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COUNCIL ON ENVIRONMENTAL QUALITY
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MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

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COUNCIL ON ENVIRONMENTAL QUALITY

SUBJECT: Effective Use of Programmatic NEPA Reviews

The Council on Environmental Quality (CEQ) is issuing this guidance for Federal departments and agencies on effective use of programmatic National Environmental Policy Act (NEPA) reviews. This guidance is issued in accordance with NEPA, 42 U.S.C. § 4321 et seq., and the CEQ Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations), 40 CFR Parts 1500-1508. The guidance explains the requirements of NEPA and the CEQ Regulations when agencies prepare programmatic NEPA reviews.

The text of the final guidance follows.

Effective Use of Programmatic NEPA Reviews

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I. INTRODUCTION

In this guidance, the Council on Environmental Quality (CEQ) provides clarification on when and how Federal agencies should use programmatic NEPA reviews[1] in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, and the CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. parts 1500-1508 (CEQ Regulations). This guidance provides an overview of opportunities for departments and agencies to use programmatic analyses to provide for greater efficiency in their work to comply with NEPA requirements for preparing NEPA reviews that help agencies make better informed decisions.[2] This guidance also reflects the need to integrate environmental reviews into the decisionmaking process, coordinate multi-agency or multi-governmental reviews and approvals, and ensure meaningful public engagement in the decisionmaking process.[3] The

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[1] The term "NEPA review(s)" is used to encompass the process, analyses, and documents developed under NEPA to inform a Federal agency's decision.

[2] This guidance provides CEQ's interpretation of existing regulations promulgated under NEPA, and does not change agency obligations with regard to NEPA and the CEQ Regulations. This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "recommend," "may," "should," and "can," is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as "must" and "required" is intended to describe controlling requirements under the terms of NEPA and the CEQ Regulations, but this document does not establish legally binding requirements in and of itself.

[3] Programmatic NEPA guidance was first recommended by the interagency 2003 NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA Implementation. The need for guidance was reiterated in 2012 in comments received on CEQ's Implementing the Procedural Requirements of the National Environmental Policy Act. In addition, recent trends in legislation (e.g., MAP-21 Section 1305, Water Resources Reform and Development Act of 2014 § 1040) encourage agencies to apply programmatic approaches in their NEPA reviews. The goal of this guidance is to encourage a more consistent approach to programmatic NEPA analyses and documentation that will allow comprehensive programmatic reviews.

goal of this guidance is to encourage a more consistent approach to programmatic NEPA reviews.

NEPA requires Federal agencies to consider the effects of a proposed action and any reasonable alternatives on the human environment. Those effects include, among others, impacts on social, cultural, economic, and natural resources.[4] To implement NEPA, agencies undertake an assessment of the environmental effects of their proposed actions prior to making decisions. The NEPA review process is an integral and valuable tool for public engagement and thoughtful decisionmaking, a process that often produces more sound analysis and information that the federal government might otherwise overlook. The NEPA process:

- Leads to a better outcome;[5]
- Includes meaningful public engagement;
- Provides transparent, accountable, and informed government decisionmaking;

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[4] 40 CFR *§ 1508.8*

[5] For example, Russell Train, former Administrator of the Environmental Protection Agency and the first Chairman of the Council on Environmental Quality, found that NEPA's "[c]onsideration of the impacts of proposed government actions on the quality of the human environment is essential to responsible government decision-making. Government projects and programs have effects on the environment with important consequences for every American, and those impacts should be carefully weighed by public officials before taking action. Environmental impact analysis is thus not an impediment to responsible government action; it is a prerequisite for it." September 19, 2005 Letter to the Honorable Cathy McMorris, Chair of the Task Force on Improving the National Environmental Policy Act. In August 2010, the Environmental Law Institute published *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government.* This publication provides numerous case studies that illustrate how NEPA works for better decisions and better outcomes for federal agencies and all stakeholders.

- Allows for the consideration of reasonable alternatives that may not otherwise be identified;
- Identifies mitigation alternatives and measures; and
- Encourages collaboration with interested parties.

Each Federal agency has its own agency NEPA implementing procedures which adapt the framework established by the CEQ Regulations to address agency specific missions and decisionmaking authority. The NEPA process begins when an agency has a proposal.[6] Once the proposal is conceptualized and any reasonable alternatives have been developed, the agency must determine if the proposed action or any reasonable alternatives have the potential to affect the quality of the human environment. Agencies fulfill their NEPA responsibilities by:

- Applying a Categorical Exclusion established in the agency's NEPA implementing procedures;
- Preparing an Environmental Assessment; or
- Preparing an Environmental Impact Statement.

NEPA reviews may be on a site- or project-specific level or on broader – programmatic – level. Programmatic analyses have value by setting out the broad view of environmental impacts and benefits for a proposed decision. That programmatic NEPA review can then be relied upon when agencies make decisions based on the Programmatic Environmental Assessment (PEA) or

[6] 40 CFR § 1508.23.

Programmatic Environmental Impact Statement (PEIS)[7] such as a rulemaking or establishing a policy, program, or plan, as well as when decisions are based on a subsequent – tiered[8] – NEPA review. Programmatic NEPA reviews should result in clearer and more transparent decision-making, as well as provide a better defined and more expeditious path toward decisions on proposed actions. Agencies are encouraged to revise or amend their NEPA implementing procedures, if necessary, to allow for analyses at a programmatic level.

A. Purpose of This Guidance

This guidance was prepared to assist Federal agencies to improve and modernize their use of programmatic NEPA reviews. The term "programmatic" describes any broad or high-level NEPA review; it is not limited to a NEPA review for a particular program.[9] Programmatic NEPA reviews assess the environmental impacts of proposed policies, plans, programs, or projects for which subsequent actions will be implemented either based on the PEA or PEIS, or based on subsequent NEPA reviews tiered to the programmatic review (e.g., a site- or project-specific document). Programmatic NEPA reviews are governed by the same regulations and guidance that apply to non-programmatic NEPA reviews. This guidance addresses both

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[7] The terms PEA and PEIS are also know by some agencies as "generic" or "tier 1 NEPA review".

[8] "Tiering" refers to an approach where federal agencies first consider the broad, general impacts of proposed program, plan, policy, or large scope project – or at the early stage of a phased proposal – and then conduct subsequent, narrower, decision focused reviews. See 40 CFR §§ 1502.20 and 1508.28.

[9] For example, programmatic NEPA reviews are used when agencies revise forest or land and resource management plans, establish programs to eradicate or control invasive species, or develop similar infrastructure (e.g., similar recovery projects following a major disaster) in multiple jurisdictions.

programmatic NEPA reviews that make decisions applicable to subsequent tiered NEPA reviews and programmatic NEPA reviews without a subsequent, tiered, review.

Programmatic NEPA reviews have not been fully used for their intended purpose and when used, have often not fulfilled agency or stakeholder expectations.[10] On March 6, 2012, CEQ published guidance highlighting the efficiencies provided for in the CEQ Regulations[11] and received feedback from several external stakeholders and Federal agencies that additional guidance on programmatic and tiered NEPA reviews would provide a valuable addition to agency practices and procedures for providing more timely and efficient NEPA reviews.

This guidance is designed to assist in the preparation and proper use of programmatic NEPA reviews, and help agencies inform and meet public expectations for programmatic

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[10] The NEPA Task Force, Report to the Council on Environmental Quality, "Modernizing NEPA Implementation," September 2003 (finding that reliance on programmatic NEPA documents has resulted in public and regulatory agency concern that programmatic NEPA documents often result in a "shell game" of when and where deferred issues will be addressed, undermining agency credibility and public trust. The report found that the public may fail to understand: (1) the significance of the broad decisions being analyzed; and (2) that the specific details will be provided in subsequent site-specific documents. On the other hand, when programmatic NEPA documents are focused, some respondents fear that some issues and analyses will be deferred and ultimately never addressed. The NEPA Task Force found that agencies that provide the greatest specificity in programmatic documents have the greatest difficulty in maintaining the viability and durability of these documents. This difficulty associated with maintaining document relevancy has led some agencies as well as members of the public to conclude that preparing programmatic NEPA documents is not cost effective. The recommendation of the Task Force was that CEQ develop advice to agencies on the analytical requirements associated with the different uses of programmatic NEPA reviews, to foster agreement and consistency between agency decisions and public expectations).

[11] Council on Environmental Quality, "Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act," March 6, 2012.

reviews that will enhance the focus and utility of public review and comment. It builds on guidance issued in 1983 that explains the use of tiering and its place in the NEPA process.[12]

This new guidance focuses specifically on programmatic NEPA reviews and not on other types of programmatic analyses such as data collection, assessments, and research. CEQ recognizes that analyses conducted outside the context of NEPA can also play an important role, for example, in assessing existing conditions. Although these types of analyses may be used – either by incorporation by reference or as a starting point for developing the NEPA review – an analysis prepared by an agency is not a NEPA programmatic review unless that agency is making decisions on a proposed Federal action. This important distinction was explained in previous NEPA guidance which referred to a non-NEPA programmatic review as a joint inventory or planning study:

> In geographic settings where several Federal actions are likely to have effects on the same environmental resources it may be advisable for the lead Federal agencies to provide historical or other baseline information relating to the resources. This can be done either through a programmatic NEPA analysis or can be done separately, such as through a joint inventory or planning study. The results can then be incorporated by reference into NEPA documents prepared for specific Federal actions so long as the programmatic analysis or study is reasonably available to the interested public.[13]

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[12] Council on Environmental Quality, "Guidance Regarding NEPA Regulations," Memorandum for Heads of Federal Agencies, July 28, 1983.

[13] Council on Environmental Quality, "Guidance on the Consideration of Past Actions in Cumulative Effects Analysis," June 24, 2005.

B. The Nature of Programmatic NEPA Reviews

Programmatic NEPA reviews address the general environmental issues relating to broad decisions, such as those establishing policies, plans, programs, or suite of projects, and can effectively frame the scope of subsequent site- and project-specific Federal actions. A well-crafted programmatic NEPA review provides the basis for decisions to approve such broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities can be taken or identifying broad mitigation and conservation measures that can be applied to subsequent tiered reviews.[14] Effective programmatic NEPA should present document reviewers with the agency's anticipated timing and sequence of decisions, which decisions are supported by the programmatic NEPA document and which decisions are deferred for some later time, and the time-frame or triggers for a tiered NEPA review.

One advantage of preparing a programmatic NEPA review for repetitive agency activities is that the programmatic NEPA review can provide a starting point for analyzing direct, indirect, and cumulative impacts. Using programmatic NEPA reviews allows an agency to subsequently tier to this analysis, and analyze narrower, site- or proposal-specific issues. This avoids repetitive broad level analyses in subsequent tiered NEPA reviews and provides a more comprehensive picture of the consequences of multiple proposed actions. An agency relying on a programmatic NEPA review must consider whether the depth of analysis needed for a tiered decision requires adding to, or building on, the analysis provided in the programmatic NEPA review. A programmatic NEPA review can also be an effective means to narrow the

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[14] See Council on Environmental Quality, "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact," January 14, 2011. See also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

consideration of alternatives and impact discussions in a subsequent tiered NEPA review. For example, a land management plan PEIS for "zoning" certain uses can narrow future alternatives to specific uses.

Decisionmakers may also call for a programmatic NEPA review for other reasons. For example, programmatic NEPA reviews may serve to influence the nature of subsequent decisions, thereby providing for an integrated and sustainable policy, planning framework, or program. Programmatic NEPA reviews may also support policy- and planning-level decisions when there are limitations in available information and uncertainty regarding the timing, location, and environmental impacts of subsequent implementing action(s). For example, in the absence of certainty regarding the environmental consequences of future proposed actions, agencies may be able to make broad program decisions and establish parameters for subsequent analyses based on a programmatic review that adequately examines the reasonably foreseeable consequences of a proposed program, policy, plan, or suite of projects.

II. PROGRAMMATIC NEPA REVIEWS IN COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS

The concept of "programmatic" NEPA reviews is imbedded in the CEQ Regulations that address analyses of "broad actions" and the tiering process.

The CEQ Regulations at 40 CFR §§ 1502.4(b)-(c) state:

> (b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements

on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision-making.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions that have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development, including Federal or Federally assisted research, development or demonstration programs for new technologies which, if implemented, could significantly affect the quality of the human environment....

CEQ interprets its regulations as allowing for the use of a programmatic approach in developing an EA as well as in an EIS.

In cases where a policy, plan, program, or broad project analysis identifies but does not provide sufficiently in-depth analysis for potential future actions, then subsequent analyses are appropriate and are referred to as "tiered" analyses. Tiering is one way "to relate broad and narrow actions and to avoid duplication and delay."[15] Appendix A provides a table of key

[15] 40 CFR § 1502.4(d). Tiering is described at 40 CFR § 1502.20 and further defined at 40 CFR § 1508.28.

distinctions between programmatic and the subsequent tiered NEPA reviews, Appendix B contains examples of programmatic NEPA reviews.

III. WHEN TO USE A PROGRAMMATIC AND TIERED NEPA REVIEW

Programmatic NEPA reviews add value and efficiency to the decision-making process when they inform the scope of decisions and subsequent tiered NEPA reviews. Programmatic NEPA reviews can facilitate decisions on agency actions that precede site- or project-specific decisions and actions, such as mitigation alternatives or commitments for subsequent actions, or narrowing of future alternatives. They also provide information and analyses that can be incorporated by reference in future NEPA reviews.[16] Programmatic NEPA review may help an agency look at a large or multi-faceted action without becoming immersed in all the details of future site- or project-specific proposals. Although a programmatic EIS may often be inadequate relative to an individual action, there is no reason to require a site-specific statement to duplicate the analysis in the PEIS. Using programmatic and subsequent tiered NEPA reviews effectively will allow for a focused review at the proper level.

A programmatic NEPA review may be appropriate when the action being considered is subject to NEPA requirements and falls into one of the four major categories of actions to which NEPA can apply (40 CFR § 1508.18(b)):

- Adopting Official Policy. Decision to adopt in a formal document an official policy that would result in or substantially alter agency programs. The programmatic analysis for such a decision should include a road map for future agency actions with defined

[16] The NEPA review and the decisionmaking is compromised when a programmatic NEPA review narrows or limits alternatives based on only a superficial or general review of potential impacts.

objectives, priorities, rules, or mechanisms to implement objectives. Programmatic examples include:

- Rulemaking at the national- or regional-level;
- Adoption of an agency-wide policy; or
- Redesign of an existing program.

- Adopting Formal Plans. Decision to adopt formal plans, such as documents that guide or constrain alternative uses of Federal resources, upon which future agency actions will be based. For example, setting priorities, options, and measures for future resource allocation according to resource suitability and availability. Specific programmatic examples include:
  - Strategic planning linked to agency resource allocation; or
  - Adoption of an agency plan for a group of related projects.
- Adopting Agency Programs. Decision to proceed with a group of concerted actions to implement a specific policy or plan; e.g., an organized agenda with defined objectives to be achieved during implementation of specified activities. Programmatic examples include:
  - A new agency mission or initiative; or
  - Proposals to substantially redesign existing programs.
- Approving Multiple Actions. Decision to proceed with multiple projects that are temporally or spatially connected and that will have a series of associated concurrent or subsequent decisions. Programmatic examples include:
  - Several similar actions or projects in a region or nationwide (e.g., a large scale utility corridor project); or

- A suite of ongoing, proposed or reasonably foreseeable actions that share a common geography or timing, such as multiple activities within a defined boundary (i.e., Federal land or facility).

Agencies should exercise judgment and discretion when determining whether to prepare a PEA or PEIS.[17] CEQ recommends agencies give particular consideration to preparing a PEA or PEIS when: (1) initiating or revising a national or regional rulemaking, policy, plan, or program; (2) adopting a plan for managing a range of resources; or (3) making decisions on common elements or aspects of a series or suite of closely related projects.

Agencies may prepare a single NEPA document to support both programmatic and project-specific proposals. Such an approach may be appropriate when an agency plans to make a broad program decision, as well as timely decisions to implement one or more specific projects under the program. Such a programmatic NEPA review should address both the broad impacts of the proposed broad Federal action and provide sufficiently detailed environmental analyses for specific decisions, such as determining the locations and designs of one or more proposals to implement the broad Federal action. If subsequent actions remain to be analyzed and decided upon, that would be explained in the programmatic document and left to a subsequent tiered NEPA review. Agencies should clearly communicate the purpose and need for the programmatic and subsequent decisions, clearly state the decisions the agency proposes to make based directly on the PEA or PEIS, and distinguish the analysis of impacts and alternatives of the broad programmatic proposals from project- or site-specific proposals.

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[17] *National Wildlife Federation v. Appalachian Regional Commission*, 677 F.2d 883, 888 (D.C. Cir. 1981).

A programmatic NEPA review may not be a cost effective effort for an agency if the effort required to perform the review is substantially greater than the time and effort saved in analyzing subsequent proposals or if the lifespan of the programmatic NEPA document is limited. Agencies usually benefit by asking two questions when determining whether to prepare a programmatic NEPA review: (1) Could the PEA or PEIS be sufficiently forward looking to contribute to the agency's basic planning of an overall program?; and (2) Does the PEA or PEIS provide the agency the opportunity to avoid 'segmenting' the overall program from subsequent individual actions and thereby avoid unreasonably constricting the scope of environmental review?[18]

IV. PRACTICAL CONSIDERATIONS FOR PROGRAMMATIC REVIEWS AND DOCUMENTS

This section provides practical guidance to help agencies implement a successful programmatic approach for informed decision-making. The following points will be addressed:

- Answering the fundamental question of what decision(s) the agency needs to make;
- Answering the question of what actions would the agency subsequently want to take based on the programmatic NEPA review;
- Determining the purpose and need of the programmatic proposal to be analyzed and decided on and its relationship to subsequent tiered level proposals and decisions;

[18] *Piedmont Environmental Council v. F.E.R.C.*, 558 F.3d 304, 316 (4th Cir. 2009) (quoting *Nat'l Wildlife Fed'n v. Appalachian Reg'l Comm'n*, 677 F.2d 883, 888-89 (D.C. Cir. 1981) (agency can do all individual EISs but not if that is an attempt to segment the program and thereby limit regulation. If so, a programmatic should have been done)).

- Defining a practical temporal and spatial scope for the programmatic review that is appropriate to the broad action being analyzed;
- Gathering and analyzing environmental resource data for broadly scoped actions that potentially affect large geographic areas;
- Coordinating among the multiple overlapping jurisdictions and agencies that may have a role in assessing or determining whether and how a subsequent action may proceed;
- Communicating the scope, content, and purpose of a programmatic NEPA analysis in a way the parties involved in the process and the public can understand;
- Communicating the opportunities for public engagement in the development of the tiered NEPA reviews; and
- Maintaining the relevancy of programmatic NEPA documents for subsequent tiered analyses.

A. Determining the Utility and Scope of the Programmatic NEPA Review

Agencies should carefully consider, as early as practicable, the benefits of making the initial broad decisions and the amount of effort required to perform a programmatic NEPA review to ensure that it facilitates decision-making and merits the investment of time and effort. To determine the utility of the PEA or PEIS, and the scope of analysis, an agency may find it helpful to consider:

- What Federal decisions need to be made now and in the future regarding the broad Federal action being proposed?

- What are the meaningful decision points[19] from proposal through implementation, and where are the most effective points in that continuum to address the potential for effects?
- What are the appropriate geographic (spatial) and time frame (temporal) limits for this programmatic review?
- Is it necessary to analyze the particular effects of a proposed action at a broader scale to facilitate analysis and/or decision-making at a more refined (i.e., tiered) level, and is a programmatic NEPA review the best way to do this? For example, a programmatic NEPA review may serve as an efficient mechanism to describe Federal agency efforts to adopt sustainable practices for energy efficiency, reduce or avoid greenhouse gas emissions, reduce petroleum product use, and increase the use of renewable energy including bioenergy, as well as other sustainability practices. Likewise, it may be more efficient to conduct and maintain an ongoing cumulative effects analysis versus a programmatic NEPA document. The definition of "proposal" for the purposes of NEPA review should be considered when answering this question.[20]
- How long will the programmatic review continue to provide a relevant framework for tiering subsequent actions and what factors may result in the need to supplement or refresh the review?

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[19] 40 CFR § 1502.4(b) ("Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision-making.").

[20] 40 CFR § 1508.23 ("'Proposal' exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated... A proposal may exist in fact as well as by agency declaration that one exists.").

- Are there any other federal agencies that may provide meaningful input during the development of the programmatic or tiered NEPA reviews?

1. Purpose and Need

The purpose and need statement is key to developing the NEPA review, as it establishes the scope of the analyses, range of reasonable alternatives, and frames the decision to be made. The purpose and need for a programmatic review will differ from the purpose and need for a project- or site-specific EA or EIS.[21] The purpose and need for a PEA or a PEIS should be written to avoid eliminating reasonable alternatives and focused enough for the agency to conduct a rational analysis of the impacts and allow for the public to provide meaningful comment on the programmatic proposal. The purpose and need sets the tone for the scoping process and the course for conducting the NEPA review.

2. Scope of Analysis

The scope consists of the range of actions, the alternatives, and the associated impacts to be considered in a NEPA review.[22] A programmatic NEPA review, like project- or site-specific NEPA reviews, must address the potentially significant environmental impacts of a proposed Federal action. Consequently, the nature of the pending decision drives the scope of the

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[21] Council on Environmental Quality, "Guidance Regarding NEPA Regulations," 1983 ("If tiering is utilized, the site-specific EIS contains a summary of the issues discussed in the first statement and the agency will incorporate by reference discussions from the first statement. Thus, the second, or site-specific statement, would focus primarily on the issues relevant to the specific proposal, and would not duplicate material found in the first EIS.").

[22] 40 CFR § 1508.25.

environmental analyses and documentation. A programmatic document should not narrow or otherwise restrict decision(s) that will be addressed in subsequent NEPA review(s).

The planning process for the proposed action and the development of a programmatic NEPA review should start as early as practicable. By starting the planning process early, there should be sufficient time for establishing the reasonable scope of actions, alternatives, and impacts in the programmatic review, and identifying the decisions the programmatic review will support so that the level of analysis is clear from the start.

3. The Proposed Action

In addition to unconnected single actions, there are three types of actions set out in 40 CFR § 1508.25(a) that may be analyzed in NEPA reviews, including those that are programmatic: connected actions, cumulative actions, and similar actions.

Connected actions are closely related and therefore should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions; or cannot or will not proceed unless a previous or simultaneous action is taken; or are interdependent parts of a larger action and depend on the larger action for justification.[23]

- Example: A proposed pesticide aerial application program EIS would analyze the proposal along with connected program actions such as standards for pesticide transport, handling, and storage.

Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts, should be discussed in the same NEPA review.[24] An analysis of the

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[23] 40 CFR §§ 1508.25(a)(1) and 1508.25(a)(1)(iii)

[24] 40 CFR § 1508.25(a)(2).

cumulative impacts for each resource would be provided in each level of review, either by relying upon the analysis in the programmatic NEPA review or adding to that analysis in the tiered NEPA review, either approach facilitated by incorporating by reference the cumulative impact analysis provided in the programmatic NEPA review.

- Example: A proposed aerial pesticide spray program with significant effects on an endangered butterfly should be analyzed in the same programmatic EIS with a proposed ground-spraying program as cumulative actions because they both have the potential to significantly affect the endangered species. Note that cumulative effects would have to be considered when conducting the NEPA reviews for each of the proposals, whether in separate or combined NEPA reviews.

Similar actions are those which, when viewed with other reasonably foreseeable or proposed agency actions provide a basis for evaluating their environmental consequences together, such as common as timing, location, impacts, alternatives, or methods of implementation.[25]

- Example: Several energy development programs proposed in the same region of the country are proposals of similar actions if they have similar proposed methods of implementation and similar best practice and mitigation measures that can be analyzed in the same document.

Broad Federal actions may be implemented over large geographic areas and/or a long time frame. Programmatic NEPA documents must include connected and cumulative actions,

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[25] 40 CFR § 1508.25(a)(3).

and the responsible official should consider whether it is helpful to include a series or suite of similar actions.[26]

4. The Alternatives

Alternatives in a programmatic NEPA review are expected to reflect the level of the Federal action being proposed[27] and the standard NEPA requirements for alternatives apply.[28] In situations where there is an existing program, plan, or policy, CEQ expects that the no-action alternative in an EIS would typically be the continuation of the present course of action until a new program, plan, or policy is developed and decided upon.[29]

When preparing the programmatic NEPA review for a policy, plan, program, or project, alternatives, including non-agency alternatives, can be considered at the programmatic level to support focusing future decisions and eliminating certain alternatives from detailed study in subsequent NEPA reviews. Stating the nature of subsequent tiered decisions allows agencies to craft the alternatives for a programmatic review and focus the scope and development of alternatives for the subsequent tiered NEPA reviews. By articulating the reasoned choice between alternatives, with a discussion of why considered alternatives were not chosen, the

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[26] 40 CFR § 1508.25(a).

[27] Council on Environmental Quality, "Forty Most Asked Questions Concerning CEQ's NEPA Regulations," Question and Answer 1, March 16, 1981. Reasonable alternatives depend on the nature of the proposal and the facts of the case. Factors may include the cost of the proposed alternative, the actual need or desire for the alternative in the affected community, and the state of the technologies involved in developing the alternative.

[28] 40 CFR §§ 1508.25(b) and 1508.9(3)(b).

[29] Council on Environmental Quality, "Forty Most Asked Questions Concerning CEQ's NEPA Regulations," Question and Answer 3, March 16, 1981.

range of alternatives in tiered NEPA reviews can be appropriately narrowed. The PEA or PEIS should include a brief written discussion of the reasons alternatives were eliminated[30] to provide the rationale for narrowing the range of reasonable alternatives to be considered in those tiered NEPA documents.

5. The Impacts

All NEPA reviews are concerned with three types of reasonably foreseeable impacts: direct, indirect, and cumulative.[31] The contrast between a programmatic and a project- or site-specific NEPA review is most strongly reflected in how these environmental impacts are analyzed. Because impacts in a programmatic NEPA review typically concern environmental effects over a large geographic and/or time horizon, the depth and detail in programmatic analyses will reflect the major broad and general impacts that might result from making broad programmatic decisions. Programmatic NEPA reviews address the broad environmental consequences relevant at the programmatic level (see Level of Detail in Programmatic Documents section). Agencies should be clear about the context of the decision to be made and how it relates to the context and intensity of any potential impacts.

As noted previously, agencies may propose standard mitigation protocols and/or operating procedures in a programmatic NEPA review and thereby provide a framework and scope for the subsequent tiered analysis of environmental impacts. For example, proposals for long range energy or transportation infrastructure programs are potentially good candidates for

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[30] 40 CFR § 1502.14(a).

[31] 40 CFR §§ 1508.7 and 1508.8.

PEAs and PEISs that include an assessment of how the programs will contribute to or reduce water quantity and quality. Discussions of water quantity and quality could then be incorporated by reference in tiered NEPA reviews. By identifying potential program impacts early, particularly cumulative and indirect impacts, programmatic NEPA reviews provide opportunities to modify program components in order to avoid or mitigate adverse impacts when developing subsequent proposals.

B. Collaboration, Public Engagement, and Coordination with Other Environmental Reviews

1. Importance of Collaboration and Cooperation

The types of actions that agencies analyze in programmatic reviews may feature some jurisdictional complexity. Impacts on state, tribal and private lands, and potentially overlapping authorities between agencies and governments with different missions and authorities should be considered in programmatic reviews that address resources or actions across jurisdictional boundaries. Early collaboration and cooperation among Federal agencies, tribes, and state and local governments is particularly useful for successful completion of meaningful programmatic NEPA reviews.[32] Scoping early in the process provides agency decisionmakers with access to other agencies' and governments' expertise and can help agencies identify broad scale issues, develop alternatives for analysis, identify the appropriate temporal and spatial parameters, and determine the appropriate depth of analysis or level of detail for the programmatic NEPA review.

[32] Council on Environmental Quality, "Memorandum on Environmental Collaboration and Conflict Resolution," September 7, 2012; Council on Environmental Quality, "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act," January 30, 2002.

2. Public Involvement

Engaging the public is particularly important when developing programmatic NEPA reviews in order to ensure agency objectives are understood and to clarify how a programmatic review influences subsequent tiered reviews. Effective public engagement will also help manage expectations with regard to the purpose and need, the scope of the broad environmental analyses, and the purpose, need and scope of subsequent site- and project-specific environmental analyses. Outreach to potentially interested stakeholders should begin as early as possible – even in advance of formal scoping periods – to afford the public a meaningful opportunity to comment on and shape the programmatic NEPA review and/or develop alternatives to be considered. Proactive and robust public participation is encouraged and, if necessary, comment periods can be extended to ensure meaningful involvement.

When the public has a chance to see the big picture early[33] it can provide fresh perspectives and new ideas before determinations are made that will shape the programmatic review and how those determinations affect future tiered proposals and NEPA reviews. Early outreach also provides an opportunity to develop trust and good working relationships that may extend throughout the programmatic and subsequent NEPA reviews and continue during the implementation of the proposed action.[34] An agency can encourage early public participation by clearly explaining to the public not only what the proposed programmatic evaluation is meant to

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[33] Members of the public are less likely to participate or engage in the commenting process if they do not fully understand how a particular project affects them. It is critical that agencies provide context and as much information as possible in the beginning of the public involvement process.

[34] 40 CFR § 1501.7; see also Council on Environmental Quality, "Collaboration in NEPA – A Handbook for NEPA Practitioners," October 2007.

accomplish, but also how it relates to future actions, and why the public should get involved at the programmatic stage and not wait for any tiered reviews. The agency should clearly state which concerns are addressed at that level of NEPA review and with concerns will be tiered to a subsequent NEPA review. Clarity of approach is essential to avoid the impression that a programmatic NEPA review creates a situation whereby the public is too early to raise issues in the broader programmatic analysis and then too late to raise them in any subsequent tiered analyses.

Stakeholders for a programmatic review may span multiple states and large areas. Consequently, public engagement should be well thought through to include all the potentially interested Federal and state agencies, tribes, local governments, private organizations, and individual citizens.[35]

3. Coordination with Other Environmental Reviews

The purpose and need statement and the proposed action for the programmatic NEPA review are critical for determining the compliance requirements under other applicable laws and regulations, such as the Endangered Species Act (ESA), National Historic Preservation Act

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[35] Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, provides that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." See Council on Environmental Quality, "Environmental Justice: Guidance Under the National Environmental Policy Act," December 10, 1997. For example, a good way to reach out to such a large and diverse public is through non-governmental organizations, citizen's groups, labor organizations, and trade associations. These organizations frequently know what their constituents care about and they may have effective means for communicating with those constituents. Agencies are also encouraged to use conference calls, web meetings and teleconferences to facilitate easy participation by the interested public.

(NHPA), and Clean Water Act. For example, programmatic NEPA review can provide the fora for considering programmatic agreements under the ESA and NHPA. They are also critical for determining when these other reviews must be completed and for developing a strategy to address all environmental review and consultation requirements in a coordinated manner. Coordinating compliance with other environmental reviews supports a broad discussion, facilitates a comprehensive project management schedule, provides opportunities to meet data, public engagement, and documentation requirements more efficiently, and generally promotes greater transparency in Federal decision-making. For example, an agency may coordinate with ESA regulatory agencies to develop ESA section 7(a)(1) consultations for the first programmatic review document and a separate consultation for any subsequent tiered programmatic NEPA review.

Programmatic NEPA analysis and subsequent tiered NEPA analysis support a phased decision-making process that allows certain statutory and regulatory compliance to be achieved at the programmatic level. The nature of the decision at each phase and the extent to which it may constrain the subsequent consideration of alternatives will help determine an agency's overall environmental compliance requirements. NEPA requires a full evaluation of all specific impacts when the agency proposes to make an irreversible and irretrievable commitment of the availability of resources which usually occurs following a tiered site- or project-specific NEPA review.[36]

Provided programmatic NEPA review has sufficient specific data and information, it may satisfy other relevant legal requirements for site-specific future actions, even when there is no irreversible or irretrievable commitment of resources at the programmatic level. The

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[36] *N. Alaska Envtl. Ctr. V. Lujan*, 961 F.2d 886 (9th Cir. 1992).

determination of whether a particular decision in a phased or incremental decision-making process represents this level of commitment begins with a well formulated description of the proposed action.[37] Agencies should be aware that preparing a programmatic NEPA review is not a substitute for compliance with other environmental laws.

For example, approval of land use plans that establish future management goals and objectives for resource management, and the measures to achieve those goals and objectives, may not necessarily require completion of the Section 106 process under the NHPA. In some cases, an agreement with stakeholders, such as a programmatic agreement pursuant to Section 106 of the NHPA, demonstrates an agency's compliance requirements for phased decisions being analyzed through a programmatic NEPA review. For instance, where a Federal agency's broad decision will narrow the opportunities for adverse effects in future specific proposals, then the agency may initiate the Section 106 process as part of the programmatic review. This will allow the agency to complete that process by establishing steps for meeting its responsibility as it implements the broad decision and prior to subsequent project- and site-specific proposals.

Agencies should clearly and concisely articulate their intentions to defer particular environmental review and consultation requirements for consideration until a subsequent project- or site-specific proposal is developed. It may be helpful for the agency to set a timing reference or triggering event that initiates the next tier of analysis. When deferring these requirements, agencies may still need to analyze and address related statutory requirements to some extent in the programmatic document. To avoid confusion with respect to subsequent timing and sequencing of Federally required consultation activities, the extent to which consultations are being undertaken in connection with the programmatic NEPA analysis should be clearly defined

[37] *Friends of Yosemite Valley v. Norton*, 348 F. 3d, 789, 801 (9th Cir. 2003).

when scoping the programmatic NEPA document. An example is the subsequent action such as bridge construction tiered to a programmatic transportation NEPA review that will require authorization under Section 404 of the Clean Water Act (CWA) prior to construction of the bridge. When addressing the CWA 404 requirements, agencies should include, after consultation with the U.S. Army Corps of Engineers, a discussion of the range of alternatives necessary to demonstrate compliance with the Section 404(b)(1) Guidelines, and whether there are any practicable alternatives that have less adverse impact on the aquatic ecosystem – and do not have other significant environmental effects – can then be made at the project-specific or site-specific level.

C. Preparing the Documents

1. Programmatic Environmental Assessment or Programmatic Environmental Impact Statement?

Programmatic approaches are usually associated with EISs and tiered documents with proposal-specific EAs. Tiering an EA or applying a CE from a PEIS is appropriate when there are no new significant effects or considerations, and the programmatic NEPA review addresses those measures that tiered proposals can rely on to address and reduce the significance of the site- or project-specific impacts.

An agency may prepare a PEA to determine whether an EIS is required at the programmatic level or when considering a proposal that does not have significant impacts at the programmatic level. A PEA may lead to a programmatic level finding of no significant impact (FONSI) or to a determination that a PEIS is required. Following a PEA that results in a FONSI,

an agency may tier to a subsequent PEA that results in a finding of no significant impact,[38] or may tier to a PEIS when a subsequent site- or project- specific proposal has the potential for a significant impact on the environment.

- Example: A PEA may be used to articulate standard mitigation for a suite of similar projects, such as capturing vented methane. This PEA may result in a FONSI but any project-level construction that goes beyond the mitigation in the PEA will require a PEIS.
- Example: A PEA may result in a FONSI and a subsequent proposal presents a unique or unexpected circumstance that raises the potential for significant impacts. In such a circumstance, a tiered EIS would not undermine or invalidate the PEA and FONSI.

Whether the agency prepares a PEA or a PEIS, that programmatic review should explain how the agency intends to use it to complete future proposal-specific NEPA reviews.

Reasonably available information that should be provided both during scoping and in the PEA or PEIS includes the expected timing of the tiered review(s) as well as the issues, and depth of analysis, it is expected to consider. At the project- or site-specific level, it is necessary to consider the potential impacts that have not been analyzed and considered in the previous programmatic review to which it tiers.

2. Level of Detail in Programmatic NEPA Documents

A PEA or PEIS addresses the broad environmental consequences relevant at the programmatic level. A subsequent tiered EA or EIS will address more particularized considerations, but can benefit from the programmatic by summarizing and incorporating by

[38] *N. Plains Resource Council v. Lujan*, 874 F.2d 661, 665-66 (9th Cir. 1989).

reference parts of it.[39] For example, the PEIS for the USDA National Gypsy Moth Management Program, supplemented in 2012, includes human health and ecological risk assessments for treatments approved for use in the Gypsy Moth Eradication Program thereby eliminating the need to do such analysis in the NEPA review for each individual treatment project. The PEIS analyzed and disclosed these risks, and deferred to site or project level analyses the specific application of these risk data to how the insecticides would be used in a given project (e.g., dose rates, number of applications, presence of "sensitive populations") and other specific issues and concerns raised during scoping.

The PEA or PEIS must provide sufficient detail to foster informed decision-making that reflects broad environmental consequences from a wide-ranging federal program.[40] Site- or project-specific impacts need not be fully evaluated at the programmatic level when the decision to act on a site development or its equivalent is yet to be made.[41] Alternatives need not consider every specific aspect of a proposal but rather should be detailed enough to make a reasoned choice between programmatic directions. For example, a programmatic analysis of a plan would not require consideration of detailed alternatives with respect to each implementation action

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[39] See *Nevada v. Dep't of Energy*, 372 U.S. App. D.C. 432 (D.C. Cir. 2006). 40 CFR § 1502.21 also requires that information incorporated by reference be "reasonably available" to the public for consideration during review and comment periods. It may be helpful to: post PEAs and PEISs online so that the public does not face challenges locating prior documents (note that a PEIS will be posted on EPA's Environmental Impact Statement Database); post PEAs on the agency website(s); have copies available at a reasonably accessible location (e.g., keep documents in reading rooms or regional and local libraries); and make documents available by mailing CD or DVD copies to interested stakeholders.

[40] *Found. On Econ. Trends. v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985).

[41] *Citizens for Better Forestry v. U. S. Dep't of Agriculture*, 481 F. Supp. 2d 1059, 1086 (D. Cal. 2007).

proposed under the plan – otherwise a programmatic analysis would be practically impossible to prepare, requiring a compilation of a vast series of site specific analyses.[42]

The following considerations may be helpful to determine the scale and scope of impacts to be addressed in a programmatic NEPA review:

- First, what is the decision to be made?
- Second, what are the appropriate scales of the affected environment to be analyzed (e.g., watershed, basin, etc.)?
- Third, what environmental impacts are of concern at this scale?
- Fourth, what information can be garnered about environmental impact criteria (thresholds) to assist in describing when those impacts are best addressed in detail?

Determining the level of detail appropriate to a programmatic analysis requires weighing several factors, including the extent of the interrelationship among proposed actions, the scale and scope of any subsequent decisions, as well as practical considerations of feasibility. Resolving these issues will require the expertise of the agencies responsible for the proposed action informed by the agencies responsible for the potentially impacted resources.[43]

3. Depth of Impact Analysis in Programmatic NEPA Documents

The agency is obligated to conduct a meaningful impact analysis in accordance with NEPA, and that analysis should be commensurate with the nature and extent of potential impacts

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[42] *Greenpeace v. National Marine Fisheries Service*, 55 F. Supp. 2d 1248, 1276 (D. Wash. 1999).

[43] *Texas Committee on Natural Resources v. Bergland*, 573 F. 2d 201 (5th Cir. 1978).

of the decision being made. A programmatic NEPA review should contain sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a "hard look" at the environmental effects and make a reasoned choice among alternatives.[44] There should be enough detail to enable those who did not have a part in its compilation to understand and meaningfully consider the factors involved.[45]

A broad (e.g., regional or landscape) description may suffice for characterizing the affected environment in programmatic NEPA reviews, so long as potentially impacted resources are meaningfully identified and evaluated. Impacts can often be discussed in a broad geographic and temporal context with particular emphasis on cumulative impacts. Those impacts can often be shown in a meaningful way by displaying a range of potential effects. The scope and range of impacts may also be more qualitative in nature than those found in project- or site-specific NEPA reviews.

It may be more difficult for an agency to analyze the environmental impacts in depth when there is no clear indication – no site- or project-specific proposal pending – for the level of activity that may follow a programmatic decision.[46] A programmatic NEPA review should carefully consider the scope of both the programmatic and the subsequent tiered NEPA review.

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[44] Neither Congress nor the courts have indicated precisely how much detail an EIS must contain. However, courts consistently have held that, at a minimum, NEPA imposes a duty on Federal agencies to take a "hard look at environmental consequences." *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972). If the EIS provides good faith analysis and sufficient information to allow a firm basis for weighing the risks and benefits of a proposed action, the court will find the EIS to be sufficient. *County of Suffolk v. Secretary of the Interior*, 562 F.2d 1368 (2nd Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978).

[45] *Baltimore Gas and Electric Co v. NRDC*, 462 U.S. 87 (1983).

[46] 40 CFR § 1508.23.

CEQ's 1981 scoping guidance addressed this issue and the need to be clear about the type of programmatic NEPA review:

> [I]f a proposed program is under review, it is possible that site specific actions are not yet proposed. In such a case, these actions are not addressed in the EIS on the program, but are reserved for a later tier of analysis.[47]

Thus, the deferred analysis should be identified and the intended use of tiering made clear at the outset of scoping, and articulated in the programmatic review. Informing participants and the public of the expected timing of the tiered review(s), as well as the issues and depth of analysis, allows them to concentrate on the issues at hand, rather than on those that will be addressed later. Courts have affirmed NEPA's requirement that Federal agencies document the environmental impacts of proposed broad actions, such as programs, but recognize the difficulty in predicting the level of activity that will occur and that it may not be possible to thoroughly analyze the environmental effects of, and the resource commitments involved in, such a broad proposed activity.[48]

For example, in the PEIS for the Container Terminal Development Plan prepared by the Port of Seattle Marine Planning & Development Department, the port determined that it was impossible to know the precise demand for container service in the future, and therefore it was impossible to predict the precise location, type and timing of specific facilities and their environmental impacts. Recognizing the uncertainties involved, the PEIS evaluated potential environmental impacts and opportunities comprehensively by focusing on a bounded range of

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[47] Council on Environmental Quality, "Memorandum for General Counsels, NEPA Liaisons, and Participants in Scoping," April 30, 1981.

[48] *Kleppe v. Sierra Club*, 427 U.S. 390 (1976).

potential activities and their impacts. The port's Container Plan projected a low and high range for container service demand and a range of new or improved facilities. The EIS evaluated strategies for meeting low and high range demand and the preferred alternative based on the plan, providing a flexible market-driven approach in recognition of the dynamic nature of the shipping industry and supply of regional container facilities.[49]

D. Mitigation and Monitoring

Programmatic NEPA reviews provide an opportunity for agencies to incorporate comprehensive mitigation planning, best management practices, and standard operating procedures, as well as monitoring strategies into the Federal policymaking process at a broad or strategic level. These analyses can promote sustainability and allow Federal agencies to advance the nation's environmental policy as articulated in Section 101 of NEPA.[50]

By identifying potential adverse impacts early during the broad programmatic planning, programmatic NEPA reviews provide a unique opportunity to modify aspects of the proposal and subsequent tiered proposals to avoid or otherwise mitigate those impacts. A thoughtful and broad-based approach to planning for future development can include best management practices, standard operating procedures, adaptive management practices, and comprehensive mitigation measures that address impacts on a broad programmatic scale (e.g., program-, region-, or nation-wide). These can expedite the preparation of subsequent project- or site-specific

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[49] Final Environmental Impact Statement, Container Terminal Development Plan, Port of Seattle Marine Planning & Development Department, 1-17 (October 1991) (on file with the Council on Environmental Quality).

[50] 42 U.S.C. § 4331. See also Executive Order 13423, "Strengthening Federal, Energy, and Transportation Management."

proposals by establishing siting, design, operational, or other relevant implementation criteria, requirements, and protocols. The subsequent tiered NEPA review would then include those measures to address potentially significant impacts and focus on the impacts and mitigation alternatives available at the project- or site-specific level that were not considered in the PEA or PEIS.

For example, a Forest Service and Bureau of Land Management PEIS for coal bed methane development on Federal lands in San Juan National Forest established siting and engineering techniques and best management practices to reduce the effects of coal bed methane development on surface water quality, quantity, and use; established a suite of mitigation measures for when pipelines, roads, or power lines crossed a stream, wetland, or riparian area; established the development of site-specific mitigation plans; and required monitoring plans for individual wells that would disturb wetlands or riparian areas.[51] These types of programmatic decisions provide valuable information for project proponents (e.g., applicants for Federal licenses or rights-of-way) as they design proposals and implementation activities and give the public insight into the kinds of protections that would be afforded in designing and permitting such facilities.

Programmatic NEPA reviews also afford agencies the opportunity to develop monitoring programs to address impacts on a broad scale. This provides agencies the opportunity to ensure that mitigation commitments on the programmatic level are actually being implemented.

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[51] *San Juan Citizens Alliance v. Stiles,* 654 F.3d 1038 (10th Cir. 2011).

Further, it allows agencies to determine whether the mitigation measures achieved the environmental outcomes they were designed to accomplish.[52]

Finally, monitoring is critical when agencies establish adaptive management strategies in a programmatic NEPA review to increase their flexibility in managing a program without further NEPA review or in developing and analyzing subsequent proposals for tiered NEPA review. Identifying when a need for changing the course of implementation and the associated effects arises, and analyzing those impacts at the programmatic level, can allow the agency to change the course of implementation without the need for developing supplemental NEPA reviews and the associated documentation. Ranges of results inform the public and the decisionmaker about which parameters are acceptable for continued management under the proposed adaptive management regime. Monitoring can provide assurance that the environmental impacts have been adequately considered in the programmatic review.

E. Handling New Proposals While Preparing a Programmatic NEPA Review

Agencies are sometimes reluctant to conduct programmatic NEPA reviews because of the risk of delaying ongoing and newly proposed actions. The CEQ Regulations enable interim

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[52] Council on Environmental Quality, "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact," Memorandum for Heads of Federal Departments and Agencies, January 14, 2011. Agencies are encouraged to consider opportunities to integrate the results of a NEPA review into an Environmental Management System as a way to further the environmental sustainability and enhancement policies contained in Section 101 of NEPA; and to use adaptive management to address unintended impacts of a program that might occur over time by using a "predict, mitigate, implement, monitor and adapt" approach (see Council on Environmental Quality, "Aligning National Environmental Policy Act Process with Environmental Management Systems (EMS)," April 2007.

actions to proceed provided certain criteria are met.[53] Typically, proposed actions of relatively limited scope or scale that would have local utility may be taken as an interim action before completing the programmatic analysis.

The CEQ Regulations address interim action criteria for site- or project-specific EAs or EISs when required PEAs and PEISs are not yet completed.[54] Although the CEQ Regulations address criteria for interim actions specifically in the context of PEISs, in those cases where part of a proposed action needs to proceed while a PEA is being prepared, agencies should use the criteria in the CEQ Regulations. The CEQ Regulations recognize and provide for situations where the programmatic review is not available when the program is at an investment stage or there is a commitment to implementation that will limit future alternatives.[55]

The CEQ Regulations, at 40 CFR § 1506.1(c), state:

> While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:
>
> (1) Is justified independently of the program;
>
> (2) Is itself accompanied by an adequate environmental impact statement; and

[53] 40 CFR § 1506.1.

[54] 40 CFR § 1506.1 (a) and (c).

[55] 40 CFR § 1502.4(c)(3).

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

Under the first criterion regarding independent justification, agencies may take an interim action that the agency determines could be undertaken irrespective of whether or how the program goes forward, assuming the other two criteria are met. For example, in cases where an agency is obligated by law to carry out a proposed interim action, the agency should be able to demonstrate that the action has independent utility.

The second criterion makes it clear that an EIS must be prepared for a proposed interim action that has the potential for significant environmental impacts. Although completion of a PEIS first may be more efficient than preparing an adequate EIS for a proposed interim action, the agency could complete an adequate EIS for the interim action. In cases that do not involve significant impacts, an EA would be sufficient to provide adequate NEPA support to meet this second criterion.

Under the third criterion, agencies may take an interim action when they determine that the proposed interim action would not jeopardize the objective consideration of reasonable alternatives. Agencies should take care to distinguish interim actions from ongoing actions. An agency does not need to suspend all operations because it has elected to prepare a programmatic NEPA document. For example, in the case of an area-wide or site-wide PEIS considering a new proposed operations plan, ongoing operations within the area or site may continue and such ongoing operations would be considered under the no action alternative in the PEIS.

F. The Decision Document

The decision is documented in a Record of Decision (ROD) following preparation of a PEIS or a decision may be based on a FONSI following preparation of a PEA. The decision document should clearly explain the decision and indicate whether tiered analyses will follow. For example, the agency should articulate its intentions with regard to future decisions, describe how the agency will use the programmatic NEPA document as a basis for tiering future NEPA reviews, and indicate when any deferred issues will be addressed.

The programmatic decision document following a PEA or a PEIS should provide the information required in a ROD. It should include a description of the alternatives considered, the environmentally preferable alternative, economic and technical considerations, agency statutory missions, essential considerations of national policy, and all practicable means to avoid or minimize environmental harm from the alternative selected that were adopted or, if not, why not. A monitoring and enforcement program should also be adopted and summarized for any mitigation where that is applicable.[56]

V. SUBSEQUENT PROPOSAL-SPECIFIC NEPA REVIEWS

A. Deferred Issues

Certain issues may not be addressed in a PEA or PEIS, but rather are discussed fully in subsequent tiered NEPA analysis. These deferred issues can include issues that will be addressed in additional tribal consultations or further National Historic Preservation Act Section 106 consultation, Endangered Species Act Section 7 consultation, or other determinations and consultations. To provide clarity to the public and the decisionmaker, programmatic NEPA

[56] 40 CFR § 1505.2(c).

reviews should make clear when the analysis of potential environmental impacts will be deferred and, if possible, any timeframes or criteria for determining when analysis in a subsequent NEPA review is appropriate. When preparing a PEA, it is acceptable for an agency to limit its analysis to those foreseeable effects resulting from the programmatic decision at hand. The programmatic document should clearly explain that while there may be other effects, those other effects do not affect the programmatic decision and full review of those other effects is being deferred. In this case agencies should logically explain why there is no effect on the programmatic decision, and also include sufficient information to explain where and when deferred issues raised by the public and/or regulatory agencies will be addressed.

The scoping process and subsequent public involvement provide an opportunity to clarify why and when subsequent reviews and opportunities for review and comment will take place.[57] The programmatic document should also, whenever practicable, explain when the interested parties will be notified of any subsequent reviews.

B. Tiering NEPA Reviews

One advantage of a programmatic NEPA review is the ability to tier subsequent reviews, such as site- or proposal-specific reviews.[58] Tiering has the advantage of not repeating information that has already been considered at the programmatic level so as to focus and

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[57] See 40 CFR §§1501.7 (scoping), 1501.4 (public involvement in EAs), 1506.6 (public involvement).

[58] 40 CFR § 1502.20. This would not be applicable to all programmatic NEPA reviews; for example, a programmatic NEPA review to establish a land or resource management plan could be sufficient to decide to establish the plan, leaving subsequent project- or site-specific reviews for actions proposed to implement or execute the plan.

expedite the preparation of the tiered NEPA review(s). When a PEA or PEIS has been prepared and an action is one anticipated in, consistent with, and sufficiently explored within the programmatic NEPA review, the agency need only summarize the issues discussed in the broader statement and incorporate discussion from the broader statement by reference and concentrate on the issues specific to the subsequent tiered proposal.[59]

There are times when an analysis at one level is sufficient. For example, one level of analysis may be appropriate when an agency undergoes rulemaking, adopts an agency-wide policy, adopts a formal plan, or redesigns an existing program. When the programmatic review has taken the required "hard look" at the potential environmental impacts, an agency can rely upon the analysis provided in the PEA or PEIS.[60] On the other hand, an agency may determine that detailed analysis should be deferred to the tiered analysis. The programmatic review must be clear when issues are being deferred, and any subsequent tiered documents will need to review briefly what level of analysis has been considered and whether it is still contemporary.

While CEQ Regulations specifically authorize an agency to tier other NEPA reviews to an EIS, there is no barrier to tiering an EIS to an EA prepared in accordance with NEPA, the CEQ Regulations, and agency NEPA implementing procedures, so long as a sufficient explanation for such an approach is proffered. A programmatic NEPA review may defer some decisions, and make use of tiering and incorporation by reference, and still be considered a "hard look." Some of the cases that address "improper tiering" involve situations where an agency attempts to tier a NEPA review to a non-NEPA document and that is not appropriate.[61]

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[59] 40 CFR § 1502.20.

[60] *Natural Resources Defense Council v. Morton,* 458 F.2d 827, 838 (D.C. Cir. 1972).

[61] *Kern v. BLM*, 284 F.3d 1062, 1073 (9th Cir. 2002), the Court found that, "tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the

Confusion over what level of NEPA analysis is required for tiered proposals may occur when a programmatic EIS is complete and the site-specific project will have a significant impact as indicated in the programmatic document. When this occurs, the appropriate question is not if there is a significant impact from the proposed action, but if there is a *new* significant impact that was not already considered and addressed in the programmatic review. If there are no new significant impacts, an EA may be appropriate instead of an EIS so long as the aspects of the proposed action that involve significant effects have not changed since the PEIS, and the agency presents its reasons for determining that the effects and potential mitigation measures were adequately considered in the PEIS. Consequently, as an agency determines the appropriate scope for a PEIS, it should consider the potential for significant site- or project-specific impacts and the cost/benefit of addressing them programmatically.

C. New Information and Supplementing Documents

The CEQ Regulations provide a procedural framework for keeping environmental analyses current. They require agencies to prepare supplements upon determining there is significant new information of relevance to the proposed action or its impacts.[62] The possibility

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purpose of NEPA." In *Northcoast Environmental Center v. Glickman*, the Court found that, "[a]lthough CEQ procedures allow agencies to incorporate by reference certain materials to cut down on the bulk of an EIS, they cannot 'tier' their site-specific EISs to the broader POC program where the program itself has not been subject to NEPA procedures." Courts have also held that agencies can't properly tier when agencies tier to an outdated PEIS (*League of Wilderness Defenders v. Marquis-Brong*, 259 F. Supp. 2d 115, 1122-23 (D. Or 2003), or an inadequate or flawed PEIS (*Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 811 (9th Cir. 1999)).

[62] See 40 CFR §§1505.3 (monitoring), 1502.9 (supplementation). See also *Seattle Audubon Society v. Moseley*, 798 F. Supp. 1473, 1482 (D. Wash. 1992) ("A federal agency has a continuing duty to gather and evaluate new information relevant to the environmental impact of its actions, even after release of an environmental impact statement."). However, once a decision

of new information arising after an EA or EIS is completed exists regardless of whether a NEPA review is programmatic.

When new information reaches an agency, it should be initially screened with respect to the following considerations:

- Does the new information pertain to a programmatic NEPA review that was prepared for a now-completed decision-making process?
- Are there any more decisions to be made by the agency that would use the original NEPA review to meet all or a portion of the agency's NEPA compliance responsibilities for any upcoming decision?
- If there are no further decisions to be made, revising the original programmatic NEPA review serves no purpose and is not required.
- If the new information is relevant to a future decision for which the agency intends to rely upon the original programmatic NEPA review to meet all or a portion of its NEPA compliance responsibilities, then the new information may be reviewed in order to determine if it has any potential effect on the content of the original programmatic review, either in terms of: (a) the accuracy of the previously analyzed impacts (direct, indirect or cumulative); or (b) the feasibility of the alternatives presented or their comparative analysis.

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has been made on certain proposed actions, such as a decision to establish a plan rather than a decision to implement an action that advances or meets the plan, there is no more "proposed action" for which there is a duty to supplement the NEPA analysis (*Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 73 (2004)).

- If supplementation is not required, agencies should consider documenting that determination. For example, an agency could include a memorandum to the administrative record for the programmatic NEPA review.

The agency is responsible for making a reasoned determination whether new information raises significant new circumstances or information regarding environmental impacts or involves substantial changes in the actions.[63] When a PEA was used, the determination must consider whether the PEA and FONSI are sufficient or whether an EIS is now necessary. If there is a need to supplement, a supplemental PEA can address the new information and result in a FONSI when such a finding is appropriate.[64]

When an agency determines there is a need to supplement a NEPA review, programmatic NEPA reviews provide alternative ways to complete that supplementation. The traditional approach would be to supplement the base document, the original PEA or PEIS. Alternatively, if a new tiered NEPA review can include consideration of the programmatic issues, then the tiered review can also serve as the vehicle for supplementing the PEA or PEIS. When the new information's effects are limited to potential impacts or alternatives associated with the next stage, or project- or site-specific decision, then the tiered analysis can address the new information without having to supplement the PEA or PEIS.

VI. THE LIFESPAN OF A PROGRAMMATIC NEPA DOCUMENT

Agencies must consider and make reasonable efforts to anticipate the length of time the programmatic decision and its supporting NEPA review will be maintained and used for

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[63] 40 CFR § 1502.9.

[64] 40 CFR § 1508.27.

subsequent tiered reviews. Programmatic documents may become outdated and require supplementation or a new analysis, depending on the specificity and analyses included in the PEA or PEIS. There is no fixed timeline or expiration date for a PEA or PEIS. Agencies should determine the factors that may result in the need to supplement or refresh the analysis,[65] establish criteria for evaluating the programmatic document for its use as a basis for subsequent proposal-specific NEPA, and communicate this to stakeholders. When a programmatic review is projected to be used for subsequent decision-making and have a long life span, then the agency should pay close attention to the possible effects of new information.

VII. CONCLUSIONS

This guidance is intended to assist agencies in preparing PEISs and PEAs that address broad, strategic, programmatic level analyses. Agencies should consider using PEAs and PEISs whenever appropriate. Programmatic NEPA reviews provide an opportunity for considering environmental consequences at a broader level and enhance the integration of environmental concerns and mitigations into an agency's planning procedures. In addition, agencies that are able to clearly explain how specific, outstanding, or future actions will be addressed in subsequent tiered documents, and how the analyses will be vetted publicly, will ensure that the public is informed and can improve the quality of participation and analysis agencies receive from the public, thereby enhancing decision-making. This guidance also is intended to assist

[65] 40 CFR § 1502.9(c).; Refer to question 32 in CEQ's Forty Most Asked Questions ("As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are no more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.").

NEPA practitioners in realizing the benefits of programmatic NEPA reviews. It should be used in conjunction with the regulations and guidance previously issued by CEQ and any applicable agency NEPA procedures established in accordance with 40 CFR § 1507.3.

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Appendix A: Programmatic and Tiered Analyses

Programmatic and tiered analyses differ in their focus and scope. The following table indicates the general differences between programmatic and subsequent tiered analyses.

	Programmatic Level (e.g., Tier 1)	**Subsequent (e.g., Project- or Site-Specific or Tier 2) Tiered Level**
Nature of Action	Strategic, conceptual	Construction, operations, site-specific actions
Level of Decision	Policy, program, planning, suite of similar projects	Individual project(s)
Alternatives	Broad, general, research, technologies, fiscal measures, socioeconomic, land use allocations	Specific alternative locations, design, construction, operation, permits, site-specific
Scale of Impacts	Macroscopic, for example, at a national, regional, or landscape level	Project level, mainly local
Scope of Impacts	Broad in scale and magnitude	Localized and specific
Time Scale	Long- to medium-term (e.g., Regulatory)	Medium- to short-term (e.g., Permit)
Key Data Sources	Existing national or regional statistical and trend data, policy and planning instruments	Field work, sample analysis, statistical data, local monitoring data
Impacts	Qualitative and maybe quantitative to the degree possible	Generally quantifiable (though not always)
Decision	Broad, strategic program, policy, or plan	Detailed, project- or site-specific, action-oriented
Mitigation	General, broad suite of potential measures that could be applied after site-specific analysis	Specific, precise refinement of measures identified at the programmatic level

Table based on "Strategic Environmental Assessment (SEA) - current practices, future demands and capacity-building needs", a course manual by Maria Rosário Partidário, International Association for Impact Assessment Training, 2003. mp@fct.unl.pt

Appendix B: Sample Programmatic Analyses:

Example of Broad or Programmatic Analysis	Why Analysis Was Used	Tiered Actions for Further Analysis or Action	How Stakeholders Become Aware of Further Analysis or Actions
Geographic or regional action *Ex: DOT "Transportation Corridor" Tier I EIS*	*The EIS examines broad issues such as general location, mode choice, air quality, and land use implications of major alternatives*	*As site-specific projects are identified, each project will have a separate Tier II EA/EIS. Tier I EIS specifies decisions which must be resolved in Tier II documents.*	*Each site-specific Tier II project will have its own public involvement process, as specified in the Tier I EIS and ROD.*
Agency policymaking *Ex: USDA Fruit Fly Cooperative Control Program Final Environmental Impact Statement (EIS)—2001*	*Introduction of Invasive Fruit Fly species can occur at multiple potential sites throughout the United States. The EIS evaluates broad issues such as potential locations, control strategies, mitigation measures, and cumulative impacts avoids segmentation of analyses and provides basic information to foster efficiency by focusing the scope on critical issues that will be analyzed for site-specific assessments.*	*The detection of a non-native, invasive fruit fly species introduction at levels determined to be sufficient for establishment is the trigger for agency action and the preparation of a site-specific EA tiered to the EIS.*	*Each site-specific EA has its own public involvement process with associated public comment period.*

Range of activities and operations within a facility *Ex: Department of Energy (DOE) Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs (DOE/EIS-0203, April 1995).* *http://energy.gov/node/368803*	*The EIS supports two sets of decisions: (1) DOE-wide programmatic decisions on spent nuclear fuel (SNF) management (Volume 1), and (2) site-wide decisions on the future direction of environmental and waste management programs at the Idaho National Engineering Laboratory (now called the Idaho National Laboratory (INL) (Volume 2). This document has a "hybrid" character in that it served to (a) inform the broad DOE-wide and INL site-wide decisions and (b) to enable implementing decisions for a defined set of project-specific actions at INL.*	*In the analysis of broad DOE-wide SNF program alternatives, the PEIS considered the individual and collective environmental impacts of ongoing activities at INL and also reasonably foreseeable future projects. In addition to informing implementation decisions for a defined set of specific proposed projects at INL, other foreseeable projects also were analyzed to ensure adequate cumulative impacts analysis. The "trigger" for further analysis would be a DOE proposal to implement one of the other specific projects.*	*If DOE proposes to implement a specific project, additional NEPA review (e.g., an EA or EIS) would be conducted, with appropriate further public participation.* *DOE has completed several such tiered EISs under this PEIS (for example, DOE issued an EIS for the Advanced Mixed Waste Treatment Facility in Idaho, DOE/EIS-0290, January 1999: http://energy.gov/node/573151).* *In addition, DOE prepared five Supplement Analyses per DOE NEPA procedures (10 CFR 1021.314(c)). Based on these analyses, the most recent of which was issued in 2012, DOE determined that a supplemental or new PEIS was not required.*

U.S. Army's Programmatic Environmental Assessment: Army Net Zero Installations. http://aec.army.mil/Portals/3/nepa/Net_Zero_PEA.pdf	*The PEA evaluates various behaviors, processes, and technologies that can be used to achieve Net Zero and the associated environmental impacts and mitigation. The PEA supports the decision whether to implement Net Zero Army-wide, to strategically implement Net Zero based on mission needs and return on investment, or to not implement Net Zero; and it provides analysis that installations can draw on as they explore measures and processes that can be used in their site-specific analyses.*	*The PEA provides an analysis of the environmental, social, and economic issues at a programmatic level. After evaluation of mission needs, consumption and existing resource constraints at installations, potential Net Zero projects representing a broad spectrum of possible energy, water and waste related projects may be implemented.*	*All installation-specific actions to implement Net Zero will require an appropriate level of supplemental NEPA analysis and documentation, with appropriate level of public involvement.*

"Technical Program" with a combination of known elements or conditions *Ex: NASA's environmental assessment for routine payloads on expendable launch vehicles.* http://www.nasa.gov/pdf/603832main_FINAL%20NASA%20Routine%20Payload%20EA%20Resized.pdf	*Analyzed common launch vehicles, two common launch sites, and broad classes of payload risk.* *Allowed short-turnaround of projects within known risks.*	*Each new project completes a checklist to identify launch vehicle, launch site, and payload. Any of these parameters outside of those listed in the EA would result in a supplemental analysis (e.g. project EA).*	*Supplemental analyses (where required) are publicly announced in a manner similar to the original Programmatic EA (regional newspapers, local public meetings, etc.)*
National Science Foundation's Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research funded by the National Science Foundation or Conducted by the U.S. Geological Survey. http://www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis_3june2011.pdf	*The PEIS examines the potential impacts that may result from marine geophysical seismic surveys conducted from research vessels in support of scientific research. The programmatic NEPA approach provides a format for a comprehensive cumulative impacts analysis by taking a view of marine geophysical research and survey activities as a whole.*	*Cruise-specific EAs would be prepared when a proposed seismic research activity is not covered by the PEIS, such as a proposed survey that uses a new technology or survey location not analyzed in sufficient detail.*	*Subsequent cruise-specific NEPA documents or other appropriate environmental documents would use the framework of the programmatic document and include appropriate public involvement.*

USDA National Gypsy Moth Management Program Programmatic Supplemental EIS *http://www.na.fs.fed.us/pubs/detail.cfm?id=5251*	*Analyzed the human health and ecological risk assessments for each pesticide approved for use in the Gypsy Moth Eradication Program thereby eliminating the need for such analysis when individual spraying projects are proposed. The PEIS analyzed and disclosed these risks, and deferred to site or project level analyses the specific application of these risk data to how the insecticides would be used in a given project (e.g., dose rates, number of applications, presence of "sensitive populations") and other specific issues and concerns raised during scoping.*	*As site-specific projects are identified, each project will have a separate Tier II project analysis and documentation. Tier I EIS specifies decisions which must be resolved in Tier II documents. All required consultations (both federal and state) are implemented at the project level.*	*Each site-specific Tier II project will have its own public involvement process, as specified in the Tier I EIS and ROD. Proposals on Federal lands will be on the Forest Service list of proposed projects on the "schedule of proposed actions" available online--http://www.fs.fed.us/sopa. Proposals on other lands will notify interested and affected parties according to their requirements (usually State, county, and local).*

US Forest Service land management plans	*The EIS examines the effects of approving a land management plan or amendment. Plans consist of plan components (goals, desired conditions, objectives, suitability of lands, standards, and guideline). The plan indicates where the plan components apply (entire plan area or part of the plan area). Because subsequent project proposals must be consistent with the plan components, the Plan EIS describes in general terms the expected effects of management during the plan period.*	*All project proposals for the National Forest System lands covered by the plan.*	*The public may become aware through NEPA "scoping" and the Forest Service list of proposed projects on a "schedule of proposed actions" available online--http://www.fs.fed.us/sopa*

US Forest Service regional invasive plant program analysis and subsequent decision adding management direction to all national forests in Oregon and Washington.	*Invasive Plant FEIS examined a range of options for integrated invasive plant management including prevention, treatment, restoration, and monitoring. Provided updated herbicide risk assessment information. Contains interagency agreement on monitoring framework. Amended all national forest plans in Oregon and Washington based on best available science and most recent agency policies.*	*Having the regional programmatic FEIS allows the Forest Service to focus site-specific effective prevention measures applied to various land use decisions and tier to the 2005 FEIS for invasive plant treatment. This allows the Forest Service to narrow the scope because alternatives such as using herbicides as a last resort have been addressed in the programmatic analysis.*	*Site-specific projects are on the Forest Service list of proposed projects on the "schedule of proposed actions" available online--http://www.fs.fed.us/sopa. The regional 2005 Invasive Plant Mgt ROD is clear that subsequent NEPA applies to projects on the ground. Public involvement is requested for each site-specific project based on local and some regional outreach with follow up depending on interest.*