

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Handbook on Procedures
for Implementing the
National Environmental Policy Act

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CHAPTER 1. INTRODUCTION

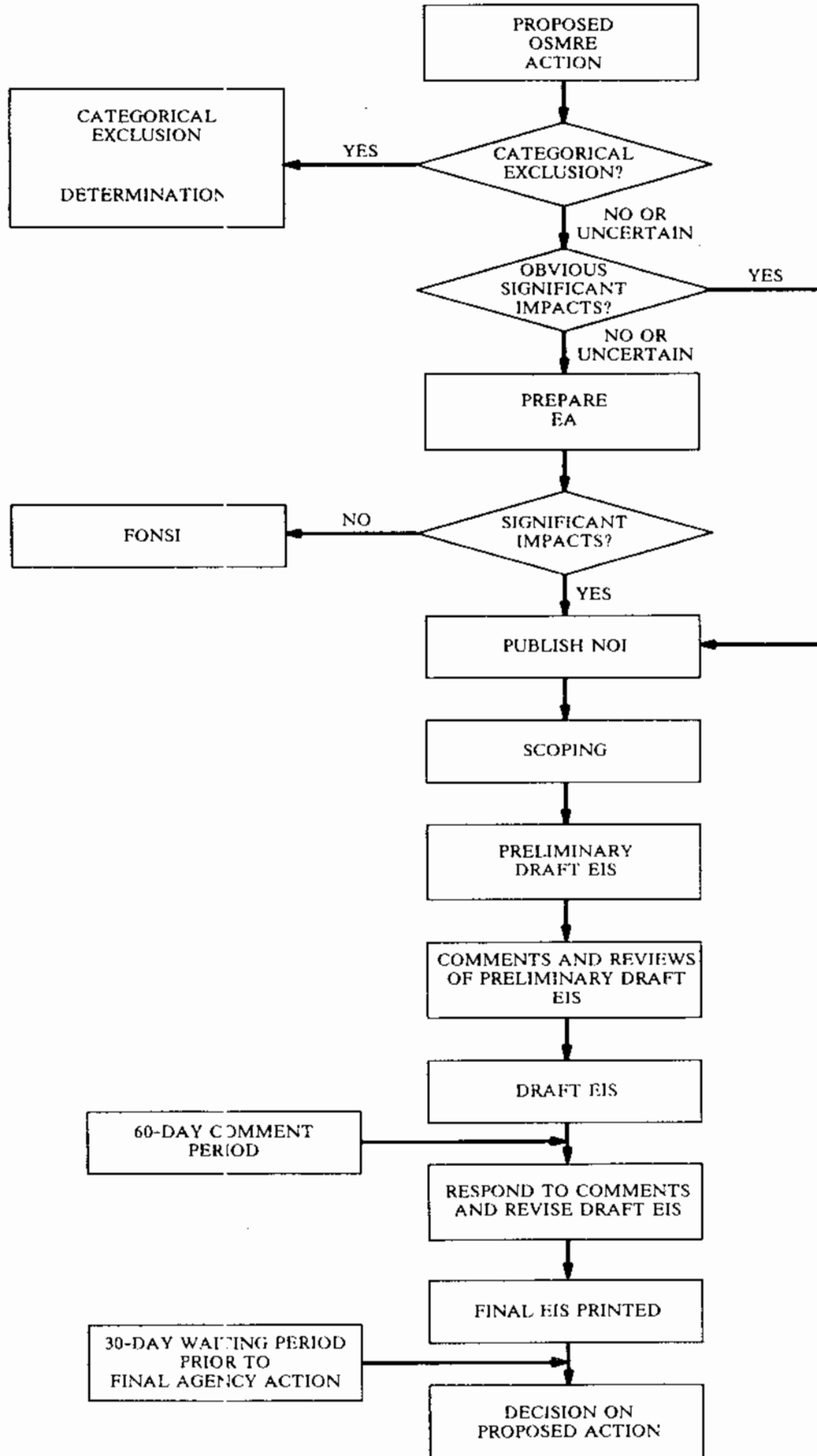
- A. Purpose--This handbook contains internal operating procedures for use by the Office of Surface Mining Reclamation and Enforcement (OSMRE) in complying with the National Environmental Policy Act of 1969 (NEPA) and its related legal requirements (See Figure A.) The handbook provides guidance to OSMRE personnel concerning existing legal requirements but does not create, add to, or otherwise modify any legal requirement. Should any discrepancy between this handbook and a legal requirement exist, the legal requirement should be followed.
- B. Policy--Departmental policy, and thus OSMRE policy, is to interpret and administer, to the fullest extent possible, its policies, regulations and applicable public laws in accordance with the policies of NEPA (516 DM 1.2C).
- C. Scope--This handbook primarily pertains to OSMRE compliance with the following legal requirements:
1. The National Environmental Policy Act of 1969 (NEPA), Public Law 91-190; 42 U.S.C. 4321-4347, January 1, 1970, as amended by Public Law 94-52, July 3, 1975, and Public Law 94-83, August 9, 1975. (For the full text of NEPA, see Appendix I of this handbook.)

NEPA applies to Federal actions that have an impact on the quality of the human environment, including those taken by OSMRE. Most of this handbook pertains to the procedural requirements of sections 102(2)(C), (D), and (E) of NEPA and including the preparation of NEPA documents.
 2. Executive Order 11514, March 5, 1970, Protection and Enhancement of Environmental Quality, As Amended by Executive Order 11991 (Secs. 2(g) and 3(h)), May 24, 1977.

The executive order applies to all Federal agencies, including OSMRE, for

- o providing leadership and developing programs for environmental protection and enhancement;

OVERVIEW OF NEPA PROCESS



- o meeting national environmental goals;
- o consulting with appropriate Federal, State and local agencies in carrying out activities affecting environmental quality;
- o providing opportunity for obtaining the views of interested parties with respect to environmental impacts;
- o disseminating the results of environmental research; and
- o complying with CEQ regulations (40 CFR 1500 - 1508).

Additionally, the executive order lists CEQ's responsibilities.

3. The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (CEQ regulations), 40 CFR Parts 1500-1508, 43 F.R. 55978-56007 (November 29, 1978). (For the full text of the CEQ regulations, see Appendix II of this handbook.)

The CEQ regulations apply to all Federal agencies, including OSMRE, for implementing the procedural provisions in section 102(2) of NEPA (40 CFR 1500.3). The Department of the Interior has expressly adopted the CEQ regulations as an integral part of its NEPA procedures, except in those instances where compliance would be inconsistent with other statutory requirements (516 DM 1.7B).

4. The Department of the Interior Departmental Manual, Part 516, Environmental Quality, Chapters 1-7 (Departmental Manual), 516 DM 1-7. (For the full text of 516 DM 1-7, see Appendix III of this handbook.)

The Departmental Manual, including supplemental directives of the Office of Environmental Project Review (OEPR), contains the only official NEPA procedures of the Department, which apply to all of its bureaus and offices, including OSMRE (transmittal sheet for 516 DM 1-7 (March 18, 1980)); and Memorandum for NEPA Liaisons, CEQ, January 19, 1979, Subject: Agency Implementing Procedures Under CEQ's NEPA Regulations). Any additional NEPA procedures, such as this handbook,

developed at the bureau or office level, constitute internal guidance.

- D. Definitions--For the purpose of this handbook, definitions of terms are as presented in 40 CFR 1508 (Appendix II to this handbook), 30 CFR Chapter VII of OSMRE's regulations implementing the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), SMCRA, and the following:
1. Abandoned mined lands--Lands on which mining ceased prior to August 3, 1977, without adequate reclamation.
 2. Categorical Exclusion Determination (CED)--A document which states why an action is categorically excluded from any further NEPA documentation.
 3. Decisionmaker--Person who is legally responsible for making a given decision.
 4. Errata sheet--A list of minor factual errors and changes in an appropriate draft NEPA document (40 CFR 1503.4(c)).
 5. Federal Register--Daily United States Government publication containing Federal rules and other public notices covering Federal agency actions.
 6. Memorandum of understanding--Agreement between agencies defining responsibilities for joint actions or actions in specific areas of interest to both agencies.
 7. Notice of availability--Notice placed in the Federal Register by an agency announcing that a draft or final NEPA document is available for public review.

E. Common Acronyms Used in this Handbook

ADFO - Assistant Director, Field Operations
 ADPP - Assistant Director, Program Policy
 ADBA - Assistant Director, Budget and Administration
 BEEA - Branch of Environmental and Economic Analysis,
 OSMRE-HQ

CFR - Code of Federal Regulations

CEQ - Council on Environmental Quality, Executive Office of the President

DD/OTS - Deputy Director, Operations and Technical Services

DEIS - Draft Environmental Impact Statement

DM - Departmental Manual, U.S. Department of the Interior

DOI - U.S. Department of the Interior

DTS - Division of Technical Services, OSMRE-HQ

EA - Environmental Assessment

EIS - Environmental Impact Statement

E.O. - Executive Order

EPA - U.S. Environmental Protection Agency

ER - Environmental Review Memorandum (OEPR)

ES - Environmental Statement Memorandum (OEPR)

FEIS - Final Environmental Impact Statement

FONSI - Finding of No Significant Impact

FOD - Field Office Director

HQ - Headquarters

NOI - Notice of Intent

OEPR - Office of Environmental Project Review, U.S. Department of the Interior

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

PAP - Permit Application Package

PDEIS - Preliminary Draft Environmental Impact Statement

PFEIS - Preliminary Final Environmental Impact Statement

SMCRA - Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.

- F. Use and Organization of This Handbook--This handbook should be used in conjunction with the CEQ regulations (Appendix II) and the DOI Departmental Manual (Appendix III) in planning and implementing NEPA compliance for OSMRE actions. Specific sections of the CEQ regulations and the Departmental Manual are cross-referenced by section numbers in parentheses. It is important to refer to the cross-referenced sections for a wider perspective, as well as for details applicable to certain situations.
- G. Responsible Staff
1. Director, Office of Surface Mining Reclamation and Enforcement (OSMRE)--The Director is ultimately responsible for agency NEPA compliance (516 DM 6, Appendix 8.1).
 2. Deputy Director, Operations and Technical Services--The Deputy Director, Operations and Technical Services (DD/OTS) is responsible for the overall implementation of NEPA. Except for functions specifically reserved to the Director, the DD/OTS represents the Director to Secretarial Offices, other Federal and State agencies, and the general public on NEPA matters (116 DM 4.1).
 3. Assistant Director, Program Policy--The Assistant Director, Program Policy (ADPP) is responsible for the approval or disapproval of draft and final EIS's and for issuing notices of intent (NOI's) to prepare such documents. For EA/FONSI's prepared at Headquarters, or those requiring Headquarters' approval, final review and approval is by the ADPP.
 4. Assistant Directors, Field Operations--Assistant Directors, Field Operations (ADFO), are responsible for the preparation of NEPA documents for actions taken at the field level. For EA/FONSI's prepared in Field Operations Offices, final review and approval of the document is by the ADFO.
 5. Chief, Division of Technical Services (DTS)--The Chief, DTS, is responsible for ensuring agency compliance with NEPA and other related environmental laws, regulations, orders and directives.

6. Chief, Branch of Environmental and Economic Analysis (BEEA)--The Chief, BEEA, is responsible for maintaining guidance on policy and procedures for implementing and complying with NEPA and integrating NEPA requirements with the requirements of other related environmental laws, regulations, orders, and directives. BEEA staff provides guidance for developing NEPA documents, coordinates Headquarters' review of specific NEPA documents, reviews and comments on regulations and guidance issued by other agencies affecting OSMRE environmental programs, and prepares NEPA documents for rulemaking and other actions of nationwide importance.

7. Field Office Directors--Field Office Directors are responsible for implementing the procedures of this handbook for all Field Office-originated actions, except those specifically designated to a responsible Headquarters or Field Operations program office. Final review and approval of EA/FONSI's prepared in Field Offices are by the FOD.

CHAPTER 2. NEPA DOCUMENTS

A. Determining the Type of NEPA Document

1. Introduction--In order to determine the type of NEPA document that should be prepared, the proposed action that is subject to a decision by OSMRE must first be identified, along with an initial judgment concerning its scope and magnitude. This will determine whether the proposed action is statutorily excluded, categorically excluded, or requires preparation of an environmental assessment (EA) or environmental impact statement (EIS).
2. OSMRE Statutory Exclusions--If the proposed action is statutorily excluded from the NEPA process, no NEPA document is necessary. This should be noted briefly in the administrative record of the action. OSMRE's statutory exclusions are found in sections 501(a) and 702(d) of SMCRA (516 DM 6, Appendix 8.4).
3. OSMRE Categorical Exclusions--If the proposed action is categorically excluded, a categorical exclusion determination must be prepared. Actions that are categorically excluded, and the criteria used to determine such actions, are listed in the Departmental Manual (See 516 DM 2.3.A.2 and Handbook Appendix III). If the proposed action is categorically excluded, a CED is prepared and included in the administrative record of the action in the originating office (Attachment 1.2). Authority for approving a Categorical Exclusion Determination rests with the Field Office Director for Field Office actions, the appropriate Division Chief for Field Operations actions, or the appropriate Division Chief for Headquarters actions.
 - a. Listing of Categorical Exclusions--OSMRE categorical exclusions appear in section 8.4 of Appendix 8 to 516 DM 6 (Handbook Appendix III). Applicable SMCRA sections are shown in parentheses within this listing.
 - b. Listing of Departmental Categorical Exclusions--Departmental categorical exclusions appear in Appendix 1 to 516 DM 2 (Handbook Appendix III).

- c. Exceptions--Under certain circumstances, some actions that otherwise would be categorically excluded may require additional environmental review (516 DM 2.3A(3) and (4), and 516 DM 2, Appendix 2 (Handbook Appendix III)).
 4. 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 6, Appendix 8, Section 8.3) or clearly would have significant impacts. If no significant impacts are identified through preparation of an EA, a finding of no significant impact (FONSI) should be prepared. If the EA concludes that significant impacts could occur, an EIS is required prior to a decision on the action. The purpose and preparation of an EA are discussed in section C of this chapter.
 5. Environmental Impact Statement--If a proposed 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 section E of this chapter.
- B. Factors to be Considered in Determining Whether to Prepare an Environmental Assessment or an Environmental Impact Statement
1. Introduction--To determine which document is appropriate, it is necessary to determine if the proposed action is a major action significantly affecting the quality of the human environment. This determination is subject to variable interpretation, and no hard- and -fast rules are available to label an action conclusively one way or another.
 2. "Significance" Criteria--The criteria in 40 CFR 1508.27 which defines the term "significant" should be used in evaluating significant issues of alternatives, including the proposed action, to determine if the Federal action is a major action affecting the quality of the human environment (40 CFR 1508.27(b)(1) to (10), Handbook Appendix II).
 3. Other Factors--Other factors to be considered include:

- a. Irreversible and irretrievable commitments of resources. This is an important concern in determining significance in terms of indirect impacts, cumulative impacts, relevant legal criteria, and the relationship between short-term uses of the human environment and maintenance and enhancement of long-term productivity (40 CFR 1508.27, 40 CFR 1502.16).
 - (1) Consider whether the proposed action could cause environmental damage that cannot be reversed or mitigated (40 CFR 1502.16(h)).
 - (2) Consider indirect impacts that commonly are not obvious during the initial analysis of an action. They may affect social and cultural values, including alterations of life style and quality of life (40 CFR 1502.16(b), and 1508.8).
 - b. In addition to the consideration of the environmental resources, factors, and concerns noted above, use the professional judgment and experience of the various disciplines of OSMRE staff, as appropriate to assist in determining significance. Consider consulting with agencies other than OSMRE. If any legal questions arise, consultation with the Headquarters Office of the Solicitor may be useful; however, this should be done through the Headquarters program staff. Legal issues specific to a field action should be handled through the Field Solicitor. The determination of whether the environmental impacts of a proposed action are significant may eventually be subject to comment by other agencies and the public through public comment/response procedures of the NEPA process. Potential impacts may be identified at interagency or public scoping meetings. However, the ultimate decision rests with OSMRE, as lead agency, as to whether an impact is significant.
4. Determining "Significant Issues"--It is necessary to systematically assess the impacts of a proposed action on individual environmental resources, factors or concerns; or cumulative impacts on one or more environmental resource, factor or concern when combined. A key aspect in evaluating environmental impacts is to ensure the inclusion of all

environmental resources, factors or concerns that need to be considered. Those that are not part of significant issues can receive less consideration so as not to direct attention from issues that require careful analysis. Environmental resources, factors and concerns suggested as a guide for consideration are listed below:

- o Public health and safety
- o Air quality, including visibility
- o Land (topography, geology, nonrenewable resources and soils)
- o Surface-water and ground-water resources, quantity and quality
- o Vegetation
- o Fish and wildlife populations and their habitats
- o Existing and future land use, including farming, grazing and forestry
- o Transportation and utilities
- o Socioeconomic characteristics, including population, incomes, employment, housing, and sociocultural resources
- o Public services, the infrastructure and resources needed for growth
- o Noise and ground vibration
- o Recreational resources
- o Cultural resources, including historic, archeological, paleontological, religious, etc.
- o Esthetics

5. EA or EIS--It is important to be as objective as possible when making these determinations. One or more of the criteria, depending on the significance, i.e., the severity of impacts, may trigger either the preparation of an EA/FONSI or EIS. As stated in section 2.A.5. above, if the proposed action has the potential for causing significant impacts on the quality of the human environment, an EIS should be prepared. Otherwise an EA and FONSI are sufficient.

C. Environmental Assessment (516 DM 3.1)

1. Introduction--The EA is the document used for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9). Alternatives must be analyzed to the extent they are being actively considered, and as required by section 102(2)(E) of NEPA (Appendix I). The preparation of the EA requires definition of the

proposed action and alternatives, assembly of relevant existing information, baseline data, and other studies, and evaluation of potential impacts. (See EA Flowchart, Figure B.) Scoping is not required, but may be useful in determining the content of an EA. Analytical emphasis should be placed on the proposal. For Field Office-originated actions, the FOD shall be responsible for preparing an EA and determining whether to prepare a FONSI or EIS. For Field Operations Office-originated actions, the Assistant Director, Field Operations, shall be responsible for preparing an EA and for making this determination. For Headquarters-originated actions, the Chief, Division of Technical Services, shall be responsible for preparing an EA and for making this determination. Any announcement published for an OSMRE proposed action, such as a rule, should specifically state any availability of or intention to prepare an EA.

2. Preparation of the EA

- a. Designate EA Preparer--Once the decision to prepare an EA is made, the OSMRE official responsible for the action should designate a lead person to be responsible for preparing the EA.
- b. Format of EA--See Attachment 2.2 for the recommended format and required content of an EA. While the EA format may vary from that recommended, the content should remain consistent with Attachment 2.2.

3. Completion of the EA

- a. Review the EA--Upon completion of the initial EA, it should be reviewed for accuracy. It may need to be revised or supplemented if, during the course of the EA process, it becomes apparent that the EA is inadequate, contains erroneous analysis or conclusions, or the nature of the proposed action has changed.
- b. Prepare a FONSI--A FONSI is prepared to document a determination that the proposed action will have no significant impact on the quality of the human environment, and therefore an EIS is not required.

- c. Proceed With an NOI to Prepare an EIS--If the EA concludes that there is the potential for significant environmental impacts to occur as a result of the proposed action, an EIS should be prepared. (Substantial public controversy over the potential impacts of the proposed action on the quality of the human environment may also raise the need to prepare an EIS (40 CFR 1508.27).)

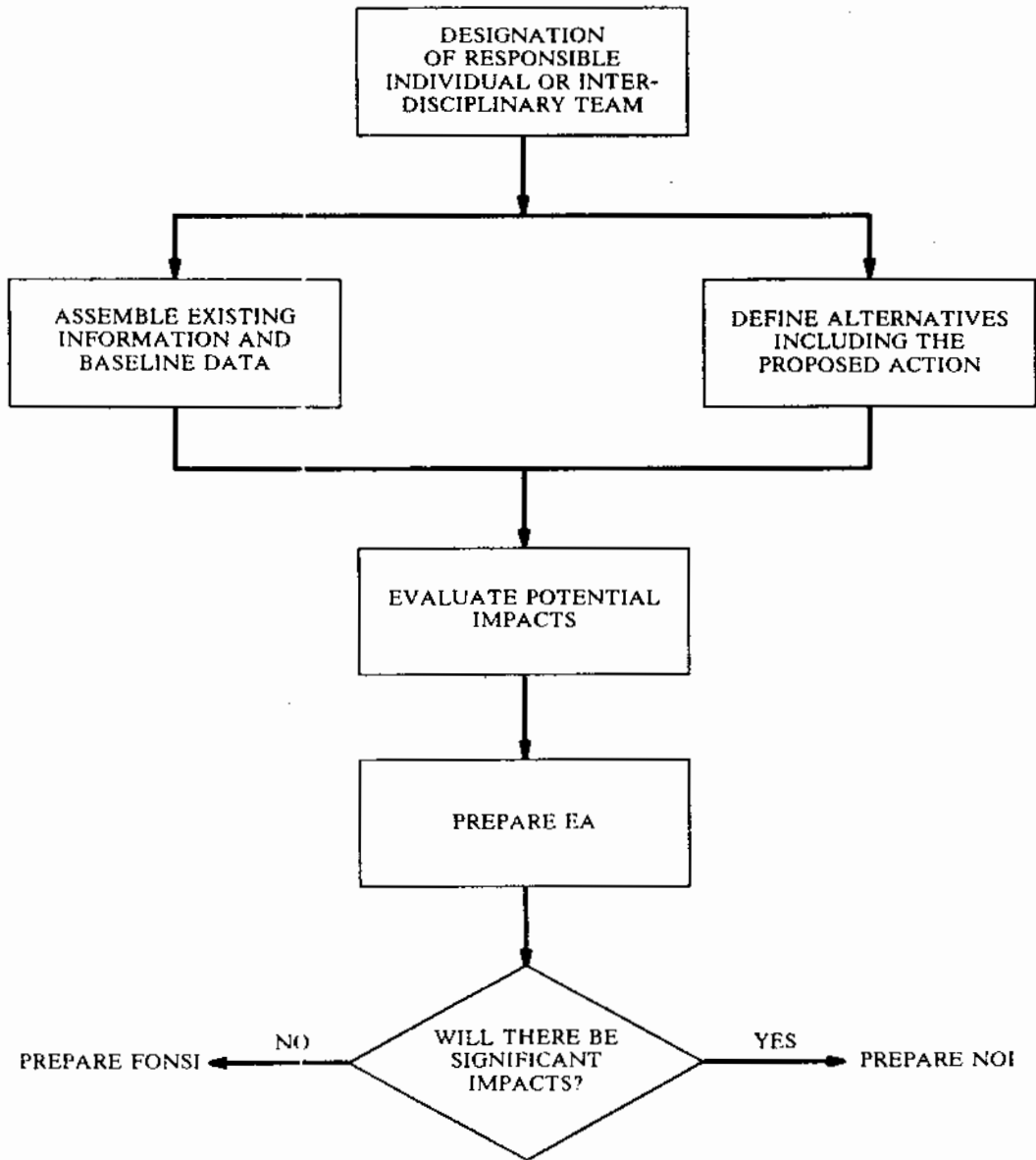
4. Sources of Information for Preparing an EA

- a. Applicants, Petitioners or OSMRE Officials--The EA preparer must independently review the appropriateness and validity of any information submitted by applicants, petitioners or OSMRE officials. For example, proposed permit application packages contain information on the existing environment, on direct and indirect impacts, and on mitigative actions planned in compliance with SMCRA and the Mineral Leasing Act requirements (See 30 CFR 740.13(b)). Information on cumulative impacts and relationships between impacts may or may not be a part of the information submitted with the proposed action. The EA preparer should contact the applicant, petitioner or OSMRE official, as necessary, to ensure that the EA accurately describes the proposed action and to request additional background information, if needed.
- b. Existing Environmental Documents--The preparer should draw upon existing analysis by reviewing previous EA's or EIS's. The use of existing environmental documents may provide extensive analysis and consistency with similar cases. Previous documents or portions thereof may be incorporated into the EA by reference. Material incorporated by reference should be summarized as appropriate for clarity and continuity of text (40 CFR 1502.21). In certain cases, it may be appropriate to adopt existing NEPA documents. (40 CFR 1506.3). Also, adopted EA's may have to be augmented (See 516 DM 3.6).

- 5. Intergovernmental and Public Review--The responsible OSMRE official is encouraged to provide notice to the general public as well as to other agencies when a proposed action covered by an EA is likely to generate

public interest. Such EA's should evidence solicitation of comments as well as consideration of comments received (40 CFR 1501.4(b)).

6. Outside Discussions--All conversations with persons outside the Department should be documented for the record. The data or intentions of one party should not be discussed with another. Although it is important to obtain input from applicants or petitioners and from the public, preliminary OSMRE conclusions should not be discussed. The content of conversations must be limited to public information. The general timetable and scheduling of the EA may be discussed; however, it is important to make clear that dates may change. Beyond general assurances that concerns of the applicants or petitioners and of the public will be taken into consideration, it is inappropriate to discuss the content of an EA before its release.



D. Finding of No Significant Impact (FONSI)

1. Introduction--The term "Finding of No Significant Impact" is defined in 40 CFR 1508.13. The FONSI and EA should be made available to the public in accordance with 40 CFR 1506.6 (See FONSI Flowchart, Figure 3.)
2. Format--A FONSI is a separate document to which an EA is attached and which notes any other related environmental document. When a FONSI is based on an OSMRE-prepared EA, the recommended format is as outlined in Attachment 2.3. When a FONSI is based on a State-, applicant-, other-agency-, or other-party-prepared EA, the recommended format is as outlined in Attachment 2.4. While the FONSI format may vary from that recommended, the content should remain consistent with Attachments 2.3 and 2.4, as appropriate.
3. Need for a Public Review Period
 - a. A decision should be made on whether a public review period is appropriate. Under 40 CFR 1501.4(e)(2), an agency should make the EA and proposed FONSI available for 30 days of public review under either of the following circumstances:
 - o The action is, or is very similar to, one which normally requires an EIS under the OSMRE procedures in 516 DM 6, Appendix 8.
 - o The nature of the action is without precedent.

In either circumstance, no further action should be taken on the EA until after the 30-day review period ends. This public review may include a published notice of the availability of the EA, other relevant documents, and the intent to make a FONSI based on the EA.

- b. Even if a public review period is not required, the EA preparer should consider whether there is either substantial environmental controversy concerning the proposed action or a request for a review period and/or hearing from another agency with jurisdiction over the action (40 CFR 1506.6(c)) in determining whether to have a

public review period. Lack of a public review period for the EA on a controversial proposed action may increase the likelihood of a challenge of the FONSI and, thus, delay final agency action.

- c. The preparer should plan the timing of the public review period and draft a notice (for the Federal Register, newspapers, etc.) announcing the availability of the EA. The review period may not begin until the EA is available to interested parties.
4. Need for a Public Meeting--The EA preparer may consider holding public meetings and soliciting written comments. The meeting should be planned early enough to allow ample time for public notices.
 5. Reconsideration of a FONSI--If public review elicits concern with the conclusions reached by the EA and the intent to prepare a FONSI, the preparer should reconsider the contents of the EA and the appropriateness of the FONSI. The preparer is not required to respond to comments on the EA. However, important issues raised by commenters may be summarized in the EA. Options to be considered include:
 - a. No Change--Continue the EA/FONSI approval process.
 - b. Further Analysis--Additional public meetings and comment period could, in some instances, resolve the controversy expeditiously.
 - c. Proceed With NOI--Substantial public controversy over potential impacts on the quality of the human environment may also raise the need to prepare an EIS (40 CFR 1508.27).
 - d. Revise the EA--This option may be appropriate if, during the EA/FONSI process, it appears that the analysis or conclusions in the EA were inadequate or erroneous or the proposal has changed. If the EA is revised, the procedures described in the EA section of this handbook should be repeated.

6. Coordination--Occasionally, BEEA may request copies of FONSI's and EA's to ensure nationwide consistency in document preparation. BEEA may publish a public notice of the availability of FONSI's and EA's (40 CFR 1501.4(e)(1) and (2); 40 CFR 1506.6(b)). Published notices of OSMRE actions should state that the related environmental documents are available for public review, and give the name and address of the OSMRE official responsible for EA preparation. The preparer arranges for publishing a notice of the availability of the EA/FONSI, when appropriate, in the Federal Register, newspapers, etc. BEEA does not generally review Field Office or Field Operations EA/FONSI's. BEEA staff, however, is available to provide guidance to Field Offices or Field Operations Offices regarding EA/FONSI preparation.

E. ENVIRONMENTAL IMPACT STATEMENTS (516 DM 4)

1. Introduction (516 DM 4)--An EIS describes in detail the proposed action, all reasonable alternatives, and the nature and extent of each significant environmental impact the action may or would cause. An EIS is required if the proposed action is one which either normally requires the preparation of an EIS, where significant impacts are identified in an EA, or otherwise apparently has significant impacts which cannot be mitigated to a level of nonsignificance. (516 DM 6 Appendix 8.3). Once it is determined that an EIS will be prepared, the Assistant Director, Field Operations, or responsible Headquarters official, as appropriate, should designate an interdisciplinary team or project leader responsible for managing the preparation of the EIS. The project leader should contact the Chief, BEEA, who will assign an EIS document number and assure that appropriate guidance is provided to the responsible official on the preparation of the EIS. BEEA staff is available to provide guidance during all stages of EIS development.
2. Notice of Intent (NOI) (516 DM 2.3D)
- a. Preparation of the NOI--The NOI process begins with a determination that an environmental impact statement will be prepared. As soon as that decision is made, the Assistant Director, Field Operations, or the responsible Headquarters program office, through BEEA, shall prepare a

Notice of Intent for publication in the Federal Register (40 CFR 1501.7 and 1508.22). The NOI documentation is made up of:

- o the EA, if prepared;
- o other supporting analysis or documents, if prepared; and
- o Federal Register notice of intent.

b. Approval Procedures

- (1) **Field Operations:** The NOI is prepared in the Field Operations Office and approved by the ADFO by signing the Federal Register notice. This notice is sent to BEEA, which arranges for its publication.
- (2) **Headquarters:** The NOI is prepared in BEEA and approved by the ADPP by signing the Federal Register notice. The NOI is returned to BEEA, which arranges for publication.

c. Publication and Distribution--As noted above the NOI should be prepared once it has been decided to prepare an EIS. However, publication in the Federal Register may be postponed if preparation of the EIS is not to be initiated within 3 months of this decision (516 DM 2.3D). The NOI must be published before the formal scoping process for the EIS begins (40 CFR 1501.7). BEEA shall send a copy of the NOI to DEPR.

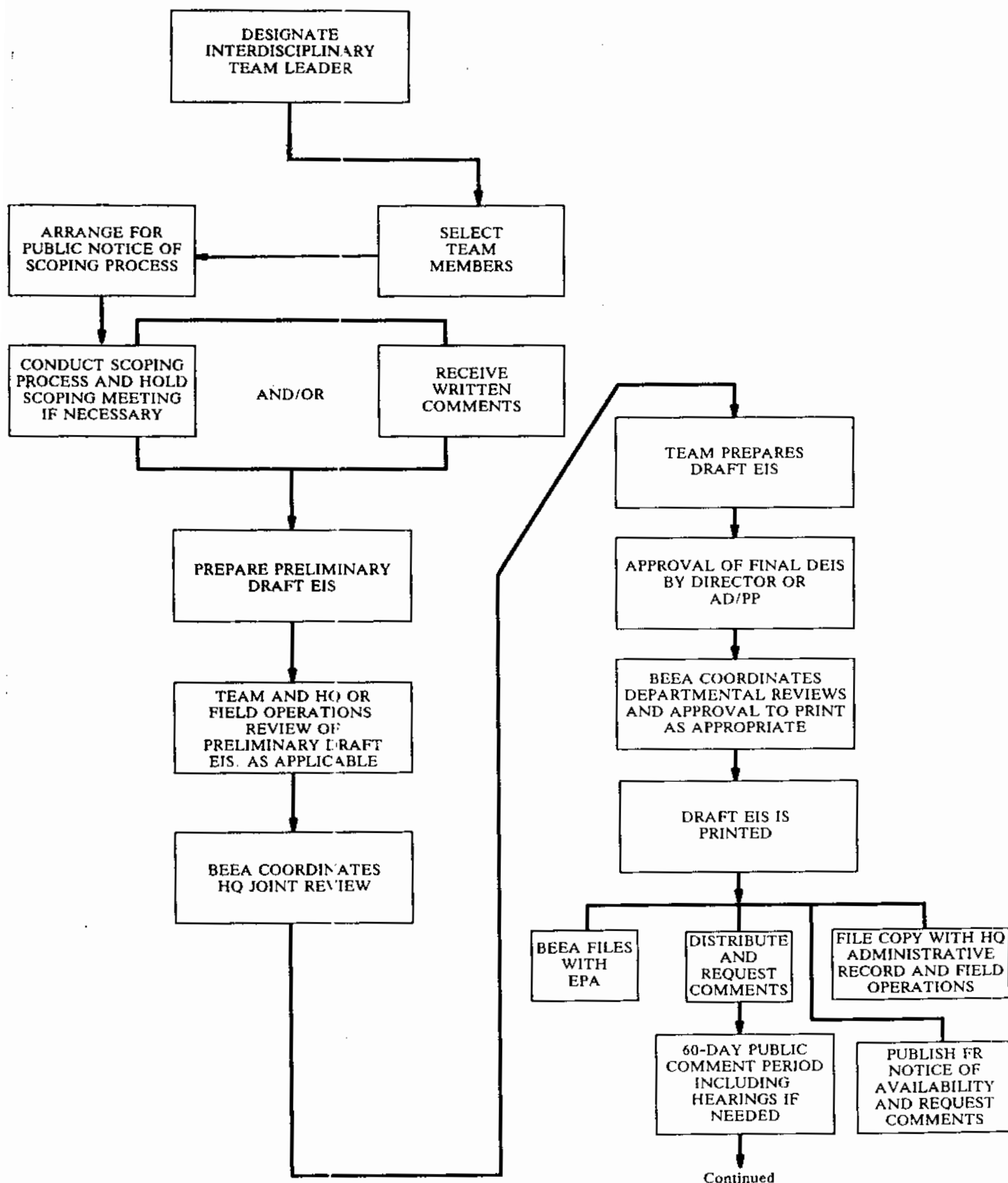
d. NOI Format--The contents of the NOI (Attachment 2.5), as specified in 40 CFR 1508.22 are--

- o Brief description of the proposed action and reasonable alternatives.
- o Brief description of the proposed scoping process, and an invitation for the public to participate in scoping, including the time, date, and location of any scoping meeting planned.
- o Name and address of the person who can answer questions about the proposed action and the EIS.

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

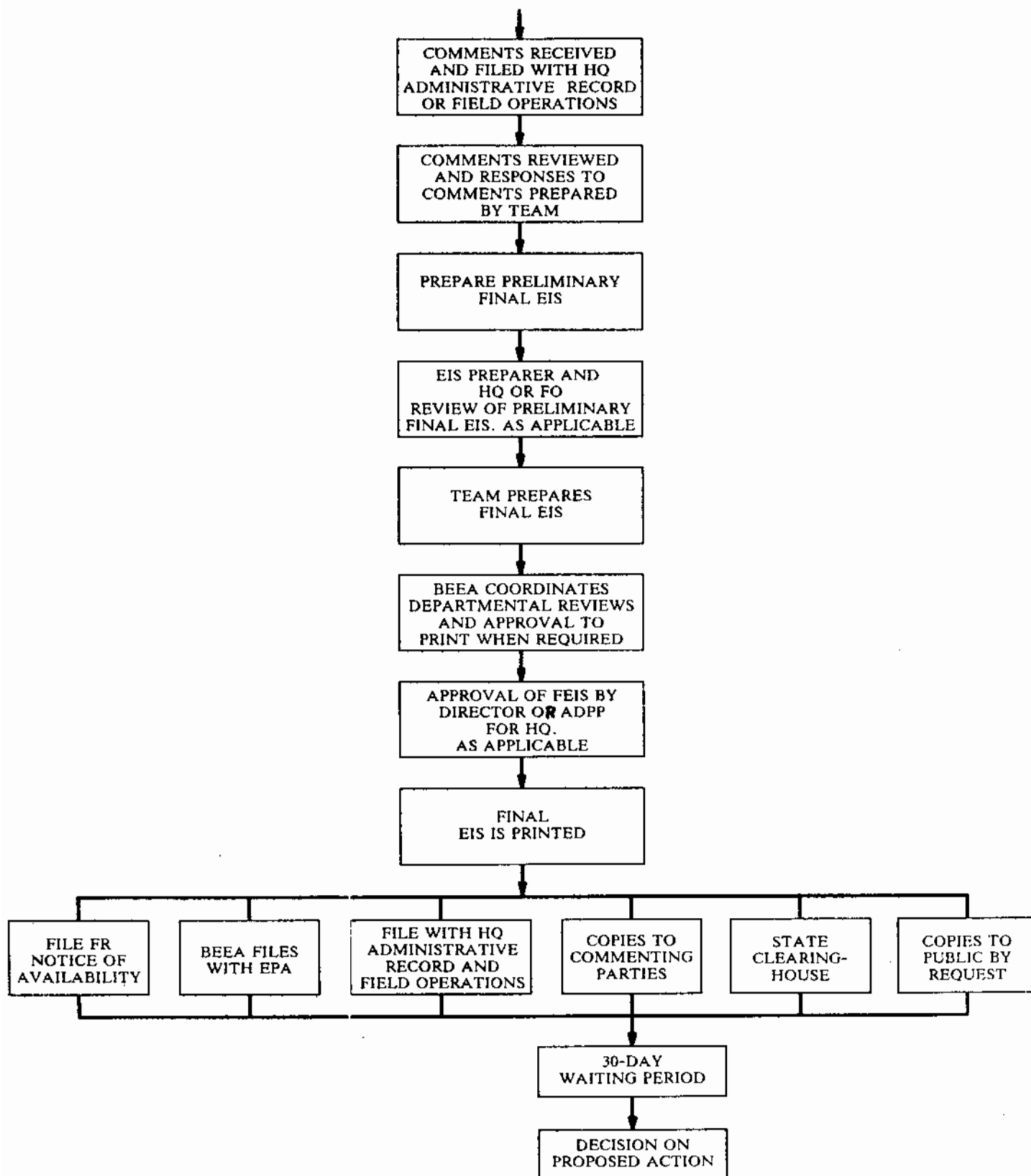
3. EIS Process (See EIS Flowchart, Figure C)

- a. General Requirements--An EIS provides the decisionmaker and the public with a complete, objective evaluation of significant environmental impacts, both beneficial and adverse, resulting from a proposed action and its reasonable alternatives (40 CFR 1502.1). The EIS should provide concise analysis and conclusions, helpful to decisionmakers. Technical analyses and data may be an important part of EIS preparation but generally are not included in the text. Such material should be incorporated by reference, summarized in the text, or, if needed to substantiate statements made in the EIS, put in an appendix.
- b. Commencement--If it has not been done prior to publication of the NOI, a project leader responsible for managing the preparation of the EIS should be designated.
- c. Preparation Plan--After publication of the NOI, the EIS process continues with arrangements for scoping. Planning for preparation of the EIS also includes selection of project team members, and development of the EIS preparation outline, schedule, and management framework.
- d. Obtaining Contractor Support--It may be desirable to obtain contractor support for preparation of some or all of the EIS. Contractor support must be planned well in advance because of the timeframes associated with Federal procurement. The key to good contracting is a carefully detailed statement of work and intensive management of the contractor. Refer to the OSMRE manual, "Contracting for Program and Project Officers," and consult with contracting officers. In appendix V, the Environmental Protection Agency third-party method for EIS preparation is presented. This method conforms with NEPA and the CEQ regulations, and may be used by OSMRE.



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ENVIRONMENTAL IMPACT STATEMENT—Continued



- e. Timing of Agency Action--There are mandatory time periods to the decision process, with certain exceptions (40 CFR 1506.10 and 516 DM 5.7). No decision on a proposed action can be made until either 90 days after EPA has published in the Federal Register a notice of the filing of the draft EIS, or until 30 days after EPA has published notice of the filing of the final EIS, whichever date is later (516 DM 4.24). (In case of rare exceptions, i.e., an appeal of a Federally-issued permit for mining, consult with BEEA.)
- (1) Extensions--OSMRE may extend the time periods discussed in the preceding section (40 CFR 1506.10(d)).
 - (2) Reductions--For non-delegated EIS's and for compelling reasons of national policy, OSMRE may request through OEPR that EPA reduce the waiting periods for decisionmaking (40 CFR 1506.10(d) and 516 DM 4.24. Non-delegated EIS's are defined in 516 DM 8.3B.). These requests to OEPR are made through BEEA.
 - (3) Changes in Proposed Action--Features of the proposal may change as the EIS is being prepared. If possible, anticipate changes in the proposed action. These changes are an integral part of the EIS process and play a role in the development of alternatives and mitigation. Also, information developed during EIS preparation can result in changes in the proposed action and/or alternatives. Where changes are extensive, the EIS schedule may have to be revised. The ADFO or ADPP, as appropriate, should be advised of any such schedule revisions. Applicants and proponents may also revise their proposals in response to the draft EIS or public comments. Substantial changes in a proposal that are relevant to environmental concerns necessitate the preparation of a supplemental EIS (40 CFR 1502.9(c)). See handbook section 2.E.3.K.
- f. Scoping--The basic purpose of scoping is to compile a list of potentially significant issues for analysis in the EIS. Section 2.B. of this handbook contains guidance on what "significant

issues" includes. Those issues that are identified as significant are to be analyzed in depth in the "Environmental Consequences" chapter. It is the responsibility of the agency to decide which issues are significant and which are not. For those issues not considered significant, a brief explanation is provided, in the scoping section. Another purpose of scoping is to identify reasonable alternatives and significant impacts to be analyzed in detail in the EIS.

- g. Scoping Procedures--Scoping should bring out relevant concepts, alternatives, issues, or comments. The EIS preparer or team leader plans the scoping process. Any public meetings should be noted in the NOI published in the Federal Register. It is recommended that scoping meetings be held within 1 month after the NOI is published. The variety of scoping meetings includes interagency meetings, public meetings, meetings within OSMRE regarding the proposal, and meetings with affected parties and interests, such as Federal agencies, State and local government officials, any affected Indian tribe, adjacent landowners, local and regional public interest groups, the media, and other interested parties. Affected interests include persons and organizations potentially impacted by a proposal, either directly or indirectly. Potential significant impact issues include changes to socioeconomic, recreation, and lifestyle, as well as the physical and biological environment, such as geology, hydrology, soils, topography, vegetation, and wildlife. For those actions involving an applicant, the scoping process should include contact with the applicant. The ADFO, or for Headquarters, the ADPP, ensures that the content of an EIS is determined through the scoping process. The scoping process may include solicitation of written comments, a meeting (or series of meetings), or both. No response to comments raised during the scoping process is required. However, written statements from the participants should be requested. Adequate records of the discussion at any meeting should be kept by a stenographer or tape recorder. An EIS preparation plan should be developed as a result of the scoping meeting. (Handbook Appendix VI: CEQ Memorandum: Scoping Guidance).

- h. Scoping Meeting--The purpose of a scoping meeting is to bring together interested parties to discuss the scope of the proposed action and alternatives, or other significant issues relating to EIS preparation. It is not a forum to discuss the desirability of the proposed action. Rather, its purpose is to describe the proposed action and to identify impact topics, additional information, data, alternatives, and national, state, and local concerns for consideration in preparing the EIS.
- (1) Advertising a Scoping Meeting--Notice other than the NOI may be necessary to reach interested parties. News releases in the local and regional news media, and mining association journals, notices posted in public buildings, and written or telephone contact with individuals requesting their attendance can all be used to assure public participation in the scoping meeting.
 - (2) Scoping Documents--Individuals attending the scoping meeting should be given a concise document concerning the need for the EIS and which describes the proposed action, alternatives, key issues, and the scope and limitations of the analysis. The general text of a preparation plan may be used as the scoping document.
 - (3) Feedback--Following a scoping meeting participants should be encouraged to provide comments to the EIS preparer on the issues raised. Comments may be received by telephone; however, a letter from the commenter is preferable.
- i. Preparation of Environmental Impact Statement (EIS). This section provides guidance on EIS format and scope of analysis.
- (1) Format--The CEQ regulations specify the length and format of an EIS. The text of all FEIS's normally should be less than 150 pages, exclusive of preliminary pages, references, and appendices. For proposals of

unusual scope or complexity, an FEIS normally should be fewer than 300 pages (40 CFR 1502.7 and 516 DM 4.4) The EIS format recommended by CEQ is presented in 40 CFR 1502.10. OSMRE recommends a slightly different format, as follows:

Cover
Cover Sheet (1 page)
Title Page
Contents (Table)
Summary (not over 15 pages)
Chapter I: Introduction, including statement of the purpose of and need for proposed action
Chapter II: Alternatives, including proposed action (NEPA 102(2)(C)(iii) and 102(2)(e))
Chapter III: Affected Environment
Chapter IV: Environmental Consequences (NEPA 102(2)(C)(i), (ii), (iv) and (v))
Chapter V: List of preparers
Chapter VI: Scoping/Consultation (include list of reviewers)
Chapter VII: References cited
Chapter VIII: Index (if any)
Appendices (if any)

Any proposed format that may be inconsistent with this format must have prior approval from BEEA. The NEPA sections cited above provide specific content requirements for the EIS chapters. The EIS preparer should be familiar with these requirements as well as with the following discussions of the content of some of the major subdivisions of the EIS:

- (2) Summary (516 DM 4.8)--The EIS summary briefly describes the proposed action and alternatives (discussed in detail in the "Environmental Consequences" chapter); major assumptions used in the analysis; potential significant impacts of the proposed action and alternatives on the quality of the human environment; and adverse impacts that cannot be avoided or mitigated. It precedes the "Contents," and its pages are numbered S-1, S-2, etc.

- (3) Purpose of and Need for Action (516 DM 4.9)-- This chapter briefly discusses the purpose of and need for the proposed Federal action under consideration (Not the purpose of and need for the EIS).
- (4) Alternatives Including the Proposed Action and Preferred Alternative (516 DM 4.10)-- This chapter describes all reasonable alternatives analyzed in the EIS, including the proposed action, and compares their impacts. This comparative summary of impacts is derived from the impact analysis of the proposal and alternatives in the "Environmental Consequences" chapter. Mitigating measures that are committed as part of the proposed action are analyzed with the proposed action. Mitigating measures that are part of an alternative are analyzed with the alternative. Mitigating measures also may be identified and analyzed as separate alternatives where environmental consequences are distinct and significant. Where no commitment to alternative mitigating measures has been made, the impacts both with and without the mitigation should be analyzed.
- (5) Affected Environment (40 CFR 1502.15)-- This chapter describes the environment that would be affected by the proposed action and alternatives, including changes occurring from other contemporaneous activities. In drafting this section, of special concern is determining the extent of coverage for a particular resource. For example, if a proposed action is located in one area of a State, it would be appropriate to describe the affected environment in terms of the general categories of physical-chemical, biological, cultural, and socio-economic environment of that part of the State. For a proposed action involving several States, however, it would be appropriate to discuss the affected environment on a regional basis. Coverage should be succinct. Data and analysis presented of environmental resources and factors should be commensurate with the importance of the impact.

(6) Environmental Consequences--This chapter analyzes in depth the impacts of the proposed action and all reasonable alternatives. For the proposed action and each alternative the following format is recommended:

- (a) Introduction to the alternative;
- (b) Major assumptions used;
- (c) Discussion of items in 40 CFR 1502.16;
and
- (d) Unresolved issues.

j. Scope of Analysis--The EIS is an information source for use in decisionmaking; therefore, it must be clear and concise. Analysis and description should be presented in direct proportion to their importance in the decision-making process. Although acquiring available information to be used in evaluating impacts is an important part of preparing an EIS, the purpose of the EIS is to analyze impacts and not to describe the environment in minute detail. The context, intensity and duration of the impacts on the environment that may or would result from the proposed action and reasonable alternatives should be analyzed. Detailed analysis of causes and effects is needed to support a conclusion. Tiering, with program policy or planning EIS's ranging from broad scope to those of narrower scope, may eliminate repetitive discussion of similar issues (40 CFR 1502.4 and 1502.20).

k. Supplementing EIS's (515 DM 4.5 and 40 CFR 1502.9(c))--A draft or final EIS may require a supplement when substantial changes are made in a proposed action or where new circumstances or important information on its environmental impacts becomes available. The ADFO, ADPP or program official, as appropriate, shall coordinate with BEEA, as appropriate, to determine if a supplemental EIS is required.

1. Preliminary Draft EIS (PDEIS)--The EIS project leader produces a PDEIS for review by the ADFO (for Field Operations Office EIS's), who will coordinate the review by the Field Solicitor, and Chief, DTS, who will coordinate review by the Associate Solicitor, DSM-SOL, and OEPR through BEEA. All necessary figures, tables, graphs and photographs are developed and referenced in draft form. All references and bibliographic materials are assembled. A copy of each reference cited must be available to the public, either in a library or in the appropriate OSMRE office. BEEA staff assists the project leader in developing a consensus among all Headquarters reviewers and the project leader on the required revisions to be made in the PDEIS. Since approval of the DEIS by the ADPP is contingent upon these revisions, this procedure ensures quick approval of the DEIS when completed and submitted for approval to print and distribute. Therefore, ADPP approval to print and distribute the DEIS should be merely a confirmation that the revisions previously agreed upon are included in the DEIS.

- m. Approval--The draft and final EIS is approved for printing and distribution by the Assistant Director, Program Policy, or for non-delegated EIS's by the Assistant Secretary --- Policy, Budget and Administration through OEPR (Non-delegated EIS's are defined in 516 DM 6.3B.) Draft and final EIS's must be filed with OEPR and with EPA as they are distributed. OEPR assigns a DEIS or FEIS number to the document at the time of filing (DES or FES number). A sample memorandum approving an EIS for printing and distribution is provided in Attachment 2.6 (516 DM 6.3, ES 85-2, and ES 81-4). BEEA provides the memorandums for approving non-delegated EIS's on a case-by-case basis.

- n. Procedures for Headquarters Review of Draft and Final EIS's.
 - (1) ADFO should submit three copies of the draft DEIS or FEIS to BEEA for Headquarters review and comments. The EIS must be typed, edited and contain copies of the final graphics. If any further changes are required prior to

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further processing, BEEA will provide written guidance. BEEA staff will coordinate review of the EIS with the Solicitor's Office and OEPR. For an EIS prepared in the field, BEEA will notify the ADFO of its approval or disapproval, and that the EIS may be printed and distributed. (See Attachment 2.6, example of approval memorandum.)

(2) The BEEA staff files the printed DEIS or FEIS with EPA and OEPR. (See Attachment 2.7, sample letter to EPA forwarding the EIS to EPA. BEEA provides the forwarding letters for non-delegated EIS's on a case-by-case basis.) The project leader must send 20 printed copies to BEEA which distributes these as follows:

- o BEEA delivers 5 copies to OEPR with a transmittal letter. OEPR assigns a number to the printed document.
- o After the number is assigned, BEEA delivers five copies to EPA along with a transmittal letter (from the ADPP or from the Director of OEPR, if applicable) to the EPA Office of Federal Activities.
- o BEEA retains 10 copies.

(3) The Field Operations office or, for Headquarters actions, BEEA, distributes copies of all draft and final EIS's to the public and to appropriate agencies concurrent with BEEA's filing of the EIS with EPA. The ADFO, or BEEA, as appropriate, should have enough printed copies of the final EIS printed to make it available to all those who commented on the draft and/or requested a copy of the document.

- o. OSMRE Notice of Availability--OSMRE is required to publish in the Federal Register a notice of availability to give the public notice that the DEIS OR FEIS is available for distribution. The ADPP signs the notice of availability. The notice

of availability should be sent to BEEA, which arranges for its publication. BEEA staff may send the notice to the Federal Register prior to receipt of the printed EIS so that it can be published on the day the EIS is made available to the public. The date when OSMRE publishes this notice must be before the date the review period for a DEIS begins. The 45-day review period begins on the date when the EPA Office of Federal Activities publishes a notice in the Federal Register stating that the EIS has been filed with EPA. The DOI 60-day review period begins when the EIS is filed with EPA.

p. Distribution of the Printed Draft or Final EIS

- (1) The project leader should prepare the following:
 - o A distribution memorandum and a mailing list to circulate the draft or final EIS for review.
 - o Mailing labels and envelopes.

The EIS should be mailed with a transmittal memorandum. ES 84-4, 85-2 and 40 CFR 1502.19 and 1503.1 list those who must be given the opportunity to comment on the draft EIS before the final EIS is prepared. OSMRE requests comments on the draft EIS from State and local governments, applicable Federal agencies, and Indian tribes. The cooperating and other applicable agencies should each be sent a copy of the EIS. The project leader should ensure that copies of the printed EIS are made available for public review in OSMRE's Administrative Record room in Headquarters, both OSMRE Field Operations Offices, and the Department of the Interior Library (Information Products Branch, Room 2258, Main Interior Building, Washington, DC 20240. The Interior Library receives three copies.)

- q. Public Comment Period on the Draft EIS--The public comment period for the draft EIS must not end less than 60 days from the date of transmittal of the EIS to EPA (516 DM 4.24(A)), and must not end less than 45 days from the date of the EPA Notice of availability in the Federal Register (40 CFR 1506.10(c)). Anyone may submit a written request for an extension of the comment period. For delegated EIS's, the ADPP may request that BEEA obtain EPA permission to extend or reduce the 45-day comment period upon a showing of compelling reasons of national policy (40 CFR 1506.10(d)). For nondelegated EIS's, OEPR makes this request.
- r. Arranging Public Hearings or Meetings
- (1) Public hearings on an EIS may be held whenever appropriate or required by statute (40 CFR 1506.6(c)). CEQ criteria for determining whether to hold a hearing include substantial environmental controversy concerning the proposal, substantial interest in holding a hearing, or a request for a hearing by another agency with jurisdiction over the proposed action, supported by reasons describing why a hearing would be helpful.
 - (2) If one or more hearings are held, planning for them should be completed by the time the printed EIS is delivered to OSMRE, so the Federal Register notice announcing the availability of the EIS can include their dates, times, and locations. The date scheduled for a public hearing or meeting should provide the public with a reasonable amount of time in which to review the draft EIS. Generally, a hearing should be held at least 30 days after the EPA notice of availability is published, but early enough in the EIS preparation process to allow time for attendees to submit subsequent written comments and OSMRE staff to adequately address comments in the FEIS.

- s. Response to Comments--Responses to written or oral hearing testimony should be prepared as soon as possible after the reporter's transcript of the testimony is received. In the final EIS, hearing testimony should be organized by major topics, and the agency responses to those comments made collectively, whenever appropriate. A summary of hearing testimony dealing specifically with the EIS is published in the final EIS. A response is required in the FEIS to all comment letters received on the DEIS during the comment period, and to substantive oral and written comments received at hearings (516 DM 4.17, 40 CFR 1503.4). This is a particularly important, critical step in the EIS/public participation process. Responses to comments received after the close of the comment period should be included whenever possible if they do not delay publication of the final EIS. If time constraints prevent preparing responses to late comments, the comments alone should be included in the final EIS, if possible. Each comment letter should be printed individually in the final EIS with a reference to the response. Where a response to a substantive comment is exceptionally voluminous but appropriate to more than one comment, subsequent responses should reference the initial response. All responses should be clearly stated and provide support for the agency's position.
- t. Preliminary Final EIS (PFEIS)--All revisions in the DEIS prompted by public comment and agency review are incorporated into a PFEIS. Normally, team members retain responsibility for the same sections of the draft and final EIS. In rare instances, if the changes made in response to comments are minor and include only factual corrections or explanations of why no further OSMRE response is warranted, the changes may be written on errata sheets and attached to the draft EIS (40 CFR 1503.4(c)). Regardless of whether the draft EIS is rewritten or the changes are attached to it with a new cover sheet, the PFEIS is circulated by BEEA for internal OSMRE review. (Also, OEPR reviews the PFEIS when it is a non-delegated EIS.) Solicitors at the field or headquarters level provide legal sufficiency

review of PFEIS's for actions that originate within their respective jurisdictions. A copy of the PFEIS should be presented to the appropriate Solicitor with sufficient time for review and comment. AD/PP has the authority to approve the printing and distribution of all delegated EIS's.

- u. Preparation, Approval, Printing, Filing With EPA, and Distribution of Final EIS--Headquarters review of a PFEIS is similar to review of the PDEIS. Copies of the PFEIS are sent to BEEA so that BEEA can send each reviewer a copy, allowing enough lead time for sufficient review and comment. BEEA assembles the comments from all reviewers and prepares guidance representing all their concerns (including BEEA). BEEA coordinates between the project leader and the reviewers to reach a consensus on any necessary changes in the PFEIS. This procedure expedites approval of the FEIS by the ADPP, contingent upon these changes, when the FEIS is revised and submitted for final approval to print and distribute. If the action requires approval by the Headquarters Solicitor, Under Secretary or more than one Assistant Secretary (AS), final approval is given by OEPR, acting for the AS/PBA. The procedures for printing, filing with EPA, and distribution of the FEIS are identical to those listed for the DEIS.
- v. Limitation on Actions during NEPA Process--Until OSMRE issues a Record of Decision, no agency decision should be made on the proposal which would be inconsistent with 40 CFR 1506.1.
- w. Record of Decision (ROD), Final Agency Action (516 DM 5.4 and 40 CFR 1506.10)--After the final EIS is made available to the public, a final agency decision cannot be made until 30 days after the EPA notice of filing is published in the Federal Register. A concurrent waiting period of 90 days after EPA notice of the DEIS also is required. The ADPP may extend the 30 or 90 day periods or, acting through OEPR, reduce this period for compelling reasons of national policy (40 CFR 1506.10(d)).

- (1) Preparation of Record of Decision (ROD)
--An ROD is prepared for actions covered by an 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 (516 DM 5.4). The ROD should: "(a) State what the decision was. (b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. [This may be different from the agency's preferred alternative.] An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy balanced by the agency in making its decision and state how those considerations entered into its decision. (c) 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. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation." (40 CFR 1505.2).

- (2) Mitigation Measures--If mitigation measures are included in a NEPA document, such as the ROD, then the person implementing the action is also responsible for instituting these measures (40 CFR 1508.20).

4. Special EIS Applications

- a. Introduction--This section discusses special EIS's that differ from other EIS's in scope, complexity, or procedures.

- b. Program EIS's--Program EIS's consider environmental impacts of broad agency actions. Under certain circumstances, they also may be sufficient for subsequent, related, site-specific

EIS's to tier upon them. OSMRE use of program EIS's is rare and BEEA will provide specific guidance on their use on a case-by-case basis. BEEA coordinates the preparation of program EIS's.

- c. Legislative EIS's (516 DM 4.23 and 40 CFR 1506.8 and 1508.17)--NEPA requires an EIS for legislation which significantly affects the quality of the human environment. Such an EIS, which must be prepared for any legislative proposal developed by or with the significant cooperation and support of a Federal agency, is part of the formal transmittal of the proposal to Congress. However, it may be transmitted to Congress up to 30 days later to allow sufficient time for completion. The EIS must be available in time for congressional hearing and deliberation. Agencies must comment on certain EIS's prepared by other agencies, including legislative EIS's (40 CFR 1503.2). Comments on a legislative EIS are given to the lead agency, which forwards them along with its own responses to the congressional committee with jurisdiction. BEEA staff coordinates the preparation of legislative EIS's.

F. Special Areas of Consideration

1. Introduction--When assessing a proposed action's impacts on various environmental resources, factors or concerns, it is important to consider related environmental laws, regulations and executive orders that may have specific applicability. Although an action which falls under a categorical exclusion generally does not require a NEPA document other than a CED, it must be analyzed to determine whether effects covered by related environmental laws trigger an exception to the categorical exclusion under 516 DM 2.3(A)(3). Additionally, such analysis may support that an impact is significant or insignificant. The following narrative discusses representative environmental resources, factors and concerns covered by specific statutes, OSMRE responsibilities under those statutes, and possible incorporation of any required documentation into the NEPA document. Staff of the various OSMRE programs have access to manuals in which compliance procedures are presented and explained in detail.

2. Historic Properties

- a. Compliance--An OSMRE action may necessitate compliance with section 106 of the National Historic Preservation Act of 1966 (Public Law 89-665), as amended; Executive Order 11593, Protection and Enhancement of the Cultural Environment; the Archeological and Historic Preservation Act of 1974 (Public Law 93-291); Part 800 of Title 36 CFR (Protection and Historic and Cultural Properties) which implements section 106 of Public Law 89-665 and Executive Order 11593; Parts 60 and 63 of Title 36 CFR; and any other applicable implementing regulations.
- b. Responsibilities--OSMRE has the responsibility, in accordance with 36 CFR 800.1(c)(1)(i), to make a reasonable and good faith effort to identify historic and cultural resources in the vicinity of an OSMRE action. Historic and cultural resources include historic districts, objects, archeological remains, and historic structures. This information may be used, as appropriate, in the NEPA document.

3. Wetlands

- a. Compliance--An OSMRE action may necessitate compliance with the provisions of E.O. 11990, Protection of Wetlands.
- b. Responsibilities--Where applicable, an action should be planned and/or carried out in a manner that assures the protection, preservation and enhancement of wetlands to the fullest extent practicable. OSMRE documents the effects of each applicable action on wetlands in accordance with E.O. 11990. This information, along with the "Wetlands Finding," may be included an EA, EIS, or CED.

4. Floodplains

- a. Compliance--An OSMRE action may necessitate compliance with E.O. 11988, Floodplain Management.

- b. Responsibilities--OSMRE determines if any land affected by the proposed action is located in the base floodplain, as defined by the executive order. This determination should be made using either Federal Insurance Administration (FIA) maps, or if no FIA maps exist, the best maps available. An encroachment is based solely upon any part of the land being located in the floodplain. For purposes of this Executive Order, the waterway itself is considered part of the floodplain. OSMRE documents the effects of the action on Floodplains in accordance with the executive order. This information may be included in an EA, EIS, or CED.

5. Fish and Wildlife

- a. Compliance--An OSMRE action may necessitate compliance with the Fish and Wildlife Coordination Act (Public Law 85-624), as amended; or the Endangered Species Act of 1973 (Public Law 93-205), as amended.
- b. Fish and Wildlife Coordination Act--Following section 2 of the Fish and Wildlife Coordination Act, OSMRE coordinates with the appropriate field and regional offices of the U.S. Fish and Wildlife Service (USFWS) and the State fish and wildlife agencies to ensure that prior to the proposed action careful consideration is given to the concerns of these agencies. The impact analysis of the OSMRE action on fish and wildlife resources in the NEPA document should discuss this coordination. The NEPA document also should describe any mitigative measures that were considered or adopted as a result of this coordination. 40 CFR 1502.25 requires that to the fullest extent possible, agencies shall prepare NEPA documents concurrently with and integrated with environmental impact analyses and related surveys and studies required by the laws listed in paragraph 2.F.5.a.

- c. Endangered Species--OSMRE consults with the appropriate Regional Directors of the USFWS and the National Marine Fisheries Service (NMFS) to ascertain whether any species listed or proposed to be listed on the Federal Endangered Species List may be present in the area that would be affected by a proposed action. OSMRE must coordinate with the USFWS, as required by section 7 of the Endangered Species Act. When applicable, OSMRE may include in the NEPA document the biological assessment, the results of the consultation process, the analysis of any steps taken to avoid impacts on a species, and any other pertinent information to document compliance with the Endangered Species Act. OSMRE must, however, fully analyze the impact on any endangered species in any EA or EIS undertaken.

6. Wild and Scenic Rivers

- a. Compliance--An OSMRE action may necessitate compliance with the the Wild and Scenic Rivers Act of 1968 (Public Law 90-542), as amended, OEPR Memorandum ES80-2; and CEQ Memorandum dated 10 August 1980 concerning interagency consultation.
- b. Responsibilities--Section 7 of the Wild and Scenic Rivers Act of 1968 applies to OSMRE actions involving a wild and scenic river, or one proposed for such designation, that would have a direct adverse effect on the values for which the river was designated. OSMRE staff should review the Wild and Scenic Rivers Act and subsequent amendments to determine whether an action will affect an established or designated river. OSMRE should consult with the land managing agency, i.e., State, Bureau of Land Management, Fish and Wildlife Service, National Park Service, Forest Service, etc., to receive their comments on all Wild and Scenic Rivers, both designated and study rivers. The Secretary of the Department (Interior or Agriculture) charged with administration of the river makes a determination of the effect,

where appropriate. States also administer State wild and scenic rivers systems. OSMRE may contact the appropriate State park and recreation agencies to obtain current lists of the designated State rivers. OSMRE actions which may affect listed State rivers are coordinated with the appropriate State agencies. The NEPA document should contain information on any potential impacts an OSMRE action may have on State or federally designated wild and scenic rivers.

7. Prime And Unique Farmlands

- a. Compliance--An OSMRE action may fall under the CEQ memorandum dated 11 August 1980; OEPR Memorandum ES80-3, and the Farmland Protection Policy Act of 1981 (Public Law 97-98). It is the intent of these provisions that efforts be made to assure that farmlands are not irreversibly converted to other uses which would erode their productivity, scenic value, wildlife habitat value, and their benefits as open space. Criteria for evaluating the relative value of farmland can be found in 7 CFR 658 or Federal Register 7-5-84, Part III.
- b. Responsibilities--OSMRE should investigate the possibility of a proposed action impacting on State and local prime and unique farmlands. If prime and unique farmlands are identified, OSMRE should consult the U.S. Department of Agriculture State Land Use Committee, which will assist in analyzing the impacts to such lands. Many of these considerations are covered under 30 CFR 823 (SMCRA regulations). An analysis of the impacts of an OSMRE action on any prime and unique farmland may be included in a NEPA document.

8. Air Quality

- a. Compliance--An OSMRE action may involve compliance with the Clean Air Act (Public Law 90-148), as amended. Section 309 of the Clean Air Act requires that the EPA Administrator review and comment in writing

on the environmental impact of any major Federal action pertaining to the duties and responsibilities granted to EPA under the Clean Air Act. Section 176 of the Clean Air Act restricts the Secretary of the Interior from approving an action which is not consistent with an approved State Implementation Plan (SIP).

- b. Responsibilities--Where applicable, OSMRE should document that a proposed OSMRE action is consistent with the approved SIP. If it is determined that the action may cause an adverse air quality impact, OSMRE staff or the applicant, as appropriate, should contact the State or local air quality board and prepare an air quality analysis to determine what compliance is necessary, i.e., permits, etc.. OSMRE should then submit the air quality analysis to the EPA and other pertinent Federal agency regional offices for review and comment. The applicant and OSMRE staff should coordinate the proposed action with appropriate State and EPA offices very early in planning. If other lands (parks, wilderness, areas, etc.) managed by the Federal government might be affected, then coordination must include the appropriate Federal land manager. OSMRE should work with these agencies to ensure that consideration is given to their concerns. The air quality analysis usually is not included in the NEPA document; however, OSMRE should describe its methodology, basis, assumptions, and data in the NEPA document. The analysis itself is usually included as an appendix to the EIS, while salient points are discussed in the document. Any comments received from Federal or State agencies should also be included in the NEPA document.

9. Noise

- a. Compliance--OSMRE actions may involve compliance with the provisions of the Noise Control Act of 1972 (Public Law 92-574), as amended. OSMRE may use applicable State

standards as a guide for noise levels for particular activities if they are at least as stringent as any existing Federal standards.

- b. Responsibilities--OSMRE should identify all existing activities or land uses which may be adversely affected by noise resulting from an OSMRE action. When an OSMRE action is expected to surpass the State standard for a noise level for an activity, OSMRE should explore alternatives which may reduce noise impact. OSMRE will also give special attention to the location of noise-sensitive sites, such as hospitals, schools, and nursing homes. If there are no mitigating measures in the proposed action to reduce the noise impact, OSMRE should determine what alternative mitigating measures could be used to reduce the noise impact, such as scheduling machinery operation, etc. OSMRE can establish noise-reducing procedures to be included in mitigation measures as part of a permit, Record of Decision, etc., to ensure noise impacts are reduced.

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
CATEGORICAL EXCLUSION DETERMINATION

for
Publishing a Notice of Reinstatement of Suspended Rules at
30 CFR Parts 701, 800, 816 and 817
Definition: Law Enforcement; Bond and Insurance
Requirements; Performance Standards
(RDIM Serial No. 082)

The above-referenced action has been reviewed by OSMRE, and it has been determined by the undersigned to be categorically excluded from further environmental documentation according to the Department of the Interior (DOI) Departmental Manual, 516 DM 2, Appendix 1.10, since none of the exceptions listed in the DOI Departmental Manual, 516 DM 2, Appendix 2.1 to 2.10 apply to its implementation.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is publishing a notice of reinstatement of suspended rules at 30 CFR Parts 701, 800, 816 and 817 concerning the definition of support facilities (30 CFR Part 701.5), incremental bonding (30 CFR Part 800.11(b)), phased bonding (30 CFR Part 800.13(a)(2)), the retention of highwalls in permanent impoundments (30 CFR Parts 816.49(a)(9)/817.49(a)(9)), coal waste refuse pile compaction (30 CFR Parts 816.81(c)(2)/817.81(c)(2)), and the construction of coal waste refuse piles using lifts greater than 2 feet thick (30 CFR Parts 816.83/817.83). Publication of this notice is an administrative action and would merely make the public aware that the suspended rules upheld by the U.S. Court of Appeals for the District of Columbia Circuit in (NWF v. Hodel, No. 84-5743 (D.C. Cir. Jan. 29, 1988)) have been reinstated as the result of the court decision. (Explain why the cited categorical exclusion applies).

Date

Chief, (Division)

Recommended Format and Required Content
for an Environmental Assessment (EA)

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
ENVIRONMENTAL ASSESSMENT
for
(Subject)

A. Description of the Proposed Action

Provide a complete description of the proposed Federal action, including the decision to be made, the applicant's or petitioner's proposal, if any, committed mitigation measures, i.e., to be carried out by the applicant, etc., and special design features.

B. Need for the Proposed Action

Why is the proposed Federal action needed? Describe what the Federal action would accomplish (approve, deny, grant, etc.)

C. Alternatives Considered

List and describe any alternatives under active consideration, including the proposed action. This must include appropriate alternatives to the proposed action in any proposal involving unresolved conflicts concerning alternative uses of available resources (NEPA, Section 102(2)(E) and 516 DM 3.4A.) Examples of common alternatives under active consideration include "no action" (often not viable), approval, approval with modifications, disapproval (based on a proper cause), and deferral (usually due to incomplete or inadequate information).

D. Affected Environment

(Optional: The contents of this section may be integrated into section A and/or E.)

1. General Setting

Begin with a description of the general setting of the environment that would be affected by the proposed action or any alternatives under active consideration. Be brief, and provide the reader with a mental picture of what the area looks like.

2. Other Affected Resources, including Special Areas of Consideration

Generally, limit descriptions of resources, factors, or concerns, including special areas of consideration, to those from the list below that may or would be impacted by the proposed action or any of the alternatives under active consideration. Describe these only in sufficient detail to understand a change from the present as a result of the proposed or alternative actions. Briefly describe only the part of the resource that would be specifically affected. Describe the current management of the particular resource if necessary to understand a change in management.

Special areas of consideration are items that may be considered in the EA because of law, regulation, executive order, or directive. These must be specifically addressed as being or not being present in the project area. This may be accomplished by separate sentences for each concern, or, if several are not present, one sentence (i.e., "the following (resources or environmental components) are not present in the area....").

List of Environmental Resources, Factors or Concerns
(Generally, describe only those that would be affected)

- o Topography
- o Land Use (e.g., prime farmlands, ecologically critical or significant areas, natural landmarks, wilderness areas, refuge lands).
- o Soils
- o Vegetation (e.g., wetlands)
- o Hydrology (e.g., water quantity and quality, surface and ground water, floodplains)
- o Fish and Wildlife Resources (e.g., endangered species)
- o Historic and Cultural Resources
- o Recreation (e.g., parklands)
- o Air Quality
- o Noise
- o Other, as applicable to a particular location and proposal or alternative (e.g., Wild and Scenic Rivers)

E. Environmental Impacts of the Proposed Action and Alternatives:

Impacts--Analyze the individual and cumulative impacts of the proposed action and any alternatives under active consideration. Present the impact analyses in the same order as in the Alternatives Considered section (e.g., proposed action first, etc). Discuss impacts on each environmental resource, factor, or concern described in section D, Affected Environment. Include in the introduction for each alternative a statement that only the environmental resources, factors, or concerns that would be affected will be discussed. Making one negative declaration for all environmental components, resources, or concerns that would not be impacted is permissible (i.e. "The following environmental resources, factors, or concerns would not be impacted:...."). Evaluate the direct and indirect impacts of the proposed action and each alternative under active consideration on any significant environmental resource, factor, or concern. Evaluate impacts only as needed for the decision maker to determine whether there are significant environmental impacts which may require the preparation of an EIS. DO NOT use the term "significant" in the EA. Describe and quantify, where possible, the levels of impacts. Characterize impact levels, i.e., negligible, minor, moderate, major, or low, medium, high, etc.

Mitigation--Discuss mitigation measures in any alternatives, including the applicant's proposal, that could reduce or eliminate any identified impacts. Indicate the degree that they would reduce impacts. Remember, mitigation is relevant only if included as part of a proposed or alternative action. Indicate who is committed to carrying out the mitigation measures, i.e., the applicant, OSMRE, both, etc.

Unavoidable Adverse Impacts--Discuss the adverse impacts that would remain after mitigation, if any, that is included in the proposed action or alternatives.

F. Summary--Summary of the proposed action, alternatives and their beneficial and adverse impacts, as appropriate. Compare the impacts associated with each alternative under active consideration, including the proposed action.

- G. Persons and Agencies Contacted to Assist in the Preparation of the Environmental Assessment--List the following:
1. The OSMRE contact for the proposal,
 2. Any other person or agency directly involved in the proposed action;
 3. Any other person or agency providing information for the Environmental Assessment.
- H. Preparer--List the name of the person who prepared the environmental assessment, and his or her position, agency, branch, city and State.
- I. References Cited (if any)--List any references cited.

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
FOR
(Title of proposed Federal action)

A. Introduction

Summarize sections A, B, and C of the EA. Explain WHO wants to do WHAT, WHY, WHEN, WHERE and HOW.

B. Statement of Environmental Significance of the Proposed Action

The undersigned person has determined that the above-named proposed action would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) and therefore, an environmental impact statement is not required. This finding of no significant impact is based on the attached OSMRE environmental assessment (reference other environmental documents as appropriate) which identifies and discusses the environmental impacts of the proposed action and the reasons stated below.

C. Reasons

Give the reason that the impact on each affected environmental resource, factor, or concern would not be significant based on the severity of impact according to 40 CFR 1508.27(b)(1) to (10) (see handbook appendix II). For example, for wetlands in the project vicinity:

- "1. The project avoids wetlands in the proximity of the project." (Incorporate background information from the attached EA by reference.)

Include specific references to sections, paragraphs, or sentences which document any special problems or areas where judgment is clearly relevant. DO NOT repeat details mentioned in the EA, incorporate those details by reference to the EA. Mitigation measures may also be referenced. For example:

- "2. OSMRE will implement (the proposed action, project, etc.) with the following mitigation measures. (List mitigation measures)" or "Mitigation measures identified for the proposed action in (cite specific location in the EA) will ensure that impacts would not be significant."

(Authorized Official) Title/Position

Date

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
FOR
(Title of proposed Federal Action)

A. Introduction

Summarize sections A, B, and C of the EA. Explain WHO wants to do WHAT, WHY, WHEN, WHERE and HOW.

B. Statement of Environmental Significance of the Proposed Action

The undersigned person has determined that the above-named proposed action would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) and therefore, an environmental impact statement is not required. This finding of no significant impact is based on the attached (State, applicant or other party, agency, etc.) prepared environmental assessment (reference other environmental documents as appropriate) which has been independently evaluated by OSMRE and determined to adequately and accurately assess the environmental impacts of the proposed action and to provide sufficient evidence and analysis for this finding of no significant impact. OSMRE takes full responsibility for the accuracy, scope and content of the attached environmental assessment. Additionally, OSMRE bases this finding on the following reasons.

C. Reasons

Give the reason that the impact on each affected environmental resource, factor, or concern would not be significant based on the severity of impact according to 40 CFR 1508.27(b)(1) to (10) (see handbook appendix II). For example, for wetlands in the project vicinity:

- "1. The project avoids wetlands in the proximity of the project." (Incorporate background information from the attached EA by reference.)

Include specific references to sections, paragraphs, or sentences which document any special problems or areas

where judgment is clearly relevant. DO NOT repeat details mentioned in the EA, incorporate those details by reference to the EA. Mitigation measures may also be referenced. For example:

- "2. OSMRE will implement (the proposed action, project, etc.) with the following mitigation measures. (List mitigation measures)" or "Mitigation measures identified for the proposed action in (cite specific location in the EA) will ensure that impacts would not be significant."

(Authorized Official) Title/Position

Date

In Reply
Refer To:
4110
EVP-3

Memorandum

To: Assistant Director, Program Policy

From: Chief, Division of Technical Services

Subject: Approval to Print and Distribute the Final Petition
Evaluation Document/Environmental Impact Statement
(PED/EIS) for Black Diamond, Washington, OSMRE-PE-7 and
EIS-21

The subject final PED/EIS is transmitted herewith for your approval to print and distribute. All reviews of the final PED/EIS have been completed and all appropriate revisions and corrections have been incorporated.

Printing and distributing of the subject final PED/EIS is approved:

Assistant Director, Program Policy

Date

Attachment

In Reply
Refer To:
4132
EVP-3

Director, Office of Federal
Activities (A-104)
Environmental Protection Agency
Room 2119 M, Waterside Mall
401 M Street, S.W.
Washington, D.C. 20460

Dear Sir:

In accordance with Section 102(2)(C) of the National
Environmental Policy Act of 1969, we are enclosing five copies
of the Draft Environmental Impact Statement for the Proposed
Mining Plan, Dry Fork Mine, Campbell County, Wyoming
(OSMRE-EIS-24).

Sincerely,

Assistant Director,
Program Policy

Enclosures

CHAPTER 3. AGENCY, INTERAGENCY AND PUBLIC INVOLVEMENT

A. Lead and Cooperating Agencies1. OSMRE Responsibilities

- a. Relationships With Other Agencies--Cooperation among agencies in compliance with NEPA is an objective of the CEQ regulations. This cooperation should reflect the intent of 40 CFR 1501.1(b). OSMRE may assume one of four roles in the NEPA process:
- (1) It may assume primary responsibility for NEPA compliance as lead agency;
 - (2) It may assume shared responsibility for NEPA compliance as joint lead agency for the preparation of EA's or EIS's in accordance with 40 CFR 1508.16;
 - (3) It may support another agency by providing special expertise or resources for EA's or EIS's as a cooperating agency; or
 - (4) It may comment on EA's or EIS's prepared by other agencies as a commenting agency (516 DM 7).
- b. A lead agency is primarily responsible for preparing the EA or EIS for a proposed Federal action (40 CFR 1501.5 and 1508.16) that involves more than one agency. (A joint lead agency has shared responsibility.) The AS/PBA will designate lead bureaus within the department when bureaus under more than one AS are involved in preparing an EIS (516 DM 2.4A). The lead agency may request cooperating agency participation early in the NEPA process, use environmental analysis and proposals from the cooperating agencies as applicable, and meet with cooperating agencies at their request (40 CFR 1501.6). OSMRE will inform OEPR of any agreement to assume lead agency status it makes. (516 DM 2.4B).
- c. A cooperating agency is any Federal, State or local agency or Indian tribe other than a lead agency which has jurisdiction by law or because of special expertise in dealing with any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other

major Federal action significantly affecting the quality of the human environment (40 CFR 1508.5). A cooperating agency is not primarily responsible for preparing the EA or EIS but is involved in the action in some capacity and may participate in the EA or EIS preparation process. Cooperating agencies should participate in the NEPA process at the earliest possible time, including the scoping process; assume on request of the lead agency responsibility for developing information and preparing environmental analyses, including portions of the EA or EIS for which the cooperating agency has special expertise; and make available staff support at the lead agency's request to enhance interdisciplinary capability (40 CFR 1501.6 (b)) (Attachment 3.1). A cooperating agency has the prerogative of declining to provide the requested assistance because of other program commitments. OEPR must send CEQ a copy of the declining agency's reply to the lead agency (40 CFR 1501.6(c), 516 DM 2.5B). Cooperating agencies participate in, but are not directly responsible for, preparing an EIS. Cooperating agencies comment on the proposed action and NEPA document following 40 CFR 1503.3. One of the benefits of being a cooperating agency is under 40 CFR 1506.3(c), the cooperating agency may adopt the resulting EIS without recirculation.

- d. Arranging for OSMRE Cooperation--The lead agency submits a memorandum requesting OSMRE participation in preparing an EIS to the OSMRE ADPP. The ADPP should respond to the lead agency with a memorandum or letter notifying it of the OSMRE decision, based on the particular subject matter, the workload, and the availability of staff. A copy of the memorandum to the lead agency is sent to BEEA to forward to OEPR (516 DM 2.5B). If OSMRE declines to be a cooperating agency, OEPR then submits a copy of the memorandum to CEQ (40 CFR 1501.6(c)). The lead and cooperating agencies should formally agree in writing on financial responsibility and the use of personnel and other resources. Normally, salaries for cooperating agency staff are paid by the cooperating agency. This is not required, however. Expenses, including travel, may be paid by the lead agency. Personnel can either be assigned by their supervisors to work on the EIS, or be temporarily detailed to the lead agency.

- e. Leadership Responsibility--An OSMRE staff member should be designated to coordinate the OSMRE role as a cooperating agency. This OSMRE coordinator, responsible to the ADPP, for Headquarters-originated actions, or ADFO, for Field Operations office-originated actions, for all activities of OSMRE personnel in the EIS process, informs the ADPP or ADFO of EIS assignments and the progress of OSMRE staff. OSMRE staff carry out their work as assigned by the coordinator. The coordinator is not responsible for the EIS, but sees that OSMRE assignments are done on time, that they are technically correct, and that they reflect agency policy. The coordinator ensures that any comments received at OSMRE are forwarded to the lead agency team leader, accompanied by an OSMRE response where appropriate.
- f. Interdisciplinary Team Review--As a cooperating agency, OSMRE should formally comment on the draft EIS during the public comment period. Formal comments from OSMRE should identify areas of concern and required changes in the document based on special expertise or jurisdiction.
- g. Response to Public Comments--OSMRE staff assists lead agency personnel in responding to public comments and revising the document in those sections relating to OSMRE responsibility or expertise. If OSMRE and lead agency staff cannot concur on responses or changes, OSMRE ADPP should be notified, so that if necessary the matter can be referred by the ADPP to higher levels of OSMRE, DOI, or CEQ.

2. Interagency Coordination

- a. Responsibility--For Field Operations office-originated actions, the ADFO or his designee, ensures that OSMRE responsibilities as lead agency are carried out. For Headquarters-originated actions, the ADPP or his designee ensures that lead agency responsibilities are carried out. In extraordinary circumstances (e.g., an action transcends more than one Field Operations area, etc.) the ADPP through BEEA designates the individual responsible for assuring that OSMRE

lead agency responsibilities are carried out. Requests for CEQ resolution concerning lead agency designation shall be made by BEEA through OEPR (516 DM 2.4A).

- b. Documents to Be Reviewed (516 DM 7.2 and 7.4D)-- OSMRE may comment on draft EIS's prepared by other Federal agencies which discuss environmental impacts involving OSMRE jurisdiction or special expertise (40 CFR 1503.2). OSMRE review of non-DOI EIS's that have been filed with EPA is controlled by OEPR and any comments are routed through OEPR (516 DM 7). For preliminary or working drafts of EA's or EIS's, OSMRE provides comments directly to the preparing agency. 40 CFR 1503.2 and 1503.4 set forth standards as to the duty to comment and specificity of comments and responses. Also, see ES72-5.
- c. Referrals--40 CFR Part 1504 describes procedures for resolving interagency conflicts concerning proposed major Federal actions with potential unsatisfactory environmental effects. For OSMRE lead agency proposed actions, the ADFO or Headquarters program office receiving a notice of intended referral from another agency shall expeditiously notify and provide a copy of the notice to BEEA. Then BEEA will notify and provide a copy of the notice to OEPR (516 DM 1).
- d. Emergency Circumstances--In no event will OSMRE delay an emergency action necessary to preserve human life or property for the purpose of complying with this handbook or the CEQ regulations. In emergency circumstances, take any necessary action following 516 DM 5.8. Then, expeditiously notify BEEA, which will ensure that consultation occurs with CEQ through OEPR, and others as required by 516 DM 5.8, about NEPA compliance. (Also see 40 CFR 1506.11 about NEPA compliance.)

B. Adopting Environmental Documents Prepared by Other Agencies (516 DM 3.6, 40 CFR 1506.3)

- 1. Introduction--Some OSMRE actions may be covered in environmental documents prepared by another agency. Agencies are encouraged to adopt the environmental documents of other Federal agencies whenever possible to reduce costs and processing time of Federal actions

(40 CFR 1500.4(h)). However, the conclusions reached by the adopting agency may not be the same as those of the preparing agency. Therefore, in adopting another agency's environmental documents, OSMRE must ensure that the findings of the document are in full compliance with NEPA and OSMRE policy. Adhere to the following procedures when adopting environmental documents prepared by other agencies. (Also see section 2.C.4.b. of this handbook).

2. Environmental Assessments (EA's) and FONSI's (516 DM 3.6)--If the EA is adequate from a NEPA standpoint and the proposed action in the EA is substantially the same as the proposed OSMRE action and meets OSMRE procedural requirements, OSMRE can adopt an EA prepared by another agency, applicant, etc., as its own. In doing so, OSMRE must review the EA and assume full responsibility for its scope and content as if OSMRE had prepared it. If review of the EA by the responsible OSMRE official results in a finding of no significant impact (FONSI), a FONSI should be prepared using the format in attachment 2.4 of this handbook. This attachment serves as both a statement adopting the other agency's EA and a finding of no significant impact. A separate adoption statement is not needed. Should the responsible OSMRE official determine that the other agency's EA is not adequate, the EA must be augmented or rewritten. This augmentation or rewrite may be done by the other agency at the request of OSMRE. However, if the other agency is unable to do so, the responsible OSMRE official shall augment or rewrite the EA. The other agency's EA may be used as the basis for the OSMRE augmentation or rewrite and may be incorporated by reference into the OSMRE EA to the extent it is adequate.
3. Environmental Impact Statement (EIS) (40 CFR 1506.3)
 - a. OSMRE may adopt a draft or final EIS of another agency if the EIS adequately addresses the impacts of the proposed OSMRE action and meets the standards for an adequate statement under 40 CFR 1506.3. A notice of intent to adopt should be published in the Federal Register. When adopting an EIS of another agency, the responsible OSMRE official shall state this fact in the Record of Decision (ROD). A suggested format for stating this is: "After an independent review of (specify lead agency) environmental impact statement, I

have determined that the document adequately addresses the impacts of the (specify proposed action). Therefore, I hereby adopt the (specify entire EIS or portion thereof)."

- b. If the responsible OSMRE official determines that a lead Federal agency's EIS is not adequate for OSMRE purposes, the official shall contact BEEA for specific guidance concerning appropriate action to comply with NEPA.
 - c. An ROD is prepared for all actions involving an EIS (40 CFR 1505.2). When OSMRE is the lead agency, an ROD is included in the file when submitted for final agency action. When another Federal agency has the lead, the case file should contain a copy of that agency's ROD, if any, as well as the OSMRE ROD. The OSMRE ROD is limited specifically to the concerns and actions under OSMRE jurisdiction and shall discuss all impacts for which OSMRE is responsible. The ROD is signed by the appropriate decisionmaker.
- C. Public Access to NEPA Documents. OSMRE makes completed NEPA documents available to interested persons through the Administrative Record. See appropriate sections in this handbook on the development of NEPA documents for specific requirements for public involvement and public notice. Documents made available should include interagency memoranda to the extent they transmit comments of Federal agencies on the environmental impacts of the proposed action. Materials are provided to the public without charge up to \$15.00, after which there are charges of \$0.10 per copied page and for any employee time in excess of 2 hours. A library copy of an EIS or EA is made available for public inspection at Headquarters and the appropriate OSMRE Field Operations office.
- D. Public Hearings and Meetings
- 1. Introduction--Unless otherwise noted the following guidance for public hearings also applies to public meetings. Increased public participation in the NEPA process can be obtained through a public hearing (40 CFR 1506.6). Public hearings provide an orderly forum for the presentation of public comments on draft EIS's. Public hearings and meetings can help resolve

environmental conflicts. When considering whether to hold a public hearing, the responsible official should consider the magnitude of or underlying issues of the proposed action, the degree of public interest in it, and the benefits of having a hearing. A public hearing requires intensive preparation, beginning as soon as the decision is made to hold one. The public hearing is not an adversary process. Commenters are encouraged to express their views but are not allowed to question or argue with panel members on any substantive issues. They may only present comments and ask questions pertaining to NEPA procedures. Participants are encouraged to submit a written copy of their comments to OSMRE. Generally, hearings are presided over by an OSMRE official.

2. When To Prepare for a Public Hearing or Meeting
 - a. Preparation for a public hearing should begin at least 60 days before the anticipated hearing date. Notice of the hearing should appear in the Federal Register at least 30 days before the hearing. At least 10 working days should be allowed for the proposed notice to clear OSMRE and Departmental review, when required, and another 3 days for the proposed notice to be published after it is delivered to the Office of the Federal Register.
 - b. Preparation for a public hearing or meeting may involve a Federal Register notice. Scoping meetings require scheduling similar to that for public hearings. Other meetings may not require this level of advance notice and preparation. BEEA should be consulted regarding the content and timing of public hearing and meeting notices when a Federal Register announcement is made.
3. Preparation--Preparation for both hearings and meetings must begin well in advance and include determining whether to hold a hearing or meeting; determining their number and location(s); making arrangements for specific dates, times and locations; arranging for Federal Register and/or newspaper notice; arranging for a presiding officer; determining whether a loud-speaker system would be needed; arranging for a record of the proceedings; developing

procedural ground rules; determining that sufficient seating would be available; and preparation of handouts. These preparations are discussed in detail below.

- a. Determine Whether to Hold a Hearing or Meeting-- Before any arrangements can be made, it must be determined whether there is a need to hold a hearing. Unless a hearing is required by law, an informal meeting generally is preferable. Preparation for a hearing is more extensive than for a meeting. However, hearings which are formal, transcribed, and limited to the receipt of testimony are far easier to manage. In contrast, meetings provide for greater interaction, are not as easily managed, and may develop a greater amount and depth of public participation.
- b. Determine the Number and General Location(s) of the Hearing(s) or Meeting(s)--If a large geographic area is involved, hearings should be held in two or more locations to encourage greater public participation.
- c. Make Arrangements for Specific Dates, Times and Locations--Date(s), time(s) and location(s) are arranged and confirmed before any public notices are prepared. It is helpful to hold hearings in the afternoon and evening at the same location (e.g., 1:00 p.m. and 7:00 p.m.) to enable persons to participate who might otherwise be unable to do so. Location is important for a hearing which should be held in a well-known, easily accessible building. Adequate seating capacity, tables, ventilation and sound equipment are also important. The size of the room and the use of a public address system should be based on the potential attendance. Consideration should be given to other concurrent events which might conflict with the hearing. You may need to arrange for name placards for the panelists, water pitchers and glasses, three-prong electrical adapters, extension cords, directional signs and arrows, transportation and lodging for agency participants, typewriters, name tags, sign-in sheets, and project maps or other graphics.

- d. Arrange for Federal Register or Newspaper Notice
--Requirements for the preparation and submission of Federal Register documents are detailed in the "Document Drafting Handbook" published in June 1980 by the Office of the Federal Register. Generally, notice of a hearing on a draft EIS should be included in the notice of availability of the EIS (For further information, also see section 318 of the Departmental Manual).
- e. Arrange for a Presiding Officer at Hearings--
Generally the presiding officer at a hearing or meeting is an appropriate OSMRE official.
- f. Arrange for a Record of the Proceedings--For a public hearing, a transcript of the proceedings is prepared so that the testimony can be reviewed, especially where the team must later prepare written responses to the comments made (40 CFR 1503.4). The proceedings may be transcribed by a court reporter or stenographer under contract to OSMRE. A tape recorder should always be used as a backup. Where very low attendance is expected, the tape recorder alone is adequate if arrangements are made to transcribe the tape. If a stenographic service is used, the typed transcript must be delivered to OSMRE within 5 days after the hearing.
- g. Develop Ground Rules for the Hearing or Meeting and Prepare Handouts--The EIS preparer develops ground rules and prepares a short handout for the hearing. The handout should include: (1) the purpose of the hearing; (2) a description of the proposed action and related documents; (3) a summary of principal issues, (4) the procedures for presenting oral and written statements; (5) the address for submitting written statements; (6) a list of locations where any applicable documents may be inspected; (7) the composition of the hearing panel; (8) the citation of authority for the hearing (e.g., NEPA); and (9) a schedule of any related public hearings. An opening statement should be prepared which incorporates the major elements of the handout.
- h. Arrange for Publicity--In addition to a Federal Register notice, it may be helpful to publicize a hearing by advertisement and/or notices in the

legal classified or other appropriate section of local newspapers and organization newsletters. Press releases for local radio and television stations and newspapers, approved by the ADFO or ADPP, can also be used to stimulate local interest. Other forms of publication include distribution of pamphlets on the proposed action, mass mailings to local citizens and notices posted in public buildings (e.g., sending requests for local postmasters to post notices). Notice of a hearing should identify any available detailed information concerning the environmental impacts of the project or proposal. For a public hearing, any related environmental document should be made available to the public at least 30 days in advance. The notice of the hearing should indicate the person from whom the document can be obtained.

Memorandum

To: Director, U.S. Fish and Wildlife Service (USFWS)

From: Director, Office of Surface Mining Reclamation and Enforcement (OSMRE)

Subject: Assistance for Environmental Impact Statement (EIS),
Proposed Caballos Rojo Coal Mine, Campbell County,
Wyoming

We request the assistance of the USFWS as a cooperating agency for preparation of a site-specific EIS for the proposed Mobil Oil Corporation Caballos Rojo coal mine located in the Eastern Powder River Basin, Wyoming.

Specifically, we request the services of a wildlife resources specialist familiar with the Powder River Basin to prepare the appropriate sections of the EIS in consultation with our staff archeologist in Denver, Colorado. We anticipate that approximately 3 man-months of effort will be required during 1980, with the bulk of the effort concentrated on preparing the preliminary draft EIS (DEIS) from January 25th through March. The DEIS is scheduled for completion on August 15, 1980, and the final EIS is scheduled for release January 16, 1981. An initial meeting has been scheduled for January 25, 1980, in the OSMRE Western Field Operations Office, 1020 15th Street, Denver, Colorado, beginning at 8:30 a.m. We would appreciate it if your representative could attend.

Because of the tight schedule for preparing this EIS, we would like an early response to this request. If you have any questions, please contact the Chief, (Branch Name, location and phone number). We believe this EIS will implement the Department's objective of meshing technical and environmental analyses in implementing the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

We look forward to USFWS participation in this important effort.

CHAPTER 4. SPECIAL CONSIDERATION FOR CERTAIN ACTIONS

A. Unsuitability Petitions

1. Introduction--This section briefly discusses key areas of emphasis in preparation of NEPA documents for petitions to designate lands as unsuitable for all or certain types of surface coal mining operations, or to have such a designation terminated. Petitions dealing with Federal lands are processed in accordance with 30 CFR Part 769. Petitions on lands in a State where OSMRE is the regulatory authority are processed in accordance with that State's program. The following procedures relate directly to NEPA compliance and should be followed in conjunction with the OSMRE directive: Processing Petitions to Designate Lands as Unsuitable for Surface Coal Mining Operations and Termination of Previous Designation.
2. Petition Evaluation Document/National Environmental Policy Act (PED/NEPA) Document
 - a. Preparation of Draft PED/NEPA Document--The ADFO prepares the combined draft PED/NEPA document which satisfies the requirements of both SMCRA and NEPA and is prepared in accordance with this handbook.
 - b. Hearing--If a draft PED/EIS is being prepared as part of petition processing, the hearing on the petition may also cover the draft EIS.
 - c. Final PED/NEPA Document--The ADFO shall prepare the final PED/NEPA document, including responses to public comments on the draft.
 - d. Final Decision--After completing final PED/NEPA document processing, the ADFO sends to the Deputy Director, OTS a recommendation memorandum, draft decision document, draft statement of reasons, and draft Federal Register notice announcing the availability of the decision. The Director's decision document, final statement of reasons, final Federal Register notice announcing the availability of the final document and the decision, and the letter to the petitioner are prepared by the Headquarters Coordinator and included with the Headquarters Coordinator's memorandum.

B. Mining Plan Permit Application Packages (PAP)

1. Introduction--This section discusses key areas of interaction between the processing of a PAP and associated NEPA compliance. Separate documents should be written for technical review of

the PAP and NEPA compliance. Each document must be able to stand alone, and there may be some duplication. The sections that may be nearly the same in both documents are the introduction, the preferred alternative (usually approval of the applicant's proposal), the maps, and mining plan information. A single staff member may be assigned the lead responsibility for both processing the PAP and the completing the NEPA document. Before beginning the administrative completeness review or development of a task order contract, the responsible staff member should study the applicant's proposal, locate existing environmental studies evaluating the impact area, such as CHIA documents, NEPA documents, and other studies for use by a contractor, staff member, or State regulatory authority (RA), study the applicant's proposal, and coordinate with other State and Federal agencies to reach an agreement on the roles and responsibilities of each during the review. Early in the review process, the PAP should be reviewed to see that there are adequate data in the application to determine the critical issues to be addressed in NEPA compliance. If not, the preparation plan should include a discussion of the steps that will be taken, either by OSMRE or by the applicant, to obtain the necessary data.

2. The NEPA Document

- a. A determination that the PAP is complete and accurate in accordance with 30 CFR 773.15(c)(1) is required before the final agency decision can be made on the PAP. The NEPA document must assess the impacts on the environment resulting from the proposed action, taking into account compliance with applicable laws, regulations, policies, and conditions. (See Chapter 2 for discussion of alternatives to be considered in NEPA documents). The NEPA document must include a cumulative analysis of all potential impacts on the affected environment.
- b. Data sources used in preparing the NEPA document include the technical analysis of the PAP, information submitted by the applicant, BLM's minerals evaluation, environmental studies of the affected area, existing EIS's covering the affected area, and land use plans and other resource documents developed by Federal land managing agencies. The NEPA compliance document should be a clear, concise assessment of the impacts resulting from the proposed action and other alternatives. The document should contain adequate information to stand by itself. It should focus on the location or environmental setting, ownership details, type of operation, size of operation, existing or new operation, duration of operation, production levels, description of

the existing environment, and an assessment of the impacts on the environment as a result of the proposed action and alternatives. Responsibility for information contained in a NEPA document cannot be delegated to a State regulatory authority. Therefore, when a State assists OSMRE in the NEPA process by listing impacts in its technical analysis, OSMRE must evaluate these impacts and describe them in the impact section of the OSMRE NEPA document. If an agency having jurisdiction and authority to set and enforce relevant environmental standards under related environmental laws recommends that a reasonable permit condition be included in the permit, impacts of this recommended alternative permit condition must also be fully analyzed in the NEPA document (30 CFR 740.13(c)(5), 30 CFR 773.13(b) and 30 CFR 773.17).

C. Abandoned Mine Land Reclamation Program

1. Introduction--This section presents the general responsibilities of organizational units within OSMRE for complying with NEPA for the decision to fund abandoned mine land reclamation (AMLR) projects.
2. NEPA Document Responsibilities
 - a. Secretary Discretionary Fund AMLR Projects--The proposed action is the decision to fund Federal projects that are planned, administered, and contracted by the Eastern and Western Field Operations Offices (EFO and WFO). The EFO or WFO must prepare an environmental assessment (EA) and finding of no significant impact (FONSI), or an environmental impact statement (EIS).
 - b. Cooperative Agreements (CA's) With States or Indian Tribes--The proposed action is the decision to fund Federal projects that are conducted by a State or Indian tribe. Either the State or Indian tribe, or EFO or WFO may prepare the EA, depending on the CA for the specific project. The EFO or WFO is responsible for the scope and content of the NEPA document. The FONSI is prepared by EFO or WFO and signed by the ADFO. Also, only OSMRE or its contractor can prepare an EIS, if required.
 - c. State Share Fund AMLR Project Grant Applications--The proposed action is the decision to fund State or Indian tribal projects. This involves approval of grant applications submitted by States and Indian tribes to OSMRE. Either the State or Indian tribe, a contractor, or the

Field Office prepares the EA. The FONSI is prepared by the Field Office and signed by the FOD. Also, only OSMRE or its contractor can prepare an EIS, if required.

3. Methods for Implementing NEPA for AMLR Projects

- a. NEPA Document Preparation—Chapter 2 discusses how to determine the type of NEPA document and prepare a Categorical Exclusion Determination, EA, FONSI or EIS and ROD, as appropriate.
 - (1) As discussed in section 2.C.4.b. of this handbook, pertinent sections of an existing NEPA documents may be incorporated by reference into the NEPA document for the proposed action, e.g., OSM-EIS-11.
 - (2) OSM-EIS-11 (Approval of State and Indian Reclamation Program Grants Under Title IV of the SMCRA, November 1983) covers generic categories of AMLR projects, the impacts typically associated with AML sites, and typical reclamation techniques.
- b. OSMRE Role in Environmental Analysis of AMLR Projects—The responsible OSMRE staff independently evaluates the proposed project following the procedures set forth in Chapter 2 of this handbook and establishes the extent of information needed. Written information provided by State or Indian tribal staff may be supplemented by documented oral statements between State or Indian tribal staff and the responsible OSMRE staff. The ADFO's will retain NEPA compliance responsibility for all AMLR actions referred to them by the FOD. Periodically, the ADFO staff should review a sample of State Share Fund AMLR project files and report to the FOD on NEPA compliance. WFO or EFO NEPA Coordinators, or BEEA, may be consulted for guidance concerning any of these procedures.
- c. State/Federal Coordination—The responsible OSMRE official, i.e., FOD or ADFO, may develop an agreement for a State or Indian tribe to coordinate with all or some of the agencies with expertise or jurisdiction in related environmental laws and to document the results. The responsible OSMRE official must ensure that the consultation occurs and that the results are documented as part of the project submittal to OSMRE. Please note that to comply with some laws, OSMRE itself must coordinate directly with these agencies.