

POLICY AND PROCEDURES FOR THE REVIEW OF MAJOR FEDERAL ACTIONS WITH ENVIRONMENTAL IMPACTS

September 26, 2023

U.S. Environmental Protection Agency
Office of Federal Activities
NEPA Compliance Division
Washington, DC 20460

This guidance supersedes the *1984 Policy and Procedures for the Review of Federal Actions Impacting the Environment* to reflect organizational changes within EPA and the Environmental Impact Statement (EIS) Database EPA uses to track EIS documents and reviews. This guidance is not a rule or regulation. The use of language, such as “may,” “should,” “will,” or “must” is intended to describe the procedures and policy for EPA’s environmental review process. This document does not independently establish legally binding requirements. EPA aims to review this guidance at least every 5 years or as needed.

CONTENTS

TABLE OF CONTENTS	i
ACRONYMS AND ABBREVIATIONS	iv
CHAPTER 1 – MANUAL PURPOSE, POLICY, AND MANDATES	1
1. PURPOSE	1
2. STATUTORY AUTHORITIES	1
A. National Environmental Policy Act	1
B. Section 309 of the Clean Air Act	1
C. Other Environmental Laws, Policies and Guidance	2
3. POLICY	2
CHAPTER 2 — MANAGEMENT OF THE ENVIRONMENTAL REVIEW PROCESS	4
1. GENERAL RESPONSIBILITIES	4
2. OFFICE OF FEDERAL ACTIVITIES (OFA)	4
A. NEPA Compliance Division	4
B. Federal Agency Liaisons	5
3. REGIONAL NEPA OFFICES	6
4. EPA PROGRAM OFFICES	6
5. REVIEW MANAGEMENT RESPONSIBILITIES	7
A. Headquarters and Regional Environmental Review Coordinators	7
B. Lead Reviewer	8
C. Associate Reviewers	8
D. Consolidation of Comments	9
6. EPA LEAD OFFICE RESPONSIBILITY FOR EISs AND OTHER MAJOR FEDERAL ACTIONS	9
CHAPTER 3 – EARLY ENGAGEMENT AND REVIEW ACTIVITIES BEFORE DRAFT ENVIRONMENTAL IMPACT STATEMENT PUBLICATION	12
1. POLICY	12
2. GENERAL LIAISON ACTIVITIES	12
3. EPA’S PARTICIPATION IN SCOPING	12
A. General	12
B. Responding to Scoping Requests	13
C. Detailed EPA Input to the Scoping Process	14
4. EPA AS A COOPERATING AGENCY	14
A. General	14
B. Responding to Requests to be a Cooperating Agency on an EIS	15
C. Providing Guidance as a Cooperating Agency	16
5. EPA AS LEAD AGENCY	16
6. REPORTING AND RECORD MANAGEMENT	16
CHAPTER 4 — REVIEW OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS	17
1. POLICY	17
2. DRAFT EIS REVIEW MANAGEMENT	18
A. Establishing Deadlines and Time Extensions	18
B. Level of Concern Categories	18
3. SCOPE OF EPA COMMENTS ON DRAFT EIS	19
A. General	19
B. Mitigation	20
C. National Environmental Standards Derived from EPA’s Statutory Authorities	20
D. Alternatives	20
E. Purpose and Need	21
4. RECOMMENDED LEAD AGENCY ACTION BASED ON EPA’S LEVEL OF CONCERN	21
5. COMMENT LETTER APPROVAL, AGENCY NOTIFICATION, CONCURRENCE AND DISTRIBUTION	22
A. No Concerns or Concerns Comments	22

B. Inadequate EIS.....	23
C. Unsatisfactory Impacts.....	24
6. REPORTING AND RECORDS MANAGEMENT.....	25
CHAPTER 5 – EPA FOLLOW-UP AFTER REVIEW OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS.....	26
1. POLICY.....	26
2. POST-DRAFT CONSULTATIONS.....	26
3. STATUS REPORTS FOR INADEQUATE AND UNSATISFACTORY FINDINGS.....	27
4. REPORTING AND RECORDS MANAGEMENT.....	27
CHAPTER 6 – REVIEW OF FINAL ENVIRONMENTAL IMPACT STATEMENTS.....	28
1. POLICY.....	28
2. FINAL EIS REVIEW MANAGEMENT.....	28
A. Designating Lead Responsibility and Lead and Associate Reviewers.....	28
B. Establishing Deadlines and Time Extensions.....	28
C. Criteria Used in Identifying Level of Concern for Final Environmental Impact Statements.....	29
3. SCOPE OF COMMENTS ON FINAL EIS.....	29
A. General.....	29
B. Final EIS Mitigation Measures.....	30
4. UNRESPONSIVE FINAL EIS.....	30
5. FINAL EIS COMMENT LETTER DISTRIBUTION.....	31
6. FINAL EIS REPORTING AND RECORDS MANAGEMENT.....	31
CHAPTER 7 – POST RECORD OF DECISION FOLLOW-UP.....	32
1. FOLLOW-UP POLICY.....	32
2. FOLLOW-UP STEPS.....	32
3. REVIEW OF THE RECORD OF DECISION.....	32
4. REPORTING AND RECORDS MANAGEMENT CONTROL.....	33
CHAPTER 8 – REVIEW OF DOCUMENTS OTHER THAN ENVIRONMENTAL IMPACT STATEMENTS.....	34
1. POLICY.....	34
2. GENERAL REVIEW PROCEDURES.....	34
A. Lead Responsibility for Review of Other Actions.....	34
B. Conducting Reviews of Other Actions.....	34
C. Unsatisfactory Finding On Other Major Federal Actions.....	35
3. LEGISLATION REVIEWS.....	35
4. REGULATION REVIEWS.....	35
5. OTHER AGENCY ACTION REVIEWS.....	36
6. DETERMINING THE NEED FOR AN EIS.....	36
7. UNSATISFACTORY FINDING.....	37
8. MONITORING AND FOLLOW-UP ON MITIGATED FONSI.....	38
9. REPORTING AND RECORDS MANAGEMENT.....	38
CHAPTER 9 – REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY.....	39
1. POLICY.....	39
2. CRITERIA FOR REFERRAL.....	39
3. REFERRAL PROCEDURES.....	39
4. REFERRAL PACKAGE DEVELOPMENT SEQUENCE.....	40
5. CONTENT AND ORGANIZATION OF THE REFERRAL PACKAGES.....	42
A. Lead Agency Referral Package.....	42
B. Administrator’s Referral Package.....	43
C. CEQ Referral Package.....	43
6. APPROVING AND DISTRIBUTING THE REFERRAL PACKAGE.....	43
7. REPORTING AND RECORDS MANAGEMENT CONTROL.....	44
APPENDICES.....	45
APPENDIX A – EARLY ENGAGEMENT GUIDING PRINCIPLES.....	45
Background.....	45
Cooperating Agency Status.....	45

Early Engagement Practices	47
Resource Considerations	47
APPENDIX B —EXAMPLE LANGUAGE FOR NEPA/CAA § 309 COMMENT LETTERS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS.....	49
NEPA/CAA § 309 REVIEW	49
EXAMPLE LANGUAGE – All Letters	49
EXAMPLE LANGUAGE BASED ON ADVICE TO LEAD AGENCY ON RECOMMENDED NEXT STEPS IN THE NEPA PROCESS	50
APPENDIX C —QUICK REFERENCE GUIDE FOR ACTIONS THAT REQUIRE HEADQUARTERS ELEVATION	55
APPENDIX D —REFERENCES.....	57

ACRONYMS AND ABBREVIATIONS

AA	Associate Administrator
CAA	Clean Air Act
CATEX	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CWA	Clean Water Act
EA	Environmental Assessment
EIS	Environmental Impact Statement
<i>e-NEPA</i>	EPA's electronic filing database for EISs
EO	Executive Order
EPA	Environmental Protection Agency
FONSI	Finding of No Significant Impact
NCD	EPA's NEPA Compliance Division in the Office of Federal Activities
NEPA	National Environmental Policy Act
NOA	Notice of Availability
NOI	Notice of Intent
OCIR	EPA's Office of Congressional and Intergovernmental Relations
OFA	EPA's Office of Federal Activities in the Office of Policy
OMB	The Office of Management and Budget, Executive Office of the President.
OP	EPA's Office of Policy
OP AA	Associate Administrator for Policy
ORPM	EPA's Office of Regulatory Policy and Management
SME	Subject Matter Expert
ROD	Record of Decision
USC	United States Code

CHAPTER 1 – MANUAL PURPOSE, POLICY, AND MANDATES

1. PURPOSE.

This manual establishes policies and procedures for carrying out the Environmental Protection Agency’s (EPA) responsibilities to review and comment on major Federal actions affecting the quality of the human environment. EPA has general statutory authority for such reviews under the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality’s (CEQ) NEPA implementing regulations. EPA has specific authority and responsibility under Section 309 of the Clean Air Act (CAA) to conduct such reviews, comment in writing, and make those comments available to the public. EPA has combined these responsibilities into one process that is referred to throughout this manual as the “NEPA/CAA § 309 environmental review process.”

This manual contains EPA’s policies and procedures for carrying out the environmental review process, assigning responsibilities, and outlining mechanisms for issue resolution.

2. STATUTORY AUTHORITIES

A. NATIONAL ENVIRONMENTAL POLICY ACT

NEPA, as amended, (42 U.S.C. 4321 et seq.), requires that all federal agencies proposing legislation and other major actions significantly affecting the quality of the human environment consult with other agencies having jurisdiction by law or special expertise over such environmental considerations, and thereafter prepare a detailed statement of the environmental effects. CEQ published regulations and associated guidance to implement NEPA (40 CFR 1500-1508).

B. SECTION 309 OF THE CLEAN AIR ACT

CAA § 309(a), as amended, (42 U.S.C. 7609, Public Law 91-604 12(a), 84 Stat. 1709), requires EPA “to review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to [the Act] or other provisions of the authority of the EPA Administrator, contained in any: (1) legislation proposed by a Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal action (other than a project for construction) to which section [102(2)(C) of NEPA] applies, and (3) proposed regulations published by any department or agency of the Federal Government.” EPA must make its written comments public at the end of any review. CAA § 309(b) provides that if the Administrator determines that such proposed legislation, major federal action, project for construction, or regulation is unsatisfactory from the standpoint of public health, welfare, or environmental quality, EPA will publish its determination and refer the matter to CEQ.¹

¹ Review of non-EIS actions under CAA § 309, such as proposed legislation and regulations, are addressed in [Chapter 8](#) of this document.

C. OTHER ENVIRONMENTAL LAWS, POLICIES AND GUIDANCE

Federal environmental statutes require, in most circumstances, Federal Executive Branch facilities to comply with federal, state, and local pollution control requirements promulgated pursuant to, or effective under, those statutes. EPA is responsible for reviewing proposed federal projects for compliance with these national environmental standards through the environmental review process and the Federal Facilities Compliance Program. EPA is responsible for reviewing national policies, executive orders, and guidance and considering these in NEPA/CAA § 309 reviews as applicable. [Appendix D](#) provides a list of common references and resources to consider.

EPA is also responsible for reviewing proposed federal projects for consistency with EPA's authorities, policies and areas of expertise, including but not limited to, air quality and regulatory compliance under the Clean Air Act, water quality and compliance under the Clean Water Act and Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (commonly known as Superfund), Marine Protection, Research, and Sanctuaries Act (also known as the Ocean Dumping Act), the Toxic Substances Control Act, climate change mitigation and adaptation, children's health, and environmental justice.²

3. POLICY

The objective of the environmental review process is to promote NEPA's goals by leveraging EPA's environmental expertise to assist federal agencies in identifying and reducing potential adverse impacts from the proposed action. EPA strives to provide sound advice to other federal agencies to inform analysis and decision-making through early technical engagement and constructive comment letters. EPA's policy is to carry out the environmental review process in conjunction with EPA's other authorities to:

1. Strive to participate in interagency coordination early in the planning process to identify significant environmental issues that should be addressed in completed documents;
2. Identify environmental issues and recommend measures to avoid or minimize adverse impacts to the environment, or to protect, restore, and enhance the environment;
3. Identify agency actions with significant environmental impacts and discuss EPA's concerns to promote the implementation of appropriate mitigation measures; and
4. Identify environmentally unsatisfactory proposals and consult with other agencies, including CEQ, to timely resolve major issues or problems.

In implementing this policy, EPA will assist federal agencies to:

² For a complete list of EPA authorities, regulations, and policies visit www.epa.gov.

1. Achieve NEPA's goals;
2. Meet the objectives and comply with the requirements of EPA administered laws and regulations;
3. Synchronize analysis for NEPA and environmental permitting as appropriate, identifying permit actions and key issues, to optimize timely and efficient permitting; and
4. Develop well-reasoned decision documents that identify project impacts, a range of project alternatives, and mitigation measures that will avoid or minimize adverse environmental impacts.

Current NEPA/CAA § 309 policy and guidance documents are published on [EPA's NEPA website](#). CEQ's NEPA regulations, policies, guidance, and publications are published on [CEQ's website](#). Current NEPA/CAA § 309 internal technical tools, training, reviewer aids and resource library are located at the NEPA/CAA § 309 Community shared electronic resource site maintained by Office of Federal Activities (OFA) NEPA Compliance Division (NCD).³

³ As of the date of this document, EPA's electronic resource site is the NEPA/CAA § 309 Community SharePoint.

CHAPTER 2 — MANAGEMENT OF THE ENVIRONMENTAL REVIEW PROCESS

1. GENERAL RESPONSIBILITIES

The EPA Administrator delegated authority for carrying out the environmental review process⁴ to the Associate Administrator for the Office of Policy (OP AA)⁵ and Regional Administrators. The EPA Administrator retains the authority to refer matters to CEQ.

The OP AA has, in turn, delegated environmental review program management to the Director of OFA, except concurrence on regional written comments with an unsatisfactory and/or inadequate finding. The OP AA retains authority to make recommendations to the Administrator to refer matters to CEQ when finding that a proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality.

2. OFFICE OF FEDERAL ACTIVITIES (OFA)

The OFA Director has been designated as the National Program Manager (NPM) for the environmental review process. OFA is responsible for policy development, coordination, and management oversight of EPA's NEPA/CAA § 309 environmental review process. To carry out these responsibilities, OFA manages and supports the Federal Agency Liaisons in NCD.

Working through the OFA Director, the NCD Director has policy development and management oversight authority for the environmental review process. The NCD Director appoints and designates Federal Agency Liaisons, who then coordinate with the headquarters offices of all federal agencies and oversee and guide regional reviews as appropriate.

A. NEPA COMPLIANCE DIVISION

1. NCD operates the Environmental Impact Statement (EIS) Database for its environmental review process of EISs prepared by other federal agencies and makes its comments publicly available pursuant to CAA § 309(a). *e-NEPA* is EPA's electronic tool for the filing of EISs prepared by other federal agencies.
2. NCD manages the official filings of all EISs in accordance with 40 CFR 1506.10. NCD is also responsible for publishing the weekly CEQ Notice of Availability (NOA) of EISs and maintaining the EIS Database to inform EPA officials and the public of EISs received by EPA for review and comment. This is accomplished through the management and/or tracking of the following:

⁴ See EPA Delegations Manual, CAA § 309 Review Process, 1200 TN 350, at 7-57.

⁵ The OP AA is also designated as EPA's NEPA Official, who is responsible for EPA's NEPA compliance. 40 CFR 6.102(b)(8).

EIS Database.⁶ The database contains information regarding all EISs filed pursuant to 40 CFR 1506.10. It includes the EIS title, EIS number, EIS document type, Federal Register publication date, date when comments are due, state or territory for the project, lead agency,⁷ and lead agency contact information.

CEQ Notice of Availability (NOA) of EISs. A NOA is published in the Federal Register weekly for EISs filed during the previous week, pursuant to 40 CFR 1506.11(a). EPA calculates the minimum comment and review periods from the date EPA publishes the NOA in the Federal Register.

Requests for Waivers of Minimum Comment and Review Periods. NCD coordinates with CEQ and seeks the OP AA's approval for any requests from federal agencies to waive minimum comment and review periods pursuant to 40 CFR 1506.11(b).

3. NCD leads the headquarters coordination or concurrence process on any CAA § 309 comment letters that require elevation and concurrence from the OP AA or the OP AA's delegated representative to confirm consistency with EPA policies, regulations, and priorities. (See [Appendix C](#) for quick reference guide for actions that may require coordination or concurrence with OP AA.)
4. NCD coordinates internal and external reports required for the NEPA/CAA § 309 program.

B. FEDERAL AGENCY LIAISONS

Working through the NCD Director and other appropriate elements within OFA, each Federal Agency Liaison has the following responsibilities:

1. Liaise with headquarters counterparts for assigned federal agencies to identify and promote opportunities to improve nationwide working relationships and procedures;
2. Update the NCD Director on issues of interest or concern regarding the Agency Liaison's assigned federal agencies to share with EPA regional reviewers;
3. Seek EPA regional staff feedback to share with federal agency headquarters counterparts on trends that reflect opportunities to improve the federal agency's NEPA program;
4. Assist with the regional review of actions, on a case-by-case basis, carried out in accordance with this manual to promote consistency across EPA, and provide environmental review policy guidance to EPA headquarters program offices and regions;

⁶ Public EIS Database may be viewed at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search/>.

⁷ Lead agency means the Federal agency that proposes the agency action or is designated pursuant to § 1501.7(c) for preparing or having primary responsibility for preparing the environmental impact statement or environmental assessment.

5. Support actions elevated to EPA headquarters under these procedures; and
6. Coordinate EPA review of proposed regulations, EISs that are national in scope (see [Table 1](#)), and other national-level activities and actions.

3. REGIONAL NEPA OFFICES

Each EPA regional NEPA office is responsible for carrying out the environmental review process for proposed major federal actions within its region in accordance with the policies and procedures of this manual and applicable regulations. Each EPA regional NEPA office will designate a Regional Environmental Review Coordinator, who has overall management responsibility for the environmental review process in that region and a regional senior manager who has overall responsibility for regional NEPA program management similar to the OFA Director on the national level. The Regional Environmental Review Coordinator:

1. Liaises with other federal agencies' regional representatives;
2. Leads the review of proposed EISs and other major federal actions assigned to their region;
3. Leads actions described in [Section 5. A.](#) of this chapter (NCD Director and Regional Environmental Review Coordinator);
4. Maintains and follows the appropriate records management schedule for NEPA records;
5. Provides appropriate regional NEPA office representation, as resources allow, in cross-EPA work groups with objectives intersecting NEPA/CAA § 309 review responsibilities; and.
6. Tracks and reports monthly on all NEPA-related performance measures established by the NCD Director, highlighting performance trends and opportunities for improvement.

4. EPA PROGRAM OFFICES

EPA Headquarters and EPA Regions are organized into several program offices that work to ensure access to clean air, land, and water. These EPA program offices are also responsible for providing technical assistance and policy guidance on NEPA review actions related to their areas of responsibility. EPA Office of General Counsel and Offices of Regional Counsel should be included as associate reviewers. The subject matter experts (SME) and representatives of the program offices will be referred to in this document as associate reviewers. Associate reviewers will follow the policies and procedures in this manual in accordance with [Section 5](#) of this chapter.

5. REVIEW MANAGEMENT RESPONSIBILITIES

A. HEADQUARTERS AND REGIONAL ENVIRONMENTAL REVIEW COORDINATORS

The term “Environmental Review Coordinator” is used in this manual to mean either a Regional Environmental Review Coordinator or the NCD Director managing the Federal Agency Liaisons. It is the Environmental Review Coordinator’s responsibility to manage the environmental review process and to ensure EPA follows the procedures in this manual. The Environmental Review Coordinator:

1. Determines the level of EPA participation in EIS scoping efforts, assigns EPA staff to review EISs, and manages EPA staff assigned to those efforts;
2. Designates a lead reviewer for each proposed action assigned to their region;
3. Determines the scope of EPA’s early engagement as a cooperating agency⁸ under 40 CFR 1501.8 of CEQ’s NEPA implementing regulations, as well as other levels of engagement (e.g., EPA’s review and comment on administrative drafts of an EIS and other draft technical documents supporting the NEPA analysis);
4. Provides timely written EPA comments to lead agencies on draft EISs regarding EIS adequacy and the federal action’s environmental impact(s);
5. Determines whether to prepare comments on final EISs and, as needed, prepares, and provides such comments to lead agencies;
6. Determines whether to prepare comments on non-EIS actions such as environmental assessments (EAs), notice of intents (NOIs), and other actions described in Chapter 8, Section 2.A. ([Lead Responsibility for Review of Other Actions](#));
7. Reviews comment letters for consistency with applicable EPA policies and OFA letter writing guidance;
8. Initiates and manages follow-up on EPA comment letters with lead agencies and other parties to identify and resolve significant issues; and
9. Completes project close-out consistent with NCD’s reporting procedures (e.g., tracking and reporting program performance measures).

⁸ Cooperating agency means any Federal, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency.

B. LEAD REVIEWER

To coordinate the review and preparation of EPA's comment letter, the Environmental Review Coordinator designates a lead reviewer for each major federal action. The lead reviewer must ensure the comment letter represents the views of other EPA offices, is consistent with agency policy, and reflects applicable EPA environmental responsibilities. In general, for reviews led by headquarters, the lead reviewer will be a NCD Federal Agency Liaison on the team assigned to the lead agency. The lead reviewer:

1. Identifies associate reviewers, including staff associated with permit actions, to provide an opportunity for all appropriate regional and headquarters EPA offices to participate in the review;
2. Establishes due dates for associate reviewers' comments and coordinates timely receipt of comments, timely resolution of disagreements or inconsistencies among reviewers, and provides the person signing the comment letter ("the signing official"⁹) with adequate time for review, as described further in this document;
3. Reviews and confirms the validity of comments in EPA's finalized letter(s);
4. Resolves and records the disposition of any disagreements with or between associate reviewers' comments in accordance with Section 5.D. ([Consolidation of Comments](#));
5. Ensures consistency between EPA's comment letters and EPA's prior comments on similar proposed actions;
6. Ensures the distribution of copies of the signed comment letter to associate reviewers and other parties; and
7. Documents project close-out and applicable NCD reporting procedures (e.g., tracking and reporting program performance measures).¹⁰

C. ASSOCIATE REVIEWERS

The lead reviewer may contact/consult EPA program offices to request one or more associate reviewers to provide technical and policy advice and the views of their program office. As resources allow the associate reviewers:

1. Review assigned NEPA documents and underlying proposed actions within their areas of responsibility and expertise, guided by this manual's policies and procedures;
2. Submit timely comments to the lead reviewer;

⁹ The EPA comment letter will be signed by the appropriate regional or headquarters official in accordance with the Delegation of Authority 7-57 CAA § 309 Review Process and applicable redelegations.

¹⁰ Roles and responsibilities for project close out may vary in regions depending on office organization.

3. Obtain their program office's concurrence on comments submitted;
4. Provide technical assistance, at the lead reviewer's request, to respond to lead agency questions on associate reviewer comments; and
5. Seek their program office's approval to provide technical assistance in their area of expertise when EPA is a cooperating agency.

D. CONSOLIDATION OF COMMENTS

The lead reviewer will consider all associate reviewer comments and must concur before including them in EPA's comment letter. When the lead reviewer makes substantive changes to associate reviewer comments, the lead reviewer will provide the associate reviewer an opportunity to discuss the changes. If the lead reviewer disagrees with substantive associate reviewer comments, the lead reviewer will attempt to resolve the differences with the associate reviewer. If this is not possible, the lead reviewer will inform the Environmental Review Coordinator and elevate the issue to senior leadership for resolution. The signing official shall be the final arbiter of differing opinions. If major policy issues are involved, the lead reviewer shall inform the Environmental Review Coordinator, and strive to obtain policy level concurrence with the associate reviewer's office. Pursuant to the relevant EPA records management schedule, the Environmental Review Coordinator will ensure associate reviewers' comments are retained in the official project file along with the lead reviewer's notes on the issue and its disposition.

6. EPA LEAD OFFICE RESPONSIBILITY FOR EISs AND OTHER MAJOR FEDERAL ACTIONS

Consistent with CEQ NEPA regulation 40 CFR 1506.10, lead agencies shall file statements with EPA no earlier than they are also transmitted to participating agencies and made available to the public. The EIS filed in *e-NEPA* shall serve as the transmitted EIS to EPA. However, if the Environmental Review Coordinator would like a paper copy of an EIS (or in another format not provided in *e-NEPA*) and has not received such requested document, the Environmental Review Coordinator may reach out to the lead agency to request such document-type be transmitted to the Region in the request format.¹¹

¹¹ See <https://www.epa.gov/nepa/submitting-copies-environmental-impact-statements-epa-regional-offices>).

Table 1 includes EPA review actions and the lead offices responsible for those reviews.

TABLE 1: Review Actions and Responsible EPA Lead Offices¹²

Action	Directed to
Policy statements, regulations, procedures, and legislation accompanied by an EIS	OFA-NCD
Actions that are national in scope	OFA-NCD
Actions that: 1) Result in a high degree of national controversy or have national significance; 2) Raise novel policy considerations or precedent; and/or 3) Are required to maintain or promote national consistency.	On a case-by-case basis, the OP AA and the Regional Administrator (or their designee) will consult to determine if a comment letter (at any stage of the process), in whole or in part, warrants OP AA coordination or concurrence. ¹³ Refer to delegation of authority as needed (see Chapter 2).
Actions crossing multiple regions	OFA-NCD in consultation/agreement with affected Regions, will designate a lead Region or assign to NCD.
All other actions	Appropriate regional office

Regional offices are generally responsible for leading reviews of EISs, other major federal actions, and selected EAs within their respective region. The following categories of projects may require coordination between the NCD Director and the Regional Environmental Review Coordinator to determine which region will have lead review responsibility:

1. The proposed action under review relates to a NEPA Review that occurs in a different region;
2. The proposed action under review relates to more than one region;
3. The regional office does not have adequate expertise or capacity to review the proposed action; or
4. The proposed action under review relates primarily to national EPA policy, regulations, or procedures, or has broad geographic reach, (e.g., overlapping several regions). (See [Table 1](#)).

If the Regional Environmental Review Coordinator proposes that an EIS may warrant reassignment to a different region or the designation of multiple regional offices as leads, the Regional Environmental Review Coordinator will notify the NCD Director. The NCD Director

¹² See EPA Delegations Manual, CAA § 309 Review Process, 1200 TN 350, at 7-57.

¹³ OFA and Regional management will consult to present necessary information to inform the OP AA and the Regional Administrator (or their designee) for these discussions.

will provide direction after consulting with affected region(s), the Federal Agency Liaison and the *e-NEPA* Team.

CHAPTER 3 – EARLY ENGAGEMENT AND REVIEW ACTIVITIES BEFORE DRAFT ENVIRONMENTAL IMPACT STATEMENT PUBLICATION

1. POLICY

EPA’s policy is to engage as early and as much as practicable in other agencies’ NEPA compliance efforts. EPA seeks to identify and resolve concerns with proposed agency actions at the earliest possible stage of project development. The Environmental Review Coordinator and lead reviewer will try to resolve project concerns through early coordination, rather than relying solely on the formal commenting process to identify and resolve concerns.

See [Appendix A: Early Engagement Guiding Principles](#) which identifies the practices for early engagement, including considerations for when to be a cooperating agency.

2. GENERAL LIAISON ACTIVITIES

Environmental Review Coordinators, lead reviewers, and the Federal Agency Liaisons will seek to establish and maintain contact with other agencies’ representatives to foster effective inter-agency relationships. EPA seeks to understand agencies’ programs and policies and stay informed of projects of interest to EPA.

To the extent practicable, the Environmental Review Coordinator and lead reviewers will assist other agencies to:

1. Identify potential project impacts early and assess whether to prepare EAs or EISs;
2. Identify appropriate environmental assessment techniques and methodologies; and
3. Incorporate reasonable alternatives and impact mitigation measures in project planning and development.

3. EPA’S PARTICIPATION IN SCOPING

A. GENERAL

CEQ’s NEPA implementing regulations (40 CFR 1501.9) require scoping for EISs.¹⁴ Scoping is a formal early coordination process to identify issues early and study them properly. Scoping generally involves identifying significant issues, eliminating non-significant issues from further study, and determining the range of actions, alternatives, and impacts to be considered by the

¹⁴ Many agencies may conduct scoping as part of their environmental assessment process.

EIS. To achieve these objectives, EPA will participate in scoping as much as possible. This potentially includes attending lead agency public scoping meetings and/or lead agency-sponsored interagency consultation meetings.

Note: As a matter of practice for EIS reviews, EPA does not provide comments while attending lead agency public scoping meetings. Instead, EPA provides written scoping comments to the lead agency.

B. RESPONDING TO SCOPING REQUESTS

1. If EPA receives a request or invitation to participate in the scoping process for an EIS or EA, the Environmental Review Coordinator will review and respond to the request in writing. Federal Register notices of intent to prepare an EIS are not considered specific requests. However, the Environmental Review Coordinator should be aware of relevant scoping requests and participate in those of special interest to EPA. The Environmental Review Coordinator may respond to scoping requests that are not specific to EPA by phone or email. A record of the communication must be kept in the official project file in accordance with the appropriate EPA records schedule.
2. EPA's scoping comment letters can be a form letter of acknowledgment with a list of concerns related to project type or project area. Scoping letters may also offer detailed comments specific to the proposed action under review. An EPA scoping comment letter, phone response, or e-mail may contain the following information:
 - a. A list of potentially applicable EPA-related regulatory requirements;
 - b. Significant environmental issues with heightened agency attention regarding the NEPA document;
 - c. Recommendations to improve meaningful public engagement, including engaging communities with environmental justice concerns;
 - d. References to guidelines, current research, or other publications that may inform the analysis of the environmental impacts of alternatives including climate resilient design alternatives;
 - e. A statement regarding EPA's intention to carry out its independent environmental review responsibilities under CAA § 309; and
 - f. The name, title, email address and telephone number of EPA's lead reviewer.
3. To determine the level of EPA's participation in scoping, the Environmental Review Coordinator will consider:
 - a. EPA's statutory responsibilities;
 - b. Severity of potential environmental impacts;

- c. National or regional priority concerns; and
- d. Available staff and travel resources.

C. DETAILED EPA INPUT TO THE SCOPING PROCESS

If an Environmental Review Coordinator determines that EPA should participate more substantively in scoping, they should supplement the generic information in [Section 3. B.](#) above with additional detailed information to the lead agency. Such information may include:

1. Specific environmental issues for analysis;
2. Specific information or data related to the area of interest, or within the boundary of a special designation (e.g., potential communities with environmental justice concerns and approaches to ensuring their meaningful engagement, potential areas sensitive to changing climate, sole source aquifers, Superfund locations, air quality non-attainment areas);
3. Specific knowledge of relevant reasonably foreseeable trends or planned actions;
4. Specific assessment techniques and methodologies EPA program offices use or have approved for use;
5. Reasonable alternatives to the proposed action that may avoid potential adverse impacts, including suggestions for an environmentally preferred alternative; and
6. Potential mitigation measures to reduce or eliminate adverse environmental impacts.

4. EPA AS A COOPERATING AGENCY

A. GENERAL

Under 40 CFR 1501.7, a lead agency may request any other federal agency serve as a cooperating agency if that agency has jurisdiction by law or special expertise (e.g., statutory responsibility, agency mission, or related program experience) — including EPA — regarding environmental issues the EIS should address. If not requested to serve as a cooperating agency, EPA may offer to be a cooperating agency.

In consultation with EPA regional or headquarters program offices that may need to provide technical assistance, the Environmental Review Coordinator determines whether EPA will accept cooperating agency status pursuant to another agency's request. The Environmental Review Coordinator also determines if EPA will request to be a cooperating agency. EPA should accept agency requests to be a cooperating agency when appropriate and as resources allow, with consideration given to the criteria in [Section 3. B.](#) above and EPA authorities and expertise.

B. RESPONDING TO REQUESTS TO BE A COOPERATING AGENCY ON AN EIS

- 1. EPA accepting a request to be a cooperating agency:** EPA must respond to the lead agency for any request to be a cooperating agency on an EIS. Responses may be in the same form as the lead agency request (e.g., if the lead agency requests via email, the Environmental Review Coordinator may respond via email). EPA's response must state that EPA will make every effort to raise and resolve issues during scoping and EIS preparation, and that EPA retains its independent obligations under CAA § 309 to review and comment on the draft EIS. If EPA responds to a request to become a cooperating agency, EPA should outline EPA's role in EIS preparation. EPA may participate in the scoping process and during other stages of the EIS development process. EPA's role may also include reviewing the scope of work, preliminary drafts, or technical documents. EPA may also assume responsibility for developing information, preparing environmental analyses, or, on rare occasions, providing technical assistance where EPA has special expertise.
- 2. EPA requesting to be a cooperating agency:** EPA may request that a lead agency designate EPA as a cooperating agency. If EPA is requesting to be a cooperating agency, EPA should request this role at the earliest opportunity possible (e.g., in the scoping comment letter or any stage where EPA's expertise is relevant and available), though resources and priorities may vary as circumstances evolve. EPA should also describe why EPA should be a cooperating agency (e.g., due to subject matter expertise or jurisdictional authority) in the request.
- 3. EPA declining cooperating agency request:** If the Environmental Review Coordinator, in consultation with the NCD Director, determines that resource constraints or other criteria preclude EPA's involvement in the preparation of another agency's EIS or preclude the degree of involvement the lead agency requests, the Environmental Review Coordinator must inform the lead agency in writing (40 CFR 1501.8(c)). When declining cooperating agency status for national and regional priority projects, the regional NEPA senior manager and OFA Director will consult and ensure the OP AA and Regional Administrator are notified, as appropriate, regarding the scope of EPA involvement before notifying the lead agency. When declining a cooperating agency request on an EIS or EA, the Environmental Review Coordinator will submit a copy of this reply to the OP AA, the OFA Director, the NCD Director and CEQ, pursuant to 40 CFR 1501.8. Where NCD is the lead reviewing office, the NCD Director will consult with the OFA Director and notify the OP AA prior to declining a cooperating agency request.
- 4. Cost reporting:** In accordance with 40 CFR 1502.11(g), lead agencies must include the costs incurred by cooperating and participating agencies on the cover of the final EIS. EPA will calculate and provide the costs to the agencies based on the methodologies as outlined in associated EPA guidance.

C. PROVIDING GUIDANCE AS A COOPERATING AGENCY

Whether as a cooperating agency or as part of early engagement, EPA should provide information or guidance to the lead agency in those areas where EPA has special expertise relating to EPA's duties, expertise, and regulatory responsibilities and in subject areas described in [Section 3.C.](#) of this chapter.

5. EPA AS LEAD AGENCY

EISs prepared by EPA are not subject to CAA § 309 reviews.¹⁵ However, the NEPA/CAA § 309 review program can provide informal technical assistance if requested by the EPA program or the EPA Responsible Official, responsible for compliance with NEPA for EPA's individual proposed actions.

6. REPORTING AND RECORD MANAGEMENT

Consistent with the appropriate EPA records management schedule, the Environmental Review Coordinator should ensure that official project files include EPA responses related to scoping, cooperating or lead agency issues, and follow-up correspondence.

¹⁵ EPA's procedures for implementing NEPA for EPA's actions are provided within 40 CFR 6.

CHAPTER 4 — REVIEW OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS

1. POLICY

EPA’s policy is to review and comment in writing on all draft EISs filed with EPA and to make those comments available to the public. Further, EPA policy is to summarize EPA’s level of concern and work with the lead agency to resolve significant issues. This policy arises from responsibilities that CAA § 309 assigns to EPA. The EPA review will focus on identifying and recommending mitigation measures to avoid, minimize, or compensate for effects caused by the proposed action or alternatives described in the EIS, including whether the agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns. The EPA will review whether agencies considered the potential effects of a proposed action on climate change, including by assessing both greenhouse gas emissions and reductions from the proposed action; and the effects of climate change on a proposed action and its environmental impacts. EPA’s review also considers if the EIS meaningfully assesses the impacts. To support this objective, lead reviewers will review the adequacy of the information and analysis in draft EISs.

The content of the draft EIS comment letter should be consistent with this NEPA/CAA § 309 Policy and Procedures Manual, commensurate with the context and severity of potential impacts. To guide and promote the preparation of high-quality comment letters, the lead reviewer should use the concepts and principles in this chapter along with current example language (see [Appendix B: Example Language for NEPA/CAA § 309 Comment Letters on Draft Environmental Impact Statements](#)) and the EPA Correspondence Manual. The objective is for EPA’s draft EIS comment letters to use consistent plain language to:

- Emphasize EPA’s unique review authority under CAA § 309;
- Transparently and consistently communicate with sister agencies and other stakeholders, including members of the public;
- Identify critical/significant recommendations (that stand out from other comments for improvement);
- Advise lead agencies of EPA’s recommendations for next steps in the NEPA process based on our level of concern; and
- Identify opportunities to tackle the climate crisis, assess whether the action avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns, and address other priorities as appropriate.

2. DRAFT EIS REVIEW MANAGEMENT

Except as noted below, the review management procedures and responsibilities in [Chapter 2](#) of this manual apply to draft EIS reviews.

A. ESTABLISHING DEADLINES AND TIME EXTENSIONS

1. **Comment Deadlines.** Unless the lead agency officially approves/grants a different deadline for EPA to submit comments, EPA will provide comments on a draft EIS to the lead agency within 45 calendar days from the start of the official comment period. *e-NEPA* includes the official comment due date. The lead reviewer will set internal deadlines for associate reviewer comments and necessary concurrences consistent with meeting the final deadline, as well as the need for EPA leadership briefings, concurrences, and other discussions.
2. **Comment Deadline Extensions.** EPA should minimize requests for extensions on draft EIS comment periods. If EPA is preparing detailed substantive comments and there are important environmental issues involved, or there is missing information that makes it difficult to comment, or it is an extremely complex project or EIS, EPA may request comment period extensions. Extensions should normally be requested for 15 or fewer days.
 - a. If an EPA region requests a deadline extension on a draft EIS review period, the Environmental Review Coordinator will notify the Federal Agency Liaison for awareness. This is considered an informal extension that only applies to EPA. If the lead agency grants the *informal* extension to allow EPA to submit comments after the public comment due date, the lead reviewer should update *e-NEPA* with the new deadline.
 - b. EPA, in consultation with OFA and after informing OP AA, may request a formal extension to a comment or review period. If the lead agency extends the comment or review period for all parties, the lead agency must notify EPA of the extended time period through *e-NEPA* (see 40 CFR 1506.10).

B. LEVEL OF CONCERN CATEGORIES

1. After completing a draft EIS review, the lead reviewer will identify the potential issues and associated recommendations regarding the potential environmental impacts. The lead reviewer will then incorporate language located in [Appendix B](#) in the comment letter that discusses EPA's level of concerns to the lead agency. General categories for level of concern include:
 - a. **No Concerns.** EPA did not identify significant concerns to be addressed in final EIS.
 - b. **Concerns.** EPA identified public health, welfare, or environmental quality concerns and/or deficiencies that should be addressed in final EIS.

- c. **Inadequate.** EPA identified deficiencies in the analysis such that it is not possible to meaningfully assess the impacts.¹⁶
- d. **Unsatisfactory.** EPA has found that there are impacts caused by the proposal at the draft EIS stage that are unsatisfactory from the standpoint of public health, welfare, or environmental quality. EPA believes that the proposed action should not proceed as proposed and therefore may warrant referral to CEQ.

There may be some reviews that identify elements of multiple categories (e.g., “concerns” and “inadequate” or “inadequate” and “unsatisfactory”). Potential issues associated with any of these categories should be incorporated into the letter as appropriate. In addition, as appropriate, the lead reviewer should define any EPA plans to conduct follow up with the lead agency. [Section 4](#) of this chapter explains the criteria for these categories. [Section 5](#) of this chapter explains the agency notification process for these categories.

3. SCOPE OF EPA COMMENTS ON DRAFT EIS

A. GENERAL

In general, EPA’s comments will focus on the preferred alternative for the proposal. However, there may be some cases where a preferred alternative has not been identified or the review has identified another alternative that has not been considered that may reduce impacts. In such case, EPA’s comments may address the complete range of alternatives. This includes identifying those alternatives that are environmentally unacceptable to EPA (e.g., violate a national environmental standard) and identifying EPA’s preferred alternative. EPA’s comment letter on the draft EIS will reflect EPA’s environmental responsibilities related to its areas of jurisdiction and/or expertise bearing on the proposed action.

EPA will assess the proposed action’s expected environmental impacts, with consideration of relevant laws, EOs, and additional EPA and CEQ guidance documents as appropriate. If EPA identifies substantive impacts, it will also evaluate the adequacy of the EIS’s supporting information and suggest additional critical or essential information. EPA’s publicly available comment letters and other guidance should help lead agencies prepare and publish a technically sufficient EIS and make an informed decision.¹⁷ EPA will also assess outreach and meaningful engagement, and analysis and mitigation of impacts to communities with environmental justice concerns. EPA’s comment letter on draft EISs will:

1. State EPA’s review responsibilities under NEPA and CAA § 309 highlighting EPA’s unique role under CAA § 309 requiring it “to review and comment publicly on any proposed federal action subject to NEPA’s environmental impact statement requirement”;

¹⁶ See 40 CFR 1502.9(b)

¹⁷ See, <https://www.epa.gov/nepa/national-environmental-policy-act-policies-and-guidance>.

2. Acknowledge positive lead agency responses to EPA scoping suggestions or early coordination efforts;
3. Describe EPA's substantive concerns and recommendations with supporting details in an attachment; and
4. Give the name, email address and phone number of an EPA contact.

B. MITIGATION

As stated in 40 CFR 1508.1(s), NEPA requires the consideration of mitigation. It is noteworthy that in the Record of Decision (ROD) (40 CFR 1505.2(a)(3)), agencies must state whether they have *“adopted all practicable means to avoid or minimize environmental harm from the alternative selected, and if not, why the agency did not.”* Adopted mitigations should be enforceable and effective. To support lead agencies, EPA's comments should include recommended measures to avoid or minimize adverse environmental impacts, or measures to protect, restore, and enhance the environment. EPA should recommend mitigation measures that are technically feasible, effective, and likely to succeed.

C. NATIONAL ENVIRONMENTAL STANDARDS DERIVED FROM EPA'S STATUTORY AUTHORITIES

EPA's statutory authorities under CAA 309 requires that EPA reviews focus on NEPA and other EPA authorities regarding “any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator.” If the NEPA review identifies an issue regarding another agency's authority (e.g., the Endangered Species Act of 1973 (Public Law 93-205) or the National Historic Preservation Act of 1966 (Public Law 89-665)) that may need additional analysis in the EIS, it may be referenced in EPA's comment letter by noting that the lead agency may consult the applicable regulatory agency as appropriate. EPA should strive to identify project impacts that may lead to violations of EPA's national environmental standards. EPA should also identify impacts that might preclude or affect related permit issuance. EPA's comment letter must identify potential environmental standards violations and offer to work with the lead agency to develop mitigations to minimize the impacts.

D. ALTERNATIVES

EPA's comments may recommend its preferable alternative. If an agency's proposal does not adequately mitigate significant impacts or incorporate climate resilient design, EPA could recommend a new alternative, or the no action alternative if warranted. EPA's recommendation should be reasonable, feasible, and meet the EIS purpose and need. When compared with the range of alternatives the EIS considers, EPA's proposed alternatives should reduce the scope of the potentially affected environment or degree of impacts of the proposed action. In this context, EPA should explain how the recommendation provides an opportunity to reduce project impacts or enhance climate resilience.

E. PURPOSE AND NEED

If an EIS review requires a detailed review of alternatives pursuant to [Section 3. A.](#) above, the lead reviewer may need to assess whether the purpose and need clearly states and supports the proposed action's objectives. The lead reviewer may also need to assess to what degree an alternative would meet project objectives. The lead reviewer may comment on whether the purpose and need is consistent CEQ regulations (40 CFR 1502.13). This assessment is of particular importance if the EIS's description of the project need affects the definition of reasonable alternatives.

4. RECOMMENDED LEAD AGENCY ACTION BASED ON EPA'S LEVEL OF CONCERN

EPA's comment letters should identify additional information warranted to understand the environmental impacts, potential mitigation measures to consider, substantive concerns and impacts to be avoided, and any impacts that are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA letters will recommend that the lead agency: proceed with preparing a final EIS; prepare a supplemental draft EIS and solicit public comments accordingly; or be alerted that the proposed action may have unsatisfactory impacts from the standpoint of public health, welfare, or environmental quality and could be or is a candidate for referral to CEQ.

In some cases, EPA may recommend preparing a supplemental EIS and that the proposed action may have unsatisfactory environmental impacts. Recommendations for lead agency action are summarized below and further described in [Appendix B.](#)

Recommended proceeding to final EIS: EPA's review did not identify significant public health, welfare, or environmental quality concerns that warrant potential CEQ referral or supplemental NEPA analysis. Recommendations may range from suggestions to improve the assessment and/or environmental outcome of the proposed action, to mitigation measures if there is a potential or expected exceedances or violations of regulatory environmental standards or inconsistencies with policy that are limited in scope or duration and can be avoided through actions analyzed in the draft EIS.

Recommended supplemental EIS based on inadequate analysis: EPA's review identified deficiencies in the analysis such that it is not possible to meaningfully assess impacts and recommends a supplemental EIS be prepared. If the lead agency does not address identified issues or EPA identifies unsatisfactory impacts in the supplemental or revised analysis, the proposal may be a candidate for referral to CEQ.

Recommended candidate for referral/unsatisfactory finding: EPA may conclude that based on the analysis in the draft EIS, the proposed major Federal action may result in adverse environmental impacts of sufficient magnitude that the proposal is unsatisfactory from the standpoint of public health, welfare, or environmental quality and the proposed action should not proceed as proposed. Therefore, the proposed action is a candidate for

referral to CEQ. The basis for an unsatisfactory finding consists of identifying concerns as defined above and one or more of the conditions in [Table 2](#) below.

Note: When a supplemental draft EIS is recommended, EPA may request that the lead agency prepare and publish a revised draft of the appropriate portion (40 CFR 1502.9(b)). Further, EPA may request an agency prepare a supplement to a draft if there are significant new circumstances or information relevant to public health, welfare or environmental quality concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)). Based on its inadequacy finding, EPA may also find that the proposed major Federal action is unsatisfactory from the standpoint of public health, welfare, or environmental quality and should be considered a candidate for referral to CEQ if not addressed. In such cases, EPA’s comment letter must include sufficient detail in plain language to explain to the lead agency the inadequacies of their analysis. Further, EPA’s comment letter must provide sufficient detail for the lead agency to determine how to address the deficiency.

Table 2: Criteria for Potential Referral to CEQ

Criteria for an Environmentally Unsatisfactory Finding for Proposed Major Federal Actions
<ul style="list-style-type: none"> • The potential violation of an EPA public health, welfare, or environmental standard¹⁸ is substantive;
<ul style="list-style-type: none"> • There are no applicable standards, but the severity, duration, disproportionality, or geographical scope of the impacts on public health, welfare or environmental quality associated with the proposed action warrant special attention; or
<ul style="list-style-type: none"> • The potential public health, welfare, or environmental quality impacts resulting from the proposed action are of national importance¹⁹ based on the threat to public health, welfare or environmental resources or conflicts with environmental policies (e.g., national policies related to addressing impacts to communities with environmental justice concerns, impacts from greenhouse gas emissions or changing climate conditions).

5. COMMENT LETTER APPROVAL, AGENCY NOTIFICATION, CONCURRENCE AND DISTRIBUTION

A. NO CONCERNS OR CONCERNS COMMENTS

Pursuant to the Delegation of Authority 7-57 CAA § 309 Review Process, the appropriate regional or headquarters official will sign EPA comment letters.

¹⁸ EPA’s 309 authority is limited to the review and comment on the environmental impacts related to the duties and responsibilities of the Administrator. *See* Section 309(a) of CAA.

¹⁹ “National importance” may include, but not limited to, local or regional issues that are precedent setting, are conflicting with national policies, or are in areas that have been or is currently overburdened by environmental impacts, have a special designation such as protected habitat areas, or other national attention.

For actions that may result in a high degree of national controversy or have national significance, raise novel policy considerations or precedent, or are required to maintain or promote national consistency, a case-by-case determination will be made on the most appropriate method to notify the lead agency of anticipated concerns. On a case-by-case basis, the OP AA and the Regional Administrator will consult to determine if a comment letter (at any stage of the process), in whole or in part, warrants OP AA concurrence. The Environmental Review Coordinator will work with the NCD Director and Federal Agency Liaison to manage the headquarters concurrence process where warranted.

B. INADEQUATE EIS

If the Environmental Review Coordinator finds that a draft EIS is so inadequate as to preclude meaningful analysis or recommends that EPA request a revised or supplemental EIS, OP AA must concur on the EPA comment letter before release. If an EPA regional office is conducting the review, the Regional Administrator will submit the draft letter to the OP AA. The Environmental Review Coordinator will notify the NCD Director and Federal Agency Liaison as early as possible of the potential for an inadequate finding, but at least seven (7) business days prior to the due date. The Environmental Review Coordinator will work with the NCD Director and Federal Agency Liaison to manage the headquarters concurrence process.

After receiving OP AA concurrence on the recommendation, the Environmental Review Coordinator must also verbally communicate and attempt to resolve EPA's concerns with the lead agency before transmitting EPA's comment letter.²⁰ The Environmental Review Coordinator's efforts should:

- a. Describe EPA concerns and discuss how they may be resolved;
- b. Ensure that the EPA review has correctly interpreted the proposal and supporting information; and
- c. Learn about ongoing lead agency actions that might resolve EPA's concerns²¹.

Pursuant to the Delegation of Authority 7-57 CAA § 309 Review Process, the appropriate regional or headquarters official will sign EPA's comment letter.

²⁰ All verbal communication must be documented as part of the administrative record.

²¹ EPA may need to consider the lead agencies' statutory or regulatory constraints.

C. UNSATISFACTORY IMPACTS

If EPA finds at the draft EIS stage that the proposed major Federal action may cause unsatisfactory environmental impacts from the standpoint of public health or welfare or environmental quality (in accordance with the criteria for unsatisfactory in [Table 2](#) above), EPA’s comment letter should state that the proposed action may be a candidate for referral to CEQ if the final EIS does not remedy EPA concerns. Once the Environmental Review Coordinator has ensured that the EPA review has correctly interpreted the proposal and supporting information and finds that a proposed major Federal action may be unsatisfactory, the Regional Administrator (if it is a regional action) and the OP AA must concur as to whether the action is unsatisfactory and a candidate for referral to CEQ prior to issuance of the EPA comment letter on the draft EIS. If NCD is reviewing an EIS and the NCD Director finds that a proposed major Federal action may be unsatisfactory, the OP AA must sign the comment letter on the draft EIS.

Draft EIS Comment Letter Distribution List
1. Agency submitting EIS.
2. CEQ (for EPA unsatisfactory finding) with transmittal letter.
3. Office of Public Affairs (for EPA unsatisfactory finding).
4. EPA program offices which served as associate reviewers.
5. Other EPA liaison offices.

After receiving OP AA and the Regional Administrator (if it is a regional action) concurrence on the recommendation, the Environmental Review Coordinator must communicate and attempt to resolve EPA’s concern by meeting with the lead agency before transmitting EPA’s comment letter. The Environmental Review Coordinator will:

- a. Describe EPA concerns and discuss how they may be resolved; and
- b. Learn about ongoing lead agency actions that might resolve EPA’s concerns.

The goal of this meeting is to discuss and resolve the recommendation for an “unsatisfactory” finding. It may clarify any issues. It may also serve as an opportunity for the lead agency to commit to revise the proposed action to address EPA’s concerns. In the comment letter, the lead reviewer should document and add an acknowledgment of any relevant new information or lead agency activities that may resolve EPA concerns.

If the review is of a regional action, the Environmental Review Coordinator will submit the draft letter through the NCD Director and Federal Agency Liaison to manage the headquarters concurrence process. The Environmental Review Coordinator must submit the draft comment letter for headquarters review at least seven (7) business days prior to the due date, and the regional signing official must have approved the unsatisfactory finding.

When EPA makes an unsatisfactory finding, the OP AA will send a copy of the EPA draft EIS comment letter to CEQ. In addition, if EPA has provided comments to a regional office of the lead federal agency, OFA and the region will recommend to the OP AA and the RA strategies to inform the appropriate officials or equivalent counterparts within the headquarters office of the lead federal agency. If the matter remains unresolved at the final EIS stage, the lead agency will

be notified of EPA's intent to refer it to CEQ, and an official referral package will be prepared for the Administrator's signature in accordance with the procedures outlined in [Chapter 9](#).

[Table 2](#) explains the criteria for unsatisfactory environmental impacts that may warrant a CEQ referral. [Chapter 9](#) of this manual describes the procedures for referrals to CEQ.

Note: EPA personnel should not distribute the comment letter to parties outside of EPA until the lead agency receives the original.

6. REPORTING AND RECORDS MANAGEMENT

Informal time extensions for EPA only, and comment letters on draft EISs will be entered into *e-NEPA* by the lead reviewer. The Environmental Review Coordinator will ensure all EPA comment letters and associated correspondence on draft EISs are retained in the official project file, in accordance with the appropriate EPA records management schedule.

CHAPTER 5 – EPA FOLLOW-UP AFTER REVIEW OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS

1. POLICY

EPA's policy is to conduct follow-up discussions with the lead agency to ensure the agency understands EPA's concerns with the draft EIS and considers EPA's comments for further action. Resources permitting, EPA follow-up efforts should exceed the minimum procedures in this chapter and Chapter 4, Section 2.B ([Level of Concern Categories](#)).

2. POST-DRAFT CONSULTATIONS

Once the comment letter has been issued, the Environmental Review Coordinator and/or lead reviewer should follow up with the lead agency in those cases where significant concerns have been identified as warranted.

Inadequate. If EPA found a draft EIS was inadequate and recommended a supplemental NEPA document, the Environmental Review Coordinator *should initiate consultation with the lead agency to discuss EPA's concerns and potential resolution*. This consultation is important both to work towards cooperatively resolving issues and to document that EPA exhausted every effort to resolve these issues at the agency level in the event that EPA needs to consider a referral to CEQ during the review of the final EIS (see [Chapter 9, Section 1](#)). The Environmental Review Coordinator, Federal Agency Liaison, and/or lead reviewer should be prepared to review the project in the field, develop additional information, and/or work with the lead agency to improve the proposed action and the supporting final NEPA document. When Environmental Review Coordinators hold substantive consultation meetings, they must document the outcome and, as appropriate, respond in writing to the lead agency to acknowledge any points of agreement, and to restate any unresolved issues. The Environmental Review Coordinator or lead reviewer must regularly update the Federal Agency Liaison regarding consultation meetings and outcomes.

Unsatisfactory Impacts. If, based on the review of the draft EIS, EPA makes an unsatisfactory finding, the Environmental Review Coordinator *must initiate consultations with the lead agency*. This consultation is important both to work towards cooperatively resolving issues and to document that EPA exhausted every effort to resolve these issues at the agency level in the event that EPA needs to consider a referral to CEQ during the review of the final EIS (see [Chapter 9, Section 1](#)). If NCD is leading the review, agency consultation will elevate through management levels in EPA and the lead agency to the OP AA and the lead agency equivalent until EPA's concerns are resolved or negotiations reach an impasse. If an EPA regional office is leading the review, the Regional Environmental Review Coordinator will work through NCD's Federal Agency Liaison to coordinate consultations with the lead agency at the regional and headquarters levels. In either case, EPA headquarters will inform CEQ of EPA's concerns and discussions with the lead agency about the possibility that the proposed action may be a candidate for referral. The Environmental Review Coordinator, lead reviewer, and/or Federal Agency Liaison should be prepared to review the project in the field, develop additional

information, or work with the agency to improve the proposed action and the final EIS. When the Environmental Review Coordinator holds substantive consultation meetings, they must document the outcome. As appropriate, the Environmental Review Coordinator should respond in writing to the lead agency to acknowledge points of agreement and restate unresolved issues. If EPA finds the lead agency's proposed action is still unsatisfactory after negotiations and escalations between EPA and the lead agency, EPA must inform the lead agency in writing that it reserves the right to refer the final EIS to CEQ. The OP AA or their designee must notify CEQ as early as possible.

3. STATUS REPORTS FOR INADEQUATE AND UNSATISFACTORY FINDINGS

After meeting with the lead agency on issues and concerns resulting in an inadequate or unsatisfactory finding, the Environmental Review Coordinator will prepare a status memorandum for the OP AA and the Regional Administrator as appropriate. OFA's Director will review and present the status memorandum to the aforementioned leaders. This memorandum should summarize:

- a. Progress of consultations;
- b. Resolved issues;
- c. Partially resolved issues;
- d. Remaining unresolved issues;
- e. Positions of other affected Federal agencies; and
- f. Prognosis for resolving remaining issues.

The Environmental Review Coordinator will periodically check in on the lead agency's progress responding to EPA's issues and concerns that resulted in an inadequate or unsatisfactory finding. Pursuant to best practices, the Environmental Review Coordinator may share documentation of issue resolution(s) with the lead agency throughout consultations. To the extent practicable, the Environmental Review Coordinator must make early preparation for final EISs likely to be unresponsive to EPA's concerns and that may result in a recommendation for a referral to CEQ. This preparation can include requests for additional resources and documentation as described in [Chapter 9](#).

4. REPORTING AND RECORDS MANAGEMENT

EPA must retain correspondence regarding post-draft EIS consultations and agreements in the official project file in accordance with the appropriate EPA records management schedule. If EPA makes an unsatisfactory finding, the official file must also contain all potentially necessary material for a CEQ referral package as described in [Chapter 9](#).

CHAPTER 6 — REVIEW OF FINAL ENVIRONMENTAL IMPACT STATEMENTS

1. POLICY

EPA policy is to conduct detailed reviews of final EISs if EPA raised substantive concerns at the draft EIS stage. It is also EPA's policy to identify new information and/or substantive changes made since the development of the draft EIS. The lead reviewer will assess whether the final EIS adequately resolves the issues EPA identified at the draft EIS stage, or if the final EIS makes a substantive change in the proposal.

If EPA expressed concerns with the draft EIS, or made an unsatisfactory finding, EPA will review and comment in detail on the final EIS. In its final EIS comment letter, EPA should acknowledge when the final EIS adequately resolved EPA's concerns. EPA should reiterate outstanding issues for which EPA is seeking resolution in the ROD. EPA should also discuss any remaining concerns or expectations around future permitting and mitigation measures. If the agency issued a single final EIS and ROD (i.e., typically applicable to transportation projects pursuant to 23 U.S.C. 139(n)(2) where the 30-day wait/review period under NEPA does not apply to the proposed action), the lead reviewer may issue a final EIS comment letter to close EPA's review.

The Environmental Review Coordinator can authorize the lead reviewer to conduct a detailed review of any final EIS even when EPA did not raise any concerns on the draft EIS.

2. FINAL EIS REVIEW MANAGEMENT

Except as noted below, the review management procedures and responsibilities in [Chapter 2](#) apply to final EIS reviews.

A. DESIGNATING LEAD RESPONSIBILITY AND LEAD AND ASSOCIATE REVIEWERS

In general, the lead reviewer's office for the draft EIS will lead the final EIS review. However, NCD has authority to make changes to review assignments for final EISs (see [Chapter 2, Section 6](#)). If possible, the Environmental Review Coordinator will assign the same lead and associate reviewers who reviewed the draft EIS to the final EIS review.

B. ESTABLISHING DEADLINES AND TIME EXTENSIONS

1. **Deadlines.** Unless there is a different, official deadline for accepting comments, the EPA will usually issue comments on a final EIS within 30 days after the EIS Federal Register publication date. The end of the final EIS review period is identified in *e-NEPA*. If EPA has remaining substantive concerns the lead agency could address in the ROD, EPA should strive to submit the comment letter earlier than the official deadline. The lead reviewer will set internal deadlines for timely associate reviewer input.

In accordance with the internal deadlines specified in [Chapter 9](#), EPA will prioritize reviews on final EISs where the proposed major Federal action may be candidates for referral to CEQ.

2. **Deadline Extensions.** EPA should minimize requests for review period deadline extensions for final EISs. In general, EPA should only request review period extensions on final EISs if important environmental issues remain unresolved, and detailed substantive comments are being prepared. Requests for deadline extensions should normally not exceed 15 days. EPA should request extensions for a referral deadline in accordance with the procedures in [Chapter 9](#) and the CEQ regulations.
 - a. Other than for CEQ referrals, if a region requests a deadline extension on a final EIS review period, the Regional Environmental Review Coordinator will notify the Federal Agency Liaison for situational awareness. If the lead agency grants the informal extension -- agreeing to accept EPA's comments beyond the published review period, the lead reviewer should update *e-NEPA* with the new deadline.

C. CRITERIA USED IN IDENTIFYING LEVEL OF CONCERN FOR FINAL ENVIRONMENTAL IMPACT STATEMENTS

EPA uses the same criteria to identify the level of concern for draft and final EISs. See [Chapter 4, Table 2](#).

3. SCOPE OF COMMENTS ON FINAL EIS

A. GENERAL

1. Except in unusual circumstances, the final EIS review will focus on major unresolved issues EPA raised in comments on the draft EIS and any changes to the proposal, new information or analysis in the final EIS relating to potentially significant impacts.
2. No Further Concerns. If EPA raised no substantive concerns in the review of the draft EIS and there were no substantive changes to the project or analysis from the draft EIS, the lead reviewer may recommend to the Environmental Review Coordinator not to comment on the final EIS. EPA will otherwise prepare written comments addressing any substantive updates relative to the draft EIS.
3. In general, EPA's recommendations in the final EIS comment letter should focus on helping the lead agency meet its ROD requirements under 40 CFR 1505.2 and address any outstanding issues from the draft EIS. This includes comments and recommendations related to substantive changes to the project or analysis that the draft EIS did not contain/address. These recommendations may:
 - a. Identify the environmentally preferable alternative;

- b. Identify remaining impact avoidance or minimization measures for the preferred alternative, or recommend the agency disclose why they did not include those measures;
 - c. Identify remaining considerations for mitigation or monitoring the lead agency proposes to adopt to improve effectiveness and enforceability of the mitigation;
 - d. Identify proposed conditions or requirements to help meet future permitting requirements under EPA authorities; and
 - e. Identify, where appropriate, new regulations, policies or guidance issued since the draft EIS that are within EPA's areas of expertise and should be addressed in the final EIS or ROD.
4. Unsatisfactory Impacts. Within five (5) business days after the start of the review period for the final EIS, the lead reviewer will make a preliminary finding as to whether the proposed major Federal action meets the criteria for referral as set forth in [Chapter 4, Table 2](#). If the Regional Administrator and OP AA find the proposed action unsatisfactory, the lead reviewer will follow the procedures in [Chapter 9](#).
 5. In cases involving significant mitigation, a change in project design, or where EPA continues to have substantial concerns, EPA's comments on the final EIS will also include a request for a copy of the ROD to verify the lead agency's responsiveness to EPA's concerns.

B. FINAL EIS MITIGATION MEASURES

If a final EIS identifies for the first time or modifies the agency's preferred alternative, EPA's review should consider any additional mitigation measures necessary to reduce adverse impacts from the preferred alternative. If EPA recommends mitigation measures, the comment letter should recommend the lead agency include these measures in its ROD and, where appropriate, incorporate these mitigation measures as specific conditions of its permits, grants, or other approvals. In addition, EPA's comment letter should request the lead agency inform EPA of progress in implementing EPA's proposed mitigations.

4. UNRESPONSIVE FINAL EIS

1. If the lead agency prepares a final EIS rather than a supplemental or revised draft EIS in response to EPA's concerns that a draft EIS was so inadequate as to preclude meaningful analysis, EPA's review should follow the procedures of [Chapter 4](#) to confirm if the proposed major Federal action continues to be unsatisfactory. If EPA finds that the final EIS is unresponsive to EPA concerns and continues to be unsatisfactory, EPA should initiate [Chapter 9's](#) procedures for the Administrator to determine if a CEQ referral is warranted.

2. If the EIS is so inadequate as to preclude meaningful analysis, a request should be made for the lead agency to prepare a supplemental EIS in accordance with 40 CFR 1502.9(d). The OP AA will sign the request for supplemental EIS letters for NCD led reviews. If an EPA regional office is leading the review, the Regional Administrator, with concurrence from the OP AA, should request the lead agency prepare a supplemental EIS. In either case, EPA's comment letter must explain how the final EIS is unresponsive to EPA's draft EIS comments.
3. If EPA requests a supplemental EIS, the OP AA must concur on EPA's comment letter before release. For regional reviews, the region will submit the draft letter through OFA for the headquarters concurrence process.

5. FINAL EIS COMMENT LETTER DISTRIBUTION

The Environmental Review Coordinator will coordinate distribution of the final EIS comment letter in accordance with the procedures in [Chapter 4, Section 5](#) (or in the case of a referral, [Chapter 9, Section 6](#)), and any applicable public affairs/media communications strategy (i.e., a desk statement²²). The lead agency must receive the original comment letter and have a reasonable opportunity to read it before the Environmental Review Coordinator distributes the letter to other external parties.

6. FINAL EIS REPORTING AND RECORDS MANAGEMENT

The Environmental Review Coordinator will ensure all final EIS comment letters and correspondence related to deadline extensions or the ROD are entered into *e-NEPA* and retained in the official project file, in accordance with the appropriate EPA records management schedule.

²² Examples of desk statements are located on the NEPA/CAA § 309 Community shared electronic resource site maintained by NCD (As of the date of this document, this is the NEPA/CAA § 309 Community SharePoint).

CHAPTER 7 — POST RECORD OF DECISION FOLLOW-UP

1. FOLLOW-UP POLICY

On a select basis and as resources allow, EPA's policy is to conduct follow-up on final EIS comments to:

1. Ensure EPA maximizes participation in post-EIS efforts to assist agencies with their decision-making;
2. Verify that the ROD identifies EPA recommended mitigation measures the lead agency agreed to implement; and
3. Assess implementation of such mitigation measures.

2. FOLLOW-UP STEPS

As appropriate and as resources allow, the lead reviewer should work with the lead agency to encourage them to:

1. Provide EPA a copy of the ROD;
2. Incorporate all mitigation or impact reduction measures recommended by EPA and accepted by the lead agency into the ROD; and
3. Incorporate all measures recommended by EPA and accepted by the lead agency as conditions of grants, permits, or other approvals.

The Environmental Review Coordinator should inform officials who could be subsequently involved in the proposed major Federal action of EPA's position on the final EIS (e.g., EPA regional or state officials for the National Pollutant Discharge Elimination System program, and EPA regional officials for the Clean Water Act (CWA) § 404 program).

If resources allow, the Environmental Review Coordinator should follow up with the lead agency for updates on the effectiveness of the ROD's mitigation measures.

3. REVIEW OF THE RECORD OF DECISION

If resources allow, the lead reviewer should review the ROD on all final EISs where the lead agency has developed mitigation measures or changes in project design in coordination with EPA.

The Environmental Review Coordinator will notify the lead agency and appropriate Federal Agency Liaison of problems or discrepancies between the ROD and agreed upon mitigation measures. The Federal Agency Liaison should coordinate resolution of remaining issues with the lead agency's headquarters office or CEQ, as warranted.

4. REPORTING AND RECORDS MANAGEMENT CONTROL

The Environmental Review Coordinator and/or the lead reviewer will record correspondence regarding the ROD in the official project file, in accordance with the appropriate EPA records management schedule.

CHAPTER 8 — REVIEW OF DOCUMENTS OTHER THAN ENVIRONMENTAL IMPACT STATEMENTS

1. POLICY

The scope of CAA § 309 authority includes reviews of proposed Federal agency actions, regulations, legislation, and non-EIS actions, which could lead to or have significant environmental impacts.

2. GENERAL REVIEW PROCEDURES

A. LEAD RESPONSIBILITY FOR REVIEW OF OTHER ACTIONS

Lead responsibilities for review of other Federal agency non-EIS actions that may be within the scope of CAA § 309 authority are defined below and in the procedures in [Chapter 2](#).

1. **Regulations:** The Office of Regulatory Policy and Management (ORPM) leads EPA's review of and comments on other Federal agency regulations and policies following Office of Management and Budget's (OMB) interagency review processes. For actions that may be within the scope of CAA § 309 authority (e.g., other federal agency proposed NEPA implementing procedures and regulations), OFA supports ORPM in leading the review. When another federal agency issues proposed procedures or regulations that are not subject to OMB's interagency review process, (e.g., independent agencies), OFA may conduct a review under CAA § 309 and provide comments during the public comment period.
2. **Legislation:** The Office of Congressional and Intergovernmental Relations (OCIR) leads all non-EIS legislation reviews and will recommend to the OP AA when EPA should prepare formal comments on legislation. For those actions that may be within the scope of CAA § 309 authority (e.g., legislation proposed by a federal agency with NEPA related implications), OFA supports OCIR in leading the review.
3. **Non-EIS Actions:** The Environmental Review Coordinator leads the review of other Federal agency non-EIS agency actions that may be within the scope of CAA § 309 authority, including, but not limited to environmental assessments (EA)/finding of no significant impacts (FONSI), categorical exclusions (CATEX), license applications, and agency proposed NEPA procedures, including the creation of new CATEXs. See Section 5 ([Other Agency Action Reviews](#)).

B. CONDUCTING REVIEWS OF OTHER ACTIONS

The Environmental Review Coordinator will lead a comprehensive review and comment process using [Chapter 2's](#) procedures. The Environmental Review Coordinator will ensure submission of EPA's comments within the lead Federal agency's decision-making period. If the Environmental

Review Coordinator makes a preliminary finding that an agency needs an EIS for the proposed action, the Environmental Review Coordinator must follow the procedures in Section 6 ([Determining The Need For An EIS](#)) of this chapter.

C. UNSATISFACTORY FINDING ON OTHER MAJOR FEDERAL ACTIONS

If the Regional Administrator or OP AA recommends that an agency's proposed major Federal action covered by this chapter may be unsatisfactory from the standpoint of public health, welfare, or environmental quality at the draft or final stage (in accordance with the criteria for referral specified in [Chapter 4, Table 2](#)), the procedures in Section 7 ([Unsatisfactory Finding](#)) of this chapter will apply.

3. LEGISLATION REVIEWS

OCIR leads reviews on proposed legislation unaccompanied by an EIS. OCIR is responsible for coordinating with other EPA program and regional offices, and for preparing EPA's comments on all legislation. An Environmental Review Coordinator who receives proposed legislation from another federal agency should forward it to OCIR for action.

4. REGULATION REVIEWS

ORPM within OP manages EPA's review of and comments on other agency and department regulations (e.g., notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking) and policies following OMB interagency review process. OMB establishes a process to enhance planning and coordination with respect to both new and existing regulations among Federal agencies. OMB coordinates an internal interagency review process of the proposed regulations and policies similar to early engagement processes under NEPA. As the interagency review process is pre-decisional, it is not made public. Following early engagement principles, EPA strives to identify and resolve concerns through the OMB interagency review process. If EPA comments on regulations under its CAA § 309 authority during a public comment period, those comments are posted to the public docket.

For reviews of other federal agency NEPA regulations where OFA is likely the primary commenting office, the Federal Agency Liaison will notify the appropriate Regional Environmental Review Coordinators of the interagency reviews and comment requirements for submission to ORPM and OFA, as appropriate. The Federal Agency Liaison will work closely with the regions during the review and comment period. As a matter of practice, EPA strives to identify and resolve any potential concerns related to the CAA § 309 review through the OMB interagency review process, when applicable.

When another federal agency issues proposed regulations or policies that are not subject to the OMB interagency review process (e.g., independent agencies), OFA may conduct a review under CAA § 309 and provide comments during the public comment period. When EPA provides

comments on regulations or policies during a public comment period, EPA will also post these comments to the lead agency's public docket as part of that agency's public comment process.

5. OTHER AGENCY ACTION REVIEWS

EPA may comment on the environmental impact of other non-EIS major Federal actions. The Environmental Review Coordinator may determine that EPA should review other non-EIS major Federal action documents (e.g., EAs (40 CFR 1508.1(h)), FONSI (40 CFR 1508.1(l)), documented categorical exclusions, issue papers, or technical support documents). To determine whether to review these documents, the Environmental Review Coordinator will consider the document and how the document relates to the overall decision-making process of other major Federal actions.

The Delegation of Authority 7-57, CAA § 309 Review Process determines the individual that will be serving as the signing official for EA comment letters. EPA must keep a record of such correspondence in the official project file in accordance with the relevant records management schedule.

6. DETERMINING THE NEED FOR AN EIS

The following procedures apply if an Environmental Review Coordinator finds that a federal agency has not yet or does not intend to prepare an EIS on an action that is subject to NEPA and EPA finds the proposed action could “significantly affect the quality of the human environment”²³ and cannot be fully mitigated as proposed. An Environmental Review Coordinator may make such a finding by investigating a public inquiry regarding the action, reviewing a regulation, reviewing an EA or FONSI, or by any other available means.

1. For regulations, the OFA Director, based on input from the Federal Agency Liaison and NCD Director, will inform the OP AA of the potential need for an EIS. If the OP AA finds a proposed regulation may need an EIS, this finding will be included in the response to the OMB interagency review process where applicable. For regulations and policies not subject to the OMB interagency review process, the OP AA may identify that need in comments submitted during the public comment period.
2. For regional actions, the Environmental Review Coordinator will immediately contact the appropriate Federal Agency Liaison and coordinate through OFA and Regional Management on the approach for working with the lead agency. On a case-by-case basis, the OP AA and Regional Administrator will consult to determine if the written correspondence warrants concurrence.
3. The Environmental Review Coordinator will initiate consultations with the federal agency responsible for the major action to explore whether an EIS should be prepared.

²³ See NEPA Section 102(c), 42 U.S.C. 4332

The Environmental Review Coordinator will frame such discussions with the agency in terms of EPA's suggestion for agency consideration, rather than as a requirement. If the lead agency has committed to conducting an EA, recommendations will be framed as potential significant impacts that would need to be mitigated to less than significant to support a potential FONSI. The lead agency will decide whether to prepare an EIS.

4. After such consultation, if the Environmental Review Coordinator determines that the requirements of Section 102(2)(C) of NEPA apply, the lead reviewer will prepare a comment letter to the federal agency responsible for the proposed action. The comment letter should include EPA's assessment of the action and rationale supporting why EPA recommends the agency should prepare an EIS, including the significant impacts of concern, potential mitigation, and assessment of whether mitigation could reduce impacts to less than significant.

7. UNSATISFACTORY FINDING

If the Regional Administrator makes an unsatisfactory finding for a non-EIS proposed major Federal action at the draft stage (in accordance with the criteria for referral specified in [Chapter 4, Table 2](#)), OP AA must concur on EPA's proposed comment letter prior to issuance. EPA must follow the concurrence process and procedures of [Chapter 4](#) to request and obtain OP AA concurrence. As early as practicable, the Regional Environmental Review Coordinator will consult with the Federal Agency Liaison and NCD Director to propose a recommended strategy for notifying the lead agency of EPA's intent to refer the matter to CEQ unless a satisfactory agreement is reached. Either at the time of the concurrence request, or if the lead agency's action is a final action, the Regional Environmental Review Coordinator or the appropriate Federal Agency Liaison will set up internal consultations and follow CEQ referral procedures in accordance with those in [Chapter 9](#). EPA will consider the option of requesting an EIS. While CEQ regulations regarding delivery timeframes for referrals do not apply to EPA under its CAA § 309 authority, EPA will aim, to the extent practicable, to make a referral to CEQ no later than five (5) calendar days²⁴ before the "final" lead agency decision for regulations or legislation, and in the case of environmental assessments, no later than 25 days after the lead agency makes it available. For example, in the case of proposed regulations, the CEQ referral must occur prior to final rule publication. Where NCD is the lead reviewing office, the NCD Director will consult with the OFA Director and seek OP AA approval on a strategy for the referral process and final determination.

For regulations, if the OP AA finds that a proposed regulation may be unsatisfactory from the standpoint of public health, welfare, or environmental quality, the OP AA will notify the lead agency and OMB through OMB's interagency review process.

²⁴ When a date falls on a weekend or holiday, the next Federal business day is used.

8. MONITORING AND FOLLOW-UP ON MITIGATED FONSI

In accordance with 40 CFR 1501.6(c), the lead agency may make a FONSI determination based on mitigation measures that have been incorporated into the proposed action. However, the lead agency must state the enforceable mitigation requirements or commitments necessary to avoid significant impacts. Resources permitting, the Environmental Review Coordinator should follow-up with the lead agency for the status of the effectiveness of the mitigation measures in the FONSI. EPA should follow the monitoring and follow-up procedures in [Chapter 7](#).

9. REPORTING AND RECORDS MANAGEMENT

The Environmental Review Coordinator will retain draft regulations under review, the resulting comment letters, and comment letters on any other non-EIS action related to the environmental review process in the official project file, in accordance with the appropriate EPA records management schedule.

CHAPTER 9 — REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY

1. POLICY

EPA is authorized to refer to CEQ matters related to EPA’s duties and responsibilities contained in proposed regulations or legislation by other federal agencies, newly authorized Federal projects for construction, or any major federal actions subject to 102(2)(C) of NEPA. See CAA § 309. EPA uses its referral authority when the Administrator determines that a matter is unsatisfactory from the standpoint of public health, welfare, or environmental quality, and after exhausting every reasonable effort to resolve these issues at the agency level before referring the matter to CEQ. EPA’s referral authority under CAA § 309 is independent from the referral authority afforded to all agencies in CEQ’s pre-decision referral process (40 CFR 1504).

2. CRITERIA FOR REFERRAL

The OP AA or RA’s recommendation to the Administrator to make a determination of “*unsatisfactory from the standpoint of public health or welfare or environmental quality,*” should document that the proposed major Federal action satisfies the criteria for referral given in [Chapter 4, Table 2](#).

3. REFERRAL PROCEDURES

Under CEQ’s NEPA implementing regulations, 40 CFR 1504, CEQ has established that a referring agency shall deliver its referral package to CEQ no later than twenty-five (25) days after the date of EPA’s Federal Register publication of the NOA of the final EIS and in the case of an environmental assessment, no later than 25 days after the lead agency makes the documentation available (40 CFR 1504.3(b)). Only the lead agency can grant extensions of EIS referral periods (40 CFR 1504.3(b)). Such extensions must be specific to the 25-day referral period rather than the overall comment or review period. While these provisions do not apply to EPA acting under our CAA § 309 authority, EPA strives to follow it to the extent practicable.

Additionally, EPA has authority under CAA § 309 to refer proposed regulations and major Federal actions for which no EIS has been prepared. EPA will strive to submit any referrals made under this section to CEQ no later than five (5) days before the end of the comment period or, in any case, five (5) days before the final action takes place (e.g., prior to lead agency approval of a final regulation or signed FONSI).

4. REFERRAL PACKAGE DEVELOPMENT SEQUENCE

The following procedure outlines the referral package development. This procedure simultaneously allows EPA a final attempt to resolve concerns with the lead agency while developing the referral package. The key steps in this sequence are:

1. The lead reviewer and Environmental Review Coordinator identify the potential referral action early, in close coordination with OFA;
2. The Regional Administrator (if a regional action) and OP AA concur and recommend the referral action to the Administrator;
3. EPA attempts to meet with the lead agency to address EPA's concerns; and
4. EPA prepares the referral package to preserve the referral option if discussions with the lead agency do not resolve EPA's concerns.

The following describes the procedures for developing a referral package. These procedures apply to both headquarters and regional recommendations for referrals. If NCD is leading the referral process, affected regions will be included at each step as warranted.

1. The lead reviewer will consult with the Regional Environmental Review Coordinator within five (5) days before the beginning of the final EIS review period to make a preliminary unsatisfactory finding. The lead reviewer's analysis will adhere to the criteria for referral in [Chapter 4, Table 2](#). If the lead reviewer recommends a referral, the Regional Environmental Review Coordinator will notify the appropriate Federal Agency Liaison and proceed with development of the documents described below. Where NCD is the lead reviewing office, the assigned Federal Agency Liaison/lead reviewer will consult with the NCD Director and OFA Director.
2. For regional actions, the Regional Environmental Review Coordinator will consult with the Federal Agency Liaison within ten (10) days from the start of the 25-day referral period to prepare and submit a briefing memorandum and interim response to the lead agency. The Regional Environmental Review Coordinator will submit these documents to the Regional Administrator and OP AA through OFA. Where NCD is the lead reviewing office, the NCD Director will submit these documents to the OP AA through the OFA Director. EPA's interim response to the lead agency will state that EPA is considering a referral to CEQ. EPA's response will also request a meeting and deadline extension to facilitate possible resolution of EPA's concerns. The briefing memorandum will contain:
 - a. Brief description of the proposed action;
 - b. Reason the proposed major Federal action is unsatisfactory from the standpoint of public health or welfare or environmental quality;

- c. Description of EPA’s attempts to resolve differences with the lead agency;
 - d. Documented positions of other affected federal agencies, groups, and public officials;
 - e. Recommended strategy to resolve remaining issues; and
 - f. Recommended schedule to develop and submit the referral package by the referral deadline.
3. EPA may request a lead agency delay a decision so that EPA and the lead agency may resolve concerns to avoid a potential referral to CEQ. If the lead agency agrees, the Regional Environmental Review Coordinator or NCD Director will immediately prepare a letter to the lead agency to document the agreement. The Regional Environmental Review Coordinator or NCD Director will update the schedule and develop the potential referral package based on the anticipated date of the lead agency’s decision. If the lead agency does not agree, the Regional Environmental Review Coordinator or NCD Director will prepare its referral package based on the schedule approved by the OP AA.²⁵
 4. No later than ten (10) days before the referral deadline, the Federal Agency Liaison, and the region²⁶, in consultation with the NCD Director, will prepare, and the OFA Director will submit the following to OP AA for consideration:
 - a. A short information memorandum for the Administrator describing potential referral and the status of unresolved issues;
 - b. A one (1) page “talking points” paper; and
 - c. An outline of a communication strategy (i.e., a desk statement) for notifying interested parties of EPA’s action.
 5. For regional actions, the regional senior manager or their designee will forward the final referral package to the OFA Director for OP AA approval and transmittal to the Administrator no later than seven (7) days before the referral deadline. Where NCD is the lead reviewing office, the NCD Director will forward the final referral package to the OFA Director for OP AA approval and transmittal to the Administrator. The package should contain all letters and concurrences ready for the Administrator’s signature. For regional led reviews, the Regional Administrator must give approval on regional referral packages prior to submittal to OP AA.
 6. The OFA Director will ensure the referral package is in final form and support the OP AA’s briefing for the Administrator.

²⁵ On a case-by-case basis, the OP AA may grant an extension to the referral deadline.

²⁶ Where NCD is the leading reviewing office, the documents will be prepared by the Federal Agency Liaison/lead reviewer and the NCD Director.

5. CONTENT AND ORGANIZATION OF THE REFERRAL PACKAGES

The referral package should be organized in the following manner:

A. LEAD AGENCY REFERRAL PACKAGE

This package will contain:

1. A letter for the Administrator's signature addressed to the head of the lead agency informing the lead agency of EPA's unsatisfactory determination and intent to refer the matter to CEQ. The letter should request the agency refrain from implementing the proposed major Federal action until the CEQ acts on the matter.
2. Detailed comments supporting EPA's conclusion that the proposed major Federal action is unsatisfactory from the standpoint of public health or welfare or environmental quality. The detailed comments must articulate:
 - a. Unsatisfactory impacts related to EPA's duties and responsibilities (e.g., areas of jurisdiction or EPA expertise);
 - b. Reasons EPA determined the proposed major Federal action is unsatisfactory from the standpoint of public health or welfare or environmental quality;
 - c. The basis for the unsatisfactory determination/referral to include one or more of the following:²⁷
 - i. The potential violation of an EPA public health, welfare or environmental standard that is substantive;
 - ii. Where there are no applicable standards, but the severity, duration, disproportionality, or geographical scope of the impacts on public health, welfare, or environmental quality associated with the proposed action warrant special attention; or
 - iii. The potential public health, welfare, or environmental quality impacts resulting from the proposed action are of national importance²⁸ based on the threat to public health, welfare, or environmental resources or conflicts with environmental policies (e.g., national policies related to addressing impacts to communities with environmental justice concerns and impacts from greenhouse gas emissions or changing climate conditions).

²⁷ CEQ offers additional referral criteria that may be considered as appropriate. See 40 CFR 1504.2.

²⁸ "National importance" may include, but not limited to, local or regional issues that are precedent setting, are conflicting with national policies, or are in areas that have been or is overburdened by environmental impacts, have a special designation such as protected habitat areas, or other national attention.

- d. Identify any disputed material facts and incorporate (by reference if appropriate) agreed upon facts between EPA and the lead agency;
- e. Give EPA's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation; and
- f. Review the steps taken by EPA to bring its concerns to the attention of the lead agency at the earliest possible time.

B. ADMINISTRATOR'S REFERRAL PACKAGE

The referral package for the Administrator will include the packages to be submitted to CEQ and the lead agency, as well as:

1. An action memorandum to the Administrator (not to exceed two (2) pages) outlining the proposed action, EPA's concerns and recommendations, and positions of other affected federal agencies, public interest groups, and congressional delegations.
2. A communications strategy (i.e., a desk statement) for notifying stakeholders of the referral. This strategy will be coordinated with OP AA and immediate office.

C. CEQ REFERRAL PACKAGE

The CEQ referral package follows the requirements outlined in 40 CFR 1504.3.(b) and (c) and will consist of:

1. A letter for the Administrator's signature to CEQ's Chair setting forth the basis of EPA's determination; and
2. The information provided to the lead agency as defined in Section 5.A ([Lead Agency Referral Package](#)).

6. APPROVING AND DISTRIBUTING THE REFERRAL PACKAGE

After the Administrator signs the referral letters to the lead agency and CEQ, the Environmental Review Coordinator, in coordination with the NCD Director,²⁹ will ensure follow-up distribution by sending the letters to the following.

1. Lead agency;
2. CEQ;

²⁹ Where NCD is the lead reviewing office, the Federal Agency Liaison/lead reviewer will ensure follow-up distribution in coordination with the NCD Director and OFA Director.

3. EPA Administrator;
4. OP AA;
5. EPA General Counsel;
6. EPA Headquarters Office of Public Affairs;
7. Appropriate regional office;
8. Appropriate regional Office of Public Affairs;
9. OFA Director;
10. NCD Director within OFA;
11. EPA offices that served as associate reviewers; and,
12. Interested elected officials as appropriate, per Office of Congressional and Intergovernmental Relations (OCIR) discretion.

7. REPORTING AND RECORDS MANAGEMENT CONTROL

The Environmental Review Coordinator will retain the referral package, related correspondence, and documentation of deadline extensions in the official project file, in accordance with the appropriate EPA records management schedule. The Environmental Review Coordinator will enter deadline extensions into *e-NEPA*. Where NCD is the lead reviewing office, the Federal Agency Liaison and NCD Director will retain the referral package in accordance with EPA records management schedule.

APPENDICES

APPENDIX A — EARLY ENGAGEMENT GUIDING PRINCIPLES

BACKGROUND

The CEQ implementing regulations for the NEPA emphasize cooperation among agencies when EISs are being developed (see 40 CFR 1501.8). It is the EPA's policy to participate early in the NEPA compliance efforts of other federal agencies to the fullest extent practicable to identify the EPA matters of concern with proposed agency actions and to assist in resolving these concerns at the earliest possible stage of project development. Early engagement in the NEPA process, including participating as a cooperating agency, can avoid disagreements over impact analysis, identify alternatives with fewer environmental impacts for inclusion in the draft EIS, and identify means to reduce environmental impacts prior to an EIS being fully developed. This document is intended to assist the EPA's CAA § 309 program by identifying principles for early engagement, including considerations for when to participate as a cooperating agency. These principles are not meant to be prescriptive, as each proposed federal action is unique and therefore may require varying levels of EPA engagement.

COOPERATING AGENCY STATUS

The CEQ NEPA implementing regulations indicate that agencies with jurisdiction by law or special expertise should serve as cooperating agencies when invited by the lead agency. The regulations also state that an agency may request a lead agency to designate it as a cooperating agency. There are instances where the EPA is invited by another federal agency to act as a cooperating agency in the development of an EIS, because EPA has either legal jurisdiction over the project (e.g., an EPA permit or approval is required), special expertise and knowledge that would aid in the development of the EIS (e.g., water or air quality), or both. By serving as a cooperating agency, EPA can:

1. Identify issues and opportunities for resolution early in the NEPA process and prior to EPA's public draft EIS comment letter;
2. Provide technical assistance on how to fulfill any applicable EPA-related regulatory requirements (e.g., CWA § 404(b)(1) guidelines); and
3. Reduce the likelihood of unresolved issues at the end of the NEPA process that may require elevation.

Management and staff should consider the resource implications of being a cooperating agency before accepting a request. The EPA offices should strive to ensure that the resources needed to participate will be available and to provide input within requested timeframes. The Environmental Review Coordinator is encouraged to accept cooperating agency status whenever possible and as appropriate. The following are considerations that EPA could factor into a decision on whether/when to participate as a cooperating agency:

- The magnitude of impact the proposed project may have on human health and/or the environment;
- The availability of resources needed to support cooperating agency efforts (e.g., lead and associate reviewer full time equivalent and travel dollars);
- Whether the lead agency can assure that EPA will be provided adequate time for review of preliminary documents consistent with the length and technical complexity of the document;
- Whether the lead agency has reserved adequate time in the project schedule to address cooperating agency comments prior to publishing the EIS or ROD;
- EPA's current and historic working relationship with the lead agency or the need to develop a relationship with the lead agency;
- Which EPA programs would be involved and their roles;
- Receptivity of the lead agency to EPA's desire to be designated a cooperating agency (if lead agency has not invited EPA);
- The proposed schedule for EIS preparation and the deadline for needing a decision on EPA's cooperating agency status;
- Any established longstanding agreements with the lead agency;
- Alternative approaches for achieving the desired outcomes of having EPA serve as a cooperating agency (and associated resource implications);
- The role EPA would take as a cooperating agency (mandatory or voluntary NEPA compliance, statutory authority, agency expertise, other); and/or
- The specific expectations of the lead agency for EPA's participation (i.e., the expertise EPA can provide as a cooperating agency or what would EPA do (or not do) in this role).

Two key conditions of our cooperating agency agreement should be assurance from the lead agency that:

1. EPA will be provided adequate time for review of preliminary documents consistent with the length and technical complexity of the document; and
2. The lead agency will reserve adequate time in the project schedule to address EPA's cooperating agency comments prior to publishing the EIS or ROD.

EPA could generally consider *not accepting* cooperating agency status if the Agency's only function with a project would be to review and comment on the public review version of the draft or final EIS. EPA specifically has this independent review responsibility through our CAA § 309 authorities.

EARLY ENGAGEMENT PRACTICES

In addition to serving as a formal cooperating agency, EPA may consider the following early engagement practices to increase the chances of improved outcomes of the project.

- Provide early review and offer suggestions for improving the adequacy of the project analysis during the planning phase (e.g., involvement in planning and environmental linkages studies for transportation projects) or scoping phase prior to draft EIS publication. This practice should be considered for every project that EPA reviews.
- Provide an appropriate level of investment to identify substantial issues.
- Participate as an informal cooperating agency or a “participating agency”, by providing comments on preliminary and administrative drafts of NEPA documents and technical reports as requested or agreed upon with the lead agency, and/or attending early meetings as requested and appropriate.
- Communicate with the lead agency and build a positive working relationship to discuss any EPA interest in participating in meetings and/or reviewing preliminary or administrative draft documents when not designated as a participating or a cooperating agency. Lead agencies can agree to share preliminary documents for EPA review and comment as warranted.
- Provide clarity to the lead agency on the amount of time needed, and the availability of technical experts when commenting on early draft documents.
- Reach out to the lead agency to discuss significant comments prior to sending them in writing to ensure accuracy and to provide context and an opportunity for questions.

RESOURCE CONSIDERATIONS

Additional emphasis on early engagement and cooperating agency coordination may necessitate a workload shift on the part of NEPA staff, associate reviewers, and management to place a bigger emphasis on preliminary draft reviews and to ensure critical concerns or issues are identified. However, by conducting early engagement practices, EPA can identify potential environmental challenges as early as possible and potentially avoid needing to raise the issue at a later date during the draft EIS public comment period, thereby saving agency resources and avoiding federal agency disagreements during the public comment period.

If EPA commits to be a cooperating agency or engage in other early involvement activities, then it is possible that adjustments may have to be made elsewhere to accommodate the investment in

a project or set of projects. For example, it may be necessary to refrain from commenting in writing on a final EIS where there are no outstanding significant issues. In addition, it may be necessary to narrow the review focus to the most significant comments or issues in other, lower impact EIS reviews. EPA's regional NEPA programs should determine the appropriate resource shifts needed dependent upon the level of investment necessary for adequate early engagement practices where that investment is practicable and appropriate. See [Chapter 3, Section 4](#) on EPA's role as a cooperating agency.

APPENDIX B —EXAMPLE LANGUAGE FOR NEPA/CAA § 309 COMMENT LETTERS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS

This document provides example language to summarize EPA’s findings in the review of draft EISs. The example language will be used as a general template, adjusted as necessary for project specific considerations.

NEPA/CAA § 309 REVIEW

Objective. EPA's draft EIS¹ comment letters will use consistent plain language to:

- Emphasize EPA’s unique review authority under CAA § 309;
- Transparently and consistently communicate with sister agencies and other stakeholders, including members of the public;
- Identify critical/significant recommendations (that stand out from other comments for improvement);
- Advise lead agencies of EPA’s recommendations for next steps in the NEPA process based on our level of concern; and
- Identify opportunities to tackle the climate crisis, advance environmental justice, and address other priorities.

Regional/Headquarters Roles. Coordination or concurrence between the OP AA and the Regional Administrator will be consistent with the NEPA/CAA § 309 Policy and Procedures Manual, commensurate with context/severity of potential impacts. For example, as noted below, letters identifying that an EIS is inadequate, or a proposal is a candidate for referral requires the Regional Administrator to seek concurrence from the OP AA on the proposed findings.

Using This Tool. “Example language -All Letters” describes in **blue text** language to be used in the introduction paragraph in the NEPA/CAA § 309 draft EIS review letter. “Example language based on advice to lead agency on recommended next steps in the NEPA process” describes optional summaries of EPA’s findings in **[blue text]** that may be used for various project specific situations. During an EIS review, multiple findings may apply, and the example language may be combined and adjusted to meet project specific situations. See Figure 1 as an example for the letter format.

EXAMPLE LANGUAGE – ALL LETTERS

Documenting EPA's Unique Review Authority Under CAA § 309. To highlight EPA's unique review authority under CAA § 309, each letter will include a short, clear description of the CAA § 309 role.

¹ This document does not specifically address EPA’s review of draft EAs, proposed EAs or FONSI that could lead to or have potentially significant impacts, or comments that EPA may include in letters to lead agencies regarding EAs.

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA). The CAA Section 309 role is unique to EPA. It requires EPA to review and comment on the environmental impact on any proposed federal action subject to NEPA's environmental impact statement requirements and to make its comments public.

OPTIONAL DEPENDING ON COMMENTS [In the event that the EPA Administrator determines a proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality, the Administrator shall publish the determination and the matter shall be referred to CEQ.]

EXAMPLE LANGUAGE BASED ON ADVICE TO LEAD AGENCY ON RECOMMENDED NEXT STEPS IN THE NEPA PROCESS

EPA's comment letter will include the appropriate summary of EPA's finding from the choices below. EPA letters will recommend that the lead agency: proceed with preparing a final EIS; prepare a supplemental draft EIS and solicit public comments accordingly; or, be alerted that the proposed action may have unsatisfactory impacts from the standpoint of public health, welfare, or environmental quality and could be or is a candidate for referral to CEQ.

ACTION RECOMMENDED – Lead Agency Proceeds to Final EIS With Revisions as Applicable:²

In this category, EPA did not identify significant public health, welfare, or environmental quality concerns that warrant potential CEQ referral or supplemental, however, revisions may be recommended in the NEPA analysis. EPA identified concerns, including potentially substantial concerns, that should be addressed in the final EIS.

Potential EPA Response if Comments Not Addressed: If the lead agency considers EPA comments but does not take our recommendations, then EPA would recommend, where appropriate, actions for the ROD to avoid/minimize impacts.³

EPA will provide one of the four following summary sentences and recommendations, if warranted.

1. "EPA did not identify significant public health, welfare, or environmental quality concerns to be addressed in the final EIS. [and is providing recommendations to improve the assessment and/or environmental outcome of the proposed action.]"

² At times alternative language may be needed that is stronger depending on the specific project/criteria. When regions believe stronger language may be necessary, please coordinate with OFA.

³ If EPA finds that a lead agency is unresponsive to EPA's comments and the EIS is inadequate without addressing EPA's comments (but not a candidate for CEQ referral), EPA may request a supplemental EIS at the final EIS stage. See [Chapter 6, Section 4](#) of this document.

Follow this statement with additional information if warranted. For example: “[Enclosed, attached, summarized below, etc.] are recommendations to improve the clarity of the impact assessment [and/or] recommendations to improve the environmental outcome of the proposed action.” Note that EPA may not provide any comments following some reviews.

2. “EPA identified public health, welfare, or environmental quality concerns [and or deficiencies] in the analysis that EPA recommends be addressed in the final EIS.”

Follow this statement with additional information. For example: “The attached detailed comments include recommendations for protecting [water quality, aquatic resources, addressing impacts to communities with environmental justice concerns] [and/or] additional analysis to strengthen the assessment of impacts.”

3. “EPA identified that this [project/Alternatives X, Y and Z] [has/have the potential to/would] cause or contribute to [short/long]-term [exceedances/violations] of regulatory [water quality/air quality] standards or are inconsistent with national policies, and EPA [strongly] recommends such impacts be avoided in the preferred alternative in the final EIS.”

EPA’s review identified potential or expected exceedances or violations of regulatory environmental standards or inconsistencies with national policy that are limited in scope or duration and should be avoided. Follow this statement with additional context. For example: “Our detailed comments identify opportunities to improve the analysis or modify the project to ensure these impacts are avoided. EPA will engage the lead agency to resolve [this/these] issue[s].”) Use of “should/must” is associated with regulatory requirements.

4. “EPA identified the [proposal/alternative] would cause significant degradation to public health, welfare environmental quality that EPA [strongly] recommends be corrected by project modification or selection of a different preferred alternative in the final EIS.”

EPA’s review identified significant risk of environmental degradation. The degradation should be addressed by modification or choosing a different alternative that was analyzed in the draft EIS. For example: “Selecting Alternative B will avoid the significant degradation associated with Alternative A while still meeting the purpose and need. EPA will engage the lead agency to resolve [this/these] issue[s].”) Use of “should/must” is associated with significant risk of environmental degradation, and regulatory requirements.

ACTION RECOMMENDED - Analysis Is Inadequate, Lead Agency Should Re-Evaluate and Issue a Supplemental Draft EIS.⁴

Meets the CEQ regulation criteria of “so inadequate as to preclude meaningful analysis.” (40 CFR 1502.9(b))⁵

Potential EPA Response if Comments are Not Addressed: If the lead agency does not fully accept our comments/recommendations, then EPA maintains option to recommend a Supplemental again, dependent upon remaining context/severity of impacts.

EPA will provide one of the two following summary sentences and recommendations.

The Regional Administrator (for regional actions) will seek OP AA concurrence consistent with NEPA/CAA § 309 Policy and Procedures Manual [Chapter 4 Section 5 B.](#) and delegation authorities.

5. EPA has identified significant impacts to public health, welfare, or environmental quality [described within the draft EIS/beyond the analysis in the draft EIS] that EPA strongly recommends be avoided to provide adequate protection of public health, welfare, or environment quality. Revisions of the analysis is warranted to address these significant impacts [to address substantial changes to the preferred alternative / consideration of another alternative]. Therefore, a supplemental EIS should be prepared and made available for public comment [Therefore, the EIS should be revised and made available for public comment].

EPA’s review identified significant impacts that should be avoided to protect the environment. (Note: follow this statement with additional information. For example: “Our detailed comments identify important opportunities to modify the proposal to ensure these impacts are avoided. EPA will engage the lead agency to resolve [this/these] issue[s].”)

6. “EPA finds that the draft EIS does not provide adequate analysis regarding the proposal’s potentially significant impacts and should therefore be revised and made available for public comment in a supplemental or revised draft EIS.”

EPA’s review identified deficiencies in the analysis such that it is not possible to meaningfully assess impacts. Follow this statement with additional information. For example: “Our detailed comments identify opportunities to improve the analysis and modify the project to ensure these impacts are avoided. EPA will engage the lead agency to resolve [this/these] issue[s].”

⁴ When EPA finds the analysis is inadequate and the impacts of the proposed action are unsatisfactory, combine the applicable example language from both categories.

⁵ Under 40 CFR 1502.9(d), a supplemental document may also be prepared when there are significant new circumstances or information relevant to the public health, welfare, or environmental quality concerns or bearing on the proposed action or its impact.

ACTION RECOMMENDED - Impacts from Proposed Action Are Unsatisfactory and a Candidate For Referral To CEQ If Lead Agency Does Not Address Identified Issues.⁶

EPA finds that the proposed action will have unsatisfactory impacts from a standpoint of public health, welfare, or environmental quality (See [Chapter 4, Table 2: Criteria for Potential Referral to CEQ](#)).

Potential EPA Response if Comments are Not Addressed: If the lead agency does not address EPA's concerns in the final EIS, the Regional Administrator (if a regional action) and OP AA concur and recommend the referral action to the Administrator.

EPA will provide the following summary sentence and recommendations.

The Regional Administrator (for regional actions) will seek OP AA concurrence consistent with NEPA/CAA § 309 Policy and Procedures Manual [Chapter 4 Section 5 C](#), and delegation authorities.

7. "EPA has found that based on the analysis presented in the draft EIS, this proposed action is likely to result in unsatisfactory impacts from the standpoint of public health, welfare, or environmental quality. EPA recommends that the [lead agency] not proceed until EPA's concerns are addressed. If EPA's concerns are not addressed in the final EIS, pursuant to CAA Section 309, the EPA Administrator may determine that the proposed action is unsatisfactory, and the matter shall be referred to the Council on Environmental Quality. The basis of the finding of unsatisfactory is *[insert appropriate criteria that apply]*"

*Follow this statement with additional information. For example: "As discussed in our detailed comments, our review identified *[insert one or more criteria from [Chapter 4, Table 2](#)]*. We have identified opportunities to make essential information available and to modify the project to ensure these impacts are avoided or mitigated. EPA will engage the lead agency to resolve *[this/these]* issues[s]."*

⁶ When EPA finds the analysis is inadequate and the impacts of the proposed action are unsatisfactory, combine the applicable example language from both categories.

Figure 1: Example NEPA/CAA §309 Review Letter Format

[DATE]

Addressee
Title
Agency
Address
City, State Zip

Dear Addressee:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA). **The CAA Section 309 role is unique to EPA. It requires EPA to review and comment on the environmental impact on any proposed federal action subject to NEPA’s environmental impact statement requirements and to make its comments public.**

[Insert short project description].

Summary:

[Insert appropriate example language from “Example language based on advice to lead agency on recommended next steps in the NEPA process]. Enclosed are EPA’s detailed comments and recommendations.

Every letter will have the “example language – all letters” in the first paragraph to emphasize to the lead agency and the public, EPA’s unique role.

Every letter will include the “summary” header above the example summary of EPA’s findings. The purpose is to allow the reader to easily locate the findings for transparency and consistency.

Every letter will include EPA’s recommendation for the lead agency next steps.

EPA appreciates the opportunity to review the draft EIS for the [Project Name]. Should you have any questions regarding this letter, please contact [Lead reviewer name] at [lead reviewer telephone] or [lead reviewer email].

APPENDIX C —QUICK REFERENCE GUIDE FOR ACTIONS THAT REQUIRE HEADQUARTERS ELEVATION

**Table C-1: Comment Letters That Require Headquarters Elevation
(High Priority Actions)**

Headquarters Elevation Category	Description
Request for Supplemental EIS based on Inadequate Analysis	EPA’s review identified deficiencies in the analysis such that it is not possible to meaningfully assess impacts and recommends a supplemental EIS be prepared. If the lead agency does not address identified issues or EPA identifies unsatisfactory impacts in the supplemental or revised analysis, the proposal may be a candidate for referral to CEQ. (40 CFR 1502.9(b)). See Chapter 4 Section 5. B. <i>Requires concurrence from the OP AA prior to signature.</i>
Draft EIS - Recommended candidate for referral to CEQ/Unsatisfactory Finding.	EPA finds that based on the analysis in the draft EIS, the proposed major Federal action may result in adverse impacts of sufficient magnitude that the proposal is unsatisfactory from the standpoint of public health, welfare, or environmental quality and the proposed action should not proceed as proposed. The proposed major Federal action meets the criteria for referral in Chapter 4, Table 2. See Chapter 4 Section 5 C. <i>Requires concurrence from the OP AA prior to signature.</i>
Final EIS - Recommended the Administrator refer to CEQ/Unsatisfactory Finding.	EPA finds that based on the analysis in the draft EIS, the proposed major Federal action may result in adverse environmental impacts of sufficient magnitude that the proposal is unsatisfactory from the standpoint of public health, welfare, or environmental quality and the proposed action should not proceed as proposed. The proposed major Federal action meets the criteria referral in Chapter 4, Table 2. The OP AA/Regional Administrator recommends the EPA Administrator refers the action to CEQ. See Chapter 9. <i>Requires signature by the Administrator with concurrence through the OP AA.</i>
<p>Actions that:</p> <ol style="list-style-type: none"> 1) Result in a high degree of national controversy or have national significance; 2) Raise novel policy considerations or precedent; or 3) Are required to maintain or promote national consistency. 	On a case-by-case basis, the OP AA and the RA (or their designee) will consult to determine if a comment letter (at any stage of the process), in whole or in part, warrants OP AA coordination or concurrence. Refer to delegation of authority as needed. See Chapter 2.

Headquarters Elevation Category	Description
Findings for a Need for an EIS (e.g., EAs that may need to proceed to an EIS)	EPA may find that a federal agency has not yet or does not intend to prepare an EIS on an action. EPA finds that the proposed action could significantly affect public health, welfare or environmental quality and cannot be fully mitigated as proposed. The Environmental Review Coordinator will immediately contact the appropriate Federal Agency Liaison and coordinate through OFA and Regional management on the approach for working with the lead agency. On a case-by-case basis, the OP AA and Regional Administrator will consult to determine if the written correspondence requires concurrence. See Chapter 8 Section 6 .

APPENDIX D —REFERENCES

Following is a list of common statutes, regulations, policies, and guidance documents. For the most information please visit [EPA’s NEPA website](#), [CEQ’s website](#), and the NEPA/CAA § 309 Community shared electronic resource site maintained by NCD.¹

[Clean Air Act, Section 309](#)

CEQ NEPA Resources Website (regulations, policies, guidance, Agency NEPA Point of Contacts): <https://ceq.doe.gov/>

CEQ NEPA Implementing Regulations ([40 CFR 1500-1508](#)):

EPA Environmental Justice Screening and Mapping Tool ([EJScreen](#))

EPA [Legal Tools to Advance Environmental Justice](#) (May 2022)

EPA [Memorandum from the Associate Administrator of the Office of Policy Addressing Climate Change and Environmental Justice through Reviews Conducted Pursuant to NEPA and Section 309 of the Clean Air Act](#). (April 26, 2022)

EPA’s NEPA Website: <https://www.epa.gov/nepa>

EPA [NEPAssist](#). A web-based environmental screening application that draws environmental data dynamically from EPA Geographic Information System databases and web services.

Executive Order 11514 [Protection and Enhancement of Environmental Quality](#) (March 5, 1970), as amended by E.O. 11991.

Executive Order 11988, [Floodplain Management](#) (May 24, 1977), as amended by E.O. 12148 and E.O. 13690.

Executive Order 11990, [Protection of Wetlands](#) (May 24, 1977), as amended by E.O. 12608.

Executive Order 11991, [Relating to Protection and Enhancement of Environmental Quality](#) (May 24, 1977), amending E.O. 11514.

Executive Order 12114, [Environmental Effects Abroad of Major Federal Actions](#) (January 4, 1979)

Executive Order 12866 [Regulatory Planning and Review](#) (September 30, 1993)

Executive Order 12898 [Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations](#) (February 11, 1994), amended by E.O. 12948.

Executive Order 12948 [Amendment to Executive Order No. 12898](#) (January 30, 1995).

¹ As of the date of this document, NCD maintains the NEPA/CAA § 309 Community SharePoint as the shared electronic resource site.

Executive Order 13045 [*Protection of Children from Environmental Health Risks and Safety Risks*](#) (April 23, 1997)

Executive Order 13089 [*Coral Reef Protection*](#) (June 11, 1998)

Executive Order 13112 [*Invasive Species*](#) (February 3, 1999), amended by E.O. 13286 and E.O. 13751.

Executive Order 13175 [*Consultation and Coordination With Indian Tribal Governments*](#) (November 6, 2000)

Executive Order 13186 [*Responsibilities of Federal Agencies To Protect Migratory Birds*](#) (January 10, 2001)

Executive Order 13286 [*Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security*](#). (February 28, 2003).

Executive Order 13690 [*Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*](#) (January 30, 2015) (reinstated by E.O. 14030)

Executive Order 13751 [*Safeguarding the Nation From the Impacts of Invasive Species*](#) (December 5, 2016)

Executive Order 13855 [*Promoting Active Management of America's Forests, Rangelands, and Other Federal Lands To Improve Conditions and Reduce Wildfire Risk*](#) (December 21, 2018)

Executive Order 13867 [*Issuance of Permits With Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States*](#) (April 10, 2019)

Executive Order 13990 [*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis and CEQ interim National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*](#) (January 9, 2023)

Executive Order 14008, [*Tacking the Climate Crisis at Home and Abroad*](#) (January 27, 2021)

Executive Order 14030 [*Climate-Related Financial Risk*](#) (May 20, 2021)

Executive Order 14096 [*Revitalizing Our Nation's Commitment to Environmental Justice for All*](#) (April 21, 2023)

[National Environmental Policy Act](#)