

## Office of the Secretary, Interior

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AUTHORITY: 42 U.S.C. 4321 *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

SOURCE: 73 FR 61314, Oct. 15, 2008, unless otherwise noted.

### Subpart A—General Information

#### § 46.10 Purpose of this part.

(a) This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); and

(2) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

(b) Consistent with 40 CFR 1500.3, it is the Department's intention that any trivial violation of these regulations will not give rise to any independent cause of action.

#### § 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A—E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

#### SUBPART A 40 CFR

- 46.10 Parts 1500–1508
- 46.20 No corresponding CEQ regulation
- 46.30 No corresponding CEQ regulation

#### SUBPART B

- 46.100 1508.14, 1508.18, 1508.23
- 46.105 1506.5
- 46.110 No corresponding CEQ regulation
- 46.115 1508.7
- 46.120 1502.9, 1502.20, 1502.21, 1506.3
- 46.125 1502.22
- 46.130 1502.14
- 46.135 1502.21
- 46.140 1502.20
- 46.145 No corresponding CEQ regulation
- 46.150 1506.11
- 46.155 1502.25, 1506.2
- 46.160 1506.1
- 46.170 No corresponding CEQ regulation

#### SUBPART C

- 46.200 1501.2
- 46.205 1508.4
- 46.210 1508.4
- 46.215 1508.4
- 46.220 1501.5
- 46.225 1501.6
- 46.230 1501.6
- 46.235 1501.7
- 46.240 1501.8

#### SUBPART D

- 46.300 1501.3
- 46.305 1501.7, 1506.6
- 46.310 1508.9
- 46.315 No corresponding CEQ regulation
- 46.320 1506.3
- 46.325 1501.4

#### SUBPART E

- 46.400 1502.5
- 46.405 1502.7
- 46.415 1502.10
- 46.420 1502.14
- 46.425 1502.14
- 46.430 1502.25
- 46.435 1503
- 46.440 1506.2
- 46.445 1506.8
- 46.450 1505.2

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(b) The Responsible Official will ensure that the decision making process for proposals subject to this part includes appropriate NEPA review.

(c) During the decision making process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and, except as specified in paragraphs 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative file.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document. The Responsible Official's decision may combine elements of alternatives discussed in the relevant environmental document if the effects of such combined elements of alternatives are reasonably apparent from the analysis in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official must publish or otherwise provide policy information and make staff available to advise potential applicants of studies or other information, such as costs, foreseeably required for later Federal action.

### § 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

*Adaptive management* is a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

*Bureau* means bureau, office, service, or survey within the Department of the Interior.

## 43 CFR Subtitle A (10–1–10 Edition)

*Community-based training* in the NEPA context is the training of local participants together with Federal participants in the workings of the environmental planning effort as it relates to the local community(ies).

*Controversial* refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

*Environmental Statement Memoranda (ESM)* are a series of instructions issued by the Department's Office of Environmental Policy and Compliance to provide information and explanatory guidance in the preparation, completion, and circulation of NEPA documents.

*Environmentally preferable alternative* is the alternative required by 40 CFR 1505.2(b) to be identified in a record of decision (ROD), that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration and weighing by the Responsible Official of long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative.

*No action alternative.*

(1) This term has two interpretations. First “no action” may mean “no change” from a current management direction or level of management intensity (e.g., if no ground-disturbance is currently underway, no action means no ground-disturbance). Second “no action” may mean “no project” in cases where a new project is proposed for implementation.

(2) The Responsible Official must determine the “no action” alternative consistent with one of the definitions in paragraph (1) of this definition and appropriate to the proposed action to