



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

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PEP - ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. 20-7

To: Heads of Bureaus and Offices

From: Stephen G. Tryon, Director
Office of Environmental Policy and Compliance

Subject: Abandoned Hardrock Mine Reclamation Federal Program Guidance

PURPOSE

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum (ECM) under the authority provided in Department Manual, Series 17, Part 381, Chapter 4 (381DM4) to convey instructions and guidance through the Environmental Memoranda Series. This ECM establishes the Department's guidance for Bureaus and Offices involved in the Department of the Interior's Abandoned Hardrock Mine Reclamation ("AHMR") Program, authorized on November 15, 2021, with the enactment of the Bipartisan Infrastructure Law, Public Law No. 117-58 ("BIL") under Section 40704.

This guidance establishes a Department Review Committee (DRC) comprised of Bureau and Office representatives, identifies criteria for eligibility, prioritization, and project nomination, and establishes financial management requirements for AHMR funding recipients.

Questions related to the AHMR program may be directed to the AML Program Manager, Moira Russell, at moira_russell@ios.doi.gov.

Attachment

cc: REOs

OFFICE of ENVIRONMENTAL POLICY and COMPLIANCE

Environmental Compliance Memorandum 20-7

Abandoned Hardrock Mine Reclamation (AHMR) Federal Program Guidance

I. OVERVIEW

The Department of the Interior’s Abandoned Hardrock Mine Reclamation (“AHMR”) Program was authorized on November 15, 2021, with the enactment of the Bipartisan Infrastructure Law, Public Law No. 117-58 (“BIL”). The BIL Section 40704 directs the Secretary of the Interior to establish an AHMR Program to inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate Federal, State, Tribal, local, and private “land or water resources that were (A) used for, or affected by, hardrock mining activities; and (B) abandoned or left in inadequate reclamation status prior to the enactment of [the BIL],” or “[l]and for which the Secretary makes a determination that there is no continuing reclamation responsibility of a claim holder, liable party, operator, or other person that abandoned the site prior to completion of required reclamation under Federal or State law.” (BIL Section 40704(a) and (c)).

This guidance applies to abandoned hardrock mine lands (“hardrock AMLs”) on lands managed by the Department of the Interior (“Interior” or “the Department”) and, under Section 40704(e)(2), hardrock AMLs on lands within the U.S. Department of Agriculture’s National Forest System.

The Office of Environmental Policy and Compliance (“OEPC”), on behalf of the Principal Deputy Assistant Secretary – Policy, Management and Budget (“PDAS-PMB”), is responsible for overall management of the AHMR Program.

II. FEDERAL ABANDONED HARDROCK MINE RECLAMATION PROGRAM

For purposes of BIL Section 40704, “hardrock AMLs” are defined as: Federal, State, Tribal, local, and private lands and water resources that contain one or more sites or features resulting from the past exploration, development, mining, or processing of any solid minerals, excluding coal, and associated facilities. Such sites or features may include, but are not limited to, disturbances resulting from prospecting for or extraction of minerals; stockpiles, processing locations, shafts, adits, open pits or prospect pits/trenches, waste rock piles, and tailings piles; roads and other areas of disturbance such as highwalls; and associated structures and equipment, such as buildings, headframes, and tools that are incident to mining, mineral extraction, or mineral exploration activities.

In accordance with BIL Section 40704(c), land and water resources that were “(A) used for, or affected by, hardrock mining activities, and (B) abandoned or left in inadequate reclamation status prior to the enactment of the [BIL]” (*i.e.*, November 15, 2021); or “land for which the Secretary makes a determination that there is no continuing reclamation responsibility of a claim holder, liable party, operator, or other person that abandoned the site prior to completion of

required reclamation under Federal or State law,” are eligible for AHMR funds. *See* Appendix A for relevant definitions.

In accordance with Section 40704(a), AHMR funds may be used to inventory hardrock AMLs; assess the condition of hardrock AMLs; address physical safety, decommission, or reclaim hardrock AMLs; or conduct response actions by responding to releases of hazardous substances and remediating hardrock AML sites and features in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*

A hardrock mine site or feature is determined to be “abandoned” when exploration, development, mining, reclamation, maintenance of facilities and equipment, and other operations have ceased with no evidence demonstrating that the owner, operator, or other party intends to resume mining or any other activities (*see* Appendix A). In order to make a determination that a hardrock AML is “abandoned,” Federal Land Managers (“FLMs”) need to first identify the status of current and past mining claimants and the operational history at locations where hardrock AMLs are present and identify whether there is an entity responsible under applicable laws and regulations for the reclamation.

A hardrock AML is determined to be “left in inadequate reclamation status” when the previously conducted reclamation is no longer adequate and there is no other statutory or regulatory requirement for the mining claimant, operator, or other entity to conduct any additional reclamation activities. Any land subject to an existing authorization to conduct operations (for example, a Notice, Permit, or Plan of Operations) is not eligible for AHMR funds because an entity operating under the authorization is responsible for addressing reclamation, physical safety, and other impacts at the site in accordance with applicable laws and regulations as implemented by the FLMs.

III. REGULATORY AND COMPLIANCE CONSIDERATIONS

CERCLA

The AHMR projects that respond to or remediate the release or threat of release of hazardous substances that may pose a risk to human health or the environment must be addressed using CERCLA and must conform to CERCLA-related Environmental Compliance Memoranda (“ECMs”) for Interior bureaus, or to analogous guidance under USDA for sites within the National Forest System.

A hardrock AML may have been abandoned or left in inadequate reclamation status, or have no continuing reclamation responsibility; however, a claim holder, liable party, owner, operator, or other person may nonetheless be a “potentially responsible party” (“PRP”) under CERCLA Section 107 (42 U.S.C. § 9607) and may be liable for the costs of cleanup of hazardous substances at a hardrock AML site or feature. Therefore, AHMR projects conducted in accordance with CERCLA must follow ECM requirements to identify and pursue all PRPs to recover costs of cleanup. All actions involving PRPs are to be closely coordinated with the Office of the Solicitor.

The AHMR funds may be used for CERCLA response actions at hardrock AMLs where a viable PRP is identified as well as at sites where there is no viable PRP. In accordance with Public Law No. 111–88, 123 Stat. 2924; 42 U.S.C. § 9607 note (October 30, 2009), notwithstanding 31 U.S.C. § 3302 (the Miscellaneous Receipts Act), sums recovered from or paid by a party for remedial action or response activities conducted by the Department pursuant to CERCLA must be credited into the Department’s Central Hazardous Materials Fund (“CHF”), to be available until expended without further appropriation.

NEPA

It is the position of the United States that the National Environmental Policy Act (“NEPA”) does not apply to CERCLA actions as a matter of law. The CERCLA process accounts for many of the same considerations an agency analyzes under NEPA, including compliance with other laws and public participation requirements.

Based on available information, it appears that the majority of hardrock AMLs will involve addressing physical safety, reclamation, or decommissioning only (*i.e.*, no hazardous substance releases). In general, bureaus apply NEPA when conducting activities to address physical safety closures, reclamation, or decommissioning of hardrock AMLs. Natural and cultural resource conditions, land management compliance, and public involvement are addressed under both NEPA and CERCLA, although in slightly different ways, and the bureaus must comply with applicable Federal, State, Tribal, and local standards when following either process.

Project Management

The Hardrock AML projects will be managed efficiently, taking into consideration immediate risks, opportunity costs, sustainability, and cost recovery strategies. The subdivision into NEPA and CERCLA components of multiple features in the same geographic area or with a common operational history will be based on consensus between the respective program areas within the managing bureau. If consensus on the application of NEPA or CERCLA cannot be reached, the OEPC and the Office of the Solicitor will be consulted, with the final determination made by the OEPC Director.

All projects must comply with applicable Federal and State laws, including but not limited to the National Historic Preservation Act (“NHPA”), Endangered Species Act (“ESA”), Clean Water Act (“CWA”), Clean Air Act (“CAA”), Oil Pollution Act (“OPA”), and Resource Conservation and Recovery Act (“RCRA”), as well as meet relevant program standards and comply with departmental policies and guidance.

Federal bureaus, agencies, and offices will collaborate with one another to optimize the use of resources, as well as coordinate with States and Tribes to reduce costs, foster transparency, and build trust. Such coordination may include cooperative agreements and the sharing of training and technical assistance opportunities. If Federal AHMR projects will traverse Tribal, State, or private lands or water resources, an agreement needs to be in place between the FLM and the appropriate entity before field work can begin. All such agreements must be coordinated with the Office of the Solicitor in Interior or equivalent agency legal staff at the USDA.

While many species may be impacted by hardrock AMLs, it is important to note that abandoned underground mines provide significant habitat for bats. Acquiring even a basic understanding of bat use of abandoned mines often requires repeated surveys during different seasons. Prior to closure, bureaus will conduct surveys and other activities at hardrock AML sites in consultation with qualified biologists experienced with bats and their use of mines. Additional assistance on surveys and subsequent project design can be obtained from the U.S. Fish and Wildlife Service.

Reporting Environmental and Disposal Liabilities

Federal agencies are required to report environmental and disposal liabilities (“EDL”) in their financial statements when “a future outflow or other sacrifice of resources is anticipated to further study or cleanup contamination due to past or current operations.”¹ The Department’s bureaus are required to update their EDLs quarterly. This is inclusive of hardrock AMLs where the process of Due Care, as that term is defined in pertinent EDL guidance issued by OEPC, has determined that lands or natural resources have been injured or adversely affected by a release or threatened release of a hazardous substance, petroleum, pollutant, or contaminant, as defined under Federal or State laws (*see* ECMs 10-7 and 30-2). The Department’s bureaus will coordinate with their respective EDL Work Group representative(s) to ensure consistency and completeness of EDL reporting.

IV. NOMINATION PROCESS

A Department Review Committee (“DRC”) has been established to coordinate project nominations, propose, and review draft policies, and make funding recommendations to OEPC under the Federal AHMR Program. The DRC voting members include the Bureau of Land Management; U.S. Fish and Wildlife Service; National Park Service; Bureau of Reclamation; U.S. Department of Agriculture; U.S. Forest Service and OEPC. Non-voting members of the DRC include the Bureau of Indian Affairs and the U.S. Geological Survey, among others invited to participate as technical support or subject matter experts. The Office of the Solicitor (both the Division of Land Resources-Environmental Compliance and Response Branch and the Division of Mineral Resources-Onshore Minerals Branch) provides legal advice to the AHMR program, as set forth in Section VI. For purposes of this document, “bureau” refers to the Federal Land Management bureaus and agencies in the Department and USDA.

The OEPC will develop an annual budget for the Federal AHMR Program, as directed by the Department’s Office of Budget (“POB”). The OEPC will request project nominations from the bureaus at least annually based on the availability of funds. Bureaus will submit their proposed projects as indicated in the corresponding Call Memorandum issued by OEPC.

¹ See Statement of Federal Financial Accounting Standards 5: Accounting for Liabilities of the Federal Government.

The use of AHMR funds is limited to activities authorized in the BIL. A nominated project may be for one or more of the following activities at hardrock AMLs on lands managed by the Department or USDA Forest Service:

1. Inventory
2. Assessment
3. Decommissioning
4. Reclamation
5. Responding to hazardous substances releases
6. Remediation

During each funding cycle, the FLMs will nominate projects to the DRC for review. Nominated projects may be for a single mine feature or a group of features (*e.g.*, all the features within a mining district or land management unit). All projects must comply with applicable Federal and State laws, including but not limited to NEPA, CERCLA, NHPA, ESA, CWA, CAA, OPA, and RCRA, as well as meet relevant program standards and comply with departmental policies and guidance. If projects will traverse Tribal, State, or private lands, an agreement need to be in place between the FLM and the appropriate entity before field work may begin. All such agreements will be coordinated with the Department's Office of the Solicitor or equivalent agency legal staff in USDA.

The DRC will evaluate projects against the following priorities set forth in Section 40704(a):

1. Need
2. Public health and safety
3. Potential environmental harm
4. Other land use priorities

The AHMR Scoring Matrix, which will be updated periodically by the DRC and attached to the annual call for nominations ("Call Memorandum"), will identify the criteria upon which to evaluate the priorities of need, public health and safety, potential environmental harm, and other land use priorities for eligible projects. The AHMR Scoring Matrix will be used to initially sort and rank projects.

The DRC will consider additional factors prior to making its recommendations to OEPC. Additional factors will include, at a minimum, the following:

1. Availability of funds.
2. Opportunities to leverage additional resources.
3. Benefits to environmental justice communities.
4. Optimizing efficiencies through partnerships, cooperative agreements, and innovation.
5. Strengthening relationships with Tribal, State, local, or non-governmental stakeholders.
6. Incorporation of green remediation techniques and other sustainability considerations.
7. Team capacity to implement the project efficiently and effectively - Team composition must be commensurate with the complexity of the project.

For each nomination, the bureau will complete an AHMR Work Plan using the template provided with the annual Call Memorandum. In addition to other pertinent project details listed in the template, the Work Plan will:

1. List the project team members, including roles, responsibilities, and qualifications.
2. Describe how the bureau will ensure financial management, document management, data management, and project execution.
3. Provide a projected schedule with milestones toward completion.
4. Describe how the bureau will track project milestones, environmental justice analyses, Justice40 reporting (if applicable), and internal controls for financial accountability and technical quality.
5. Describe the work by geographic area.
6. Describe what methods will be used to execute the work and what data will be collected.
7. Identify whether the project will involve any CERCLA response activities, including assessment, characterization, or removal actions; and list any interested stakeholders.

The DRC evaluation will result in a consensus list of projects recommended for funding. If the OEPC concurs with the list of projects, that list will be transmitted to the OEPC Director for final approval. The OEPC Director will then prepare a final concurrence memo for approval by the Deputy Assistant Secretary - Land and Minerals Management (“DAS-LMM”) and the Principal Deputy Assistant Secretary - Policy, Management and Budget. If the OEPC Director or either Assistant Secretary does not approve the list of projects, the DRC will reconvene to make the adjustments necessary to achieve final Department approval.

V. FINANCIAL MANAGEMENT

Once a project has been approved and funding transferred, bureaus are required to track budget execution costs at the project level (*i.e.*, project-specific Work Breakdown Structures WBS) in their accounting system. For USDA/Forest Service projects funded through Section 40704, a financial status report with expense detail, including labor, will be submitted quarterly to OEPC. Financial status reports will provide sufficient detail to document and substantiate the proper use of funding (*e.g.*, funds have been transferred appropriately and are being used for the activities and locations identified in the Distribution Memorandum issued by OEPC) and are following program policy and guidance (*e.g.*, AHMR ECM).

Inventory (documenting mine sites and features) and assessment (determining operational history, claim and ownership status, and evaluation of site conditions) are considered direct costs and may be proposed as components of projects or as the project itself.

Examples of costs that may be funded by AHMR funds include, but are not limited to:

- Direct project implementation costs.
- Salaries, benefits, and training of employees that provide direct support or a necessary administrative function in support of funded projects.
- Contracts, cooperative agreements, and interagency agreements to support project implementation.

- Reimbursement to another bureau for acquisition, human resources, information technology or administrative support required to manage or execute project funds.
- DRC or project-related travel, including administrative support meetings, field oversight, public outreach, and settlement negotiations.
- Websites and other communication materials developed to inform the public of project or program activities.

Bureaus will endeavor to obtain reimbursement for expenditures from responsible parties to the extent practicable. For projects involving potential CERCLA cost recovery, bureaus will use the Cost Tracking Tool in Interior’s Environmental Management Information System (“EMIS”) (or similar system for USDA) and work with the Office of the Solicitor in Interior (or equivalent agency legal staff in USDA) to ensure proper and timely cost documentation and recovery.

For approved projects, bureaus will:

1. Photo document site conditions before, during, and after site activities. Photos should show mine features, road access (if any), and relevant equipment, plus any other adjacent land that will eventually be reclaimed. Photos should be of quality sufficient to include in reports to the public and to Congress.
2. Provide to the OEPC quarterly financial status reports and progress reports through completion on all funded projects. Such reports are due 30 days after the end of each Fiscal Year quarter.
3. Collect and report data to the AML inventory of record (currently being developed by USGS on behalf of the AHMR Program).
4. Comply with the Davis-Bacon Act, which applies to any contracts, grants, or agreements in excess of \$2,000 for the construction, alteration, or repair of public buildings and public works. All laborers and mechanics employed under such arrangements must be paid no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. Additional information is available at: [DoL/Davis Bacon Act](#).
5. Comply with the Build America, Buy America Act. More information is available at: [DOI/OGM-Buy America](#).

VI. ROLES AND RESPONSIBILITIES

The Federal AHMR Program is overseen by OEPC. A DRC was established to coordinate AHMR project nominations, propose and review draft policies, and make funding recommendations to the OEPC under the Federal AHMR Program. The DRC voting members include the Bureau of Land Management; U.S. Fish and Wildlife Service; National Park Service; Bureau of Reclamation; U.S. Department of Agriculture; U.S. Forest Service and OEPC. Non-voting members of the DRC include the Bureau of Indian Affairs and the U.S. Geological Survey, among others invited to participate as technical support or subject matter experts. The Office of the Solicitor (both the Division of Land Resources-Environmental Compliance and Response Branch and the Division of Mineral Resources-Onshore Minerals Branch) provides legal advice to the AHMR program. For purposes of this document, “bureau” refers to the Federal Land Management bureaus and agencies in Interior and USDA.

The management and oversight of AHMR funding is the responsibility of multiple groups and individuals. Roles and responsibilities are discussed below.

1. OEPC

- a. Chair of the Department Review Committee.
- b. Provides an AML Program Coordinator.
- c. Responsible for concurrence or non-concurrence with DRC recommendations for AHMR funding; upon PDAS-PMB and DAS-LMM concurrence and OEPC Director approval, transmits funding recommendations to POB.
- d. Provides policy and guidance for the use of AHMR funds, with assistance from the DRC.
- e. Develops guidance to the DRC on matters of environmental policy and compliance relevant to AML matters.
- f. Responsible for financial monitoring, program oversight, and reporting.
- g. Manages the AHMR funds, which includes the following activities, among others:
 - i. Initiates funds transfers from the Parent Account to the bureaus.
 - ii. Reviews and approves transfer requests from the Interior Parent Account and, as appropriate, between bureaus.
 - iii. Reviews and approves requests for additional funding for projects that have already been approved by DAS-LMM and PDAS-PMB, but that require additional funding above allocated funds. This may require coordination with POB and the Office of Management and Budget when apportionments and re-apportionments of funding are necessary.
- h. Ensures integrity and accountability in expenditures of AHMR funds.
- i. Assists in overseeing and reviewing AHMR project nomination packages.
- j. Conducts Internal Control Reviews (“ICRs”) of funded projects.
- k. Identifies subject matter experts to support various AHMR matters.
- l. Tracks performance and spending on a quarterly basis in appropriate systems of record.
- m. Monitors project data and activities to ensure consistent and complete reporting requirements, including EDL, CHF, Justice 40, Sustainability, Environmental Compliance, and NEPA, among others.

2. Office of the Solicitor (“SOL”)

- a. Advises bureaus and the Department to ensure that actions are conducted in a manner consistent with BIL Section 40704, other applicable laws and regulations, and Department policy.
- b. Provides legal review of project nomination packages.
- c. Provides legal support consistent with the CERCLA ECMs for those hardrock AML sites that involve the release or threat of release of CERCLA hazardous substances on or from Department-managed lands.
- d. Provides legal review of Administrative Records when needed for Interior projects.
- e. Provides legal review of interagency agreements, memoranda of understanding, and other agreements under the AHMR program.
- f. Coordinates with counterparts in USDA and USFS to foster a community of practice and consistency across 40704-funded projects.

3. DRC
 - a. Provides technical review of AHMR project nomination packages and ongoing AHMR projects.
 - b. Recommends the final project list to OEPC for review and concurrence.
 - c. Assists OEPC with the development of technical guidance, such as technical notes and technical references, for the Federal AHMR Program.
 - d. Assists OEPC with developing program policies and guidance.
 - e. Coordinates implementation of policy and guidance with DRC Representative's bureau.

4. DRC Representatives
 - a. Coordinate information, data, and budget requests between bureau staff, OEPC, and the DRC.
 - b. Coordinate with bureau or agency program offices and project attorneys on enforcement strategies, development of cost documentation packages, and settlement negotiations at hardrock AML sites.
 - c. Provide AHMR financial management oversight within their bureau or agency, including the monitoring of budget execution and status reports.
 - d. Provide guidance and oversight to bureau site/project managers for bureau-specific requirements.
 - e. Ensure timely updates to OEPC and the DRC on project status, financial reports, and data management.
 - f. Ensure that all bureau nominations meet eligibility criteria, are accurately scored, and represent the highest priority projects for the bureau.
 - g. Ensure that project information is cross-referenced across all applicable reporting processes (*e.g.*, EDL, CHF, AML inventory).
 - h. Ensure that sound technical approaches are undertaken at each project consistent with bureau and Interior policies and guidance.
 - i. Review project nominations for completeness and cost estimate accuracy, and present, or coordinates presentations of, project nominations for the DRC.
 - j. Participate in ICRs of selected projects within their bureau.
 - k. Ensure, and maintain documentation of, proper distribution of funds from Interior to approved project accounts.

5. Bureau or Agency Program Offices
 - a. Implement and manage AHMR activities at the project site.
 - b. Develop the project schedule, contracting packages, and cost-to-complete estimates, conduct assessments, and ensure appropriate resources are utilized for an efficient, cost-effective AHMR action.
 - c. Submit annual project nomination packages to their bureau's DRC representative for consideration of new and ongoing projects.
 - d. Utilize the bureau's financial management system to track and confirm project costs are accurately accounted for in the bureau's accounting structure.
 - e. Ensure that project personnel and other costs are correctly charged to the appropriate project accounts.

- f. Ensure that funds are spent in accordance with AHMR guidance, the bureau's project management plan requesting funds, and are properly documented. Funds not spent in accordance with the plan may be required to be returned to the Interior Parent Account.

VII. FUNDING DISTRIBUTIONS AND TRANSFERS

Subject to approval from the OEPC Director, funding may be transferred from the Department account to the bureau accounts or from project to project within bureaus. Funding may be transferred from the bureau accounts to the Department account with notification to OEPC. Transfers with the USDA Forest Service may be Department Account to Department Account or Treasury Account Symbol ("TAS") to TAS transfers. The OEPC will coordinate USDA Forest Service transfers with the Office of Budget and USDA to identify the most efficient mechanism to make funds available to USDA Forest Service for approved projects, including such mechanisms as reapportionment or Interagency Agreements.

Transfers between the Department and bureaus may not be performed during the last week of the month. This is due to the lead-time required for these transfers to be approved by the U.S. Treasury before posting them in the Department's Financial and Business Management System, given end-of-month closing deadlines. Each month, the financial management offices must ensure all transactions that took place during the month are posted before closing the month and opening the next month.

Transferring Funding from the Department to the Bureaus

Following approval by the OEPC Director, project funds are transferred from the Department Account to the respective bureau Accounts or, for approved USDA projects, via Interagency Agreement or other funding transfer mechanism as determined by the POB. The bureau budget offices will further distribute funds within the bureau, maintaining project specific accounting codes that retain the source year of the funding. In addition, a summary table will be included in the bureau's transfer request that documents how much funding is provided from prior year balances (*i.e.*, carryover) versus current year funds.

Once funding memos are provided to POB for distribution, the OEPC will distribute copies to the bureaus' DRC Representative to share with their budget offices.

Transferring Funding from Bureaus to the Department

Periodically, a transfer will occur that returns funding from a bureau Account to the Department's Account (*e.g.*, actual cost to complete less than estimated cost, undelivered orders (UDOs), failure to execute project in a timely manner, unresolved findings). Before initiating a transfer from a bureau account to the Department, the bureau's DRC Representative will notify OEPC in writing, including the following information:

1. The reason(s) for the bureau Account to Department Account transfer;
2. The account and project name from which funding will be transferred, including the source year; and

3. Approximate timing of when the transfer needs to occur (*i.e.*, when are the funds needed).

The OEPC will provide notification to POB once this information is received.

Transfer of Funds within Bureaus

Occasionally, a bureau may request authorization to transfer funds between previously approved and funded projects. Bureaus may not transfer funding between projects (generally this will be from one land management unit to another within the same bureau, such as between two national wildlife refuges) without first submitting a transfer request to the OEPC in writing detailing the need for the transfer and proposed use of funds. The appropriate bureau budget office will be notified of the proposed transfer as well. The authority to approve intra-bureau or inter-agency transfers rests with the OEPC Director. The OEPC will notify the DRC representative of all transfer decisions.

Funding Shortfalls, Overages, and New Discoveries

Bureaus may experience approved project cost increases that are over and above the project-specific amount allocated. In such cases, the bureau, through its DRC Representative, may request additional funding from OEPC in writing by providing an updated cost estimate and an explanation of the shortfall. The OEPC will review the request and, if approved, provide funding from remaining AHMR funds, if available.

Changed or previously unknown conditions may be discovered that could be addressed in the same mobilization. The bureau may proceed if the following applies:

1. Addressing the new condition can be accomplished with existing project funds.
2. Addressing the new condition as part of an approved project can be accomplished safely, can be reasonably expected to save funds (*e.g.*, avoids additional mobilizations to a remote location), and/or addresses an immediate human health or environmental risk.
3. Location data and other characteristics of the new condition are documented, including entry into the appropriate database (*e.g.*, USGS AML Inventory).

For all AHMR-funded projects, bureaus will **use oldest source year funds first**, ensuring that UDOs and other unexpended funds are tracked. Projects with source year funds older than 5 years need to have a plan of execution approved by the OEPC in order to retain the funds. All distributed funds must be accounted for in the project budget (*e.g.*, to be used for labor, travel, training, contracting, etc.), approved for transfer to another AHMR project, or returned to the Department's Parent Account. All transfers must be approved by the OEPC prior to transfer execution.

Emergency Funding Protocol

On occasion, emergency (off-cycle) funding may be needed for specific projects. In this context, an emergency is defined as either 1) an immediate or imminent risk to public safety and health exists or 2) time-sensitive deadlines are at risk (*e.g.*, limited field season, avoiding nesting season

of T&E species). The bureau DRC Representative is responsible for submitting emergency funding requests to the OEPC that outline the emergency to be addressed, the amount of funding needed, the timeframe in which the funding is needed, and the anticipated outcome of receiving the funding. The OEPC will review the request, consult with the DRC on an expedited basis, and, as appropriate, prepare an out of cycle new project Recommendation Memorandum for the OEPC Director's approval or denial. The OEPC will notify the DRC of all emergency funding request decisions.

VIII. FINANCIAL ACCOUNT STRUCTURE

The AHMR is a multi-departmental, no-year fund to support a variety of activities related to hardrock AMLs on the Department and USDA National Forest System lands. Within Interior, the OEPC maintains the Department Account and the bureaus establish bureau Accounts with project-specific accounting. Funds transferred to USDA will follow a similar formula, with accommodations for USDA-specific accounting protocols. All project funding will be **identifiable by specific project and source year** when sub-allotted.

IX. PROJECT FINANCIAL MANAGEMENT

Bureau management ensures that AHMR funds are allocated to the specific project accounts established for approved projects. Project managers and the bureau DRC Representative are responsible for ensuring that funds are spent according to the work plan proposed in the project nomination package and in a manner consistent with the terms and intent of the BIL and this guidance. The bureaus and OEPC will monitor budget execution by reviewing quarterly reports (*see Reporting below*).

Reporting

The OEPC will review budget execution by bureau and project each quarter. These reviews assess whether funding distributions, as well as approved transfer requests, were transferred to the correct project's account, whether a project's budget authority increased or decreased without a funding distribution or approved transfer, and whether the projects are spending funding on approved major object classes. It should be noted that the OEPC can request an update at any time.

The quarterly reviews typically will not allow the OEPC to assess whether personnel, contract, or equipment charges are appropriate because of the level of detail needed to make such an assessment. These topics will be evaluated during project ICRs, which will be conducted on a sampled basis per bureau beginning in FY24.

Bureaus will perform quarterly reviews to evaluate whether project budget execution and expenditures are appropriate. This process will be discussed and evaluated during ICRs.

Bureaus will also respond to data calls and additional reporting requirements that other offices request within the Department to execute AHMR funds. This includes, among others, the annual

fiscal year carryover estimate requested by the Office of Budget each June or July. Such requests will be routed through the AHMR Program Coordinator.

Internal Control Reviews

The Office of Management and Budget (OMB) Circular A-11, Preparation, Submission, and Execution of the Budget, OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control, and Interior's "Program Manager's Guide to Risk Management and Internal Controls" require the Department to ensure that administrative and management controls are in place for Department programs. The AHMR ICRs are to ensure that appropriate policies, procedures, and applications are available and implemented to meet the AHMR program's objectives. As such, the OEPC is required to conduct periodic reviews of AHMR projects. These reviews will be coordinated with bureau representatives near the beginning of the fiscal year and will comply with the AHMR ICR planning. Bureaus will submit a Project Management Plan ("PMP") and schedule for each approved project during the first fiscal quarter following the receipt of funds. These plans and schedules will be used for project monitoring and ICR evaluations. Projects will be selected for an ICR based on level of risk, as determined by a weighted table of factors. Depending upon the volume of projects funded and availability of reviewers, the OEPC will perform ICRs on a 3-to-5-year cycle through project completion and closure.

The ICR reviewers will assess project risks that could affect employees, projects, the program, or the public. On that basis, the OEPC will select projects for site visits and desk reviews, prepare ICR reports with findings and observations, and transmit the ICR report to the bureau DRC Representative. If findings have been identified, the bureau DRC Representative will submit a corrective action plan(s) to OEPC within 30 days of being notified of the finding. Corrective action plans include the timeline and process to remedy the finding. Observations are best management practices that do not have to be addressed in a corrective action plan.

The OEPC will review the status of open ICR findings every quarter. The OEPC will close findings upon receipt of documentation that findings have been adequately and appropriately addressed. When findings remain open for longer than one year, the OEPC will require the bureau to revisit the corrective action plan, provide an update on why a finding has not been resolved, and identify new approaches to address the finding. The OEPC may discuss during DRC meetings any findings that remain open after one year and may take appropriate actions, such as providing additional support to the bureau, holding back additional funding until the bureau completes its corrective actions, and, absent other effective alternatives, transferring funds to other approved projects or claw-back funds to the Department level.

Appendix A

DEFINITIONS

Abandoned - A hardrock AML is determined to be “abandoned” when exploration, development, mining, reclamation, maintenance of facilities and equipment, and other operations ceased prior to November 15, 2021, with no evidence demonstrating that the owner, operator, or other party intends to resume mining or conduct any other activities at the site, or the Secretary determines under Section 40704(c)(2) that “there is no continuing reclamation responsibility of a claim holder, liable party, operator, or other person that abandoned the site prior to completion of required reclamation under Federal or State laws.”

Bevill Amendment² - Under a 1980 amendment to RCRA, Congress temporarily excluded from regulation “solid waste from the extraction, beneficiation, and processing of ores and minerals.” This became known as the “Bevill exclusion” and exempts certain wastes from RCRA Subtitle C (*i.e.*, hazardous waste) regulations. For purposes of regulatory classification, the EPA distinguished between beneficiation and mineral processing in its Bevill rules. Beneficiation involves separating and concentrating mineral value from extracted ore through physical activities including, but not limited to, grinding or crushing. Mineral processing involves the use of processes that cause a significant physical/chemical change to the ore or minerals. For example, the smelting of copper or lead is commonly recognized as a mineral processing activity. While wastes from beneficiation are exempt from RCRA under the Bevill exclusion, wastes from mineral processing are not, unless they are specifically identified as exempt under 40 CFR 261.4(b)(7). The rules established that all mineral processing wastes, except the 20 wastes listed at 40 CFR 261.4(b)(7), are subject to RCRA Subtitle C hazardous waste regulation if they are “listed” or exhibit one or more of the hazardous waste characteristics (*i.e.*, ignitable, corrosive, reactive, or toxic). Note that the Bevill exclusion only relates to the characterization of waste for management and disposal purposes (*e.g.*, disposal of Bevill waste does not require a RCRA Subpart C landfill). However, the Bevill exclusion does not render such waste non-toxic or of acceptable risk, nor does it obviate the need for CERCLA response actions based on human health risk, ecological risk, and Applicable or Relevant and Appropriate Requirements (“ARARs”).

Contaminated Site - The terms “contaminated” and “contamination” used in this guidance refer to releases of hazardous substances, petroleum, pollutant, or other contaminants that may pose a threat to human health or the environment. Contaminated sites include any lands managed by, or natural resources under the jurisdiction, custody, or control of the Department (or USDA for purposes of 40704) that are injured or otherwise adversely affected by a release or threatened release of a hazardous substance, petroleum, pollutant, or contaminant, as defined under Federal or State laws.

² 42 U.S.C. 6921(b)(3)(A)(ii); USEPA, “Hazardous Waste Management Practices at Mineral Processing Facilities Under Scrutiny by U.S. EPA,” Enforcement Alert, Vol 3, No. 10, November 2000.

De Minimis - The term refers to a condition related to a release of hazardous substances, pollutants, or contaminants that does not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.³ An example of a de minimis condition is a small, superficial release that is not anticipated to present unacceptable human health or ecological risk. A de minimis release may fall under routine operation and maintenance or under the NEPA process.

Hardrock AML - Federal, State, Tribal, local, and private lands and water resources that contain one or more sites or features resulting from the past exploration, development, mining, or processing of any solid minerals, excluding coal, and associated facilities. Such sites or features may include but are not limited to: disturbances resulting from prospecting for or extraction of minerals; stockpiles; processing locations; shafts; adits; open pits; prospect pits/trenches; waste rock piles; tailings piles; roads; highwalls; associated structures and equipment; buildings; headframes; and tools that are incident to mining, mineral extraction, or mineral exploration activities. For purposes of this guidance, this definition includes lands that contain features resulting from past sand and gravel mining.

³ ASTM E1527-21, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, Section 3.2.20. Dec 21, 2021.