

§ 137.285

Scope of work or specific scope of work means a brief written description of the work to be accomplished under the construction project agreement, sufficient to confirm that the project is consistent with the purpose for which the Secretary has allocated funds.

THPO means Tribal Historic Preservation Officer.

NEPA PROCESS

§ 137.285 Are Self-Governance Tribes required to accept Federal environmental responsibilities to enter into a construction project agreement?

Yes, under section 509 of the Act [25 U.S.C. 458aaa-8], Self-Governance Tribes must assume all Federal responsibilities under the NEPA of 1969 [42 U.S.C. 4321 *et seq.*] and the National Historic Preservation Act [16 U.S.C. 470 *et seq.*] and related provisions of law that would apply if the Secretary were to undertake a construction project, but only those responsibilities directly related to the completion of the construction project being assumed.

§ 137.286 Do Self-Governance Tribes become Federal agencies when they assume these Federal environmental responsibilities?

No, while Self-Governance Tribes are required to assume Federal environmental responsibilities for projects in place of the Secretary, Self-Governance Tribes do not thereby become Federal agencies. However, because Self-Governance Tribes are assuming the responsibilities of the Secretary for the purposes of performing these Federal environmental responsibilities, Self-Governance Tribes will be considered the equivalent of Federal agencies for certain purposes as set forth in this subpart.

§ 137.287 What is the National Environmental Policy Act (NEPA)?

The NEPA is a procedural law that requires Federal agencies to follow established environmental review procedures, which include reviewing and documenting the environmental impact of their actions. NEPA establishes a comprehensive policy for protection and enhancement of the environment by the Federal Government; creates the Council on Environmental Quality

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in the Office of the President; and directs Federal agencies to carry out the policies and procedures of the Act. CEQ regulations (40 CFR 1500-1508) establish three levels of environmental review: categorical exclusions, environmental assessments, and environmental impact statements.

§ 137.288 What is the National Historic Preservation Act (NHPA)?

The NHPA requires Federal agencies to take into account the effects of their undertakings, such as construction projects, on properties covered by the NHPA, such as historic properties, properties eligible for listing on the National Register of Historic Places, or properties that an Indian Tribe regards as having religious and/or cultural importance. Section 106 of the NHPA [16 U.S.C. 470f] requires Federal agencies to afford the Advisory Council on Historic Preservation, acting through the SHPO or the THPO, a reasonable opportunity to comment on such undertakings.

§ 137.289 What is a Federal undertaking under NHPA?

The Advisory Council on Historic Preservation has defined a Federal undertaking in 36 CFR 800.16(y) as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

§ 137.290 What additional provisions of law are related to NEPA and NHPA?

(a) Depending upon the nature and the location of the construction project, environmental laws related to NEPA and NHPA may include:

- (1) Archaeological and Historical Data Preservation Act [16 U.S.C. 469];
- (2) Archeological Resources Protection Act [16 U.S.C. 470aa];
- (3) Clean Air Act [42 U.S.C. 7401];
- (4) Clean Water Act [33 U.S.C. 1251];