

personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

Carly Bruder,

Acting Chief Program Officer.

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COUNCIL ON ENVIRONMENTAL QUALITY

Emergencies and the National Environmental Policy Act Guidance

AGENCY: Council on Environmental Quality.

ACTION: Notice.

SUMMARY: On December 18, 2024, the Council on Environmental Quality (CEQ) issued guidance in a memorandum to the heads of Federal departments and agencies (agencies) to assist agencies with compliance with the National Environmental Policy Act (NEPA) during emergencies. The CEQ regulations implementing NEPA provide for alternative arrangements during emergencies when an agency's action is likely to have significant effects and would require preparation of an environmental impact statement. This guidance also addresses compliance with NEPA when the action is unlikely to have significant effects and might require preparation of an environmental assessment or application of a categorical exclusion.

DATES: This guidance was issued on December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Jomar Maldonado, Director for NEPA, 202-395-5750, Jomar.MaldonadoVazquez@ceq.eop.gov.

SUPPLEMENTARY INFORMATION:

Memorandum for Heads of Federal Departments and Agencies

FROM: Brenda Mallory, Chair

SUBJECT: Emergencies and the National Environmental Policy Act Guidance

This guidance¹ updates and replaces previous guidance from the Council on Environmental Quality (CEQ) on the environmental review of proposed

¹ The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This guidance does not establish new requirements. This memorandum is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

emergency response actions under the National Environmental Policy Act, 42 U.S.C. 4321-4347 (NEPA).² Federal departments and agencies (agencies) should distribute this guidance as part of their general guidance on emergency actions to agency offices that are or may become involved in developing and taking actions in response to emergencies.

As agencies respond to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established in CEQ's National Environmental Policy Act Implementing Regulations, 40 CFR parts 1500 through 1508 (CEQ NEPA regulations),³ and their agency NEPA procedures.

CEQ established the regulation addressing alternative arrangements in emergency circumstances in 1978⁴ and amended it in 2020 and 2024⁵ to clarify that it provides for alternative arrangements for agencies to comply with section 102(2)(C) of NEPA (42 U.S.C. 4332(C)). See 40 CFR 1506.11. Alternative arrangements do not waive the requirement to comply with NEPA. Rather, they establish an alternative means for NEPA compliance. CEQ has approved, and agencies have applied successfully, numerous alternative arrangements to allow a wide range of proposed actions in emergency circumstances including natural disasters, catastrophic wildfires, threats to species and their habitat, economic crises, infectious disease outbreaks, potential dam failures, and insect infestations.⁶

This guidance includes two attachments with step-by-step guides to help agencies when planning for and responding to emergencies. Attachment 1 provides agencies with a process for determining the appropriate path forward for the NEPA environmental review of all actions proposed in response to an emergency situation and what steps to take depending on the appropriate level of NEPA review. Attachment 2 provides guidance for preparing a concise and focused EA for emergency actions.

² This guidance replaces guidance issued by CEQ on September 14, 2020 (85 FR 60137 (Sept. 29, 2020)), September 29, 2016, May 12, 2010, and September 8, 2005. CEQ rescinds the prior guidance.

³ See <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A>.

⁴ 43 FR 55977 (Nov. 29, 1978).

⁵ 85 FR 43304 (July 16, 2020); 89 FR 35442 (May 1, 2024).

⁶ A synopsis of previous alternative arrangements is available at www.NEPA.gov.

Environmental Impact Statements

The CEQ regulations, at 40 CFR 1506.11, provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental effects and would require an environmental impact statement (EIS) if the situation were not an emergency:

Where emergency circumstances make it necessary to take an action with significant effects without observing the provisions of the regulations in [40 CFR parts 1500 through 1508], the Federal agency taking the action shall consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council shall limit such arrangements to actions necessary to control the immediate impacts of the emergency; other actions remain subject to NEPA review consistent with [40 CFR parts 1500 through 1508]. Alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance.

Agencies develop these alternative arrangements, based on emergency-specific facts and circumstances, during consultation with CEQ. The alternative arrangements developed by an agency address the actions necessary to control the immediate impacts of an emergency. The long-term response to the emergency, including recovery actions, remains subject to the regular NEPA process set forth in the statute and the CEQ NEPA regulations.

Here again, alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance from the process set forth in the CEQ NEPA regulations. Alternative arrangements for NEPA compliance do not satisfy or alter other legal requirements, including other environmental legal requirements (except as provided by other applicable statutes or regulations); however, engaging other resource and regulatory agencies about other environmental requirements during development and implementation of alternative arrangements for NEPA compliance can potentially facilitate meeting other environmental compliance requirements. Final agency action taken pursuant to alternative arrangements for compliance with NEPA under 40 CFR 1506.11 may be subject to judicial review if a statute, such as the Administrative Procedure Act, provides for such review.

Attachment 1 describes the factors for an agency to address when requesting and designing alternative arrangements. Once the agency and CEQ develop the alternative arrangements, CEQ will provide documentation detailing the alternative arrangements and the considerations on which they are based.

Environmental Assessments

When agencies are considering proposed actions that are not likely to have significant effects or the significance of the effects are unknown, the agency can prepare a concise, focused environmental assessment (EA). Attachment 2 of this memorandum provides guidance for preparing an EA. Some agency NEPA procedures provide processes for preparing EAs for emergency actions,⁷ which the CEQ NEPA Regulations encourage agencies to include in their procedures. For emergency actions that require preparation of an EA, agencies should not delay taking action necessary to address immediate threats to human health or safety, or immediate threats to valuable natural resources. Agencies should follow any agency-specific direction regarding preparation of an EA for emergency actions, which may include preparing an EA before, during, or after the emergency. Agencies must continue their efforts to notify, inform, and engage with the affected public and relevant Federal, State, Tribal, and local governments and agency representatives of the Federal agency activities and proposed actions. Agencies must comply with the CEQ NEPA regulatory requirements implementing the statute for content, interagency coordination, and public engagement to the extent practicable.⁸

Attachment 1

Process for Emergency Actions Under the National Environmental Policy Act (NEPA)

This attachment provides a step-by-step process for managing the NEPA review of all actions proposed in response to an emergency situation, consistent with the Emergencies and the National Environmental

Policy Act Guidance. In the case of an emergency:

1. Do not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources. Consult with CEQ as soon as feasible. Please coordinate any communications with your Federal agency NEPA contacts.

2. Determine if NEPA applies and the appropriate level of NEPA analysis:

- Determine if a Federal agency is taking the proposed action (e.g., city or State action does not trigger NEPA; Federal decisions to fund city or State action may trigger NEPA, depending on the nature of the funding arrangements) or is exempt from NEPA (e.g., certain Federal Emergency Management Agency response actions under the Stafford Act are statutorily excluded from NEPA; additional information is available at <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/laws/NEPA/statutory-exclusions>).

- If the Federal agency's proposed emergency action is not statutorily exempt from NEPA, and the agency has a categorical exclusion (CE) that covers the type of activity, then apply the CE unless there are extraordinary circumstances that indicate using the CE in this particular case is not appropriate. Agency NEPA personnel can assist in identifying agency-specific actions that are categorically excluded. Additionally, the agency should review CEs established in other agencies' NEPA procedures to determine whether there is a CE that would cover the agency's proposed emergency action. If so, the agency may adopt and apply the CE consistent with 40 CFR 1501.4(e) and Section 109 of NEPA (42 U.S.C. 4336c).

- If the proposed Federal agency emergency action is not statutorily exempt from NEPA, a CE is not available, and the agency does not expect the potential environmental effects of the proposed response activity to be significant, then an environmental assessment (EA) is appropriate. Where applicable, follow the agency's emergency procedures as set forth in the agency's NEPA implementing procedures, or prepare a focused, concise EA as described in Attachment 2. Alternative arrangements, as outlined at 40 CFR 1506.11, do not apply because the environmental effects are not expected to be significant. Agency NEPA personnel can assist in identifying agency-specific actions that typically require an EA.

- If the proposed Federal emergency action is not statutorily exempt from NEPA, and the agency expects it would have significant environmental effects, the agency should determine whether an existing NEPA analysis covers the action (e.g., implementing pre-existing spill response plans). If so, the agency may rely upon its existing analysis or adopt the analysis of another agency consistent with 40 CFR 1506.3.

- If the proposed Federal emergency action is not statutorily exempt from NEPA, the agency expects it to have significant environmental effects, and an existing NEPA analysis does not cover the action, then the agency should consult with CEQ to determine whether alternative arrangements can take the place of an EIS. Contact CEQ to develop alternative arrangements under 40

CFR 1506.11. CEQ encourages agencies to submit inquiries via email at nepa@ceq.eop.gov. Agencies may also contact CEQ at (202) 395-5750.

3. Factors to address when requesting and designing alternative arrangements include the:

- Nature and scope of the emergency;
- Actions necessary to control the immediate impacts of the emergency;
- Potential adverse effects of the proposed action;
- Components of the NEPA process that the agency can follow and provide value to decision making (e.g., coordination with Tribal Nations, affected agencies, and the public);
- Duration of the emergency; and
- Potential mitigation measures.

Attachment 2

Preparing Focused, Concise, and Timely Environmental Assessments

An agency can prepare a concise and focused EA in a short time in those situations where:

- There is no statutory exemption from NEPA requirements;
- There is no CE that covers the action, or there are extraordinary circumstances requiring the preparation of an EA or EIS;
- An existing NEPA analysis (EA or EIS) does not cover the proposed action; and
- The environmental effects of the proposed actions are not likely to be significant.

The following outline with notations addresses the core elements of an EA as required by 40 CFR 1501.5:

- The purpose and need for the proposed action;
- Alternatives, as required by NEPA section 102(2)(H);
- The description of environmental effects of the proposed action and the alternatives;
- The list of agencies and persons consulted;
- The unique identification number of the EA.

Purpose and Need for the Proposed Action

The agency should briefly describe information that substantiates the purpose and need for the action and incorporate by reference information that is reasonably available to the public. For example, "This agency is preparing to erect a temporary emergency response facility to replace facilities disrupted or destroyed by the [hurricane/flooding/contamination/etc.] to facilitate rescue or relief efforts in an effort to [minimize further adverse health conditions/restore communications/restore power]."

The agency should briefly describe the existing conditions and the projected future conditions of the area impacted by the action. For example, "The area(s) in which the temporary facility will be located or relocated is identified in the attached map. This area consists of [add brief description of the environmental state of the area that will be affected by the location and operation of the facility, focusing on those areas that are potentially sensitive. The goal is to show that environmental effects have been considered

⁷ See Agency NEPA procedures, for example: Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01 at VI-1, https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf; U.S. Forest Service, 36 CFR 220.4(b), <https://www.ecfr.gov/current/title-36/chapter-III/part-220/section-220.4>; and Department of the Interior, 43 CFR 46.150, https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2a2ce144c79da6f3e773bfa9cdf17bcf&mc=true&n=sp43.1.46.b&r=SUBPART&ty=HTML#se43.1.46_1150.

⁸ 40 CFR 1501.5, 1501.6, and 1501.9 (these regulations address required content and public and governmental engagement for preparing EAs and findings of no significant impact).

and the facts found indicate no significant impact (for example, refueling sites are not on top of aquifers, nesting areas, graves, sacred sites, etc.). These are examples to show the utility of and need to identify actual place-based environmental issues rather than compiling lists of environmental resources not at issue.”

Proposed Action and Alternatives

The agency should list and briefly describe its proposed action and reasonable alternatives that meet the purpose and need. The agency must use its discretion to ensure the number and reasonable range of alternatives is reasoned and not arbitrary or capricious. The purpose and need for the proposed action and its environmental effects should focus the alternatives. For example, the need to use existing infrastructure necessary to support the facility is a reasoned basis for focusing on a discrete number of alternatives.

When there is no unresolved conflict concerning alternative uses of available resources with respect to the proposed action based on input from interested parties, the agency can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, the agency must identify reasonable alternatives that meet the action’s purpose and need, consistent with section 102(2)(H) of NEPA.

Environmental Effects of the Proposed Action and Alternatives

The agency must describe the environmental effects of its proposed action and each alternative. 40 CFR 1501.5(c)(2)(iii). The description should provide enough information to support a determination to either prepare an EIS or a finding of no significant impact.

The agency should focus on whether the action would significantly affect the quality of the human environment. The agency should follow the CEQ NEPA regulations in considering whether the effects of a proposed action are significant. See 40 CFR 1501.3(d). Agency NEPA contacts and contacts at resource agencies can assist in this effort.

Tailor the length of the discussion to the complexity of each issue. Focus on those human and natural environment issues where effects are a concern. Telephone or email discussions with State, Tribal, and local governments and agencies and other Federal agencies that operate in the area will help focus those issues.

The agency must discuss the effects of each alternative and may discuss those effects together in a comparative description or discuss each alternative separately. The agency should use the approach that will be most effective in the time available. The agency may contrast the effects of the proposed action and alternatives with the current condition and expected future condition in the absence of the action. This constitutes consideration of a no action alternative as well as demonstrating the need for the action.

The agency should incorporate by reference data, inventories, other information, and analyses relied on in the EA. See 40 CFR 1501.12. CEQ encourages the

use of digital references, such as hyperlinks. This information must be reasonably available for review by potentially interested persons. For example, include relevant existing programmatic agreements and generally accepted best management practices.

The agency should be clear and concise about its conclusions and their bases.

List of Agencies and Persons Consulted

The agency must involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing EAs, and list the agencies and persons consulted. 40 CFR 1501.5(c)(3) and 1501.5(f). For example, include the people, offices, and agencies that the agency coordinated with to ensure that the location of the action did not cause unintentionally an adverse effect. Also include information about individuals consulted to comply with substantive environmental requirements and regulations, for example: the Clean Water Act, the National Historic Preservation Act, and the Endangered Species Act (ESA). Note that the ESA emergency provisions at 50 CFR 402.05 may be applicable to the proposed action.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375.

Brenda Mallory,
Chair.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0038]

Department of Defense Progress Payment Incentive Pilot

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for information.

SUMMARY: DoD is seeking public input to inform the implementation of a section of the National Defense Authorization Act for Fiscal Year 2024 that authorizes DoD to establish a pilot program to incentivize performance for specific, measurable criteria under approved contracts by increasing the customary progress payment rate.

DATES: DoD will consider all comments received by January 29, 2025.

ADDRESSES: Submit comments to the questions provided below, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “Docket Number DARS–2024–0038.” Select “Comment” and follow the instructions to submit a comment.

Please include your name, company name (if any), and “Docket Number DARS–2024–0038” on any attached document(s).

○ *Email:* osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil. Include “DoD Progress Payment Incentive Pilot” in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Sara Higgins, telephone 937–200–4020.

SUPPLEMENTARY INFORMATION:

A. Background

Section 874 of the National Defense Authorization Act for Fiscal Year 2024 authorizes the Under Secretary of Defense for Acquisition and Sustainment to establish and implement a progress payment pilot program to incentivize contractor performance on a contract-by-contract basis. By statute, the incentive criteria must be clear and measurable, and contractor participation must be voluntary.

This notice requests comments and information from the public on DoD’s possible implementation of the pilot program, in accordance with section 874. DoD is particularly interested in comments and information from companies currently in the Defense Industrial Base.

B. Possible Implementation

DoD is planning to focus the Progress Payment Incentive Pilot (PPIP) on payment time to subcontractors in order to improve cash flow throughout the supply base. This is a key interest area highlighted in the 2023 Defense Contract Finance Study, available at <https://www.acq.osd.mil/asda/dpc/pcf/finance-study.html>.

DoD is particularly interested in comments and information from all business sizes with regard to DoD’s notional eligibility and incentive criteria, and supporting documentation concept, especially the following:

1. Eligibility Criteria

Section 874 authorizes an increase of up to 10 percentage points higher than the current customary progress payment rate (80 percent for large businesses) for contractor performance against clear, measurable criteria on a contract-by-contract basis. To be eligible for the PPIP, a participant must be eligible for customary progress payments, and their