



United States Department of the Interior

Office of the Secretary
Washington, D.C. 20240

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PEP – ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 13-12¹

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Incorporating Consensus-Based Management in Agency Planning and Operations

1. Purpose and Scope

The purpose of this memorandum is to provide guidance to bureaus and offices on incorporating consensus-based management into National Environmental Policy Act (NEPA) analyses.

2. Incorporating Consensus-Based Management in Agency Planning and Operations (see 43 CFR 46.110)

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.

¹ The guidance in this Environmental Statement Memorandum (ESM) are being issued under the authority provided to the Office of Environmental Policy and Compliance (OEPC) by 381 Departmental Manual (DM) 4.5B, to convey instructions and guidance through its Environmental Memoranda Series, and by 516 DM 3.2, which authorizes OEPC to provide advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations, and 516 DM 1.21, which authorizes OEPC to provide further guidance concerning NEPA.

3. Guidance

- a. Bureaus and offices should establish a network of communication with the diverse interest groups that represent the community² affected by a proposed project. Community-based training that precedes the NEPA process is useful in developing the network of communication. Training will also allow participants the opportunity to understand the NEPA process and their roles. This also provides a focal point for assembling the diverse interest groups that make-up the relevant participating persons, organizations, or communities. The extent of community-based training, like public involvement and scoping, will vary depending on the circumstances surrounding a particular proposed action.
- b. Bureaus and offices should initiate the scoping process with full and direct involvement by the participating persons, organizations or communities, identifying and evaluating issues and impacts of concern relating to the project or activity. While scoping is required for EIS, bureaus and offices may employ the scoping process to inform the preparation of EAs, and even categorical exclusions, if appropriate.
- c. When feasible and practicable, one alternative evaluated in the NEPA analysis should be the consensus-based alternative if one exists.
- d. [43 CFR 46.110\(b\)](#) provides:

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.

Bureaus and offices should assist interested persons, organizations or communities in understanding these requirements so that they may craft a qualified alternative.

²Community, for this purpose, means those who are directly affected by or whose interests are affected by a bureau-proposed action and are represented by elected officials as well as locally-established or commonly recognized groups within the proposed action's reasonable area of impact.

- e. Bureaus and offices should use various dispute resolution processes as necessary.
4. Compliance with the Federal Advisory Committee Act (FACA)
- a. The FACA, 5 U.S.C.A App. 2, was enacted to reduce narrow special-interest group influence on decision makers, to foster equal access to the decision-making process for the general public, and to control costs by preventing the establishment of unnecessary advisory committees.
 - b. The FACA applies whenever a statute or an agency official establishes or utilizes a committee, board, commission, or similar group for the purpose of obtaining advice or recommendations on issues or policies within the agency official's responsibility.
 - c. The Department's managers and staff must understand the provisions of FACA when they are gathering public input for the decision-making processes and when working in collaborative efforts. To ensure that the Department's collaborative efforts comply with FACA, any time the Department establishes or uses a group for consultation or recommendations, that official should verify whether FACA applies and, if so, ensure that the FACA requirements are followed.
 - d. As a general rule, collaborative groups that are not initiated by the Department can avoid application of FACA and can continue to have active participation in Departmental activities by maintaining their independence from the DOI's management or control. Further, NEPA collaborative groups composed entirely of government representatives would not be subject to FACA. However, in making the determination as to whether FACA will apply, the official should consult with the Office of the Solicitor.
 - e. If FACA applies, bureaus should consult their Group Federal Officer under FACA for assistance in document preparation.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Additionally, nothing in this guidance is intended to affect the authority and responsibility of the United States Department of Justice with respect to the conduct of litigation on behalf of the United States.

This memorandum replaces ESM 10-21.