

Complying With NEPA When Taking Emergency Actions

Sometimes emergency situations arise and there is not time to complete a NEPA review before you need to take action to protect lives or valuable resources. Emergency situations are typically caused by unanticipated events or natural disasters. When faced with an emergency situation you may take whatever actions are necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources (43 CFR 46.150(a)). For purposes of this guidance, these immediate, urgently needed actions are referred to as “emergency actions.” When taking emergency actions, you must take into account the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practical (43 CFR 46.150(a)). If you believe an emergency situation exists, you should consult with the National Park Service (NPS) Environmental Quality Division (EQD) through your Regional Environmental Coordinator (REC) as soon as possible. However, if there is an urgent need to take an emergency action you should do so immediately, prior to consulting with EQD.

As soon as practicable after an emergency situation arises, the Responsible Official must document in writing that an emergency exists and describe the immediate actions taken in response to the emergency (43 CFR 46.150(b)). For purposes of the NPS the Responsible Official for emergency actions that would typically be covered by a categorical exclusion (CE) is the superintendent. The Responsible Official for actions that would typically require an environmental assessment (EA) or environmental impact statement (EIS) is the regional director. Responsible Officials are encouraged to use the Department of the Interior (DOI) *Decision Memorandum to Support Emergency Activities* template (Attachment A) to satisfy the documentation requirement.

In situations where there are several days lead time before you need to take an emergency action and in situations where emergency actions are ongoing beyond the immediate time that the emergency situation arises, you should consult with EQD through your REC as soon as possible in order to begin discussions regarding alternative NEPA arrangements. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for NEPA compliance. For actions that will not have significant impacts, alternative arrangements are granted by the DOI Office of Environmental Policy and Compliance (OEPC) on behalf of the Assistant Secretary, Policy Management and Budget. For actions that are likely to have significant impacts, alternative arrangements are granted by the Council on Environmental Quality (CEQ). EQD will facilitate consultations with OEPC, and OEPC will in turn facilitate consultations with CEQ as necessary. When practicable, discussions with the DOI Office of the Solicitor should be held prior to engaging OEPC and should include EQD.

Emergency actions are limited to those actions necessary to control the immediate effects of the emergency. Follow-up actions, including long-term recovery and response actions, remain subject to the procedural requirements of NEPA; you must complete an appropriate NEPA review (CE, EA, or EIS) before follow-up actions may be taken. However, if there is not time to complete a NEPA review before follow-up actions must be taken, the follow-up actions typically may be included in the alternative arrangements entered into with OEPC or CEQ.

When an emergency situation arises, you should follow these steps:

1. If there is a possibility of imminent harm, immediately take any actions urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources and consult

This guidance is meant to supplement the NPS NEPA Handbook, and is issued under the authority of the Associate Director, Natural Resource Stewardship and Science. It is intended only to improve the internal management of the National Park Service and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person(s).

with EQD through your REC as soon as possible. If you do not need to take an emergency action immediately, consult with EQD through your REC as soon as possible. EQD will facilitate consultations with DOI OEPC in order to determine how best to proceed.

2. As soon as practicable after an emergency situation arises, the Responsible Official should use the DOI *Decision Memorandum to Support Emergency Activities* template (Attachment A) to document that an emergency exists and describe the immediate actions taken in response to the emergency.
3. If the emergency actions taken to control the immediate impacts of the emergency are complete (meaning there are no ongoing emergency actions), there are no follow-up actions that require alternative arrangements, and step 2 has been completed, no additional NEPA documentation is required.
4. If emergency actions are ongoing or if follow-up actions are necessary, consider whether these actions are exempt from NEPA. While it is possible that some of these actions may be exempt under specific legislation, such cases are extremely rare. If you believe an action is exempt, you should consult with the DOI Office of the Solicitor.
5. In most cases, ongoing emergency actions and follow-up actions will not be exempt from NEPA, and therefore the next step you should take is to determine if the actions are covered by an existing plan that has undergone NEPA review. If so, document this in a memorandum to the file and implement the covered actions. No additional NEPA documentation is required.
6. If emergency actions are ongoing, or if follow-up actions are necessary and these actions are not exempt and not covered by an existing NEPA review, determine if there is a CE available. Remember to consider whether any extraordinary circumstances apply that would preclude the use of a CE. If a CE applies and no extraordinary circumstances exist, complete whatever documentation is required in order to use the CE and implement the actions. No additional NEPA documentation is required.
7. If emergency actions are ongoing, or if follow-up actions are necessary and these actions are not exempt, not covered by an existing NEPA review, do not fit under a CE, and will not have significant impacts, you should prepare a focused, concise EA (see supplemental guidance: *Preparing Focused and Concise EAs*). If there is not time to complete an EA and finding of no significant impact to address ongoing emergency actions or before you must take follow-up actions, consult with OEPC through EQD in order to enter into alternative NEPA arrangements. To fulfill consultation requirements with OEPC, the NPS must prepare a decision memorandum that contains the elements included in Attachment A, the DOI *Decision Memorandum to Support Emergency Activities* template (DOI Environmental Statement Memorandum 13-3).
8. If emergency actions are ongoing, or if follow-up actions are necessary and these actions are not exempt, not covered by an existing NEPA review, and are expected to result in significant impacts, consult with EQD through your REC in order to begin the process for entering into alternative arrangements with CEQ. EQD will facilitate consultations with CEQ through OEPC.
9. When requesting and crafting alternative arrangements under steps 7 and 8 above, you will ultimately need to prepare a document that addresses the information listed below. To the extent practicable, you should have the following information available when you contact

EQD:

- a. the nature and scope of the emergency;
- b. actions necessary to control the immediate impacts of the emergency;
- c. potential adverse impacts of the actions;
- d. components of the NEPA process that can be followed and provide value to the decision-making (e.g., coordination with affected agencies and the public);
- e. the duration of the emergency;
- f. potential mitigation measures; and
- g. the status of compliance with other environmental review requirements that may apply, such as the Endangered Species Act (ESA), National Historic Preservation Act (NHPA), etc. (note that both the ESA and NHPA have emergency consultation provisions that may apply to the emergency action).

ATTACHMENT A

Decision Memorandum to Support Emergency Activities for:

[Project Name]

U.S. Department of the Interior
[Bureau or Office Name]
[Bureau Field Station (State Office, Regional Office, etc.)]
[County, State]

Purpose and Need for the Action

[Provide a description of the purpose and need and provide any pertinent facts such as applicable legal land description, statutory citations, and other agency involvements.]

Plan Conformance

[State that the emergency action is consistent with any land and resource management plans as required by appropriate Federal, State, or local statutes having a bearing on the decision.] [State that the emergency action was designed in conformance with all bureau standards and incorporates appropriate guidelines for specific required and desired conditions relevant to project activities.] [insert findings for other applicable laws.]

Compliance with the National Environmental Policy Act

[State that the action is an emergency action in accordance with 43 CFR 46.150 and 516 DM 2.8.] [insert any reasons.]

[Discuss any pertinent situations that were brought up during the design of the activities with regard to potential environmental impacts]. [State why the emergency action is appropriate in this situation.]

Action

I have decided to implement *[insert description of actions, including mitigation measures and reference any maps and drawings]*.

[Insert Responsible Official's name]

Date

[Insert Responsible Official's title]

Contact Person

For additional information concerning this decision, contact *[insert contact name, title, office name, mailing address, email address, and phone number]*.