



United States Department of the Interior

Office of the Secretary
Washington, D.C. 20240

PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 13-3¹

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director /s/09/24/2018
Office of Environmental Policy and Compliance

Subject: National Environmental Policy Act (NEPA) Compliance in Emergency Situations

PURPOSE

The purpose of this memorandum is to provide guidance on implementing departmental regulations at [43 CFR 46.150](#) and Council on Environmental Quality (CEQ) regulations at [40 CFR 1506.11](#).

PROCESS

Bureaus or offices should not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources.

The CEQ regulations allow agencies to take emergency actions with significant environmental impact without observing the provisions of the regulations so long as the agency consults with CEQ about alternative arrangements as soon as feasible. ([40 CFR 1506.11](#) and [CEQ Memorandum for Heads of Federal Departments and Agencies, *Emergencies and the National Environmental Policy Act*, May 12, 2010](#))

Similarly, Department of the Interior regulations at [43 CFR 46.150](#) allow the Responsible Official to immediately take any necessary actions to mitigate harm to life, property, or important natural, cultural, or historic resources.

Regulation at [43 CFR 46.150](#) intends for the bureau or office to take its action prior to consulting

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.

with the Department or CEQ, particularly if there is a possibility of imminent loss of life, property, or important natural, cultural or historic resources. In this regard, the departmental regulations provide that when taking such actions, the Responsible Official shall take into account the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practicable. ([43 CFR 46.150\(a\)](#)).

If time permits, however, consultation with the Department or CEQ should take place to determine alternative arrangements. Some emergencies involve several days lead time in which to complete the consultation to determine alternative arrangements but do not allow enough lead time to complete NEPA compliance.

To fulfill the consultation requirement with OEPC contained in 43 CFR 46.150 and 516 DM 2.8, bureau field managers must prepare a decision memorandum containing the elements of the attached template. Bureau checklists or other existing documentation may be used in conjunction with this template. However, any changes from the attached template must be approved by this office.

For follow-up actions requiring alternative arrangements for NEPA documentation, the Responsible Official shall then expeditiously consult with the Office of the Solicitor, OEPC, and the appropriate Assistant Secretary. Then OEPC and the bureau or office will consult with CEQ as appropriate.

If no follow-up action requiring alternative arrangements for NEPA documentation is necessary after an emergency action has been taken by the Responsible Official, further consultation with OEPC is not required. Other than documenting a determination that an emergency existed and the type of response action taken, no additional NEPA documentation is necessary. Responsible Officials are encouraged to utilize the Department's Decision Memorandum to Support Emergency Activities template to document emergency response actions even if consultation with OEPC is not required.

The Department's Decision Memorandum to Support Emergency Activities template is attached below.

GENERAL

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 10-11 and 10-2.

Attachment

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]*.