

**Regulatory Analysis:
Implementation of the National Environmental Policy Act (NEPA) of 1969
in the US Department of the Interior (43 CFR Part 46)**

Each agency of the Federal government is required to comply with the [Council of Environmental Quality] CEQ Regulations¹ for implementing the procedural provisions of NEPA, and, in consultation with CEQ, to develop their agency-specific procedures to ensure that environmental information is available to the public and the agency decision makers before decisions are made and actions taken.²

As an interpretive and procedural rule to comply with the CEQ's NEPA regulations (noted above), there are legitimate arguments that administrative costs are likely to be incurred only by the US Department of the Interior from publication of its proposed rulemaking, "Implementation of the National Environmental Policy Act (NEPA) of 1969" (43 CFR Part 46). With the exception of certain flexibilities given agencies to modernize internal NEPA process, most of the benefits and costs are attributable to the CEQ regulations rather than to the Department-specific changes in this rule. It is improbable that any of the proposed changes have the potential to exceed the \$100 million threshold for a "significant regulatory action." To meet the spirit of Executive Order (EO) 12866 (including the Office of Management and Budget (OMB) Circular A-4³), the Unfunded Mandates Reform Act of 1995 (Public Law 104-4; UMRA), and the Small Business Regulatory Enforcement Fairness Act (SBREFA), the following provides a brief summary of the status quo of NEPA implementation at the Department, a statement of need for Interior's proposed rulemaking, and a qualitative overview of the expected benefits and costs. The analysis is based on data from CEQ; costs provided by the CEQ Task Force; information on the effects of the rulemaking provided in the "Side by Side Comparison of Changes to Existing Procedures" (October 12, 2006) by Interior's Office of Environmental Policy and Compliance (OEPC) (available in the Rulemaking Record); revisions to the draft regulations following extensive discussions between the Department and CEQ (June 28, 2007); and a meeting between Interior, US Forest Service, OMB and CEQ on July 2, 2007, to discuss the proposed regulations.

Status Quo of NEPA Implementation in the US Department of the Interior

Interior's current NEPA guidance provides the baseline for the Department's NEPA activities. Identification of the baseline conditions is necessary to evaluate any benefits and costs of proposed changes, as required by OMB Circular A-4. The Department, coordinated by OEPC, has spent many years modernizing procedures for implementing NEPA in consultation with CEQ, including adopting the CEQ NEPA regulations in its entirety. Environmental Statement Memoranda (ESM, which are internal Departmental guidance documents) were issued in 2003 to address new NEPA-related policy issues. Specifically, they provided for greater public and stakeholders' participation in the NEPA process, collaborative NEPA planning, conflict avoidance, and use of adaptive management. Interior revised its 516 Department Manual (DM) NEPA procedures and published the revisions in the *Federal Register* on March 8, 2004 (69 FR 46, pp. 10866–10887) and June 6, 2005 (70 FR 107, pp. 32840–32844). In March 2004, the Department announced publication of the revised procedures "in order to encourage the department's cooperative conservation goals."⁴ On June 28, 2007, Interior provided a revised proposed rule that is organized under subparts A through E, covering the material in 516 DM Chapters 1 through 6.

¹ CEQ, Regulations for Implementing NEPA. <www.nepa.gov/nepa/regs/ceq/toc_ceq.htm>

² CEQ, Agency NEPA Procedures. <www.nepa.gov/nepa/regs/agency/agencies.cfm>

³ OMB, Circular A-4. <www.whitehouse.gov/omb/circulars/a004/a-4.pdf>

⁴ <http://www.doi.gov/news/040308a>

The Department did not include 516 DM Chapter 7 in this proposed regulation because it provides guidance on review of environmental documents and project proposals prepared by other Federal agencies. The Department intends also to convert 516 DM Chapters 8-15 into proposed regulations and publish them in the *Federal Register* shortly thereafter.

In an effort to quantify the baseline, consideration was made to use bureau appropriations and staffing information to estimate potential costs associated with NEPA activities. However, because of the decentralized and diverse organization of the bureaus, a time-consuming information request would be needed. Given that the Department is focused on outcomes, which includes the outputs of Environmental Impact Statements (EISs) and Environmental Assessments (EAs) used for decisionmaking under NEPA, a decision was made to use existing information from CEQ and the CEQ Task Force on the number of EAs and EISs started and completed in 2003.⁶ The number of actively ongoing EISs and EAs are not reported, and are not included in this analysis. Specifically, a CEQ data collection effort states that Interior started 116 NEPA EISs from March 1, 2002 to February 28, 2004, which is approximately 17% of all EAs started by all Federal agencies (116/669).⁷ During the same time period, Interior started 14,104 NEPA EAs, which accounts for 44% of all EAs started by all Federal agencies (14,104/31,792).⁸ According to the CEQ Task Force, EISs range in length from 200 to 2000 pages, take an interdisciplinary team 1 to 6+ years to complete, and cost \$250,000 to \$2 million (the figures are assumed to be CY 2003, although this is not indicated in the report).⁹ In contrast, EAs range in size from small (i.e., 10-30 pages that take 2 weeks to 2 months for one person to complete at a cost of \$5,000-\$20,000 each) to large (i.e., 50-200+ pages that take 9 to 18 months for an inter-disciplinary team to complete for \$50,000-\$200,000 each).⁹

The total current costs of the Department's NEPA compliance is unknown; however, an understanding of some costs may be deduced from the data presented above. An average of approximately 250 EISs were finalized annually from all Federal agencies from 1995 to 2004.¹⁰ As shown in Table 1, this implies that during 2003, approximately 334 EISs were started (669 total/2 years) and 250 were finalized for all Federal agencies. Therefore, this analysis only includes resources expended on an EIS or EA that is being started or finalized. Interior started 17% of all EISs, so it is assumed that 42.5 were completed (17% of 250). This means that for 2003, the Department started 58 EISs (116/2) and finalized 42.5. Assuming that EISs average 3.5 years at \$875,000 each (approximately \$250,000 annually), Interior spent an estimated \$25.3 million (CY 2003) on EISs. Because EAs usually take less than one year, this analysis assumes a relatively constant flow of 75%-25% split of small and large¹¹ EAs based on the numbers reported by CEQ. Assuming that EAs average \$7,500 for small and \$75,000 each for large, Interior spent an estimated \$171.9 million (CY 2003) on EAs, as shown in Table 2. Clearly, this analysis only reflects a

⁶ OEPC collects information on the Department's EISs, but the timeframe used is different from the CEQ Task Force report and would not be relevant to the CEQ Task Force's reported costs. There is no centralized database of Interior's EAs. OEPC confirmed that the number of EIS and EAs started and completed seemed reasonable based on the best available information from CEQ (personal communications, November 1, 2006).

⁷ CEQ, *Cooperating Agency Status*, 2005. <ceq.eh.doe.gov/nepa/reports/EIS_Compilation.xls>

⁸ CEQ, *Cooperating Agency Status*, 2005. <ceq.eh.doe.gov/nepa/reports/EA_Compilation.xls>

⁹ NEPA Task Force Report to CEQ, *Modernizing NEPA Implementation*, September 2003, p. 65. <ceq.eh.doe.gov/ntf/report/chapter6.pdf>

¹⁰ CEQ, *Number of EISs Filed 1970 to 2004*. <ceq.eh.doe.gov/nepa/EIS_Statistics_1970_to_2004.pdf>

¹¹ Only anecdotal evidence is available that most of the EAs are on the smaller scale.

snapshot in time, but is based on the best available information. These baseline costs result from the requirements in the CEQ regulations, and are not a result of this proposed rule or the Department's existing procedures.

**Table 1
Summary of Annual EIS Costs***

Cost Analysis	All Agencies	Interior
Average # EISs started in 2003	334.5 (669 reported over 2 years ÷ 2 years)	58 (116 reported over 2 years ÷ 2 years; approx. 17% of total for all agencies)
Average # of EISs completed in 2003	250	43 (approx. 17% of 250)
Average annual cost in 2003 assuming 3.5 years to completion and a cost of \$875,000 each (\$250,000 annually)	\$146.13 million [(334.5+250 EISs) x (\$250,000)]	\$25.3 million [(58+43 EISs) x (\$250,000)]

* Numbers are rounded by computer; hand calculations may not sum to totals.

Sources: CEQ, *Cooperating Agency Status*, 2005, ceq.eh.doe.gov/nepa/reports/EIS_Compilation.xls; Task Force Report to CEQ, *Modernizing NEPA Implementation*, September 2003, p. 65, ceq.eh.doe.gov/ntf/report/chapter6.pdf; and CEQ, *Number of EISs Filed 1970 to 2004*, ceq.eh.doe.gov/nepa/EIS_Statistics_1970_to_2004.pdf.

**Table 2
Summary of Annual EA Costs***

Cost Analysis	All Agencies	Interior
Average # EAs started and completed in 2003	15,896 11,922 small & 3,974 large (31,792 reported over 2 years ÷ 2 years; 75% small & 25% large)	7,052 5,289 small & 1,763 large (14,104 reported over 2 years ÷ 2 years; approx. 44% of total for all agencies; 75% small & 25% large)
Average annual cost in 2003 assuming less than one year to completion and a cost of \$7,500 to \$75,000 each	\$387.5 million (11,922 x \$7,500; 3,974 x 75,000)	\$171.9 million (5,289 x \$7,500; 1,763 x \$75,000)

* Numbers are rounded by computer; hand calculations may not sum to totals.

Sources: CEQ, *Cooperating Agency Status*, 2005, ceq.eh.doe.gov/nepa/reports/EA_Compilation.xls; Task Force Report to CEQ, *Modernizing NEPA Implementation*, September 2003, p. 65, ceq.eh.doe.gov/ntf/report/chapter6.pdf.

In addition to development of EAs and EISs, CEQ's litigation surveys indicate Interior was the lead defendant in 38 NEPA cases with one injunction in 2002¹²; 23 NEPA cases filed in 2003¹³; and 31 NEPA cases with one injunction in 2004.¹⁴ According to the CEQ NEPA Task Force, of all NEPA cases filed in 2004, 94% were completed without injunctions.¹⁵ The actual costs of these lawsuits are not readily available. The Department of Justice only recently started releasing the litigation statistics at the request of CEQ. The number and cost of NEPA lawsuits are unlikely to tell the full story about the significance of a case in terms of precedence and impact. Further, the CEQ NEPA Task Force reports that most of the high costs of EISs result from agencies seeking to avoid litigation (i.e., litigation risk).¹⁶ There is a possibility that the Department's push for greater transparency and accountability in this rulemaking could lead to additional lawsuits in that the public may become more familiar with NEPA procedures, clearly see departmental actions, and potentially take legal action when dissatisfied with decisions. It is also likely that the emphasis in this rulemaking on earlier public participation, more collaboration and improved communication could produce better outcomes and result in fewer lawsuits.

Statement of Need for the Proposed Action (OMB Circular A-4)

The problems addressed by Interior's NEPA regulations do not result from market failure, but seek to improve governmental processes, some of which could affect the public. NEPA section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of NEPA. The CEQ regulations implement section 102(2). "Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act" (CEQ NEPA regulations, section 1500.1¹⁷). CEQ regulations at 40 CFR 1507.3, require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing NEPA and to consult with CEQ during their development and prior to publication in the *Federal Register*. The regulations further encourage agencies to publish internal agency explanatory guidance for CEQ's regulations and agency procedures.

Because the Department's proposed regulations are explicitly mandated and are inherently procedural, the level of analysis is limited to internal processes for which there is a lack of available data and quantitative models beyond what is presented above on the costs. However, the qualitative analysis is sufficient to present the expected economic outcomes of Interior's rulemaking.

¹² CEQ, NEPA Litigation Survey, 2002. <ceq.eh.doe.gov/nepa/NEPA2002LitigationSurvey.pdf>

¹³ CEQ, NEPA Litigation Survey, 2003. <ceq.eh.doe.gov/nepa/NEPA2003LitigationSurvey.pdf>

¹⁴ CEQ, NEPA Litigation Survey, 2004. <ceq.eh.doe.gov/nepa/NEPA2004LitigationSurvey.pdf>

¹⁵ Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act, December 21, 2005, p. 11.
<resourcescommittee.house.gov/nepataskforce/report/nepareport_finaldraft.pdf>

¹⁶ Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act, December 21, 2005, pp. 11-12.
<resourcescommittee.house.gov/nepataskforce/report/nepareport_finaldraft.pdf>

¹⁷ CEQ, NEPA Regulations. <www.nepa.gov/nepa/regs/ceq/1500.htm>

Summary of Economic Effects of Interior's Rulemaking

The NEPA regulations reflect the Department's commitment to the 5 C's—cooperation, communication and consultation in support of conservation and community. Dedication to cooperation through collaborative work with partners, communication that relies on transparency and accountability, and consultation to achieve integrated decisionmaking, by definition involve expenditure of departmental time and financial resources to achieve beneficial goals in support of conservation and community. Table 3 (end of this document) provides select changes from the rulemaking that are likely to result in benefits and costs. The proposed changes are organized by the 5 C's for qualitative evaluation. Where relevant, the analysis addresses the following principles from EO 12866, as amended:

- Incentives for innovation, consistency, and predictability;
- Enforcement and compliance costs to the government, regulated entities, and the public;
- Flexibility;
- Distributive impacts; and
- Equity.

In summary, the benefits of this rulemaking appear to accrue to both the public and the Department in terms of transparency, accountability, consistency, and opportunities to participate and collaborate. The costs appear to be mostly administrative in nature for Interior.

Requirements of Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Department must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. Executive Order 12866 defines "significant regulatory action" as one that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Adverse effects to the economy result from Interior's direct spending and costs to any other parties participating and/or otherwise affected by the NEPA procedures, including litigation costs. It is improbable that any of the proposed changes would exceed the \$100 million threshold for a "significant regulatory action." The logic is as follows:

- Administrative costs are likely to be incurred only by Interior from publication of this proposed rulemaking in terms of additional workload for learning, planning, and implementation. The baseline of annual administrative costs to produce EISs and EAs is estimated to be \$197.1 million (CY 2003).
- The baseline level of NEPA lawsuits (23-38 cases annually over 3 years) shows that very few result in injunction, although the actual costs are unknown. There is a possibility that the Department's push for greater transparency and accountability in this proposed rulemaking could lead to additional

lawsuits. It is also likely that the emphasis in this rulemaking on earlier public participation, more collaboration and improved communication could produce better outcomes and result in fewer lawsuits. The Office of Insular Affairs (OIA) indicated that more explicitly providing for NEPA in their grant process has the potential to avoid future lawsuits.

- With the exception of certain flexibilities given agencies to modernize internal NEPA process, most of the benefits and costs are attributable to the CEQ regulations rather than to the Department-specific changes in this rule. It is improbable that any of the proposed changes have the potential to add over 50% to Interior's estimated administrative costs to meet the additional \$100 million threshold for a "significant regulatory action." It also seems unreasonable to expect a dramatic increase in lawsuits that cost millions to effect the economy to such a significant extent.

Requirements of the Unfunded Mandates Reform Act (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments as well as on the private sector. Under Section 202(a)(1) of UMRA, Interior must generally prepare a written statement, including a cost-benefit analysis, for proposed and final regulations that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector" in excess of \$100 million per year.

The analytical requirements under Executive Order 12866 are similar to the analytical requirements under this Act, and thus the same analysis presented above complies with UMRA.²⁰ It is unlikely that Interior's proposed rulemaking will lead to an excess of \$100 million in spending by State, local, and tribal governments.

Administrative Procedure Act & the Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act

According to the preamble, broad exemptions for the notice and comment process exist for interpretive and procedural rules such as this rulemaking. This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action. Therefore, it is not subject to the analytical requirements of the RFA. However, the analyses conducted under EO 12866 are almost substantively the same for the RFA and SBREFA. This rule is not a major rule because:

- Its annual effect on the economy will be under \$100 million.
- It is unlikely to cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- It does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of US-based enterprises to compete with foreign-based enterprises.

²⁰OMB, Circular A-4, p. 43. <www.whitehouse.gov/omb/circulars/a004/a-4.pdf>

Table 3
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA) of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Cooperation: Collaborative Work			
<p>§46.310(b) Contents of an EA. <i>When there is consensus about the proposed action with respect to alternative uses of available resources, the EA need only consider the proposed action and proceed without consideration of additional alternatives, including the no action alternative. (See section 102(2)(e) of NEPA).</i></p>	✓	✓	<p>This language reflects a policy call by Interior and US Forest Service officials in consultation with the CEQ Chairman. It reflects the intent in 102(2)(E) of NEPA that provides for alternatives to recommended courses of action in any proposal which involves unresolved conflicts. That is, if there are no unresolved issues/conflict with respect to a proposed action, then there is no need to describe other alternatives, including the no action alternative.</p> <p>Preferred outcomes result from a consensus-driven, collaborative process. Anecdotal evidence from Interior’s Office of Collaborative Action & Dispute Resolution (CADR) indicates that there can be up-front administrative (transaction) costs to ensure public input and effective participation very early in any process. When the important issues receive attention at the outset, later arguments about the need for more study and new information can be avoided, along with increased costs and substantial delay. Interior’s NEPA process helps ensure that interested parties provide input, particularly in those circumstances where there are no other alternatives in the EA process.</p>

Table 3 (continued)
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA) of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Cooperation: Collaborative Work (continued)			
<p>Adaptive Management: §46.145 Using adaptive management <i>Bureaus should use adaptive management as part of their decision making processes, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make necessary adjustments in subsequent implementation decisions. The NEPA analysis conducted in support of a bureau’s decision to adopt an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring, and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.</i></p> <p>§46.415((b)(3) EIS format, <u>Alternatives</u>; §46.310(d) Contents of an EA <i>A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action or proposed adaptive management during implementation. If the adjustments to an action are clearly articulated and prespecified in the description of the alternative, action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved actions that may be taken, and environmental effects analysis for the actions approved.</i></p>	✓	✓	<p>Changes the regulation to specifically allow adaptive management (AM) alternatives in EAs and EISs or provide guidance which encourages the use of adaptive management. AM has already been defined in 516 DM 4.16; the Department has an ESM on AM.</p> <p>According to CEQ, AM can help determine whether mitigation measures are cost effective and if the predicted impacts occurred. If the actual impacts are not what were predicted, adaptive management can help determine actions to take to avoid the costs associated with unexpected environmental damage. It might also be possible to provide managers with the flexibility to adjust the proposed action based on the original NEPA review, without needing new or supplemental NEPA analyses.¹⁸</p> <p>It seems reasonable to expect higher up-front costs in planning, preparation, implementation and monitoring. Assuming AM was developed based on the ability to define the intended outcome, there are expectations of lower long-term costs from potentially insufficient projects with unexpected damages. Actual benefits and costs would be situation-specific.</p>

¹⁸ NEPA Task Force Report to CEQ, *Modernizing NEPA Implementation*, September 2003. <<http://ceq.eh.doe.gov/ntf/report/chapter4.pdf>>

Table 3 (continued)
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA)
of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Communication: Commitment to Transparency, Accountability & Consistency (continued)			
Making the rule easy to understand	✓		Meets the plain language requirements in EO 12866 and the SBREFA. Plain language lowers transaction costs by reducing the burden on the reader to understand legal and technical jargon.
Centralizing NEPA procedures	✓		As a highly decentralized agency, there are substantial potential benefits to the public and departmental staff from having a centralized source of NEPA procedures for seven bureaus, the US Geological Survey (USGS) and the Office of Insular Affairs (OIA). The proposed rulemaking offers transparency of process, including a procedural framework, a clearer understanding of flexibilities available in decisionmaking, and a comprehensive listing of the categorical exclusions. The Department expects that this centralization will help facilitate quicker agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes, among others.
§46.100 Federal action subject to the procedural requirements of NEPA. <i>(a) The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise decision-making authority over the project and whether Federal funding or approval is essential to the implementation of the project. If Federal funding is provided for general purposes without specific Federal decision-making authority, the proposed action is not “Federal” and NEPA compliance is not necessary.</i>	✓		Provides explicit criteria for when a bureau’s proposed actions are considered federal and subject to NEPA requirements, contributing to the transparency of process and consistency across the Department.

Table 3 (continued)
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA)
of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Communication: Commitment to Transparency, Accountability & Consistency (continued)			
<p>§ 46.115 Consideration of past actions in the cumulative effects analysis. <i>When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with guidance established by CEQ: (a) The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for bureau action. Bureaus then look for present effects of past actions that are, in the judgment of the bureau, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for bureau action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the bureau has identified those present effects of past actions that warrant consideration, the bureau assesses the extent that the effects of the proposal for bureau action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents a bureau assessment of the cumulative effects of the actions considered (including past, present, and reasonably foreseeable future actions) on the affected environment. (b) With respect to past actions, during the scoping process and subsequent preparation of the analysis, the bureau must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require bureaus to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.</i></p>	✓		<p>This section incorporates CEQ guidance of June 24, 2005, that clarifies which past actions should be considered in a cumulative effects analysis. (CEQ Memo, 6/24/05).</p> <p>This change had not formally been implemented by the Department in the DM or through ESMs, and is not considered part of the baseline conditions. The Department is likely to benefit from this provision in terms of avoided costs from listing and addressing all past effects. Now there is discretion to limit the extent of cumulative effects analysis to those effects of past actions that are most relevant and can be studied with information that can be obtained without exorbitant cost.</p>

Table 3 (continued)
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA)
of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Communication: Commitment to Transparency, Accountability & Consistency (continued)			
<p>§46.150 Emergency responses. <i>(a) If the Responsible Official determines that an emergency exists that makes it necessary to take emergency actions before completing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part, then these provisions apply. (b) The Responsible Official can take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical. (c) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an EA and finding of no significant impact (FONSI) prepared in accordance with this regulation, unless categorically excluded (subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an EA and FONSI, the Responsible Official shall consult with the Department about alternative arrangements for NEPA compliance. Consultation with the Department must be coordinated through the appropriate bureau's office. (d) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are likely to have significant environmental impacts, then the Responsible Official shall consult with CEQ, through the Department, about alternative arrangements as soon as possible. Alternative arrangements address the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this regulation. Consultation with the Council must be coordinated through the appropriate bureau office and the Department.</i></p>	✓		<p>These changes provide more flexibility for alternative arrangements for emergencies and other circumstances requiring quick action.</p>

Table 3 (continued)
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA)
of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Communication: Commitment to Transparency, Accountability & Consistency (continued)			
<p>§46.140 Using tiered documents. <i>A NEPA document that tiers to a broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid. (a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary. (b) To the extent that any relevant analysis in the broader NEPA document is out-of-date or otherwise inadequate, the tiered NEPA document must explain this and provide any necessary analysis. (c) Bureaus must maintain guidance concerning the use of tiering, including but not limited to, guidance on sources of similar information, examples of tiered analyses, a set of procedural steps to make the most of tiered analyses, knowledge of when to use previous material, and how to use tiered analyses without sacrificing references to original sources.</i></p>	✓		<p>This section specifically addresses the relationship between tiered and broader documents, along with the need to assure continued adequacy and relevance of the tiered document. The proposed changes are intended to help promote consistent, clear, cost-effective programmatic NEPA analyses, documents, and tiering that meet agency and stakeholder needs.</p> <p>The Department has been conducting programmatic NEPA analyses and tiering for years, which are captured in the baseline conditions. The NEPA Task Force noted that programmatic NEPA analyses and tiering can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects.¹⁹</p>
Consultation: Public Participation for Integrated Decisionmaking			
<p>§46.155 Consultation, coordination, and cooperation with other agencies and organizations. <i>(a) The Responsible Official for planning or implementing Departmental plans, programs, and activities must whenever possible: (1) Consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of Departmental plans, programs, and activities within the jurisdictions or related to the interests of these outside entities; and (2) Include consensus-based management to the extent allowed by law and in accordance with the Federal Advisory Committee Act (FACA). (b) Bureaus must develop procedures to implement this section.</i></p>	✓		<p>There are no major changes from Interior's DM updates and ESM's; however, the weight of a regulation is likely to further emphasize a commitment to early consultation and public involvement.</p>

¹⁹ NEPA Task Force Report to CEQ, *Modernizing NEPA Implementation*, September 2003, p. 35.
<http://ceq.eh.doe.gov/ntf/report/chapter3.pdf>

Table 3 (continued)
Changes in the Status Quo from Implementation of the National Environmental Policy Act (NEPA)
of 1969 in the US Department of the Interior (43 CFR Part 46)

Proposed Change	Benefit	Cost	Discussion
Consultation: Public Participation for Integrated Decisionmaking (continued)			
<p>§46.165 Ensuring public involvement. <i>Bureaus must develop and implement procedures in accordance with this part to ensure: (a) The fullest practical provision of timely public information about Departmental proposed actions that have environmental impacts, including information on the environmental impacts of alternative courses of action; and (b) Appropriate public involvement in the development of NEPA analyses and documents.</i></p> <p>§46.200 Applying NEPA Early. <i>(a) For any proposed Federal action (40 CFR 1508.23 and 1508.18) that may have environmental impacts, bureaus must coordinate, as early as feasible, with: (1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and (2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment. (b) Bureaus must solicit the participation of all interested parties and organizations as early as possible, such as at the time an application is received, or when the bureau initiates the NEPA process for a proposed action. (c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process. (d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of: (1) Any appropriate environmental information that the applicants must include in their applications; and (2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.</i></p>	✓		