

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.100 Federal action subject to the procedural requirements of NEPA.

(a) A bureau proposed action is subject to the procedural requirements of NEPA if it would cause effects on the human environment (40 CFR 1508.14), and is subject to bureau control and responsibility (40 CFR 1508.18). The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval are necessary to implement it. If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary. The proposed action is not subject to the procedural requirements of NEPA if it is exempt from the requirements of section 102(2) of NEPA.

(b) A bureau shall apply the procedural requirements of NEPA when the proposal is developed to the point that:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and

(2) The effects of the proposed action can be meaningfully evaluated (40 CFR 1508.23).

§ 46.105 Using a contractor to prepare environmental documents.

A Responsible Official may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a Responsible Official uses a contractor, the Responsible Official remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

§ 46.110 Incorporating consensus-based management.

(a) Consensus-based management incorporates direct community involvement in consideration of bureau activities subject to NEPA analyses, from

initial scoping to implementation of the bureau decision. It seeks to achieve agreement from diverse interests on the goals of, purposes of, and needs for bureau plans and activities, as well as the methods anticipated to carry out those plans and activities. For the purposes of this Part, consensus-based management involves outreach to persons, organizations or communities who may be interested in or affected by a proposed action with an assurance that their input will be given consideration by the Responsible Official in selecting a course of action.

(b) In incorporating consensus-based management in the NEPA process, bureaus should consider any consensus-based alternative(s) put forth by those participating persons, organizations or communities who may be interested in or affected by the proposed action. While there is no guarantee that any particular consensus-based alternative will be considered to be a reasonable alternative or be identified as the bureau's preferred alternative, bureaus must be able to show that the reasonable consensus-based alternative, if any, is reflected in the evaluation of the proposed action and discussed in the final decision. To be selected for implementation, a consensus-based alternative must be fully consistent with NEPA, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance.

(c) The Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.

(d) If the Responsible Official determines that the consensus-based alternative, if any, is not the preferred alternative, he or she must state the reasons for this determination in the environmental document.

(e) When practicing consensus-based management in the NEPA process, bureaus must comply with all applicable laws, including any applicable provisions of the Federal Advisory Committee Act (FACA).