**NEPA & Emergencies Talking Points**

**Overview**: The National Environmental Policy Act (NEPA) has **never stood in the way of emergency response activities**. When agencies are required to take immediate action to secure the lives and safety of people in our communities, NEPA provides for alternative arrangements for compliance. In addition to existing flexibilities in the CEQ regulations, there are additional emergency provisions available under other laws such as the Stafford Act, which are outlined below. The bottom line is NEPA has never stood in the way of emergency response activities.

40 C.F.R. 1506.11 Alternative Arrangements under NEPA

* “Where emergency circumstances make it necessary to take an action with significant environmental impact without” conducting NEPA analysis, “the Federal agency taking the action should consult with the Council on Environmental Quality about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency.”
* CEQ has worked with agencies on nearly 50 occasions to provide for alternative arrangements under NEPA, often on the same day of request.
  + Examples available at: <https://ceq.doe.gov/docs/nepa-practice/Alternative_Arrangements_Chart_051419.pdf>
* Alternative arrangements have been granted for release of loan guarantee funds to initiate land acquisition, relocation, and site clearing in response to an economic crisis as well as, most recently, in response to Hurricane Michael, to the Air Force.

American Recovery and Reinvestment Act of 2009 (ARRA)

* During the last financial crisis, Congress passed to promote economic recovery and growth, included no NEPA waivers or limitations.
* Over $300 billion dollars in ARRA funds were distributed “in a timely and environmentally sound manner” according to CEQ’s last report to Congress in 2011.

Public Law 93-288 Robert T Stafford Disaster Relief and Emergency Assistance Act

* The Stafford Act allows the Federal Emergency Management Agency to provide immediate relief without conducting NEPA analysis.
* FEMA does not have to conduct environmental analysis before providing essential assistance including: providing medicine and medical equipment, water, food, personnel; deploying search and rescue teams; providing temporary housing, crisis counseling, community disaster loans, emergency public transportation; clearing roads; demolishing unsafe structures; providing technical advice, and distributing Federal resources.
* FEMA is also not required to conduct NEPA analysis for clearing debris or restoring damaged buildings to their original condition.
* FEMA was not required to make any Environmental Impact Statements (EIS) for its response to Hurricane Katrina.

Military Emergency Procedures

* Defense agencies may take immediate steps without environmental analysis to respond to emergencies that threaten national security, life, or property. When practicable a designated officer will coordinate alternative NEPA arrangements with CEQ.
* Classified projects do not have to go through the public scoping process to comply with NEPA. They can remain classified until the project is declassified.
* Army (32 CFR 651.11(b)), Navy (32 CFR 775.6(d)), Air Force (32 CFR 989.34(b)), Coast Guard (67 FR 141), and Defense Logistics Agency (32 CFR 1000.22 subpart B(4)(b)(1)).

Non-Military Federal Agency Emergency Procedures

* Most federal agencies have regulations specifying how to comply with NEPA during an emergency. Generally agencies must address the immediate needs of the situation and coordinate alternative arrangements with CEQ as soon as practicable.
* The Army Corps of Engineers– 33 CFR 230.8 – “In responding to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses, district commanders may proceed without” following NEPA documentation. District Commanders will consider “the probable environmental consequences” and may file NEPA documentation after the action to record such impacts.
* Department of the Interior– 43 C.F.R. 46.150 – “The Responsible Official may take those actions 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. 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 practical.”
* Department of Homeland Security– 71 FR 16790 – In the event of emergencies such as hurricanes, earthquakes, imminent terrorism threat, or the release hazardous substances, the DHS “will not delay an emergency action” to comply with NEPA. Instead the DHS official will consider and minimize as practicable environmental harm and contact CEQ when possible.
* Department of Energy–10 CFR 1021.343(a) – DOE may respond to emergencies without fully following NEPA documentation, but document as practicable. As soon as possible the responsible party shall consult with the office of NEPA compliance.

Categorical Exclusions

* NEPA recognizes that some types of actions consistently do not have significant environmental impacts. Thus NEPA allows agencies to create and implement categorical exclusions: “a category of actions which do not individually or cumulatively have a significant effect on the human environment,” and therefore do not require further analysis. The agency must consider whether extraordinary circumstances- such as expected public concern- indicate that an action does not fall into the categorical exclusion. 40 CFR 1508.4.
* Categorical exclusions are the most commonly used form of analysis to comply with NEPA. Every year, 99% of FEMA actions fall under the Stafford Act exemptions or categorical exclusions.
* 44 C.F.R. 10.8 (d)(2) – FEMA categorical exclusions include: training, procuring emergency supplies, improving facilities, activating the Emergency Support Team, activating the Regional Operations Center, deploying an Emergency Response Team, ground and aerial reconnaissance, and reporting rescue efforts.
* 32 C.F.R. 651 Appendix B–Army categorical exclusions include “Emergency or disaster assistance provided to federal, state, or local entities,” and response to hazardous waste and chemical spills