyses for these related permits, licenses, and approvals must be integrated and performed concurrently ([40 CFR 1502.25](#), [40 CFR 1506.2\(b\)](#)); and
- Table listing the issues considered for analysis (and issues identified, but not analyzed) which may be raised by the public, other agencies, or OSMRE. Issues identified but not carried forward for analysis should include a brief statement or reference to supporting documentation on why they were not analyzed.

A suggested format includes:

- Section 1.1 Introduction
- Section 1.1.1 Document Structure
- Section 1.1.2 Permit Review Process
- Section 1.2 Project Location
- Section 1.3 Background and Overview
- Section 1.4 Purpose and Need, Decision to Be Made
- Section 1.5 Agency Authority and Actions
- Section 1.6 Public Participation (Scoping and Outreach)
- Section 1.7 Issues

**Chapter 2 Proposed Action and Alternatives** - An EIS must describe the proposed action and alternatives ([40 CFR 1502.14](#)). See Chapter 8 of the handbook for a more detailed discussion of the Proposed Action and Alternatives. The EIS must consider a range of reasonable alternatives, including the Proposed Action and No Action alternative, and provide a description of alternatives eliminated from further analysis (if any exist) with the rationale for elimination ([40 CFR 1502.14\(a\)](#)). The CEQ regulations direct that an EIS include a description of the No Action alternative ([40 CFR 1502.14\(d\)](#)). See Chapter 8 of the handbook for a more detailed discussion of the No Action Alternative. The No Action alternative is the only alternative that must be analyzed in an EIS that may not respond to the purpose and need for the action.

This chapter must also document:

- Design features that would minimize potentially significant impacts ([40 CFR 1502.14\(f\)](#));
- The Agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference ([40 CFR 1502.14\(e\)](#)); and
- Summary of effects (usually in a table) ([40 CFR 1502.14](#))

A suggested outline:

- Section 2.1 Current Operations
- Section 2.2 Alternative 1 – No Action

- Section 2.3 Alternative 2 – Proposed Action
- Section 2.4 Alternative 3
- Section 2.5 Alternatives Considered but Eliminated from Further Analysis
- Section 2.6 Regulatory Framework, Protective Measures, Standard Operating Procedures, and Best Management Practices Applicable to All Action Alternatives
- Section 2.7 Summary of Impacts by Alternative (Table), Identification of Preferred Alternative

***Reasonable Alternatives for an EIS*** - The CEQ regulations direct that an EIS “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated” ([40 CFR 1502.14\(a\)](#)); *see also* [42 U.S.C. § 4332\(2\)\(C\)\(iii\)](#)).

The CEQ regulations also direct that an EIS “include reasonable alternatives not within the jurisdiction of the lead agency” ([40 CFR 1502.14\(c\)](#)). *See* Chapter 8 of the handbook for a more detailed discussion of Reasonable Alternatives.

When multiple agencies are cooperating to develop a single EIS for several agency-specific decisions, the alternatives should be developed to ensure that each agency will be able to develop a joint or its own ROD from the joint Final EIS.

***Features Common to All Alternatives*** - Describe features that are common to all alternatives. These features need only be described in detail once. For example, identify common features in the description of the proposed action and cross-reference the discussion of each alternative to which they apply. Another option is to describe common features under a separate heading. Common features typically include standard operating procedures and other OSMRE requirements prescribed by law, regulation, or policy. This may also include a description of relevant laws, regulations, required permits, licenses, or approvals.

***Agency Preferred Alternative*** - The Draft EIS should identify the preferred alternative, and the Final EIS must do so (*see* [40 CFR 1502.14\(e\)](#), [43 CFR 46.425](#)).

The identification of a preferred alternative does not constitute a commitment or decision in principle, and no requirement exists to select the preferred alternative in the ROD. The identification of the preferred alternative may change between a Draft EIS and Final EIS. Selection in the ROD of an alternative other than the preferred alternative does not require preparation of a supplemental EIS if the selected alternative was analyzed in the EIS. In any case, you must provide the rationale for choosing the alternative selected in the ROD ([40 CFR 1506.2\(b\)](#)).

Various parts of separate alternatives analyzed in the Draft EIS can also be “mixed and matched” to develop a complete alternative in the Final EIS as long as the reasons for doing so are explained and the effects are adequately covered in the Final EIS.

When an EIS is prepared jointly with another agency, the lead agency with responsibility for preparing the EIS, and ensuring its adequacy, is responsible for identifying the agency’s

preferred alternative (see *Question 4c, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). Similarly, when OSMRE as the lead agency works with cooperators and other interested parties, OSMRE's goal is to select an alternative that is acceptable to all cooperating agencies; however, the selection of the preferred alternative in the EIS is ultimately OSMRE's decision (see Chapter 12). Cooperators and other interested parties can express their preferences about the alternatives through scoping and comments on the Draft EIS. When working with other federal agencies, OSMRE may occasionally prepare an EIS as a "joint lead" agency ([40 CFR 1506.2\(b\)](#)). In such circumstances, the joint lead agencies should attempt to reach a consensus about the preferred alternative. If consensus cannot be reached, we recommend that each joint lead agency clearly identify their preferred alternative and explain the basis for their preference and why consensus could not be reached. See Chapter 12 of the handbook for a more detailed discussion of coordination with other entities during the NEPA process.

**Chapter 3 Affected Environment** - You must provide a brief description of the environment likely to be affected by the proposed action or alternatives. Limit the description of the affected environment to that information relevant to understanding the effect(s) of the proposed action or alternative. See Chapter 8 of this handbook for a more detailed discussion of the Affected Environment and Use of Relevant Data. You may present the affected environment description as its own section, or combined with the environmental effects section. If the EIS will be used to document compliance with any supplemental authorities, it may be necessary to provide a description of the resources of concern. A general outline:

- Section 1 General Setting
- Section 2 Description of Current Environment for Resources to be Analyzed (Baseline). (Those issues identified in the above Chapter 1 example as "not be analyzed further", do not need to be described in this Section.)
  - Topography and Physiography
  - Geology, Minerals, and Paleontology
  - Air Quality
  - Hydrology
  - Alluvial Valley Floors
  - Wetlands and Riparian Zones
  - Soils
  - Public Health and Safety
  - Vegetation
  - Fish and Wildlife
  - Special Status Species (including threatened and endangered species)
  - Land Use
  - Cultural Resources
  - Visual Resources
  - Noise
  - Transportation
  - Hazardous and Solid Waste
  - Climate Change
  - Socioeconomics

- Environmental Justice
- Short Term Uses and Long Term Productivity
- Unavoidable Adverse Effects
- Visual Resources
- Prime Farmlands

**Chapter 4 Environmental Effects/Consequences** - An EIS must describe and provide a detailed environmental effects analysis of the proposed action and each alternative ([40 CFR 1502.16](#)). Describe the assumptions and assessment criteria used in analyzing impacts. Identify any time-frames, rates of change, and other common data pertinent to the analysis. Explain assumptions used when information critical to the analysis was incomplete or unavailable. Include relevant reasonably foreseeable development scenarios for certain programmatic EIS and for cumulative effects analysis. *See* Chapter 8 of the handbook for a more detailed discussion of the Affected Environment and Use of Relevant Data. NEPA regulations outline what to include in Chapter 4: “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” ([40 CFR 1502.16](#)). Discussion of impacts may either be organized by alternative with impact topics as subheadings or by impact topic with alternatives as subheadings. Generally, if impacts to a particular resource for one alternative are the same as another alternative, you should refer to that section in the EIS rather than repeating the information. A suggested outline (if other alternatives are analyzed, those need to be included for each resource as well):

- Section 4.1 Introduction
  - Section 4.1.1 Criteria for Impact Intensity
- Section 4.2 Topography
  - Section 4.2.0 Significance Criteria
    - Section 4.2.1 Proposed Action - Direct Effects to Topography
      - No Action - Direct Effects to Topography
    - Section 4.2.2 Proposed Action – Indirect Effects to Topography
      - No Action - Indirect Effects to Topography
    - Section 4.2.3 Proposed Action – Cumulative Effects to Topography
      - No Action - Cumulative Effects to Topography

Based on the effects analysis in this chapter, develop a summary comparison of effects by alternative and include the summary in the section that describes the alternatives in Chapter 2. You must describe direct, indirect, and cumulative impacts of each alternative ([40 CFR 1508.25\(c\)](#)). We recommend that you quantify the effects analysis as much as possible and describe effects in terms of their context, duration, and intensity.

Base the analysis of impacts on the assumption that all regulations, standard operating procedures, and other standard OSMRE-wide requirements will be followed in implementing the proposed action and alternatives unless changes in such practices are specifically being addressed in the analysis or considered in an alternative.

You must consider long-term impacts and the effects of the project in narrowing the number of future options (e.g., project impacts related to soils such that it would prevent the land from being used for agriculture in the future). Describe the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources that would be involved in the proposal if it is implemented ([40 CFR 1502.16](#)).

All “relevant, reasonable mitigation measures that could improve the project are to be identified,” even if they are outside the jurisdiction of the agency (See *Question 19b, CEQ, [Forty Most Asked Questions Concerning CEQ’s NEPA Regulations](#), March 23, 1981*). See Chapter 11 of this handbook for a more detailed discussion of mitigation. If mitigation measures are identified, those measures must be analyzed “even for impacts that by themselves would not be considered significant” (See *Question 19a, CEQ, [Forty Most Asked Questions Concerning CEQ’s NEPA Regulations](#), March 23, 1981*). Analyze and compare the effectiveness of mitigation measures proposed and the effects if the project were to proceed without mitigation. Include an assessment of any residual direct, indirect, or cumulative effects that will remain after application of the mitigation measures.

***Chapter 5 Consultation/Coordination (Tribes, Individuals, Organizations, or Agencies) -***

Include a brief history of the public involvement (including scoping) undertaken, a list of agencies (including cooperating agencies), and organizations consulted, a list of preparers and their expertise, and a list of recipients of the EIS. In an Appendix to the Final EIS, you must include a response to comments section.

***Public Involvement and Scoping***

- Summarize the scoping process, including efforts to involve the public in EIS preparation. Briefly describe the scoping meetings (when, where, how many, topics), the major issues that arose during scoping if they have not been discussed in Chapter 1, and the comments received.
- Include names of any federal, state, or local agencies, major organizations, or individuals consulted.
- Identify any unresolved environmental issues or conflicts discovered during scoping.
- Include a list of all agencies, organizations, and people to whom you will send copies. This list may be organized alphabetically under “Federal agencies,” “State and local agencies,” “Indian tribes,” “organizations,” and “individuals.” If this list of individuals is excessively long, you may place it in the Decision File instead of the EIS but note in the EIS that a complete list is found in the Decision File. In the Final EIS, provide an updated list of recipients, as necessary, to indicate who will be receiving the Final EIS.

***Chapter 6 List of Preparers/Contributors*** - An EIS must include a list of individuals, including names and qualifications, primarily responsible for preparing the document or significant supporting reports ([40 CFR 1502.10\(h\)](#) and [40 CFR 1502.17](#)). As noted in Chapter 9, the CEQ provides guidance for contracting EAs and EISs at [40 CFR 1506.5\(b\) and \(c\)](#). The conflict of interest disclaimer for EISs should be included in Chapter 6.

**Other Material** - The last section of an EIS may include a bibliography, a glossary, a list of acronyms, an index of key words, and appendices.

- The bibliography includes a list of references cited in the EIS, including written material and personal communications.
- The glossary would define, using plain language, any technical or other terms not understandable to an average lay reader.
- An alphabetically ordered index should contain enough key words from the EIS to allow the reader to find the information (*see Questions 26a and 26b, CEQ, [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#), March 23, 1981*).
- Appendices should support critical analyses in the EIS. An appendix is not a data bank or library for total reference support but contains major substantiating data, essential relevant descriptions of environmental components, or other information necessary for complete use of the EIS for analytical or decision-making purposes. You may keep other supporting material in the Decision File and make it available if requested.

**Finalizing the EIS** - When the public comment period for the Draft EIS ends, the lead agency prepares a Final EIS (unless a decision is made to terminate the EIS). There are two common approaches when finalizing the EIS based on the level of changes required from Draft to Final: (1) Abbreviated Final EIS and (2) Full Text Final EIS.

**Abbreviated Final EIS** - In deciding whether an abbreviated EIS is appropriate, you should consider the extent of the changes that will need to be made to the EIS as a result of comments on the Draft EIS. If only minor changes are expected to the Draft EIS in response to comments, you may prepare an abbreviated Final EIS. An abbreviated Final EIS only contains a cover sheet, a summary of, and reasoning for, the issues analyzed in the abbreviated EIS, copies of substantive comments received on the Draft EIS, responses to those comments, and an errata section with specific modifications and corrections to the Draft EIS made in response to comments ([40 CFR 1503.4](#)). An abbreviated Final EIS requires the reader to have access to both the Draft EIS and the Final EIS. Because a Draft EIS is usually required to understand changes in an abbreviated Final EIS, provide files for the Draft EIS with the abbreviated Final EIS for e-filing with EPA (e.g., [Mountaintop Mining/Valley Fills in Appalachia Final Programmatic EIS](#)).

**Full Text Final EIS** - If you make major changes to the Draft EIS, the Final EIS should be a complete full text document, though you have discretion to use a full text Final EIS even if there are not major changes to the Draft EIS. The content of a full text document is substantially the same as the corresponding Draft EIS except that it includes copies of substantive comments on the Draft EIS, responses to those comments, and changes in or additions to the text of the EIS in response to comments ([40 CFR 1503.4](#)). A full text Final EIS may incorporate by reference some of the text or appendices of the Draft EIS. *See* Chapter 5 of the handbook for a more detailed discussion of incorporation by reference.

**Supplementing a Draft or Final EIS** - The standard procedural and documentation requirements for preparing an EIS described in this chapter also apply to supplementing an EIS, except that in the case of a supplement, conducting additional scoping is optional ([40 CFR 1502.9\(c\)](#)).

The supplement should address the following two elements:

- Identify the EIS being supplemented, and explain the relationship of the supplement to the prior analysis early in the text; and
- Identify the changes in the proposed action, the new information, or changed circumstances that require OSMRE to supplement the EIS.

The OEPC ([516 DM 1.14](#)) and the Office of the Solicitor must be consulted before proposing to prepare a final supplement without first preparing an intervening draft.

You must circulate a supplement in the same manner as a Draft or Final EIS ([40 CFR 1502.9\(c\)](#)). If good reason exists to believe the interested and affected public will have a copy of the Draft or Final EIS, you only need to circulate the supplement. If you do not include the EIS being supplemented with the supplement, the EIS must be reasonably available for public inspection ([40 CFR 1506.6\(f\)](#)).

***Terminating the EIS Process*** - When you terminate an EIS process without completing a Record of Decision, complete your Decision File, and document the reason or reasons for ending the process. You will publish a notice in the *Federal Register* referring to the relevant Notice of Intent to prepare the EIS and state that you are terminating the EIS before completion and your reasons for doing so. If you have already published a Draft EIS, we recommend that you inform all who commented on the Draft EIS that you are ending the process and briefly explain why.

## **10.5 When to prepare a Record of Decision (ROD)**

A ROD is prepared for actions covered by a Final EIS. The ROD may be integrated into any other record prepared by OSMRE, such as the decision document for a permit application package, a final rulemaking package, the preamble discussion of a final rule, or a statement of reasons for an unsuitability petition.

The ROD should:

- State the decision;
- Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives designated environmentally preferable. This may be different from the agency's preferred alternative; and
- State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, why they were not. ([40 CFR 1505.2](#)).

DOI's Memorandum "[NEPA Document Clearance Process](#), April 27, 2018" outlines the process for submitting and acquiring clearance approval for the ROD and associated materials. Any proposed agency action that is determined to require Departmental review under NEPA must be reviewed according to the procedures outlined in the memorandum. The ROD is covered under both the Stage 5: Final EIS and NOA Clearance and the Stage 6: ROD and NOA Clearance. Under Stage 5 Clearance, OSMRE will submit a Draft ROD to the DOI Review Team and

present the content of the ROD at the DOI Review Team briefing. Under Stage 6 Clearance, OSMRE submits a one-page notice to the DOI Review Team seeking objections to the Final ROD approval. The one-page notice must include the following:

- A brief discussion of any substantive issues that arose during the Final EIS notice period;
- The Final ROD text; and
- Confirmation that the text did not change from what was initially reviewed, or advise of any outstanding issues that need to be addressed.

## 10.6 Public Involvement Requirements for a ROD

OSMRE will provide the appropriate public notice that the ROD is available for public review as required by [40 CFR 1506.6\(b\)](#). However, no specific requirement exists to publish the ROD itself, either in the *Federal Register* or elsewhere. The ROD may be integrated with any other record prepared by the OSMRE ([40 CFR 1505.2](#)). Examples of this integration include incorporation of the ROD into the *Federal Register* notice for a final rule or a decision on a petition to declare lands unsuitable for mining ([30 CFR 769.18](#)). No action concerning a proposal may be taken until the ROD has been issued, except under the conditions specified in [40 CFR 1506.1](#).

Except as described below, the ROD cannot be issued until the later of the following dates:

- 90 days after the publication of the EPA's notice of filing of the Draft EIS.
- 30 days after publication of the EPA's notice of filing of the Final EIS ([40 CFR 1506.10\(b\)](#)).

You must provide public notification of the availability of the ROD, and that notification must include publication of a NOA in the *Federal Register* for actions with effects of national concern ([40 CFR 1506.6\(b\)](#), Question 34a, CEQ, [Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981](#)). You must mail notices to those who have requested such ([40 CFR 1506.6\(b\)](#), Question 34a, CEQ, [Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981](#)). You may provide a copy of the ROD or a postcard notifying the reader of availability of the posted document, to all substantive commenters on the Draft or Final EIS and to others known to have a strong interest in the proposal(s).

## 10.7 Content of a ROD

**Introductory Material** - You may prepare a cover sheet that provides introductory material. The cover sheet should have a title and display the EIS number, preparing office and office location, cooperating agencies, signatures, date of signatures, and the titles of the responsible and concurring officials.

**Summary** - A summary is needed only if the ROD exceeds 10 pages.

**Decision** - Include a concise description of the approved action. Identify all important aspects and details of the decision. Provide a clear description of what is and what is not being approved.

Attach to the ROD, stipulations and other design features that are part of the decision or incorporated by reference. Present any committed mitigation measures and related monitoring and enforcement activities, if any, for the selected alternative. *See* Chapter 11 of this handbook for a more detailed discussion on mitigation. Indicate whether all practicable mitigation measures have been adopted. You must identify any mitigation measures that were not selected and give a brief explanation of why such measures were not adopted ([40 CFR 1505.2\(a\)](#)).

**Alternatives** - Identify all of the alternatives considered. You must identify the environmentally preferable alternative in this section ([40 CFR 1505.2 \(b\)](#)). The environmentally preferred alternative best promotes the national environmental policy in Section 101 of NEPA. The environmentally preferred alternative is ordinarily the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances the resources that are present. (*See Question 6a, CEO, [Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981](#)*). You may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.

**Management Considerations** - Provide the rationale for the decision. You must identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision ([40 CFR 1505.2 \(b\)](#)). Explain how the alternatives respond to the purpose and need for the action. You must also state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. ([40 CFR 1505.2 \(c\)](#)).

**Public Involvement** - Briefly describe efforts to seek the views of the public throughout the EIS process.

## 10.8 Structural layout of a ROD

A suggested format which satisfies the ROD content requirements specified in [40 CFR 1505.2](#), is provided below.

### Chapter 1. Introduction

- 1.1 Background and Overview
- 1.2 Purpose and Need for the Action
  - 1.2.1 Purpose
  - 1.2.2 Need
- 1.3 Agency Authority and Actions
  - 1.3.1 Lead Agencies
  - 1.3.2 Cooperating Agencies
- 1.4 Key Scoping Issues Considered and Addressed

### Chapter 2. OSMRE Decision and Basis for Decision

- 2.1 Decision
  - 2.1.1 Conditions
- 2.2 Description of the Selected Alternative
- 2.3 Environmentally Preferred Alternative

- 2.4 Other Alternatives Considered
  - 2.4.1 Alternative 1 – No Action
  - 2.4.2 Alternative 3 – Proposed Action Plus Environmental Protection Measures
  - 2.4.3 Alternatives Considered but Eliminated from Further Analysis
- 2.5 Basis for Decision
  - 2.5.1 Purpose and Need
  - 2.5.2 Selected Alternative Compliance with State and Federal Laws
  - 2.5.3 Environmental Effects

**Chapter 3. Public Involvement**

- 3.1 EIS Scoping Period
- 3.2 Draft EIS Public Meeting and Public Review
- 3.3 Notice of Acceptability

**Chapter 4. Additional Information**

**Chapter 5. Approval**

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**List of Appendices**

*NONE*

## CHAPTER 11: MITIGATION, MONITORING AND ADAPTIVE MANAGEMENT

NEPA promotes efforts to prevent or eliminate environmental harm. In order to meet this objective, OSMRE should consider using mitigation, monitoring, and adaptive management strategies when evaluating potential impacts of alternatives within each resource area.

### 11.1 Mitigation

Mitigation often plays a central role in the avoidance or minimization of adverse environmental impacts. The CEQ regulations define mitigation as including ([40 CFR 1508.20](#)):

- avoidance of an impact through not taking an action or parts of an action;
- minimizing impacts by limiting the degree or magnitude of an action;
- rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- reduction or elimination of impacts by preservation and maintenance operations during the life of the action; and
- Compensating for the impact by replacing or providing substitute resources or environments.

The CEQ regulations require inclusion of appropriate mitigation measures in alternatives ([40 CFR 1502.14\(f\)](#)). In most cases, mitigation measures should be developed and incorporated as integral elements of the alternatives. Often, mitigation consists of best management practices designed to minimize impacts that are included as elements common to all alternatives. Although not common, it is possible to develop a “mitigation alternative” for consideration and analysis in the NEPA process.

When developing mitigation measures, an expectation exists that OSMRE has the authority to carry out the measures and that human and capital resources are available to perform the mitigation and monitoring. The mitigation measures that you develop should be reasonable, effective, and feasible ways to reduce, eliminate, or compensate for impacts to one or more affected resources. Where appropriate, mitigation measures should include contact information of responsible parties to the action, monitoring and reporting requirements, physical location of documents for review, and any applicable deadlines pertaining to implementation.

#### EXAMPLE

- *The construction personnel will be required to use personal protective equipment during reclamation operations.*
- *Dust produced during excavation activities will be minimized using water for wetting the haul roads and excavation areas during construction activities, as necessary.*

The CEQ regulations also define mitigation as providing compensation for impacts by replacing or providing substitute resources or environments ([40 CFR 1508.20](#)); however, in accordance with the [Secretarial Order No. 3360, Rescinding Authorities Inconsistent with Secretary’s Order 3349](#) “American Energy Independence,” the following documents were rescinded and should not be used when developing potential mitigation measures for OSMRE actions:

- Departmental Manual Part 523, Chapter 1: Climate Change Policy, dated, December 20, 2012;
- Departmental Manual Part 600, Chapter 6: Landscape-Scale Mitigation Policy, dated, October 23, 2015;
- Bureau of Land Management, Manual Section 1794 - Mitigation, dated, December 22, 2016; and
- Bureau of Land Management, Mitigation Handbook H-1794-1, dated, December 22, 2016.

One of these rescinded documents, Departmental Manual Part 600, Chapter 6: Landscape-Scale Mitigation Policy, previously included an outline on how compensatory mitigation is used and implemented within DOI. Compensatory mitigation is distinct from mitigation because mitigation seeks to minimize impacts at the site of the proposed action whereas compensatory mitigation seeks to reduce impacts by having the project proponent compensate for the impacts from the project by replacing or providing substitute resources or environments through the restoration, establishment, enhancement, or preservation of resources and their values, services, and functions ([40 CFR 1508.20](#)). Compensatory mitigation is generally no longer considered when outlining specific mitigation measures for OSMRE actions. If you are considering compensatory mitigation measures which are voluntary from the applicant, are pursuant to another law, or are due to extraordinary circumstances you will need to consult with the Project Solicitor. Voluntary mitigation measures from an applicant and mitigation measures imposed by the regulatory authority for the Permit Application Package are still valid.

## **11.2 Monitoring**

Monitoring can be used to ensure compliance with decisions, measure the effectiveness or overall success of decisions, and to determine whether or not decisions need to be modified if the desired outcomes are not being achieved.

### **11.2.1 Purposes of and Requirements for Monitoring**

The level and intensity of monitoring varies according to the purpose being served. In developing a NEPA-related monitoring program, carefully consider the following purposes of monitoring.

***To Ensure Compliance with Decisions*** - Monitoring will be used to ensure that actions taken comply with the terms, conditions, and mitigation measures identified in the decision and supporting documents (e.g., biological opinion). This monitoring may identify underlying reasons for non-compliance. You must provide compliance monitoring where mitigation measures are required to reach a FONSI.

***To Measure the Effectiveness or Success of Decisions and the Accuracy of Analysis*** - While not required by NEPA, monitoring can be implemented to determine if the decisions are achieving intended environmental objectives, and whether predicted environmental effects were accurate. This could include the validation of conceptual models and assumptions used in the analysis. Results of monitoring could also support future CEs.

***To Determine How to Modify Decisions if the Purpose and Need or Desired Outcomes Are Not Being Achieved*** - If decisions are not meeting the purpose and need or achieving desired outcomes, you may use monitoring to identify necessary changes to the project.

In a ROD, a monitoring and enforcement program must be adopted and summarized where applicable for any mitigation identified as part of the EIS ([40 CFR 1505.2\(c\)](#)). The ROD must identify the monitoring and enforcement programs that became part of the decision and plainly indicate they were adopted in the agency's decision (see [Question 34c, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981](#)). The ROD must delineate the monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so (see [Question 34c, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981](#)).

A FONSI may also impose requirements for mitigation and related monitoring and enforcement activities. Monitoring activities that are adopted in a FONSI must be implemented as specified in the FONSI.

### **11.2.2 Developing a Monitoring Plan or Strategy**

Except for monitoring activities specifically addressed in the decision document, the responsible decision-maker has discretion in scheduling monitoring activities, determining monitoring approaches or methodologies, and establishing monitoring standards. You will develop a written monitoring plan that incorporates monitoring schedules, approaches, and standards.

You will also consider the following factors when developing a monitoring plan:

**Coverage** – You should tailor the scope of monitoring activities to meet the intended purpose of monitoring.

#### **GENERAL PRINCIPLES**

*Monitoring activities may be limited to determining if the action is implemented as planned (compliance monitoring), or designed to determine if the action is meeting goals and objectives (effectiveness monitoring).*

**Frequency** – The establishment of specific time frames are recommended for each monitoring activity.

**Intensity/Complexity** – The intensity and complexity of monitoring activities will vary according to the issues at hand and with the purpose of the monitoring.

## GENERAL PRINCIPLES

*Compliance monitoring to determine if an action is being implemented as described in the decision document may be relatively simple. However, determining whether implementation of an action is achieving complex ecological objectives will involve more complex monitoring techniques and analysis.*

### 11.2.3 Implementing Monitoring

It is important that managers establish priorities for implementing monitoring activities. The following are situations or circumstances in which it is particularly important to require monitoring:

- A ROD adopts mitigation measures to reduce environmental impacts (monitoring required).
- A decision authorizing an action involves new or untested procedures or methods, or involves a high degree of uncertainty about the effects of the procedure or method.
- Effects are based on incomplete or unavailable information.
- Uncertainty exists about the interactive effects of multiple resources or uses.
- The decision may affect highly sensitive or important resource values.

### 11.3 Adaptive Management

Adaptive management is “a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated” ([43 CFR 46.30](#)). Adaptive management addresses the fact that our knowledge of natural systems is incomplete and uncertainty often exists with respect to whether actions will achieve desired outcomes. Through use of adaptive management, it is possible to adjust management actions over time as knowledge of the natural system is gained through monitoring, thereby, allowing management actions to more fully achieve the intended results. Adaptive management is a structured and iterative process. It is not “trial and error” management.

An adaptive management framework should include a variety of components. Several central components are described below. [[See Adaptive Management: The U.S. Department of the Interior Technical Guide.](#)] At a minimum, an adaptive management framework must include:

- desired outcomes of the management actions that are clearly defined;
- initial management actions aimed at achieving the desired outcome;
- activities that are monitored to determine whether the desired outcome is being achieved; and
- adaptive actions that will be taken if monitoring indicates that desired outcomes are not being achieved.

You should use adaptive management as appropriate ([43 CFR 46.145](#)). Adaptive management is most appropriate in situations when significant uncertainties exist pertaining to the long-term

implications of management actions. In these situations, monitoring can be used to determine if adjustments should be made to future implementation decisions. For example, if you are preparing a wildlife management plan and a close relationship exists between deer browsing and vegetation regeneration, using adaptive management is likely appropriate. As part of the plan, you might define a particular level of vegetation regeneration as the key desired outcome of deer management activities. An adaptive management framework describes how monitoring would be used to determine if initial management actions achieve desired outcomes, and evaluate the environmental impacts of additional management actions needed if desired outcomes are not met.

Adaptive management is less appropriate in situations where the impacts of management actions are relatively certain or little opportunity exists to adjust the future action implementation. For example, for a proposal involving construction of a new surface facility (e.g., office building) at the mine, you are not likely to use adaptive management because the impacts of the action are likely well understood and the action, once taken, does not easily lend itself to subsequent adjustments.

If you propose using adaptive management, an adaptive management framework should be incorporated as an element of one or more of the alternatives under consideration. Regardless of whether adaptive management is included in multiple alternatives or exists as a stand-alone alternative, you should ensure the description and analysis of the adaptive management framework in your NEPA document describes and analyzes the central adaptive management components discussed above.

If the adaptive management framework and its impacts, including those of potential subsequent actions, are clearly pre-specified and described, then in most cases actions may be adjusted during implementation without the need for further NEPA review ([43 CFR 46.310\(d\)](#); [43 CFR 46.415\(b\)\(3\)](#)). OSMRE does not typically prepare adaptive management plans for our actions; however, existing adaptive management plans would likely be discussed if adaptive management plans are currently being used to manage resources impacted by OSMRE actions. As shown in the example, the resource being impacted by the OSMRE action is part of an adaptive management program through the National Park Service which was evaluated in an [Environmental Impact Statement](#).

### **EXAMPLE**

#### **KAYENTA MINE ENVIRONMENTAL ASSESSMENT (2017)**

*For the purposes of recovery goals for humpback chub, the upper and lower basins are divided at the Glen Canyon Dam in Arizona. Separate objective, measurable recovery criteria were developed for each of the recovery units (i.e., the upper basin including the Green River and Upper Colorado River subbasins; and the lower basin including the mainstem of the Colorado River and its tributaries downstream to the Lake Mead National Recreation Area) to address the unique threats and use site-specific management actions necessary to minimize or remove these threats.*

*The recovery units encompass three management areas under three separate recovery or conservation programs: Upper Colorado River Endangered Fish Recovery Program, the Glen Canyon Dam Adaptive Management Program, and the Lower Colorado River Multi-Species Conservation Program. Humpback chub will be considered eligible for downlisting from endangered to threatened and for removal from ESA protection when all the following conditions are met:*

- Maintain six self-sustaining populations;*
- Essential habitats, including required instream flows, are legally protected; and*
- Other identifiable threats that could significantly affect the population are removed.*

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#### **List of Appendices**

*NONE*

## CHAPTER 12: COORDINATING WITH COOPERATING AGENCIES, JOINT LEAD AGENCIES, AND ADVISORY COMMITTEES DURING THE NEPA PROCESS

The CEQ and DOI regulations emphasize the importance of consulting, coordinating, and cooperating with other agencies during the NEPA process ([40 CFR 1501.6](#); [43 CFR 46.155](#)). Federal agencies must consult, coordinate, and cooperate with other federal, state, local, and tribal governments and other bureaus and federal agencies whenever possible concerning actions and environmental impacts within the jurisdictions of, or of interest to those entities ([40 CFR 1506.2](#), [43 CFR 46.155](#)). This chapter describes OSMRE's roles and responsibilities when serving as a cooperating agency or joint lead agency within DOI and with other federal agencies and state agencies. In addition, this chapter provides instructions for working with the Federal Advisory Committee Act (FACA) and other advisory committees.

### 12.1 Working with Other DOI Bureaus as a Cooperating Agency to Develop NEPA Documents

Certain differences exist when cooperating agencies are within DOI versus when they are external to DOI. Consequently, DOI has issued specific guidance for bureaus who serve as cooperating agencies with one another in DOI's Memorandum, *Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies*. The memorandum states that individual MOUs between bureaus (who qualify as a cooperating agency under [42 U.S.C. § 4332](#) and [40 CFR 1501.6](#)), will not be developed when bureaus are asked to participate in the NEPA process where the DOI bureau is the lead agency.

#### 12.1.1 Determination of Lead Agencies When Working with Other DOI Bureaus

When a project proponent or agency proposes an action as defined by [40 CFR 1508.18](#), lead and cooperating agencies must be determined as soon as practicable ([40 CFR 1501.5](#) and [40 CFR 1501.6](#)). The lead and cooperating agency must immediately designate a Point of Contact (POC) to represent each agency in consultations about that project or action. In instances where agencies are co-leads, the decision must be made as to which agency will act as the administrative lead agency with final responsibility to complete the NEPA process.

When OSMRE is the Lead Agency, OSMRE will:

- Request the participation of each cooperating agency in the NEPA process at the earliest practicable time;
- Use the environmental analysis and proposals of cooperating agencies with jurisdiction, by law or special expertise, to the maximum extent possible, consistent with its responsibility as the lead agency;
- To the extent possible:
  - Recover costs from project proponents; and
  - Fund major activities or analyses it requests from cooperating agencies, and include such funding requirements for NEPA analysis in project budget requests, to the extent that project proponents are not already paying for the analysis.

- Organize the NEPA review for a proposed project or action, including assigning a Senior Executive Service (SES) official to lead the NEPA review process and identifying a primary POC at each cooperating or participating agency;
- Meet with a cooperating agency when requested;
- Prepare and coordinate *Federal Register* notices and Environmental Impact Statement (EIS) filing with EPA;
- Prepare the sole NEPA analysis for the project in coordination with the cooperating agencies. All NEPA analyses should include an adequate level of detail to inform decision-makers about the environmental impacts of a proposed project or action while maintaining the DOI's document and timeline standards;
- Inform cooperating agencies of new information and changes related to the project or action;
- Review and consider comments submitted by cooperating agencies;
- If required, develop the NEPA document's purpose and need, identify the range of alternatives to be analyzed, identify the preferred alternative(s), and determine whether to develop the preferred alternative to a higher level of detail;
- Provide cooperating agencies the opportunity to review and contribute to all relevant and substantive phases of the NEPA analysis and its preparation;
- If required by One Federal Decision (OFD), prepare and publish a single ROD for all cooperating agencies responsible for the project or action to support any necessary authorization decisions. The ROD will incorporate the decisions of each such agency; and
- Maintain a contemporaneous Decision File of the information assembled and used by the cooperating agencies as the basis for their NEPA review.

When OSMRE is a Cooperating Agency, OSMRE will:

- Participate in the NEPA process beginning at the earliest practicable time;
- Participate in the scoping process, attend regularly scheduled meetings, and engage in any other activity necessary to efficiently conduct a project's NEPA analysis;
- Upon the request of the lead agency, assume responsibility for developing information and preparing environmental analyses including portions of an EA or EIS in which OSMRE has jurisdiction or special expertise;
- Review and submit comments to the lead agency on the environmental analysis performed by the lead and other cooperating agencies within the specified timeframe;
- If required by OFD, participate in the preparation of a single ROD by providing technical drafting assistance and comments that support the underlying authorization decision;
- Compile a contemporaneous Decision File composed of all documents and communications that inform OSMRE's analysis, and systematically provide those documents to the lead agency; and
- Make staff support available at the lead agency's request, within the OSMRE's available resources.

### **12.1.2 Dispute Resolution Between OSMRE and Other DOI Bureaus**

Any disputes arising among lead and cooperating agencies in the NEPA review process will be promptly brought to the attention of the appropriate first line SES member with authority over the project, or the office responsible for the NEPA review, and be resolved by them.

- In the event that first line SES members are unable to resolve such disputes, the issue will be raised to the appropriate Bureau directors for resolution;
- In the event that Bureau directors are unable to resolve such disputes, the issues will be raised to the appropriate Assistant Secretaries for resolution; and
- In the event that Assistant Secretaries are unable to resolve such disputes, the issue will be raised to the Office of the Deputy Secretary for resolution.

### **12.2 NEPA Timelines, Schedules, and Document Page Counts for Cooperating Agencies**

When conducting a NEPA analysis, all cooperating agencies and DOI will strive to meet the page count and timelines, consistent with S.O. 3355 and accompanying guidance. This is best accomplished by agreeing upon a timeline or schedule of milestones.

- If a proposed project or agency action qualifies as a Fixing America's Surface Transportation Act (FAST) or OFD action, then agencies within DOI will comply with the timelines set forth in the OFD MOU;
- To comply with agreed upon timelines, agencies within DOI will cooperate, communicate, share information, and resolve conflicts that could prevent timely completion of the NEPA review; and
- Each agreed upon project or action schedule will be uploaded to the NEPA and Permit Database by the lead agency, and where appropriate, the Federal Permitting Dashboard, as soon as is practicable based upon the timely filing of the project or action's NOI.

### **12.3 Cooperating Agency Status with Entities External to DOI in the Development of NEPA Documents**

Cooperating agencies have jurisdiction by law or special expertise ([40 CFR 1508.5](#)) where:

- Jurisdiction by law means the other agency has authority to approve, veto, or finance all or part of the proposal ([40 CFR 1508.15](#)).
- Special expertise means "statutory responsibility, agency mission, or related program experience" ([40 CFR 1508.26](#)).

We must consider a request by any federal agency to participate as a cooperating agency ([43 CFR 46.225\(3\)\(c\)](#)). If we decide to deny the request, we must inform the other agency of our reasons for such denial in writing (separate from the EIS) and document our decision in the EIS. Working with cooperating agencies during preparation of an EA is not required but could certainly be beneficial.

For entities external to DOI, cooperating agency relationships, including the respective roles and commitments, should be established in writing through a memorandum of understanding (MOU) ([43 CFR 46.225\(d\)](#)). In the case of a cooperating relationship with a non-federal agency, the DOI NEPA regulations require that an MOU be developed and adopted and require that it include a commitment to maintain confidentiality of documents and deliberations before the NEPA document's public release ([43 CFR 46.225\(d\)](#)). However, it should be noted that the commitment to maintain confidentiality cannot supersede federal, state, or tribal open records laws. A cooperating agency is normally expected to use its own funds to carry out its responsibilities ([40 CFR 1501.6\(b\)\(5\)](#)).

### **12.3.1 OSMRE as the Lead**

When the OSMRE is the lead agency for an EIS, it must (according to [42 U.S.C. § 4332](#) and [40 CFR 1501.6](#)) invite qualified governmental entities to participate as cooperating agencies ([43 CFR 46.225\(b\)](#)). When preparing an EA, OSMRE may invite eligible governmental entities to participate as cooperating agencies ([43 CFR 46.225](#)). OSMRE may invite non-federal entities to be cooperating agencies (e.g., state agencies, local agencies, and tribal governments) where they have special expertise or jurisdiction related to the EIS or EA. Cooperating agencies should be involved early in the process and be used to provide information and technical expertise on the project, review NEPA documents in a timely manner, and participate in relevant project meetings as needed. Lead agencies are responsible for consideration of the cooperating agency comments and how they are resolved, implementing the project timeline and milestones, retaining final responsibility for the content of all NEPA documents, and maintaining the Decision File.

In cases where more than one federal agency is involved in the same proposal, a single NEPA document should be prepared. In most cases, a single agency should be designated as the lead agency with any other involved agencies designated as cooperating agencies ([40 CFR 1501.5](#); [43 CFR 46.220\(a\)](#); 516 DM 1.9 D). Generally, the lead agency should be the one with the greatest level of involvement with the proposal ([40 CFR 1501.5\(c\)](#)).

A non-federal agency may have an action to approve that is connected to the OSMRE proposal. That non-federal agency must comply with any state or local requirements that are comparable to NEPA. Under these circumstances, OSMRE and the non-federal agency may act as joint lead agencies ([43 CFR 46.220\(b\)](#)).

In situations where a state requires the cooperation of another federal agency or another DOI Bureau in order to obtain approval from OSMRE for a proposal, the state should not sign an MOU without including OSMRE. OSMRE would be the lead agency for these types of proposals. For example, a State AML program may seek to create an MOU with its SHPO in order to expedite Section 106 reviews. In that situation, OSMRE is still the lead agency and responsible for NEPA compliance, including consultations, even though OSMRE has provided the State AML program authority to carry out consultations on its behalf; therefore, OSMRE must be involved throughout the development of the MOU and be a signatory to the MOU to ensure effective implementation of the MOU.

### **12.3.2 Deciding Whether to Be a Cooperating Agency**

When a federal agency outside of DOI intends to prepare a NEPA analysis document, and you have a related decision to make, you will formally ask to be a cooperating agency as early as possible. If another agency asks you to be a cooperating agency for the preparation of a NEPA document for an action in which the OSMRE has jurisdiction by law, you must be a cooperating agency ([40 CFR 1501.6](#)). If another agency asks you to be a cooperating agency in the preparation of a NEPA analysis document in which the OSMRE has special expertise, you may elect to be a cooperating agency. In deciding whether to accept in such situations, consider the resource commitments related to the document preparation.

OSMRE must inform OEPC of our decision whether or not to be a cooperator on an EIS (516 DM 1.10.B).

### **12.3.3 OSMRE as a Cooperating Agency**

Functioning as a cooperating agency in the preparation of an EIS or EA provides you several advantages:

- You may adopt the EIS without recirculating it when, after an independent review of the analysis, you conclude that your comments and suggestions have been satisfied ([40 CFR 1506.3\(c\)](#)).
- You, and the lead agency, may save staff time and dollars because you did not have to prepare separate documents.
- You can ensure the NEPA analysis document meets all DOI and OSMRE requirements or standards.
- Expanding the scope of a NEPA analysis to incorporate, into a single document, all connected and cumulative actions of all cooperating agencies improves overall interagency coordination.
- Agencies working cooperatively help the public to participate effectively and efficiently. The public involvement in the NEPA process takes place in the larger context of multiple agencies. Thus, the public can better understand the entire scope of a proposal, rather than being fed information piecemeal through time. The public can participate effectively and efficiently with fewer meetings and letters to write.
- You can ensure the NEPA analysis specifically addresses the action that you must consider before making your decision. This avoids the struggle to adapt another agency's documentation to fit our proposed action.

### **12.3.4 Procedures for Working as a Cooperating Agency**

An interagency MOU between the OSMRE and the lead agency must be prepared ([43 CFR 46.225\(d\)](#)). It must identify an OSMRE contact and specify any special resource needs, data requirements, and issues that need to be addressed in the analysis. The MOU must also identify the responsibilities of the lead and cooperating agencies.

OSMRE should be identified as a cooperating agency in the NOI published in the *Federal Register*, and OSMRE should be identified as a cooperating agency on the cover sheet of the NEPA analysis document.

OSMRE must issue its own decision (and FONSI for an EA) (Question 30, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*), CEQ Guidance Regarding NEPA Regulations, [48 Fed. Reg. 34263 \(July 28, 1983\)](#) (see Section 5.3). This may be done in an individual decision document or in a decision document signed by more than one agency, as long as it is clear that only the OSMRE decision-maker is making a decision about resources under OSMRE's jurisdiction or authority.

#### **12.4 Joint Lead Agencies in the Development of NEPA Documents**

When two agencies have responsibility over two approximately equal components of a proposal, they may opt to become joint lead agencies rather than cooperators. In cases involving a state agency, consult with the Office of the Solicitor because some states may have a NEPA equivalent law, but that law may differ significantly from its federal counterpart. An MOU that clearly defines roles and responsibilities must be signed by both agencies (516 DM 2.5(G)).

In addition to an MOU, an EIS work plan (see Chapter 4) should be developed and signed by both agencies, and identify such things as: the decisions to be made by each agency, the make-up of the core and interdisciplinary team and associated responsibilities, estimated budget and financial obligations of each agency, document review responsibilities, and tentative schedules. Only one agency can be identified as the agency responsible for filing the EIS with the EPA.

The NOI and NEPA documents will identify the agencies as joint leads. At the conclusion of the process, OSMRE may jointly sign the decision document with the other agencies or may issue our own ROD for an EIS, and FONSI and decision record for an EA. (Question 30, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*, and CEQ Guidance Regarding NEPA Regulations, [48 Fed. Reg. 34263 \(July 28, 1983\)](#)). This applies to any Federal lead or cooperating agency, and all other cooperating agency procedures apply as well. Also be careful to ensure that the decision document is clear and states that OSMRE decisions pertain only to resources under OSMRE authority.

#### **12.5 Working with Advisory Committees and the Federal Advisory Committee Act**

The Federal Advisory Committee Act (FACA) was enacted to reduce narrow special-interest group influence on decision-makers, to foster equal access to the decision-making process for the general public, and to control costs by preventing the establishment of unnecessary advisory committees. The FACA applies whenever a statute or an agency official establishes or uses a committee, board, commission, or similar group for the purpose of obtaining advice or recommendations on issues or policies within the agency official's responsibility.

If meetings are exclusively held between Federal officials and elected officers of Tribal, State, or local governments (or their designated employees with authority to act on their behalf) acting in their official capacities, the group is exempt from the administrative requirements of FACA. Alternatively, if you wish to have a central role in the formation and agenda of the group, consider pursuing a charter for a FACA committee. Consult the Office of the Solicitor to see when you need a charter and to get details on how to charter a FACA committee.

### **12.5.1 Guidance for Meeting with Groups**

If participants include nongovernmental members and they will meet regularly or formally, there are a number of circumstances that will require a FACA charter.

- OSMRE establishes, manages, or controls the group. A FACA charter is usually necessary if the OSMRE will be making decisions on or otherwise controlling group membership, sending out meeting invitations, or hosting the meeting.
- OSMRE also manages or controls the group's agenda, takes a leadership role in the group, and facilitates the meetings. Funding the group or holding a disproportionate number of the group's meetings on OSMRE property may also be seen as indicators of management or control.
- A FACA charter may be necessary if OSMRE is seeking group advice or specific group recommendations to the agency from a nongovernmental group.

If OSMRE wishes to have a central role in the formation and agenda of the group, consider pursuing a charter for a FACA committee. Refer to the Office of the Solicitor for additional information.

To avoid the need for a FACA charter, publicize the meetings of the group, and keep the group membership open to all. Invite the public to meetings; publish timely notice in local forums; accept public comments; and keep records of group meeting minutes, attendance, and other documents used by the group.

### **12.5.2 Alternatives to Chartered Groups**

OSMRE can establish a working group with solely governmental entities—other Federal, State, tribal, and local government employees working in their official capacities.

- A non-Federal entity participant can lead, organize and set up the group. The FACA only applies to Federal agencies, so if a tribal, state, county, or local agency or public interest group is willing to put the collaborative group together, control membership, and set up meetings, OSMRE can participate without violating the FACA.
- In some situations, OSMRE can form a working group as a subcommittee of a preexisting FACA-chartered advisory committee. Ensure the working group always reports to the chartered committee and not directly to the OSMRE.

OSMRE needs to educate the community about its programs and decisions and needs public stakeholder input. Here, the best approach may be to hold town hall-style meetings with open public participation. Such meetings will not violate the FACA as long as OSMRE is not seeking group advice but rather is sharing information or seeking a range of advice from individuals.

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**List of Appendices**

*NONE*

## REFERENCE LIST

**OSMRE, 1979.** *Permanent Regulatory Program Implementing Section 501(b) of the Surface Mining Control and Reclamation Act of 1977:* Final Environmental Statement OSM-EIS-1, January 1979. Office of Surface Mining Reclamation and Enforcement.

**OSMRE, 1980.** *Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977:* Final Environmental Statement, OSM-EIS-2, March 1980. Office of Surface Mining Reclamation and Enforcement.

**OSMRE, 1983.** *Approval of State and Indian Reclamation Program Grants under Title IV of the Surface Mining Control and Reclamation Act of 1977:* Final Environmental Impact Statement, OSM-EIS-11, November 1983. Office of Surface Mining Reclamation and Enforcement.