



Federal Emergency Management Agency

Washington, D.C. 20472

May 3, 1996

MEMORANDUM FOR: Associate Directors
Regional Directors
Federal Coordinating Officers

ATTENTION: Response and Recovery Division Chiefs
Mitigation Division Chiefs
Hazard Mitigation Officers

FROM: Richard S. Shivar (signed)
Acting Environmental Officer

SUBJECT: ENVIRONMENTAL POLICY MEMO #3 (Issued 3/24/95, Revised and
Reviewed at CEQ 3/1/96)
Policy for Projects Initiated Without Environmental Review Required by
the National Environmental Policy Act (NEPA)

This memorandum, which reissues ENVIRONMENTAL POLICY MEMO #3, maintains the original policy but includes clarifications recommended by the Council on Environmental Quality.

Occasionally FEMA funding is requested for an action that has been initiated and/or completed prior to environmental review and documentation as required by NEPA and outlined in 44 CFR Part 10, FEMA's Environmental Considerations. Often when these actions occur, the applicant has already requested and attained local, state and Federal permits required for such actions. However, due to lack of prior Federal involvement, the full NEPA environmental review process has not been followed in which reasonable alternatives and their impacts are fully investigated and documented **before** the action takes place.

There is minimal guidance in FEMA's regulations on how to address such situations, and this memorandum is intended to clarify policy and procedures for such actions.

Policy: It is FEMA policy that actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA may not be considered for funding.

Exception: A statutory exclusion to this requirement already exists in the Stafford Act. An action taken or assistance provided pursuant to Sections 402, 403, 407, 502, or 422, or an action that has the effect of restoring a facility substantially to its condition prior to the disaster or emergency pursuant to Section 406, shall not be deemed a major Federal action affecting the environment. In this case, no NEPA documentation is required and no coordination with the Environmental Officer would be required. Be aware, however, this exclusion does **not** relieve FEMA of the responsibility to comply with other Federal statutes, permits, and requirements such as, National Historic Preservation Act, Endangered Species Act, Section 404 of the Clean Water Act, Executive Orders 11988, 11990, and 12898, etc.

In addition, there may be a rare situation where an extension of this exception can be considered. Actions proposed for FEMA funding which were completed without fulfilling the documentation and procedural requirements of NEPA, but which were initiated in an emergency situation to prevent or reduce an immediate threat to life, health, property or severe economic losses may be considered, if otherwise eligible. Situations that might be considered under this extension could be HMGP or Public Assistance actions which were taken to avoid imminent loss from an ongoing event or from a highly probable future event whose anticipated occurrence could not possibly allow appropriate time for NEPA review.

The Regional Director has responsibility for determining the immediate course of action in such exceptional situations, but must coordinate with the Environmental Officer when these requests are made. The following paragraphs outline the procedure and documentation required when the Regional Director determines that an already initiated and/or completed project might qualify to be considered under this extension.

Procedure: If an action is proposed which is not statutorily excluded from the NEPA process and has been or will be initiated and/or completed prior to NEPA documentation due to the circumstances noted above, the Regional Director should contact the Environmental Officer at the earliest possible time so that the Environmental Officer may consult with the President's Council on Environmental Quality (CEQ), the body which has oversight for Federal agency NEPA compliance. If it is determined that the proposed action is likely to qualify under this extension then the following steps will be required:

1) The Regional Director will see that all substantive Federal, state and local statutes, regulations, and permits (local building permits, USACE 404 Permits, Section 106 historic preservation consultation, Endangered Species consultation, Executive Order considerations, etc.) are satisfied for the action. This information is to be documented in an "Environmental Record of Completed Action" which is approved by the Regional Director and submitted for review by the Environmental Officer. This document should include:

- (a) The purpose and need for the action, specifically defining its emergency nature;
- (b) A description of the action;
- (c) A description of the preexisting affected environment;
- (d) A description of the potential and actual impacts to the environment, including a summary of the results of all environmental evaluation conducted prior to and since the completion of the project, supporting consultation letters from applicable agencies, and a description of any environmental mitigation measures which were implemented; and
- (e) A description of any significant unaddressed environmental impacts resulting from the action and the mitigation measures required to reduce these impacts below the level of significance.

2) With the document provided, the Environmental Officer, in consultation with the Regional Director and CEQ should determine whether the action initiated and/or completed prior to NEPA review has potential of actual significant impacts not previously mitigated and whether or not those impacts can be mitigated. Examples of impacts that could be of issue include significant impacts to the natural environment, irretrievable loss of critical habitat, the taking of threatened or endangered species, or unacceptable upstream or downstream effects. Where there is reason to suspect that the action did have a significant impact on the environment, but that the actual impact cannot be verified, significant impact will be presumed. If the significant impacts can be mitigated to below a level of significance, public notice will be given and the necessary mitigation measures will be required to be implemented before funding can be considered. A recommendation that the action not receive funding would result where the significant impacts cannot be mitigated.

Please explain this policy to the states and potential applicants to ensure they are clear on how the requirements of the NEPA regulations can preclude the funding of completed actions except in the rare situation define above. If you have any questions on this policy, please contact Brent Paul at (202) 646-3032.