



Environmental Planning and Historic Preservation Policy

- I. **TITLE:** Projects Initiated Without Environmental Review Required by the National Environmental Policy Act (NEPA)
- II. **DATE OF ISSUANCE:** December 18, 2013
- III. **POLICY STATEMENT:** This policy provides procedural guidelines for completing environmental reviews as required by the National Environmental Policy Act (NEPA) in cases where Federal Emergency Management Agency funded projects require initiation or action prior to the completion of the environmental review.
- IV. **PURPOSE:** This policy reissues ENVIRONMENTAL POLICY MEMO #3 with clarifications from the Council on Environmental Quality and is intended to provide procedural guidance on FEMA funded projects that have been initiated before environmental review has been completed. 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. This policy provides the requirements associated with completing environmental reviews in those cases.
- V. **SCOPE AND EXTERNAL AUDIENCE:** This policy is applicable to EHP review of all grants funded by FEMA's programs and the grantees and sub-grantees that have significant roles in assisting FEMA with environmental compliance review. This policy should be explained to grantees and sub-grantees 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 defined below.



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VI. AUTHORITY: FEMA's environmental law compliance is governed by the National Environmental Policy Act of 1969, as amended (PL 91-190).

VII. OBJECTIVES: To clarify procedures for FEMA funded projects initiated without environmental review and before NEPA review is completed.

VIII. DEFINITIONS, ABBREVIATIONS, AND FORMATTING:

CEQ	Council on Environmental Quality
EHP	Environmental and Historic Preservation
FEMA	Federal Emergency Management Agency
HMGP	Hazard Mitigation Grant Program
NEPA	National Environmental Policy Act
Stafford Act	Robert T. Stafford Disaster Relief and Emergency Assistance Act
USACE	United States Army Corps of Engineers

IX. POLICY DETAILS:

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.

A. Exceptions

1. 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



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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.

2. 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.
3. The Regional Administrator 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 Administrator determines that an already initiated and/or completed project might qualify to be considered under this extension.

B. 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 Administrator 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



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is likely to qualify under this extension then the following steps will be required:

1. The Regional Administrator 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 Administrator 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 Administrator 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



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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.

- X. **ROLES & RESPONSIBILITIES:** It is FEMA's responsibility as the funding federal agency to comply with all environmental and historic preservation laws. The roles outlined in this policy are directly correlated to the FEMA Grant Programs and the EHP program including the Regional Administrator and the Environmental Officer, respectively. The Environmental Officer, Regional Administrator and the CEQ will consult on potential significant impacts and possible mitigation measures for those impacts resulting from projects initiated without environmental review.
- XI. **MONITORING AND EVALUATION:** OEHP will monitor the compliance objectives of this policy, and, in accordance with Directive 112-12 will review, supersede or rescind the document if changes become necessary in order to ensure its fullest effectiveness
- XII. **RESPONSIBLE OFFICE:** The Office of Environmental and Historic Preservation is the originating office for this policy document, with overall responsibility for policy updates and enforcement. If you have any questions, please contact Kristin Leahy, Environmental Officer at 202-646-2741.
- XIII. **SUPERSESSION:** This policy reissues Environmental Policy Memo #3, issued March 24, 1995, and then re-issued again on May 3, 1996 to include clarifications recommended by the Council on Environmental Quality.



FEMA

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- XIV. REVIEW DATE:** This policy will expire on December 18, 2016 OR be reviewed 3 years from the date of issuance in accordance with Directive 112-12.

A handwritten signature in black ink, appearing to read "Roy E. Wright", written over a horizontal line.

Roy E. Wright

**Deputy Associate Administrator for Mitigation
Federal Insurance and Mitigation Administration**