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**INSTRUCTION ON IMPLEMENTATION OF THE
ENVIRONMENTAL PLANNING AND HISTORIC
PRESERVATION RESPONSIBILITIES AND PROGRAM
REQUIREMENTS**

APPROVAL DATE: 10/10/2018



**DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
OFFICE OF ENVIRONMENTAL PLANNING AND HISTORIC
PRESERVATION**



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Foreword

This Instruction provides guidance and policy direction for implementation of the National Environmental Policy Act (NEPA) and other environmental planning and historic preservation (EHP) requirements across the Federal Emergency Management Agency (FEMA). This Instruction, combined with FEMA Directive 108-1: *Environmental Planning and Historic Preservation Responsibilities and Program Requirements*, contains the FEMA EHP supplemental instructions as authorized by Department of Homeland Security's (DHS) Instruction Manual on Implementation of the NEPA, Instruction Number: 023-01-001-01.

This Instruction serves as FEMA implementing procedures for the following requirements:

- The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*
- Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994.
- The Principles, Requirements, and Guidelines established pursuant to the Water Resources Planning Act (Public Law 89-8), as amended (42 U.S.C. 1962a-2) and consistent with section 2031 of the Water Resources Development Act of 2007 (Public Law 110-114):
 - Principles and Requirements for Federal Investments in Water Resources, March, 2013.
 - Interagency Guidelines, December 2014.

Content Overview:

Chapter 1 contains information about scope, applicability, reporting requirements, and high-level policies for compliance with EHP requirements.

Chapter 2 contains EHP compliance procedures, including implementation procedures for Executive Order 12898.

Chapter 3 contains implementation procedures for NEPA.

Chapter 4 contains FEMA's agency specific procedures for implementing the Principles, Requirements, and Guidelines.

1 **Table of Contents**

2

3 **Foreword** 2

4 **CHAPTER 1: GENERAL INFORMATION** 4

5 **1.1 Purpose** 4

6 **1.2 Applicability and Scope** 5

7 **1.3 Supersession** 5

8 **1.4 Authorities/References**..... 5

9 **1.5 Policy**..... 7

10 **1.6 Definitions of Commonly Used Terms**..... 9

11 **1.7 Reporting Requirements, Performance, and EHP Compliance** 13

12 **CHAPTER 2: EHP COMPLIANCE PROCEDURES** 13

13 **2.1 Commonly Encountered EHP Requirements**..... 14

14 **2.2 Supporting Applicants for Grant Programs** 16

15 **2.3 Implementing the Action** 20

16 **2.4 Conflict Resolution** 23

17 **2.5 Emergencies** 24

18 **2.6 EHP Training Requirements**..... 24

19 **2.7 Role of EHP Approval Authority and Program EHP Endorsement** 25

20 **2.8 Program Implementation Plans** 26

21 **2.9 EHP Documentation**..... 27

22 **CHAPTER 3: NEPA IMPLEMENTING PROCEDURES** 27

23 **3.1 Apply NEPA Early in the FEMA Decision-making Process**..... 27

24 **3.2 Determining the Appropriate Level of NEPA Review** 28

25 **3.3 Involving Other Agencies**..... 30

26 **3.4 Conducting the Impacts Analysis for EAs and EISs** 32

27 **3.5 NEPA Documentation** 37

28 **3.6 Using Existing NEPA Analyses** 38

29 **3.7 Timing of Agency Actions**..... 41

30 **3.8 NEPA Conflict Resolution**..... 42

31 **3.9 EHP Mitigation and Monitoring**..... 42

32 **3.10 Emergencies**..... 42

33 **CHAPTER 4: AGENCY SPECIFIC PROCEDURES FOR THE UPDATED PRINCIPLES,**

34 **REQUIREMENTS, AND GUIDELINES** 43

35 **4.1 Commonly Used Terms in the PR&G**..... 43

36 **4.2 Purpose** 44

37 **4.3 Guiding Principles**..... 45

38 **4.4 Exclusions from PR&G Analysis**..... 46

39 **4.5 Selecting the Appropriate PR&G Analysis** 46

40 **4.6 Interagency PR&G Analysis**..... 47

41 **4.7 Conducting the PR&G Analysis** 47

42 **ACRONYMS AND ABBREVIATIONS** 50

43

44

CHAPTER 1: GENERAL INFORMATION

1.1 Purpose

- A. This Environmental Planning and Historic Preservation (EHP) Instruction contains EHP compliance requirements and policies applicable to the Federal Emergency Management Agency (FEMA). FEMA will use this EHP Instruction when carrying out FEMA activities.
- B. This EHP Instruction, together with FEMA Directive 108-1: *Environmental Planning and Historic Preservation Responsibilities and Program Requirements* (EHP Directive), serves as FEMA’s supplemental instructions to Department of Homeland Security (DHS) Instruction 023-01: *Implementation of the National Environmental Policy Act (NEPA)*. DHS Instruction 023-01, section IV, part K gives components the option to develop their own supplemental instructions in order to receive delegation of EHP Approval Authority from DHS to approve NEPA documents and carry out NEPA compliance. Chapter 3: *NEPA Implementing Procedures* satisfies DHS Instruction 023-01 requirements for delegation of EHP Approval Authority and serves as FEMA’s implementing procedures for NEPA.
- C. This EHP Instruction also ensures consideration of environmental justice pursuant to Executive Order 12898: *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. This EHP Instruction supports FEMA’s efforts to:
 - 1. Make data-based determinations regarding the presence and possibility of FEMA actions to disproportionately impact minority and low-income populations.
 - 2. Identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of programs, policies, and activities in minority populations and low-income populations.
 - 3. Provide minority and low-income populations with meaningful opportunities to engage in, comment on, and access information during EHP reviews.
- D. This EHP Instruction also contains FEMA’s Agency Specific Procedures (ASP) for compliance with the Principles, Requirements, and Guidelines (PR&G). The PR&G are established pursuant to the Water Resources Planning Act (Public Law 89-8), as amended (42 U.S.C. 1962a-2) and consistent with section 2031 of the Water Resources Development Act of 2007 (Public Law 110-114). They supersede the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies dated March 10, 1983. Chapter 1 describes when the PR&G applies. General EHP compliance procedures are discussed in Chapter 2. Chapter 3 contains requirements for integrating PR&G analysis into EHP review. Chapter 4 provides specific guidance and procedures on how to comply with the PR&G.
- E. The FEMA Office of Environmental Planning and Historic Preservation (OEHP) and FEMA offices, programs, and directorates will create additional guidance specific to

1 FEMA programs, policies, and activities and aligned with this EHP Instruction and
2 the EHP Directive to support implementation and EHP compliance.

3
4 **1.2 Applicability and Scope**

- 5
6 A. FEMA will comply with this EHP Instruction in accordance with specific EHP
7 compliance responsibilities assigned to FEMA staff in the EHP Directive.
- 8 B. In the exercise of its Stafford Act (42 U.S.C. 5121 et seq.) authorities, FEMA can
9 task (“mission assign”) other agencies to conduct certain activities. Agencies mission
10 assigned activities and thus operating under FEMA’s authorities are expected to
11 follow the processes described in this Instruction in completing those actions.
- 12 C. This EHP Instruction applies only to discretionary actions. When FEMA does not
13 have discretion over the action this EHP Instruction does not apply.
- 14 D. The Stafford Act contains statutory exclusions (STATEXs) that exempt certain
15 actions from NEPA. Even if an action is exempt from NEPA through a STATEX,
16 FEMA must still comply with other EHP requirements.
- 17 E. FEMA will comply with this EHP Instruction for actions that trigger the PR&G. PR&G
18 apply to Federal water resource investments that directly or indirectly alter water
19 resources. Federal investment activities include all new or existing Federal
20 investments, such as infrastructure, ecosystem restoration, new construction,
21 modifications or replacements to existing facilities that affect water resources, and
22 projects where the operations and maintenance are funded by Hazard Mitigation
23 Grant Programs and Public Assistance Programs. The PR&G do not apply to
24 regulatory actions, monitoring activities, emergency actions, and all actions that fall
25 below the threshold of 10 million dollars of Federal investment, or as amended. The
26 scope and scale of applicability of the PR&G to Federal investments in water
27 resources are defined in more detail in the Interagency Guidelines.

28
29 **1.3 Supersession**

30
31 No directives or instructions are superseded by this EHP Instruction. This EHP
32 Instruction and the EHP Directive replace 44 CFR part 10: *Environmental*
33 *Considerations*. This EHP Instruction also replaces the following policy memoranda:

- 34
35 A. Environmental Policy Memo 108.024.2: *Other Federal Agency Clearance for*
36 *Environmental Assessments* (December 18, 2013).
- 37 B. Environmental Policy Memo 108.024.4: *Projects Initiated Without Environmental*
38 *Review Required by the National Environmental Policy Act* (December 18, 2013).

39 **1.4 Authorities/References**

40
41 These are only some, not all, of the environmental laws, regulations, and Executive
42 Orders applicable to this EHP Instruction. FEMA acknowledges that authorities listed
43 below may be updated or revised, and such revisions would apply.

FEMA INSTRUCTION 108-1-1

- 1
- 2 A. Advisory Council on Historic Preservation Section 106 Regulations, 36 CFR 800 *et*
- 3 *seq.*
- 4 B. Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR
- 5 1500 *et seq.*
- 6 C. Delegation to the Under Secretary for Emergency Preparedness and Response,
- 7 DHS Delegation 9001.
- 8 D. DHS Directive 017-01: *Historic Preservation in Asset Management.*
- 9 E. DHS Directive 023-01, Revision 01: *Implementation of the National Environmental*
- 10 *Policy Act* (DHS Directive).
- 11 F. DHS Instruction Manual on Implementation of the National Environmental Policy Act
- 12 (NEPA), Instruction Manual Number: 023-01-001-01, Revision 01 (DHS Instruction
- 13 023-01).
- 14 G. FEMA Directive 108-1: *Environmental Planning and Historic Preservation*
- 15 *Responsibilities and Program Requirements.*
- 16 H. FEMA Directive 108-3: *Sustainable Performance and Environmental Management.*
- 17 I. FEMA regulations, 44 CFR part 9: *Floodplain Management and Protection of*
- 18 *Wetlands*, implementing Executive Orders 11988 and 11990.
- 19 J. FEMA 322 Public Assistance Guide, May 1, 2014.
- 20 K. Endangered Species Act, 16 U.S.C. 1531 *et seq.*, as amended.
- 21 L. Executive Order 11988: *Floodplain Management.*
- 22 M. Executive Order 11990: *Protection of Wetlands.*
- 23 N. Executive Order 12898: *Federal Actions to Address Environmental Justice for Low-*
- 24 *Income and Minority Populations.*
- 25 O. Executive Order 13166: *Improving Access to Services for Persons with Limited*
- 26 *English Proficiency.*
- 27 P. Executive Order 13287: *Preserve America*, section 3(e).
- 28 Q. National Flood Insurance Act, 42 U.S.C. 4001 *et seq.*, as amended.
- 29 R. National Environmental Policy Act, 42 U.S.C. 4332(C).
- 30 S. National Historic Preservation Act, 16 U.S.C. 470h-2(c).
- 31 T. Policy Assessment Initiative: Environmental Planning and Historic Preservation,
- 32 Implementation Plan, July 28, 2012.
- 33 U. *Principles and Requirements for Federal Investments in Water Resources*, March,
- 34 2013 and *Interagency Guidelines*, December, 2014.
- 35 V. Public Assistance Guide, June 2007.

FEMA INSTRUCTION 108-1-1

- 1 W. Rehabilitation Act of 1973, section 504, Public Law 93-112, 29 U.S.C. 794, as
2 amended.
- 3 X. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et*
4 *seq.*, as amended.
- 5 Y. Water Resources Planning Act of 1965, Public Law 89-8, 42 U.S.C. 1962a-2, as
6 amended, and the Water Resources Development Act of 2007, Public Law 110-114.

7 8 **1.5 Policy** 9

- 10 A. Environmental stewardship, preservation of historic and cultural resources, and
11 sustainability are complementary goals to the emergency management mission and
12 activities of FEMA. FEMA promotes these goals to support development of resilient
13 communities in light of disasters, sea level rise, climate change, and other impacts
14 that threaten the human environment. See Council on Environmental Quality (CEQ)
15 regulations at 40 CFR part 1508.14 for an explanation of the human environment.
16 Environmental, historic, and cultural resources are important considerations when
17 preparing for, responding to, recovering from, and mitigating hazards to the United
18 States. Protection and stewardship of the Nation's natural resources including
19 floodplains and wetlands, coastal barriers, forests and fauna, biodiversity,
20 endangered species, habitats, and other natural landscapes provide increased
21 protection to communities throughout the Nation and support resiliency. Consistent
22 with the goals of EHP requirements and the policies of DHS, FEMA promotes
23 antidegradation and balances resource use and development with sustainability and
24 use of renewable resources to manage these natural and cultural resources.
- 25 B. FEMA offices, programs, directorates, and regions (regional programs under
26 authority of the Regional Administrator [RA]) will implement EHP as follows:
- 27 1. Planning Activities
- 28 a. Promote the cross-agency purpose and role of OEHP including maintenance
29 of the transparency necessary to effectively carry out EHP review;
- 30 b. Tailor EHP compliance strategies and EHP reviews to meet mission needs
31 and program implementation;
- 32 c. Maximize available resources to accomplish EHP compliance;
- 33 d. Establish clear priority criteria for initiatives and projects that require EHP
34 review, and clear prioritization of the use of EHP technical expertise across
35 FEMA;
- 36 e. Make funding for EHP compliance costs available to applicants in grant
37 awards to the extent practicable and allowable under program requirements
38 and encourage applicants to build EHP compliance costs into grant
39 applications;
- 40 f. Encourage applicants to consider EHP issues and alternatives during project
41 planning;

- 1 g. Engage the Director of OEHP and Regional Environmental Officers (REO) to
2 define EHP compliance requirements or concerns;
 - 3 h. Engage annually with the Director of OEHP and/or REOs, as applicable, to
4 identify joint priorities and improve effectiveness of the EHP review process
5 within each program;
 - 6 i. Ensure that OEHP-designed quality control and assurance processes are in
7 place to ensure legal sufficiency and consistency of EHP review decisions;
8 and Consider climate change impacts such as sea level rise and climate
9 change adaptation strategies in policies, programs, and actions.
- 10 2. Staffing and Performance Evaluation Activities
- 11 a. Ensure staff know, have been trained in, and are qualified for their EHP
12 responsibilities;
 - 13 b. Ensure program staff have EHP compliance coordination responsibilities and
14 accountability;
 - 15 c. Promote and support EHP review decision-making at the lowest possible
16 level (i.e., as programs build EHP capability within staff, EHP review may be
17 completed by program staff with EHP Approval Authority);
 - 18 d. Align staff performance expectations for EHP reviews with EHP performance
19 metrics;
 - 20 e. Ensure staff track data associated with EHP performance metrics and provide
21 applicants clear time limits for information requests to ensure timely
22 submission of information required for EHP reviews; and
 - 23 f. Ensure staff have accurate project status information related to EHP and
24 regularly communicate review requirements, expectations, and status to
25 applicants for projects requiring more than 30 days for review.
- 26 3. Compliance Activities
- 27 a. Conduct NEPA and other EHP reviews early in the decision-making process
28 and before making a decision that adversely affects natural or cultural
29 resources or limits the choices of alternatives to satisfy an agency objective;
 - 30 b. Tailor NEPA analyses, environmental justice reviews, and other EHP reviews
31 to the proposed action, and conduct appropriate analyses given the scope of
32 proposed actions, spending minimal resources and time on issues and
33 projects that do not have potential to adversely affect natural and cultural
34 resources;
 - 35 c. Aim for transparency in EHP reviews and engage the public in decision-
36 making;
 - 37 d. Document relevant EHP information considered by decision-makers during
38 EHP review;

FEMA INSTRUCTION 108-1-1

- 1 e. Inform applicants about the NEPA process and other EHP reviews, provide
2 technical assistance, and engage applicants in the processes to the extent
3 practicable;
- 4 f. Clearly convey EHP requirements, expectations, timelines, and information
5 needs to applicants as early in the project lifecycle as possible;
- 6 g. Coordinate with tribes and Federal, State, and local agencies during EHP
7 review to the extent practicable to increase efficiency and quality of EHP
8 review;
- 9 h. Employ EHP mitigation, monitoring, and adaptive management to the extent
10 practicable to inform FEMA decision-making and ensure commitments made
11 during EHP review processes are upheld (see section 2.3, part B for
12 discussion of adaptive management);
- 13 i. Comply with EHP requirements and, to the extent practicable, combine EHP
14 analyses into the NEPA analysis;
- 15 j. Use EHP review during disaster response and recovery to promote and
16 support sustainability and resilience in communities;
- 17 k. Identify and address disproportionately high and adverse impacts of policies,
18 programs, and actions on minority and low-income populations;
- 19 l. Adequately plan for and procure adequate resources to perform EHP review
20 of all actions; and
- 21 m. Comply with the revised Principles, Requirements, and Guidelines for Federal
22 Investments in Water Resources (PR&G), including the PR&G Guiding
23 Principles and General Requirements. See Chapter 4 for more information
24 about PR&G analysis, the Guiding Principles, and General Requirements.
25

26 **1.6 Definitions of Commonly Used Terms**

27
28 This section contains FEMA-specific definitions and generally accepted definitions of
29 terms used within this EHP Instruction and the EHP Directive (e.g., EHP Review
30 Process). For additional definitions, see CEQ regulations and DHS Instruction Manual
31 on Implementation of NEPA (DHS Instruction 023-01). Additional definitions specific to
32 the PR&G are listed in Chapter 4.

- 33 A. ACTION: The action implemented by FEMA. This includes projects, programs,
34 policies, and other activities proposed by FEMA and decisions on actions proposed
35 by applicants. Examples include Federal assistance for construction of
36 communication towers and utility repair to pre-disaster condition.
- 37 B. APPLICANT: Applicants include State and local governments, Indian tribes or
38 authorized tribal organizations, Alaskan Native Villages, individuals, and other
39 organizations, such as certain private nonprofit organizations, that apply for Federal
40 assistance from FEMA. Applicants that are successful in obtaining assistance are
41 formally identified as recipients or subrecipients. See 2 CFR part 200 for definitions
42 of recipient, subrecipient, and other terms associated with Federal awards.

FEMA INSTRUCTION 108-1-1

- 1 C. APPLICATION: The documents and information submitted to formally request
2 Federal assistance.
- 3 D. CONSULTATION: The process of seeking input, and sometimes approval, from a
4 resource/regulatory agency or tribe. Consultation may be formal or informal
5 depending on potential impacts of an action and specific regulatory requirements.
- 6 E. EHP APPROVAL AUTHORITY: A tiered authority to sign Records of Environmental
7 Consideration (REC), Findings of No Significant Impact (FONSI), Records of
8 Decision (ROD), or other EHP decision documents (e.g. Section 106 Memoranda of
9 Agreement [MOA], Biological Assessments, and others) as the EHP technical
10 recommendation. The EHP Approval Authority signature indicates a complete,
11 accurate, and legally sufficient EHP review process and associated document. DHS
12 delegates full EHP Approval Authority to the Director of OEHP who may further
13 delegate this authority. EHP Approval Authority is delegated up to a specific level of
14 authority to sign final decision documents (i.e. REC, EA/FONSI, or EIS/ROD, in
15 ascending level of authority), subject to separate requirements and qualification for
16 each level. EIS/ROD level EHP approval Authority includes authority to sign FONSI
17 and RECs, and EA/FONSI level EHP Approval Authority includes authority to sign
18 RECs. See section 2.7 in this Instruction and section VII, part C in the EHP Directive
19 for information.
- 20 F. EHP DECISION DOCUMENT: The document that concludes the EHP review
21 process by documenting that EHP considerations and compliance requirements
22 have been satisfied. The EHP decision document varies by EHP requirement; for
23 example, the NEPA EHP decision document is the REC, FONSI, or ROD.
- 24 G. EHP MITIGATION: Measures to avoid, minimize, rectify, or compensate for an
25 action's impacts that are negotiated during or result from EHP requirements.
- 26 H. EHP PERFORMANCE METRICS: Measurable indicators of compliance with EHP
27 requirements that track performance, identify weaknesses and risks, and promote
28 greater effectiveness, efficiency, and integration of the EHP review process across
29 FEMA and in all activities. Programs shall include discussion of metrics to be tracked
30 in their Program Implementation Plans. See section 1.6, part T for definition of
31 Program Implementation Plan.
- 32 I. EHP REQUIREMENTS: Statutes, regulations, and Executive Orders that FEMA
33 must comply with during the application process and implementation of a proposed
34 action. These requirements include, but are not limited to NEPA, section 106 of the
35 National Historic Preservation Act (NHPA), section 7 of the Endangered Species Act
36 (ESA), Executive Order 11988 Floodplain Management, and Executive Order 11990
37 Protection of Wetlands.
- 38 J. EHP RESOURCES: Environmental, cultural, and historic resources considered
39 during EHP review, such as habitat, historic properties, floodplains, wetlands, and
40 coastal zones.
- 41 K. EHP Reviewer: Staff who participate in the EHP review process in a supporting role
42 with limited focus on one or more specific EHP requirements to determine if a
43 proposed FEMA action requires further analysis, consultation, or elevation to a

- 1 higher authority based on the criteria of the particular EHP requirement for which
2 EHP Reviewer status is granted (e.g. ESA, Executive Order 11988, NHPA, etc.).
3 EHP Reviewers have particular qualifications and/or demonstrated expertise
4 applicable to one or more EHP requirements. The role of EHP Reviewers is limited
5 to support of EHP review in their particular area of expertise, and they must be
6 supervised by an individual who holds EHP Approval Authority. EHP Reviewers may
7 participate in drafting RECs and other EHP decision documents, but are not
8 authorized to sign any EHP decision documents or enter into consultations with
9 resource/regulatory agencies. EHP Reviewer status can be granted by staff with
10 EHP Approval Authority. For more information about EHP Reviewer status and the
11 requirements for receiving it see EHP Directive section VII, part C (11).
- 12 L. EHP REVIEW PROCESS: A formal review to address and document the
13 environmental planning and historic preservation considerations and compliance
14 requirements during program and project planning, development, and design; and
15 prior to implementation. The EHP review process may extend into implementation of
16 an action when EHP mitigation and/or monitoring are required to manage
17 environmental impacts.
- 18 M. EHP STAFF: Environmental specialists including the Director of OEHP, Regional
19 Environmental Officers (REO), Environmental and Historic Preservation Advisors
20 (EHAD), and those in their chains of command.
- 21 N. EMERGENCY: A natural or man-made disaster or other phenomenon of an
22 exceptional, inevitable, and irresistible character demanding immediate action for the
23 protection of human life, public safety, public health, or the environment and
24 avoidance of significant loss of property if it relates to one of the other factors. This
25 definition includes but is not limited to situations triggering emergency and major
26 disaster declarations by the President under the Stafford Act. Refer to section 2.5
27 and section 3.10 for more information on NEPA compliance for emergencies or
28 emergency actions.
- 29 O. FEDERAL ASSISTANCE: Aid that non-Federal entities receive or administer in the
30 form of grants, loans, loan guarantees, property (including donated surplus
31 property), cooperative agreements, interest subsidies, insurance, food commodities,
32 direct appropriations, funding mechanisms, and other support.
- 33 P. Issues of National Significance: Issues of a national scope and size or cross regional
34 scope, including those actions triggering an environmental impact statement (EIS),
35 that require OEHP coordination with the DHS Office of Sustainability and
36 Environmental Programs (SEP) and the Office of Chief Counsel (OCC).
- 37 Q. NON-FEDERAL REPRESENTATIVE: An applicant with express consent by FEMA
38 to carry out parts of the NEPA process for FEMA. A non-Federal representative may
39 fulfill other EHP requirements that allow such designations.
- 40 R. OFFICE OF ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION
41 (OEHP): OEHP integrates the protection and enhancement of environmental,
42 historic, and cultural resources into FEMA's mission, programs, and activities;
43 ensures that FEMA's activities and programs related to disaster response and

- 1 recovery, hazard mitigation, and emergency preparedness comply with Federal EHP
2 laws and Executive Orders; and provides EHP technical assistance to FEMA staff,
3 local, State, tribal, and Federal partners, and recipients and subrecipients. OEHP is
4 the headquarters office where the Director of OEHP, Environmental Officer (EO),
5 Federal Preservation Officer (FPO), and headquarters level EHP staff reside.
- 6 S. PROGRAM EHP ENDORSEMENT: Responsibility of program officials who hold
7 program decision-making and funding authority to review EHP decision documents,
8 understand all EHP conditions and mitigation included in EHP decision documents,
9 and ensure communication of all EHP conditions and mitigation to grant recipients
10 and subrecipients. This includes the responsibility to sign FONSI and RODS as co-
11 signatory with the EHP Approval Authority signature signifying agreement with the
12 purpose, need, and conclusions of the decision document. In cases where a
13 categorical exclusion applies to a proposed action, obligation of funding for the
14 action constitutes Program EHP Endorsement. Program EHP Endorsement confirms
15 that the responsible program decision-maker understands the EHP review and
16 commits the program to the EHP decision document along with all associated
17 conditions for EHP compliance. This responsibility applies to all FEMA officials who
18 make final decisions to commit Federal resources to any action.
- 19 T. PROGRAM IMPLEMENTATION PLAN: Plans developed by FEMA headquarters
20 programs and applicable offices detailing how the program and their regional
21 counterparts will carry out the requirements of this EHP Instruction and the EHP
22 Directive. Upon the Director of OEHP's approval of the plan, program staff may be
23 delegated limited EHP Approval Authority.
- 24 U. PROGRAMMATIC EHP MITIGATION: EHP mitigation measures established for a
25 group of projects or actions, implementation of a program, repetition of the same
26 activity over time, or a complex project or action.
- 27 V. PROPOSED ACTION: The project, plan, or program proposed by FEMA or an
28 applicant seeking Federal assistance from FEMA.
- 29 W. RECORD OF ENVIRONMENTAL CONSIDERATION (REC): A REC is an internal
30 FEMA administrative document that records the application of a categorical
31 exclusion (CATEX) or statutory exclusion (STATEX) to a specific proposed action.
32 FEMA's CATEXs are contained in Appendix A of DHS Instruction 023-01.
- 33 X. RESOURCE/REGULATORY AGENCIES: Agencies that have protection of the
34 environment and/or cultural resources as part of their mission and regulatory
35 authority, and review or evaluate applications for projects through consultations,
36 issuance of permits, or other determinations. Examples of resource/regulatory
37 agencies include the U.S. Fish and Wildlife Service, Environmental Protection
38 Agency, U.S. Army Corps of Engineers, and the National Oceanic and Atmospheric
39 Administration's National Marine Fisheries Service.
- 40 Y. STATUTORY EXCLUSION (STATEX): An action that is exempted from NEPA by
41 section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
42 42 U.S.C. 5159. See section 2.5, parts C and D for more detail.

1 Z. UNIFIED FEDERAL REVIEW (UFR) PROCESS: An interagency review process
2 applicable to disaster recovery projects that is designed to expedite and ensure
3 compliance with Federal EHP requirements and expedite the recovery process. For
4 more information on the UFR Process refer to [https://www.fema.gov/unified-Federal-
6 environmental-and-historic-preservation-review-presidentially-declared-disasters](https://www.fema.gov/unified-Federal-
5 environmental-and-historic-preservation-review-presidentially-declared-disasters).

7 **1.7 Reporting Requirements, Performance, and EHP Compliance**
8

- 9 A. In accordance with the roles and responsibilities detailed in the EHP Directive,
10 FEMA offices, programs, directorates, and regions will implement the following tasks
11 to track and report on EHP compliance:
- 12 1. Develop EHP performance metrics with assistance from the EO or the REO,
13 FPO, and Office of Policy and Program Analysis.
 - 14 2. Integrate EHP performance metrics into performance management plans and
15 position descriptions.
 - 16 3. Report EHP performance to the EO or REO and FPO. The EO will report EHP
17 performance to DHS Office of Sustainability and Environmental Programs (SEP),
18 which is responsible for oversight of NEPA implementation across DHS. For
19 reporting requirements please see DHS Instruction 023-01, section IV, part I:
20 *Performance Metrics and Reporting Requirements*.
 - 21 4. Conduct periodic internal audits of EHP reviews in coordination with the EO or
22 REO and FPO to monitor consistency and compliance with EHP requirements
23 and any OEHP guidance.
- 24 B. EHP performance metrics promote strategic evaluation of EHP compliance and
25 reflect management priorities, program goals, and organizational and staffing plans.

26
27 **CHAPTER 2: EHP COMPLIANCE PROCEDURES**
28

29 This chapter provides information and procedures for FEMA's EHP review, which may
30 include compliance with multiple EHP requirements. This chapter contains an overview
31 of information applicable to commonly encountered EHP requirements within FEMA, but
32 does not serve as implementing procedures for these EHP requirements (such as
33 section 7 of the ESA, Executive Order 11988, Executive Order 11990). This chapter
34 also ensures FEMA considers environmental justice impacts to minority and low-income
35 populations pursuant to Executive Order 12898.

36
37 This chapter contains information applicable to FEMA EHP review generally, including
38 EHP training and documentation requirements, procedures for supporting applicants for
39 Federal assistance, and, through development of Program Implementation Plans,
40 delegation of EHP Approval Authority to program staff for EHP review of projects that
41 may be categorically excluded from further NEPA review.
42

1 **2.1 Commonly Encountered EHP Requirements**
2

3 A. EHP requirements most commonly triggered by FEMA's various actions include
4 section 106 of the NHPA, section 7 of the ESA, Executive Order 11988: *Floodplain*
5 *Management*, Executive Order 11990: *Protection of Wetlands*, and NEPA. FEMA
6 offices, programs, directorates, and regions should, to the maximum extent
7 practicable, integrate compliance with these EHP requirements, adopting the
8 following practices in compliance activities:

- 9 1. Early Integration: FEMA will begin to comply with EHP requirements early in the
10 decision-making process.
- 11 2. Scoping: FEMA will scope a proposed action's potential impacts in order to
12 determine EHP requirements triggered, appropriate level of analysis, affected
13 stakeholders, and scope of review. FEMA will also consider reasonable
14 alternatives for each EHP requirement, as appropriate.
- 15 3. Consultation: If protected EHP resources are present in or near the project area,
16 consultation with appropriate agencies, tribes, the public, and other interested
17 parties may be required and documented for EHP reviews.
- 18 4. Lead and Cooperating Agencies: Section 3.3 of this EHP Instruction, Involving
19 Other Agencies, applies to other EHP requirements in addition to NEPA. FEMA
20 will seek to engage other agencies as cooperating agencies, and participate as a
21 lead, joint lead, or cooperating agency in accordance with section 3.3.
- 22 5. Impacts Analysis: FEMA will evaluate EHP resource impacts of the proposed
23 action and reasonable alternatives, including the no-action alternative, as
24 appropriate for each EHP requirement. The no-action alternative assumes
25 neither the proposed action nor any alternative will be implemented and is
26 analyzed to understand potential EHP impacts that could occur under existing
27 conditions without implementation of the proposed action or alternatives.
- 28 6. Public Involvement: NEPA or other EHP requirements may require a public
29 comment period. In addition to formal public comment periods, FEMA will to the
30 maximum extent practicable reach out to agencies, tribes, minority populations,
31 low-income populations, and the general public that could be affected by
32 proposed actions.
- 33 7. Documentation: EHP documentation will contain or reference the letter, permit, or
34 consultation documents necessary to comply with each EHP requirement
35 separately.
- 36 8. Using Existing EHP Analyses: FEMA has discretion to use analyses and
37 agreements prepared and/or negotiated by any FEMA office, program,
38 directorate, or region as well as Federal and State agencies so long as FEMA
39 maintains its own decision-making authority and documents the decision
40 reached. FEMA will use existing relevant EHP data, analyses, and
41 documentation during EHP reviews to increase efficiency. FEMA will employ
42 techniques such as incorporation by reference, tiering, adoption, and combining

FEMA INSTRUCTION 108-1-1

- 1 documents. See EHP Instruction section 3.6: *Using Existing NEPA Analyses* and
2 CEQ regulations, 40 CFR part 1502 for more information.
- 3 9. Timing: FEMA will not take actions in furtherance of a proposed action that would
4 limit the choice of reasonable alternatives until EHP review is complete. See EHP
5 Instruction section 3.7: *Timing of Agency Actions* for more information.
- 6 B. Environmental Justice: As part of the EHP review process, FEMA offices, programs,
7 directorates, and regions will identify and address, as appropriate, any
8 disproportionately high and adverse effects of proposed actions on minority and low-
9 income populations.
- 10 1. FEMA will work to ensure that potentially affected minority or low-income
11 populations have meaningful opportunities to participate in and have access to
12 information during EHP review, which may require providing information in other
13 languages for persons with limited English proficiency, providing information in
14 accessible formats for persons with disabilities, or overcoming other cultural,
15 institutional, or geographic barriers to meaningful participation. See Executive
16 Order 12898: *Federal Actions to Address Environmental Justice in Minority
17 Populations and Low-Income Populations and Environmental Justice: Guidance
18 under NEPA, CEQ (1997)*.
- 19 2. In conducting the environmental justice analysis, FEMA will identify and define a
20 proposed action's area of potential effect; make data-based determinations of the
21 presence of low-income or minority populations; conduct technical analyses to
22 identify potential impacts; and analyze whether minority and low-income
23 populations would disproportionately bear any high and adverse effects from
24 implementation of the proposal. FEMA will engage and consult with potentially
25 affected communities throughout this analysis, including in identifying potential
26 effects and mitigation measures. If FEMA's analysis indicates disproportionality,
27 FEMA will consider EHP mitigation to address those potential impacts. When
28 conducting this analysis for actions requiring review under NEPA, FEMA will
29 indicate in the NEPA document that the analysis is included to comply with
30 Executive Order 12898.
- 31 C. Updated PR&G for Federal Investments in Water Resources: FEMA will, to the
32 extent practicable, complete the analysis to comply with the PR&G issued in
33 December 2014 and integrate this analysis into the NEPA analysis. See Chapter 4
34 of this EHP Instruction for FEMA's ASP for implementing the PR&G.
- 35 D. UFR Process: FEMA complies with the UFR Process established by the Sandy
36 Recovery Improvement Act of 2013 (P.L. 113-2) for expediting and unifying EHP
37 reviews for disaster recovery projects. FEMA is a signatory of the *Memorandum of
38 Understanding Establishing the Unified Federal Environmental and Historic
39 Preservation Review Process for Disaster Recovery Projects* (UFR MOU) and
40 member of the UFR Steering Group that leads development and supports
41 implementation of the UFR Process.
- 42 1. As part of the UFR Process, FEMA supports:
43 a. Unification and standardization of EHP regulatory requirements;

FEMA INSTRUCTION 108-1-1

- 1 b. Development of standards and guidance for Federal agencies on EHP review
2 unification;
 - 3 c. Development of transparent and publicly available resources and tools to aid
4 in EHP compliance for applicants and other Federal agencies;
 - 5 d. Adoption of interagency agreements at both the national and disaster specific
6 level; and
 - 7 e. Continued development of the Natural and Cultural Resources Recovery
8 Support Function of the National Disaster Recovery Framework as a critical
9 coordinating function for disaster recovery.
- 10 2. As a participant of the UFR Process and in accordance with the UFR MOU
11 FEMA will:
- 12 a. Coordinate with other Federal agencies to share EHP data, analyses, and
13 documentation to streamline FEMA EHP reviews and increase community
14 resilience;
 - 15 b. Provide EHP guidance and tools that aid compliance with EHP requirements
16 in the context of disaster recovery to EHP practitioners and applicants who
17 support EHP reviews; and support the UFR EHP Practitioner’s Guidance and
18 EHP Applicant Guidance as the primary vehicles for unifying the EHP review
19 process during disaster recovery projects;
 - 20 c. Use interagency agreements, regulatory processes, and other tools to
21 expedite EHP reviews; and.
 - 22 d. Create greater transparency for applicants and Federal, State, and local
23 partners engaged in disaster recovery.

25 **2.2 Supporting Applicants for Grant Programs**

26
27 Note: Section 2.2 only applies to grant program activities.

28 FEMA programs and EHP staff will work with applicants to facilitate EHP review and
29 integrate EHP considerations into projects. Support will include provision of technical
30 assistance and working with applicants to refine scopes of work to meet EHP
31 requirements and consider ways to avoid, minimize, and mitigate potential EHP
32 impacts. Depending on program capabilities and complexity of the project and
33 associated EHP review, FEMA programs should work with OEHP, the REO, or EHP
34 cadre as needed.

35 A. EHP Review Process within the Grant Lifecycle: FEMA programs will work with
36 applicants to incorporate EHP review into project and grant lifecycles.

- 37 1. Step 1, Application Development: FEMA programs will help applicants integrate
38 EHP considerations and EHP review timeline into project planning, include EHP
39 costs in project budgets, and consider project alternatives to avoid, minimize, or
40 compensate for impacts based on the scope of work.

FEMA INSTRUCTION 108-1-1

- 1 2. Step 2, Pre-Award/Pre-Approval: FEMA programs will ensure that the
2 appropriate level of EHP review and documentation requirements are completed
3 before approval or awarding of a grant.
- 4 3. Step 3, Award/Approval: FEMA programs will communicate EHP conditions to
5 applicants in grant award documents so they are aware of grant conditions and
6 consequences of violation.
- 7 4. Step 4, Post Award/Post Approval: Once the project is implemented, FEMA
8 programs may work with applicants to gather success stories and identify
9 potential improvements in the EHP review process for future grants.
- 10 5. Step 5, Closeout and Monitoring: FEMA programs, with assistance from OEHP,
11 the REO, and/or FPO as necessary, will work with applicants during project
12 closeout processes to ensure EHP conditions and all other grant conditions for
13 the project award are met. FEMA programs will work with applicants to ensure
14 that monitoring commitments agreed to as part of the EHP review are
15 implemented and completed.
- 16 B. Coordination and Technical Assistance
- 17 1. FEMA programs will work with applicants for Federal assistance to gather
18 information about potential EHP impacts and provide guidance to avoid,
19 minimize, and mitigate impacts during initial project planning and development.
- 20 2. FEMA programs will describe in their Program Implementation Plans how they
21 will ensure that applicants submit complete information for EHP review. Refer to
22 section 2.8 for more information on Program Implementation Plans.
- 23 3. FEMA programs, with assistance from the EO, REO, FPO, and EHP cadre as
24 appropriate, should provide applicant guidance on requirements for scope of
25 work submittal and any other information collection forms required for evaluation
26 of proposed actions. To conduct EHP review, grant applicants must provide
27 adequate project scopes of work and project alternatives, as applicable.
28 Guidance describing requirements for scope of work and EHP information
29 provision may include:
 - 30 a. When to contact FEMA during the planning process;
 - 31 b. Requirements to notify FEMA if seeking funding or Federal assistance from
32 any other Federal agency;
 - 33 c. Studies and surveys that applicants may conduct, as deemed necessary and
34 appropriate by FEMA, to determine potential EHP impacts of proposed
35 actions or alternatives;
 - 36 d. Information necessary to initiate EHP review;
 - 37 e. When to submit permit applications for Federal, regional, State, tribal, and
38 local approvals;
 - 39 f. Procedures for consulting with tribes and Federal, regional, State, and local
40 agencies to ensure all environmental factors are identified during project

FEMA INSTRUCTION 108-1-1

- 1 planning. This consultation is separate and distinct from other consultations
2 that may be necessary to satisfy EHP compliance requirements;
- 3 g. Notification requirements when applicants act as intermediary between FEMA
4 and other entities when other Federal, State, local, or tribal actions may
5 impact or affect the FEMA grant project;
- 6 h. Requirements to notify parties potentially affected by or interested in the
7 proposed action; and
- 8 i. Information requirements for project and site descriptions, such as description
9 of site conditions, sensitive resources in the project area, alternatives to the
10 proposed action, other EHP processes and requirements planned or
11 undertaken that involve other Federal agencies, public outreach information,
12 and identification of interested stakeholders.
- 13 4. As part of information gathering or informal consultation, FEMA programs may
14 ask applicants to:
- 15 a. Identify any EHP resources potentially impacted by the proposed action;
16 b. Conduct research for publicly available information related to EHP resources
17 and include the information in the project application;
- 18 c. Correspond with appropriate resource/regulatory agencies about project
19 location and description; and
- 20 d. Ask resource/regulatory agencies about concerns with the proposed action.
- 21 5. Upon receipt of an application or notification that an application will be filed,
22 FEMA programs will consult with other parties, as appropriate, to initiate and
23 coordinate EHP reviews.
- 24 6. Following applicant submission of grant applications and EHP review information
25 collection forms, FEMA programs will notify applicants if additional EHP
26 information is required. FEMA will not conclude EHP review until all necessary
27 information is received.
- 28 7. If additional information is requested, FEMA programs will work with applicants to
29 acquire it.
- 30 8. For further instruction on coordination with applicants see DHS Instruction 023-
31 01, section VII: *Review of Applications from Persons or Organizations Outside of*
32 *DHS*.
- 33 C. Applicant Participation
- 34 1. FEMA programs will provide guidance and oversight to applicants who
35 participate in EHP review prior to and during EHP document development. FEMA
36 programs will not accept applicant-prepared information if program guidance is
37 not followed. FEMA programs will ensure staff with the appropriate level of EHP
38 Approval Authority review applicant-submitted EHP documents and verify that
39 the documents meet all applicable EHP requirements prior to adopting them as
40 FEMA documents.

FEMA INSTRUCTION 108-1-1

- 1 2. Applicants may organize public involvement and/or prepare EHP compliance
2 documents and technical studies in support of grant applications, such as
3 environmental assessments (EAs), environmental impact statements (EISs),
4 biological assessments, archaeological surveys, cultural resource surveys,
5 population surveys within affected areas, wetland delineation studies, air quality
6 impact analyses, or other studies necessary to identify, minimize, avoid, or
7 mitigate EHP impacts of proposed projects. Applicants may also support
8 development of agreement documents (e.g., NHPA Memoranda of Agreement).
 - 9 3. FEMA retains all formal consultation obligations with tribes and
10 resource/regulatory agencies under ESA, NHPA, and other EHP requirements.
 - 11 4. Ultimate responsibility for all EHP compliance and agency decisions remains with
12 FEMA.
- 13 D. Designation as a Non-Federal Representative
- 14 1. The REO or REO's representative may designate an applicant a non-Federal
15 representative to assist with informal consultations for EHP requirements that
16 allow such designations (e.g. section 7 of the ESA at 50 CFR part 402.08;
17 section 106 of the NHPA at 36 CFR part 800.2(c)(4)). In cases where non-
18 Federal representatives may assist with informal consultations, the REO should
19 utilize this flexibility to expedite EHP reviews when practicable.
 - 20 2. In deciding whether to grant non-Federal representative status to an applicant,
21 the REO or REO's representative will carefully consider the applicant's capacity,
22 expertise, and past performance in conducting EHP reviews and consultations.
23 The REO or REO's representative will consider whether designation will improve
24 efficiency of EHP review without sacrificing quality. Designation of a non-Federal
25 representative does not diminish FEMA's authority and responsibility to make
26 final EHP review determinations.
 - 27 3. If non-Federal representative status is granted, FEMA retains formal consultation
28 responsibilities and provides applicants with stipulations regarding the timing and
29 scope of informal consultations. If these stipulations are not followed, the REO or
30 REO's representative will revoke non-Federal representative status.
 - 31 4. The REO may revoke non-Federal representative status at any time for
32 unsatisfactory performance.
- 33 E. Changes in Project Plans
- 34 1. FEMA programs will inform applicants of the need to notify FEMA of changes to
35 a proposed action, alternatives, project schedule, or scope of work prior to any
36 project activities taking place.
 - 37 2. When changes to project plans create new circumstances or information that
38 affect the outcome of or is not represented in an existing EHP review, FEMA
39 programs will seek assistance from applicants to prepare supplemental or
40 additional EHP analyses as needed to comply with EHP requirements.
- 41 F. Denial of a Proposed Action

FEMA INSTRUCTION 108-1-1

- 1 1. FEMA programs may deny an application if the proposed action’s impacts, EHP
2 review preparation costs, or costs of EHP mitigation measures substantially
3 outweigh the proposed action’s costs or monetary and non-monetary benefits.
- 4 2. FEMA programs may deny an application if EHP compliance cannot be
5 achieved.
- 6 3. FEMA programs may deny an application if an applicant fails to provide
7 requested EHP information or takes action that limits the choice of reasonable
8 alternatives before EHP review is complete. Actions initiated and/or completed
9 before fulfilling specific documentation and procedural requirements of EHP
10 review may not be considered for funding. See section 2.5: *Emergencies* and
11 section 3.10, part B: *Emergencies* for exemptions from the requirement to
12 complete EHP review before initiating an action.

13 G. Post-Award Activities

- 14 1. FEMA programs may withhold all or partial funding assistance for projects if
15 recipients do not adhere to EHP conditions, mitigation, and/or monitoring
16 requirements specified as grant conditions in award documents.
- 17 2. For requirements to ensure EHP mitigation is implemented and monitored see
18 DHS Instruction 023-1, section V, part E: *Mitigation and Monitoring*.

20 **2.3 Implementing the Action**

21 A. EHP Mitigation and Monitoring

- 23 1. FEMA will require the implementation of required EHP mitigation measures to
24 avoid or minimize impacts to EHP resources. FEMA may implement mitigation
25 directly or make mitigation a grant condition. Avoidance measures are the
26 preferred method of EHP mitigation. Only when avoidance cannot be achieved
27 because it is not feasible, practicable, or reasonable, may FEMA consider
28 minimizing, rectifying, or compensating for the impacts of an action, in that order.
- 29 2. EHP mitigation measures will be identified in EHP review documentation and
30 appropriate award documents and made available to decision-makers.
- 31 3. If a recipient does not adhere to EHP mitigation or monitoring requirements
32 agreed to during EHP review, FEMA may deobligate funding for the project. See
33 44 CFR part 13.43.

34 B. Adaptive Management

- 35 1. Adaptive management is a deliberate, iterative, and science-based process of
36 designing, implementing, monitoring, and adjusting an action, measure, or
37 project to address changing circumstances and outcomes, reduce uncertainty,
38 and maximize one or more goals over time. FEMA may use adaptive
39 management to facilitate implementation changes and ensure impacts are
40 accurately described in final EHP analyses, decision documents, and award
41 documents, as applicable. Adaptive management is most appropriate when:

FEMA INSTRUCTION 108-1-1

- 1 a. Long-term impacts of proposed actions are uncertain and monitoring is
2 needed to make adjustments in subsequent implementation decisions;
- 3 b. Implementing decisions made in programmatic EHP reviews; or
- 4 c. Reviewing an application from a repeat applicant that had EHP mitigation or
5 monitoring requirements included as part of a previous award.
- 6 2. FEMA programs, with assistance from OEHP when needed, should monitor
7 projects and EHP mitigation commitments, and as new information becomes
8 available and to the extent that FEMA retains discretion over the action, adapt
9 implementation if more practicable, effective, and reasonable approaches are
10 determined.
- 11 C. Compliance Costs
- 12 1. Offices, programs, and directorates will ensure that there is adequate funding
13 allocated for EHP review of FEMA actions. Lack of funding may result in non-
14 compliance with the EHP Directive and other EHP requirements.
- 15 2. Offices, programs, and directorates will track EHP compliance costs as described
16 in EHP Directive section VII, part A (3).
- 17 3. Offices, programs, and directorates should provide for funding of EHP review
18 through direct funding or provision of policies or guidance establishing how EHP
19 review will be funded. Methods for providing funding for EHP review include, but
20 are not limited to:
 - 21 a. Directly funding EHP review when an action is under full FEMA control (e.g.
22 new construction or renovation of a FEMA facility, temporary group housing
23 site, evaluation of a FEMA program or policy, etc.);
 - 24 b. Directly funding EHP review for FEMA funded actions of non-Federal entities;
 - 25 c. Establishing EHP review as an eligible cost on a project-by-project basis as
26 allowed under program guidance and rules;
 - 27 d. Stipulating in policy or grant guidance that applicants may be responsible for
28 bearing the costs of EHP review if an applicant pursues an activity that is not
29 the original intent of the application (e.g. alternate or improved projects); and
 - 30 e. Directly funding preparation of programmatic EHP reviews when costs are
31 reasonable and preferable due to cost savings.
- 32 4. EHP mitigation costs: Each FEMA office, program, and directorate is responsible
33 for ensuring adequate funding for required EHP mitigation measures, subject to
34 program eligibility criteria. Offices, programs, and directorates should provide for
35 funding of EHP mitigation through direct funding or provision of policy or
36 guidance establishing how and/or under what conditions EHP mitigation may or
37 may not be funded. Methods for addressing costs of EHP mitigation include:
 - 38 a. Direct Funding

FEMA INSTRUCTION 108-1-1

- 1 i. Directly funding EHP mitigation when the action is under full FEMA control
2 (e.g., new construction or renovation of a FEMA facility, temporary group
3 housing site, evaluation of FEMA program or policy, etc.);
- 4 ii. Directly funding EHP mitigation for FEMA funded actions of non-Federal
5 entities; and
- 6 iii. Directly funding programmatic EHP mitigation when costs are reasonable
7 and preferable due to cost savings. See section 1.6, part U for a definition
8 of programmatic EHP mitigation.
- 9 b. Policy and Guidance
- 10 i. Establishing thresholds for excluding proposed actions from consideration
11 based on level of adverse impact to the environment or historic properties
12 and level of required EHP mitigation (e.g. projects with significant wetland
13 impacts or that jeopardize the continued existence of species);
- 14 ii. Making ineligible by type or cost certain EHP mitigation measures (e.g.
15 hazardous materials/waste remediation) on a program-wide basis and
16 requiring applicants to assume responsibility for such mitigation; and
- 17 iii. Establishing EHP mitigation as an eligible project-specific cost subject to
18 any limitations established in program guidance or written agreement
19 between FEMA and a recipient.
- 20 5. EHP Permit Costs: The FEMA office, program, or directorate that sponsors an
21 action is responsible for program eligible EHP permit costs when it has full
22 control over the action and has sole discretion over selection of alternatives. EHP
23 permit costs for FEMA grant assistance projects are eligible costs in accordance
24 with the grant program's eligibility criteria and consistent with the program's
25 administrative constraints.
- 26 6. EHP Monitoring Costs: The FEMA office, program, or directorate that sponsors
27 an action is responsible for construction and post-construction EHP monitoring
28 costs when it has full control over the action that requires EHP monitoring. FEMA
29 grant programs may meet their responsibilities for construction-related EHP
30 monitoring by making monitoring costs eligible for program funding, by
31 undertaking monitoring with program resources, or by providing an alternative
32 method through written agreement as documented in grant conditions. FEMA
33 recipients bear responsibility for and costs of post-construction EHP monitoring
34 activities.
- 35 7. Cross-Program Costs: If multiple FEMA offices, programs, or directorates provide
36 funding for the same action, EHP compliance costs will be shared proportionally
37 among the responsible offices, programs, and directorates. Each entity will
38 provide the same proportion of compliance costs as it provided of the total FEMA
39 funding for the action.
- 40 8. Interagency Agreements: FEMA programs, in coordination with the EO or the
41 REO, FPO, and the Office of Chief Counsel (OCC), may enter into interagency
42 agreements with Federal agencies responsible for the protection and

1 management of natural and cultural resources. Interagency agreements can be
2 used to expedite EHP review of FEMA projects and/or to ensure that technical
3 expertise is available generally or to help address complex compliance issues.
4 Costs for such agreements will be borne by the FEMA program sponsoring the
5 action. This section should be interpreted consistently with appropriations laws
6 and other legal restrictions or requirements.
7

8 **2.4 Conflict and Dispute Resolution**

9 10 A. Interagency and External Conflicts

- 11 1. FEMA programs, in coordination with the EO or the REO, FPO, and OCC, will
12 seek to resolve disputes that may arise with other Federal agencies, tribes,
13 States, or local governments before elevating a dispute to DHS. FEMA will use
14 widely accepted conflict resolution techniques to resolve conflicts related to EHP
15 concerns. When there is an existing regulatory framework or agreement that
16 governs the conflict resolution process (e.g. programmatic agreement), the
17 procedures in the existing framework will be used. If there is no existing dispute
18 resolution framework, FEMA will pursue the following steps:
- 19 a. If a FEMA program involved in a dispute cannot resolve the dispute on its
20 own, OEHP will seek to resolve the dispute on behalf of the concerned FEMA
21 program or directorate.
 - 22 b. For disputes that cannot be resolved within FEMA, OEHP will elevate the
23 dispute to SEP according to DHS Instruction 023-01, section IV, part C (4).
24 For guidance on coordination and elevation of issues to DHS, see DHS
25 Instruction 023-01, section IV, part D: *Collaboration* and section IV, part E:
26 *Dispute Resolution*.
- 27 2. See CEQ Regulation 40 CFR 1504 for the CEQ referral process and 36 CFR
28 800.11 for the Advisory Council on Historic Preservation dispute resolution
29 process.

30 B. Internal Disputes

- 31 1. Headquarters dispute resolution: If a dispute arises between headquarters
32 program staff and OEHP staff regarding a Program Implementation Plan or other
33 EHP-related matter that cannot be resolved by the disputants, the dispute shall
34 be elevated to the Director of OEHP for resolution.
- 35 2. Regional dispute resolution: If a dispute arises between program staff and the
36 REO regarding use of EHP Approval Authority that cannot be resolved by the
37 disputants to the REOs satisfaction, the REO will ask the EO to review the
38 proposed action and resolve the dispute. The EO will determine whether the use
39 of EHP Approval Authority is consistent with the program's implementation plan.
40 The EO will then advise the program staff and REO in the appropriate course for
41 EHP compliance. If the program staff fails to follow the EO's recommendation,
42 the EO will determine whether to formally review the program's use of EHP
43 Approval Authority.

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2.5 Emergencies

- A. Legal Exemption: FEMA will determine whether a legal exemption applies to any EHP requirements for a proposed emergency action.
- B. PR&G do not apply when there is emergency work essential to save lives and protect property, public health, and safety performed under sections 403 and 502 of the Stafford Act (42 U.S.C. 5170b and 5192).
- C. Stafford Act Declaration: In the event of a Stafford Act declaration, some emergency response actions taken by state and local authorities and individuals prior to the declaration may be exempt from EHP requirements. FEMA may provide funding for certain actions taken in direct response to a disaster event that did not undergo EHP review, provided the actions satisfy other eligibility requirements as established by FEMA programs.
- D. Actions taken or assistance provided pursuant to Stafford Act 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 such cases no NEPA documentation is required and no coordination with the EO would be required. Be aware that these exclusions do not relieve FEMA of the responsibility to comply with other Federal statues, permits, and requirements such as the NHPA, ESA, section 404 of the Clean Water Act, and Executive Orders 11988, 11990, and 12898.
- E. Programmatic EHP Review and Existing Documentation: In cases where programmatic consultations, memoranda of agreement, biological assessments, general permits, and other EHP reviews have already been conducted for an emergency action, FEMA will incorporate existing documentation into its own analyses and documentation.
- F. Emergency Consultations and Notifications: If an emergency action is not legally exempt from EHP review and no previous EHP review covers the action, emergency consultation with appropriate resource/regulatory agencies may be required. FEMA will consult with appropriate resource/regulatory agencies as soon as possible.

2.6 EHP Training Requirements

- A. Required EHP training is a prerequisite for any EHP staff or program staff to receive EHP Approval Authority. See section 1.6, part E for a definition of EHP Approval Authority. Completion of Independent Study (IS) 253: *Overview of FEMA’s Environmental and Historic Preservation Review* is a minimum requirement to receive delegation of EHP Approval Authority; if this course title changes, the equivalent class applies.
- B. All candidates for EHP Approval Authority delegations must satisfy requirements specified in their respective Program Implementation Plans. See section 2.8:

1 *Program Implementation Plans* and EHP Directive section VII, part C: *Delegation*
2 *Procedures for EHP Approval Authority.*

- 3 C. Every other year, individuals with EHP Approval Authority are required to complete
4 an environmental course (either online or in-person) that broadens their current
5 expertise. Copies of certificates must be submitted to the EO as proof of course
6 completion by the anniversary date of their delegation of EHP Approval Authority. If
7 biennial training is not completed, the delegated authority will be rescinded.
8

9 **2.7 Role of EHP Approval Authority and Program EHP Endorsement**

- 10
11 A. The EHP Directive establishes a dual signatory process for FONSI and RODs. Both
12 a program decision-maker and a technical EHP expert must review and approve
13 EHP decision documents. The program decision-maker's responsibility to approve a
14 document, referred to as Program EHP Endorsement, confirms understanding of
15 and commitment to decisions described in decision documents. The authority to
16 provide the technical approval and signature is referred to as EHP Approval
17 Authority and represents the technical EHP expert's concurrence that the analyses
18 are scientifically sound, based on best available data, and meet the requirements of
19 NEPA, CEQ regulations, DHS Instruction 023-01, the EHP Directive, and this EHP
20 Instruction. See section 1.6 for definitions of EHP Approval Authority and Program
21 EHP Endorsement.
- 22 B. Role of EHP Approval Authority: EHP staff or program staff with delegated EHP
23 Approval Authority will sign EHP documentation to verify compliance with EHP
24 requirements and make technical recommendations regarding EHP impacts of a
25 proposed action.
- 26 1. Program staff may hold REC level EHP Approval Authority if the FEMA program
27 is in compliance with the EHP Directive and Instruction and program staff have
28 satisfied EHP training requirements according to the EHP Directive, Instruction,
29 and the program's implementation plan. Program staff will not receive EHP
30 Approval Authority for EAs or EISs.
- 31 2. The EO, REO, or other EHP staff with delegated EHP Approval Authority will
32 oversee development of EAs, EISs, and other EHP reviews according to section
33 VII, part B of the EHP Directive. REOs will oversee development of EAs and
34 EISs in the regions. REOs will monitor compliance with EHP requirements and
35 appropriate use of EHP Approval Authority in the regions.
- 36 C. Role of Program EHP Endorsement: Program officials responsible for Program EHP
37 Endorsement decide whether to proceed with a proposed action. In order to
38 proceed, the responsible decision-maker must acknowledge understanding of the
39 EHP analysis, commit to the decision document (REC, FONSI, or ROD), and
40 manage the proposed action accordingly. Programs must indicate in their Program
41 Implementation Plans the titles and administrative levels of staff who may be allowed
42 to fulfill Program EHP Endorsement.
43

1 **2.8 Program Implementation Plans**

2
3 A. Each FEMA program or office whose actions are regularly subject to EHP review,
4 within six months from issuance of the EHP Directive and Instruction unless an
5 extension is requested and granted by the Director of OEHP, will submit to OEHP an
6 implementation plan, using the OEHP Program Implementation Plan template, that
7 explains how the program will carry out this EHP Instruction and the EHP Directive.
8 Program staff will not be delegated EHP Approval Authority before Program
9 Implementation Plans are submitted and approved by the Director of OEHP.

- 10 1. Programs will determine, in coordination with the Director of OEHP and
11 consistent with the EHP Directive, minimum standards for program staff to
12 receive delegation of REC level EHP Approval Authority. The Director of OEHP
13 or his/her designee will delegate EHP Approval Authority to individuals according
14 to the agreed upon standards in the program's implementation plan.
- 15 2. Headquarters programs will develop one implementation plan for their respective
16 program area for the agency. FEMA's regional offices may choose to develop
17 regional implementation plans tiered off the headquarters plan in order to more
18 effectively implement EHP compliance in regional operations. Headquarters is
19 ultimately responsible for ensuring that any regional plans conform within the
20 parameters of headquarters requirements.

21 B. OEHP will approve or deny each program's implementation plan within 120 days of
22 receipt. Upon approval, the Director of OEHP or his/her designee will delegate REC
23 level EHP Approval Authority to the individuals specified by the FEMA program.

24 C. Until OEHP approves a program's implementation plan, the program will continue
25 with current operations understanding that an implementation plan is required for
26 program staff to receive delegations of EHP Approval Authority.

27 D. If a program does not submit an implementation plan to OEHP within six months, or
28 if OEHP denies a program's implementation plan and the program fails to work with
29 OEHP to amend the implementation plan, then the Director of OEHP will not
30 delegate EHP Approval Authority to individuals within that program, and any ongoing
31 program operations that use EHP Approval Authority will stop and revert to
32 appropriate EHP staff.

- 33 1. If a program fails to submit an acceptable program implementation plan within
34 the allotted timeframe, OEHP will issue a letter to directorate leadership that
35 states that the program is out of compliance with the EHP Directive and
36 Instruction and requests a timeframe for when the program will achieve
37 compliance. If a timeframe is not provided within 60 days, OEHP will raise the
38 issue to FEMA Front Office leadership.

- 39 2. OEHP will reconsider EHP Approval Authority if the program submits an
40 implementation plan at a later date, at which time OEHP will review and approve
41 or deny the implementation plan.

- 1 E. The REO retains authority to oversee program compliance with the implementation
2 plan at the regional level. The REO will work with the program and OEHP if there are
3 concerns regarding compliance with the program's implementation plan.

4
5 **2.9 EHP Documentation**

- 6
7 A. FEMA will document CATEXs, EAs, EISs, and every other EHP review process that
8 requires documentation in the official system of record. FONSI and RODs will have
9 signatures for EHP Approval Authority and Program EHP Endorsement. See section
10 2.7 of this Instruction for explanation of EHP Approval Authority and Program EHP
11 Endorsement.
- 12 B. FEMA will use the Decision Support System (DSS) as its official system of record
13 once it meets FEMA data and storage needs, as described in DHS Instruction 023-
14 01, section IV, part F: *EP&HP Decision Support System*. FEMA will continue to use
15 the FEMA Emergency Management Information System (EMIS), National
16 Emergency Management Information System (NEMIS), and Mitigation electronic
17 Grants system (eGrants) as official systems of record until the DSS is completed
18 and integrated with grant program systems to meet data, knowledge, and storage
19 needs. Upon satisfaction of FEMA requirements, the DHS DSS will replace EMIS,
20 NEMIS, and eGrants and contain the same information as those systems. Programs
21 are required to file EHP documentation.

22
23 **CHAPTER 3: NEPA IMPLEMENTING PROCEDURES**

24 **3.1 Apply NEPA Early in the FEMA Decision-making Process**

- 25
26 A. When considering initial proposals for a major Federal action (defined at 40 CFR
27 1508.18), FEMA will begin evaluation of potential EHP impacts by reviewing existing
28 EHP information and documentation.
- 29 B. FEMA programs, in coordination with the EO or REO and FPO, will collaborate with
30 Federal, State, tribal, and local agencies when those agencies are participants in or
31 will be potentially affected by a proposed action. Collaboration includes negotiation
32 of roles, responsibilities, and procedures for NEPA reviews. See section 3.3 of this
33 EHP Instruction for a discussion of lead and cooperating agencies.
- 34 C. FEMA will balance public involvement in the NEPA process with the need to protect
35 personal, national security, sensitive, and classified information. For information on
36 consideration of national security interests during the NEPA process see DHS
37 Instruction 023-1, section IV, part G: *Public Involvement*.
- 38 D. For additional information about integrating NEPA with other planning efforts at the
39 earliest possible stage before an irretrievable commitment of resources or limiting
40 the choice of reasonable alternatives, see DHS Instruction 023-01, section IV, part
41 A: *Decision-Making and Integration of NEPA with DHS Missions*.

1 **3.2 Determining the Appropriate Level of NEPA Review**

2
3 A. Scoping

- 4 1. FEMA will determine the range of issues that needs to be addressed and level of
5 documentation required during the scoping process. As part of the scoping
6 process, FEMA may establish time limits for the NEPA process and hold early
7 scoping meetings to engage stakeholders and the general public. A FEMA official
8 with the appropriate level of EHP Approval Authority will lead these scoping
9 efforts.
- 10 2. FEMA will first determine if either a STATEX under the Stafford Act or CATEX as
11 described in Appendix A of the DHS Instruction 023-01 fits the type of activities
12 described in the proposed action. The determination will be made by staff with
13 the appropriate level of EHP Approval Authority.
- 14 a. If a STATEX applies the action is excluded from NEPA review and no
15 documentation is required.
- 16 b. If a CATEX applies and no extraordinary circumstances are present, once a
17 REC is completed and recorded in the official system of record, the NEPA
18 process is complete. If extraordinary circumstances result in the potential for
19 significant impacts from the proposed action, unless impacts can be mitigated
20 to a level below significant impact, it is not appropriate to apply a CATEX to
21 the proposed action.
- 22 i. FEMA staff with the appropriate level of EHP Approval Authority will
23 determine if other EHP requirements beyond NEPA apply (e.g. NHPA,
24 ESA, etc.), and conduct the appropriate EHP analyses in accordance with
25 the applicable EHP requirements.
- 26 ii. For a list of extraordinary circumstances and criteria for determining
27 whether a CATEX may apply, see DHS Instruction 023-01, Appendix A for
28 a list of CATEXs and section V: *Procedures for Implementing NEPA*.
- 29 c. If neither a STATEX nor CATEX applies, the EA or EIS scoping process
30 begins. The REO, Deputy REO (DREO), or other EHP staff with the
31 appropriate level of EHP Approval Authority will lead the scoping effort. In
32 some cases, applicants designated as non-Federal representatives may fulfill
33 this role for FEMA. See section 2.2 of this EHP Instruction for further
34 explanation of the applicant's role in the NEPA process. For information on
35 whether to conduct an EA or EIS, see DHS Instruction 023-01, section V, part
36 A: *Overview of NEPA Requirements* and CEQ regulations 40 CFR 1501.3
37 and 1501.4.

- 38 B. Determining the Significance of FEMA's Actions: In order to determine the
39 appropriate level of NEPA review FEMA will consider the significance of a proposed
40 action. A proposed action's significance depends upon its context and duration and
41 the intensity of its potential impacts. See CEQ regulation 40 CFR 1508.27 for
42 information about the evaluation of "context" and "intensity."

FEMA INSTRUCTION 108-1-1

- 1 1. If potential impacts are unknown or unlikely to generate significant impacts,
2 FEMA will prepare an EA. The REO, DREO, or other EHP staff with the
3 appropriate level of EHP Approval Authority will oversee EA preparation. See
4 CEQ regulation 40 CFR 1501.3 for additional information about the use of an EA.
5 EHP staff will normally prepare an EA:
 - 6 a. For a programmatic EHP review which thereafter can serve as the
7 environmental assessment for a class of actions that are not expected to
8 result in adverse environmental impacts and which would not be expected to
9 require an EA or EIS;
 - 10 b. If an action will result in changes within an already developed area and not
11 substantially affect undeveloped land, wildlife populations and their habitats,
12 other important natural resources such as floodplains and wetlands, or
13 cultural resources such as historic properties; or
 - 14 c. If an action will not result in major adverse impacts and no categorical
15 exclusion exists for the action.
- 16 2. FEMA will prepare an EIS for actions that are likely to result in significant impacts
17 on the human environment. Prior to beginning the formal scoping process, FEMA
18 will publish a notice of intent (NOI) in the Federal Register to announce the
19 preparation of an EIS. The REO, DREO, or other EHP staff with the appropriate
20 level of EHP Approval Authority may prepare the EIS in consultation with the EO.
21 The EO may lead the EIS at his/her discretion. See CEQ regulation 40 CFR
22 1501.4 for when to prepare an EIS and 40 CFR 1501.7 for scoping an EIS. The
23 EO or his/her designee will normally prepare an EIS:
 - 24 a. If an action will result in extensive change in land use or commitment of a
25 large area of land;
 - 26 b. If an action will result in land use change that is incompatible with existing or
27 planned land use of the surrounding area;
 - 28 c. If an action's environmental impact is likely to be controversial;
 - 29 d. If an action will substantially affect wildlife populations and their habitats,
30 endangered species, important natural resources, floodplains, wetlands,
31 estuaries, beaches, dunes, unstable soils, aquifer recharge areas, or delicate
32 or rare ecosystems;
 - 33 e. If an action will result in major adverse impacts on air or water quality;
 - 34 f. If an action will adversely affect a historic property that is either listed or
35 eligible for listing on the National Register of Historic Places, and if, after
36 consultation with the Advisory Council on Historic Preservation, an EA is
37 deemed insufficient;
 - 38 g. If an action is one of several actions underway or planned for an area, and
39 the cumulative impact of these actions is considered significant in terms of the
40 above criteria;

- 1 h. If an action is similar to previous actions determined to require an
- 2 environmental impact statement; or
- 3 i. For the creation, modifications to the implementation, or reformation of a
- 4 nationwide FEMA program, with known or potentially significant impacts to
- 5 the environment.

6 C. Identification of Alternatives for an EA or EIS

- 7 1. Program staff, in consultation with applicants and with assistance from EHP staff,
- 8 will identify all reasonable alternatives to the proposed action. Reasonable
- 9 alternatives include all feasible and practical actions from a technical and
- 10 economic standpoint. Reasonable alternatives that are not within FEMA's
- 11 authority or that are not an applicant's preferred alternative will also be
- 12 considered.
- 13 2. Program staff, with assistance from EHP staff, will consider reasonable
- 14 alternatives and the no-action alternative.
- 15 3. Program staff, in consultation with EHP staff, will identify a preferred alternative
- 16 for the purposes of preparing an EIS.
- 17 4. See CEQ regulation 40 CFR 1502.14 for discussion of development of
- 18 alternatives to the proposed action.

19 D. Issues of Scale: Tailoring the NEPA Analysis

- 20 1. FEMA will tailor NEPA analyses to the nature and scope of the proposed action
- 21 and potential impacts.
- 22 2. The scope of NEPA analyses may be programmatic or project/site specific.
- 23 3. FEMA will focus analysis on significant environmental issues and alternatives
- 24 and discuss impacts in proportion to their significance. Complex proposals with
- 25 potentially significant impacts warrant broader and deeper analysis.

26

27 **3.3 Involving other Agencies**

28

29 FEMA will coordinate and cooperate with other agencies, in both other agencies' and
30 FEMA's EHP reviews, in order to ensure that EHP review is comprehensive, accurate,
31 and efficiently completed. Coordination may be formal or informal, as described below.
32 These approaches are consistent with the UFR Process for interagency coordination of
33 efficient EHP reviews.

34 A. FEMA as a Lead or Joint Lead Agency

- 35 1. FEMA will act as lead agency for proposed actions that are solely funded,
- 36 planned, or approved by FEMA.
- 37 2. FEMA may serve as lead or joint lead agency for the NEPA process when
- 38 multiple Federal agencies are involved in the same proposed action. See CEQ
- 39 regulation 40 CFR 1501.5 for factors that inform this decision.

FEMA INSTRUCTION 108-1-1

- 1 3. For general requirements of serving as lead or joint lead agency, see DHS
2 Instruction 023-01, section V, part F: Cooperating and Joint Lead Agency
3 Relationships.
- 4 B. Responsibilities of a Cooperating Agency in the FEMA NEPA Process
- 5 1. FEMA may allow other agencies to participate as a cooperating agency in its
6 NEPA process.
- 7 2. The EO, REO, or other EHP staff will coordinate requests to other agencies to
8 participate as a cooperating agency in FEMA's NEPA process. To be accepted
9 as a cooperating agency, the agency must have jurisdiction by law or expertise in
10 EHP concerns related to the proposed action. FEMA may initiate a request to
11 another agency to participate as a cooperating agency when the agency's
12 participation in FEMA's NEPA process would provide technical or other expertise
13 that would contribute to the effectiveness of the EHP compliance process.
- 14 3. Cooperating agencies may include tribal governments and non-Federal agencies
15 when appropriate.
- 16 C. FEMA as a Cooperating Agency in another Agency's NEPA Process
- 17 1. As a cooperating agency, FEMA will participate in another agency's NEPA
18 process to the extent practicable. For FEMA requirements for participation in the
19 NEPA process as a cooperating agency and instructions for when FEMA may
20 accept requests to participate in another agency's NEPA process, see DHS
21 Instruction 023-01, section V, part F: *Cooperating and Joint Lead Agency*
22 *Relationships*.
- 23 2. If an agency requests FEMA participation as a cooperating agency and FEMA
24 chooses to deny the request, FEMA must provide SEP and CEQ a copy of its
25 response to the requesting agency in accordance with DHS Instruction 023-01,
26 section V, part F.
- 27 D. Procedures for Coordinating with Agencies that have Unique Delegation Authorities:
28 FEMA may serve as a cooperating agency to a non-Federal representative, such as
29 a Responsible Entity for the Department of Housing and Urban Development (HUD)
30 when HUD is acting as the lead agency for an EA or EIS. See HUD Environmental
31 Review Procedures for Entities Assuming HUD Environmental Responsibilities, 24
32 CFR part 58.
- 33 E. Cooperative Preparation of NEPA Analyses
- 34 1. FEMA will cooperate with other agencies to the extent practicable to create a
35 joint EA or EIS if multiple agencies are involved in a proposed action. FEMA will
36 work with the other agencies to assign roles in the NEPA process according to
37 each agency's expertise and role in the proposed action. FEMA will make
38 determinations required by 44 CFR part 9 due to FEMA's expertise with
39 floodplains and wetlands.
- 40 2. If FEMA participates in preparation of a joint EA or EIS, FEMA will work with
41 other involved agencies to develop or collect necessary EHP information,

FEMA INSTRUCTION 108-1-1

1 determine the appropriate level of NEPA review, and develop interagency
2 agreements to reduce delay and duplication.

3 F. Commenting on Other Agencies' NEPA Documents

- 4 1. FEMA OEHP will review and comment on other agencies' EAs and EISs for
5 programmatic actions that have potential to affect FEMA programs, plans, or
6 projects or that are otherwise subject to FEMA review. FEMA REOs will review
7 and comment on other agencies' EAs or EISs for project-level or regional reviews
8 that have potential to affect FEMA programs, plans, or projects or that are
9 otherwise subject to FEMA review. When FEMA comments on another agency's
10 NEPA document, FEMA will submit the comments to DHS for review and
11 comment according to DHS Instruction 023-01, section IV, part C (5).
- 12 2. For DHS notification requirements and restrictions regarding comments on other
13 agencies' NEPA analyses, see DHS Instruction 023-01, section IV, part J:
14 *Review of Other Agency NEPA Documents.*

15 **3.4 Conducting Impacts Analysis for EAs and EISs**

- 16 A. This section applies to FEMA impacts analysis for both EAs and EISs unless
17 otherwise specified.
- 18 B. A FEMA official with the required level of EHP Approval Authority (EA/FONSI or EIS)
19 will carry out the requirements of this section unless otherwise specified.
- 20 C. Environmental Impact Analysis
- 21 1. FEMA will compile sufficient information and analysis to understand potential
22 impacts of the proposed action and reasonable alternatives. Analysis will include
23 identification and assessment of potential impacts to natural and cultural
24 resources within the human environment including impacts to water resources,
25 species, and historic resources commensurate with the level of NEPA review.
- 26 2. FEMA will consider direct, indirect, and cumulative impacts as required by CEQ
27 regulation 40 CFR 1508.25. See CEQ regulation 40 CFR 1508.8 for an
28 explanation of direct and indirect effects and 40 CFR 1508.7 for an explanation of
29 cumulative impacts. "Effects" and "impacts" as used in the EHP Directive and
30 Instruction and CEQ regulations are synonymous.
- 31 3. FEMA is required to address in detail ESA, NHPA, Executive Order 11988,
32 Executive Order 11990, and Executive Order 12898 in its EAs and EISs.

33 D. Public Involvement

- 34 1. FEMA will engage the public, tribes, minority populations, and low-income
35 populations, as appropriate, throughout the NEPA process. For projects that
36 involve consultation under section 106 of the NHPA, FEMA will further engage
37 additional external parties with a demonstrated interest in the project who are
38 concerned with the project's effects on historic properties. Engagement may
39 occur when scoping the proposed action, developing the range of reasonable
40 alternatives, identifying and analyzing potential EHP impacts, and developing
41
42

FEMA INSTRUCTION 108-1-1

- 1 potential EHP mitigation. Applicants may carry out or support FEMA public
2 involvement responsibilities. The NEPA public involvement process can satisfy
3 public outreach requirements of other EHP requirements such as section 106 of
4 NHPA.
- 5 2. FEMA will provide public notices and tailor its communication methods to reach
6 potentially interested and affected persons, which may require providing
7 information in other languages for persons with limited English proficiency,
8 providing information in accessible formats for persons with disabilities, or
9 overcoming other cultural, institutional, or geographic barriers to meaningful
10 participation.
- 11 3. FEMA will involve environmental agencies, applicants, tribes, and the public, to
12 the extent practicable, in preparing EAs and EISs. In determining “to the extent
13 practicable” and appropriate public involvement methods and timing, FEMA will
14 consider the:
- 15 a. Magnitude of the proposal;
16 b. Likelihood of public interest;
17 c. Need to act quickly;
18 d. Likelihood of meaningful public comment;
19 e. National security classification issues;
20 f. Need for permits; and
21 g. Statutory authority of relevant agencies regarding the proposed action.
- 22 4. Prior to public disclosure and submission to the Federal Register, FEMA will
23 submit EIS NOIs and Notices of Availability, and EA public notices to SEP for
24 review and comment as described in DHS Instruction 023-01, section IV, part C
25 (6).
- 26 5. Environmental Assessments (EAs)
- 27 a. EAs will have a 30 calendar day public comment period, to the extent
28 practicable. With EO or REO approval, FEMA may deviate from the 30 day
29 standard when the proposed action is an emergency action or tiered EA,
30 circumstances necessitate expedited EHP review timelines, minimal public
31 comment is expected, or a good faith effort has been made to involve the
32 public in the drafting of an EA and no significant impacts or public controversy
33 has arisen. For factors to consider in determining a good faith effort see DHS
34 Instruction 023-01, section IV, part G (1).
- 35 b. For emergency actions, EAs will normally have a 15 calendar day public
36 comment period. Shorter comment periods may be warranted in unique
37 situations at the discretion of the EO.
- 38 c. If a programmatic EA or EIS that pertains to a proposed action is already
39 completed, FEMA will make a tiered EA available for public comment for a
40 minimum of 15 calendar days.

- 1 6. Environmental Impact Statements (EISs)
 - 2 a. As soon as possible after a decision to prepare an EIS, FEMA will publish a
3 NOI in the Federal Register (40 CFR 1508.22). The NOI initiates the scoping
4 process, inviting agencies and the public to participate in the EHP review
5 process consistent with 40 CFR 1501.7 and DHS Instruction 023-01, section
6 IV part G.
 - 7 b. After completion of a Draft EIS, FEMA will provide an opportunity for public
8 comment as described in DHS Instruction 023-01, section IV, part G: *Public*
9 *Involvement*. EISs will have a 45 calendar day public comment period.
 - 10 c. FEMA will file EISs electronically with the U.S. Environmental Protection
11 Agency (40 CFR 1506.9).
- 12 7. FEMA will respond to substantive comments received during public comment
13 periods and address those comments in the final analyses for EAs and EISs. The
14 decision-maker will consider comments in reaching a final determination of
15 whether to proceed with the proposed action.
- 16 8. For additional public involvement considerations specific to FEMA EAs and EISs,
17 see DHS Instruction 023-01, section IV, part G: *Public Involvement*. See also
18 DHS Instruction 023-01, section V, part C: *Environmental Assessments* and
19 section V, part D: *Environmental Impact Statements*. See CEQ regulation 40
20 CFR 1506.6 for additional public involvement requirements.

21 E. Option to Prepare the EA or EIS

- 22 1. FEMA may allow an applicant to prepare an EA or EIS if the applicant
23 demonstrates, at FEMA's discretion, that it has sufficient EHP capabilities to
24 conduct the NEPA analysis. If an applicant prepares an EA or EIS, FEMA will
25 conduct a sufficiency review of the EA or EIS and prepare the associated
26 decision document (FONSI or ROD). FEMA will communicate the timing of the
27 NEPA process to the applicant.
- 28 2. If the applicant is qualified and requests to prepare the EA or EIS or is required to
29 do so by FEMA, FEMA will provide the applicant with instructions for preparing
30 the EA or EIS. If the applicant chooses to use a third party contractor for an EA,
31 FEMA should provide the applicant with instructions for selecting a third-party
32 contractor and participating in the NEPA process. FEMA's instructions should
33 include a requirement that the applicant notify FEMA of their intent to use a third
34 party contractor and requirements for the third party contractor to disclose any
35 financial or other conflicts of interest.
- 36 3. If the applicant chooses to use a third party contractor for an EIS, FEMA must,
37 consistent with 40 CFR 1506.5(c) and in consultation with the applicant, select
38 the third party contractor. FEMA will enter into an agreement with the applicant
39 allowing the applicant to engage and pay for the services of the third-party
40 contractor to prepare an EIS and any associated documents. The third-party
41 contract must specify the information to be developed and the procedures for
42 gathering, analyzing, and presenting the information. FEMA will prepare a
43 disclosure statement for the applicant to include in the contract specifying that

FEMA INSTRUCTION 108-1-1

1 the contractor has no financial or other interest in the outcome of the proposed
2 action. The terms of the contract must ensure that the contractor does not have
3 recourse to FEMA for financial or other claims arising under the contract. FEMA
4 may continue to provide technical advice to the applicant and the contractor as
5 needed.

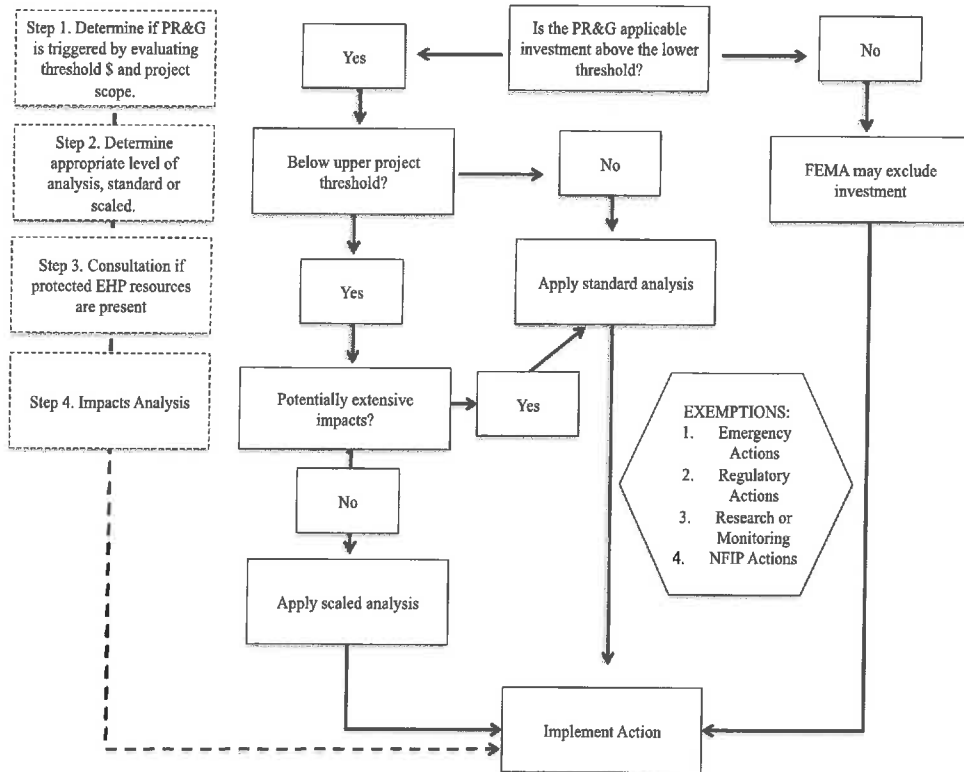
- 6 4. FEMA should provide guidance to the applicant and third-party contractor about
7 the NEPA process and information to be analyzed. FEMA should participate in
8 the collection, identification, analysis, and presentation of the information. FEMA
9 guidance should explain any notification and process requirements. For example,
10 FEMA should provide guidance to applicants regarding when to notify FEMA of
11 the use of third party contractors to complete an EA, including verification of the
12 expertise, qualifications, and nonexistence of financial interest of the third party
13 contractor. FEMA, in coordination with the applicant, may also give technical
14 advice to the third-party contractor. For an explanation of the role of contractors,
15 see DHS Instruction 023-01, section IV, part H: *Use of Contractors*.
- 16 5. In cases where an applicant or third-party contractor prepares an EA or EIS, EHP
17 Approval Authority remains with qualified regional or OEHP staff.

18 F. PR&G Analysis during the NEPA Process

- 19 1. During NEPA review when the PR&G is triggered, FEMA will follow its ASP
20 detailed in Chapter 4 of this Instruction. If the PR&G is triggered and NEPA
21 applies, FEMA will prepare an EA or EIS.
- 22 2. Triggering PR&G Analysis
- 23 a. FEMA will determine applicability of PR&G analysis for proposed water
24 resource investments, actions, and/or activities by using the Applicability
25 Flowchart (Figure 1, next page).
- 26 b. When Federal water investments, actions, and/or activities trigger the PR&G
27 analysis, FEMA will apply its ASP early in the decision-making process.
28 PR&G analysis applies in the following circumstances: 1) Project costs
29 exceed 10 million dollars of Federal investment, or as amended; and 2)
30 Project scope includes:
- 31 i. New or existing Federal investments to construct new infrastructure,
32 modify or replace existing infrastructure, or implement major changes to
33 operations of Federal assets;
- 34 ii. Ecosystem restoration activities that have direct or indirect impacts on
35 water quality or quantity;
- 36 iii. Existing assets that may not result in changes in water quality or quantity
37 by themselves, but without which unintended changes to water resources
38 may occur. These situations may occur when existing infrastructure may
39 fail or degrade in the absence of additional Federal investment, resulting
40 in change in quality or quantity of water resources or level of service
41 provided. Examples include but are not limited to dam safety modifications

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2

of existing projects and major rehabilitation or replacement of facilities that have exceeded their useful life; or



3

4 Figure 1: Flowchart of PR&G Applicability for Projects, Programs, and Plans.

5 iv. Activities where FEMA is responsible for implementation of an action, or
6 when another party is responsible for implementation using Federal funds.

7 c. The scope and scale of applicability of the PR&G to Federal investments in
8 water resources is defined in more detail in the Interagency Guidelines. To
9 determine which investment, actions, and/or activities to include in the scope
10 of the PR&G and the level of analysis adequate for the nature of water
11 resource investments, FEMA shall refer to the Interagency Guidelines
12 monetary threshold and project criteria as listed in Chapter 3, Table 1, or as
13 amended. Projects with total costs ranging from greater than 10 million dollars
14 to less than 20 million dollars of Federal investment, or as amended, or
15 projects with potential extensive impact to water resources require scaled
16 analysis. Scaled analysis is more limited in scope, appropriate for low risk/low
17 cost projects. Projects with total costs exceeding 20 million dollars of Federal
18 investment, or as amended, require standard analysis. The financial threshold
19 amounts are indexed to inflation.

- d. Water Resources Projects that only meet or exceed monetary thresholds due to project bundling may not require PR&G analysis if no other thresholds triggering the PR&G are met.

3.5 NEPA Documentation

- A. A FEMA official with the appropriate level of EHP Approval Authority (REC, EA/FONSI, or EIS) will carry out the requirements of this section unless otherwise specified.
- B. Documenting Results of NEPA Analyses: FEMA will develop an administrative record during preparation of a NEPA analysis to inform decision-making. FEMA will include any document prepared, referenced, or utilized to complete the analysis and inform the decision. For minimum content requirements, see DHS Instruction 023-01, section IV, part L: *Administrative Record Requirements*.
 - 1. CATEX and REC: FEMA will document all CATEXs with a REC prior to deciding to proceed with the proposed action. The REC will state that no EA or EIS is required. For an example and required contents, see DHS Instruction 023-01, Appendix C.
 - 2. EA and FONSI: FEMA will include sufficient evidence and analysis in the EA to inform decision-makers and the public whether a FONSI or preparation of an EIS is appropriate. An EA will result in either a FONSI, concluding the NEPA process, or a determination that an EIS is needed. If an EIS is needed, FEMA will follow the requirements for a NOI. See section 3.2 and 3.4 of this EHP Instruction and DHS Instruction 023-01, section V, part C: *Environmental Assessments*. See CEQ regulation 40 CFR 1508.9 for further explanation of the contents of an EA.
 - 3. EIS and ROD: An EIS concludes with a ROD, which provides a concise public record of decision on whether or not to proceed with a proposed action. A ROD completes the NEPA process. A ROD shall include the basis for the decision, summaries of EHP mitigation measures, and description of the reasonable alternatives and relevant factors considered during the NEPA process. The ROD will identify the environmentally preferred alternative, which is the alternative that promotes national environmental policy as expressed in NEPA section 101. FEMA will complete and sign a ROD no earlier than 30 days after publication of the final EIS notice in the Federal Register or 90 days after publication of notice for the draft EIS, whichever is later. For requirements for the ROD, see DHS Instruction 023-01, section V, part D: *Environmental Impact Statements*. See also CEQ Regulation 40 CFR 1502.19 for circulation of EISs and 40 CFR 1505.2 for contents of a ROD.
 - 4. For actions that trigger PR&G, PR&G analysis and documentation will be included in the EA and/or EIS when the project costs exceed 10 million dollars of Federal investment, or as amended, and the project scope includes one or more of the aspects listed under section 3.4 (F)(2)(b)(i-iv).

FEMA INSTRUCTION 108-1-1

1 C. NEPA Decision Document Requirements: Decision documents are first approved by
2 staff with the appropriate level of EHP Approval Authority and then by program
3 officials responsible for Program EHP Endorsement. FEMA will maintain
4 administrative records for all NEPA reviews. Administrative records contain
5 information that should be considered by decision-makers and demonstrates that
6 program officials responsible for Program EHP Endorsement considered potential
7 environmental impacts of proposed actions. See EHP Instruction section 1.6, part F
8 for definition of EHP decision document. Decision documents summarize analyses
9 focusing on the most relevant information but may include summaries of:

- 10 1. The purpose and need for the action;
- 11 2. A description of the action;
- 12 3. A description of the affected environment prior to beginning work on the action,
13 including, for example, whether historic or cultural resources, threatened or
14 endangered species, or floodplains or wetlands are found in or near the project
15 area;
- 16 4. A description of potential and actual impacts to the environment, including
17 supporting consultation letters and description of any EHP mitigation measures
18 to be implemented; and
- 19 5. A description of any significant unaddressed environmental impacts resulting
20 from the action and EHP mitigation measures required to reduce these impacts
21 below the level of significance.
22

23 **3.6 Using Existing NEPA Analyses**

24
25 FEMA should leverage existing NEPA analyses, consistent with the priorities of the UFR
26 Process.
27

28 A. A FEMA official with the appropriate level of EHP Approval Authority (EA/FONSI, or
29 EIS) will carry out the requirements of this section unless otherwise specified.

30 B. General Requirements for Using Existing NEPA Analyses

- 31 1. FEMA will use existing NEPA analyses whenever practicable to avoid
32 redundancy and unnecessary paperwork. An existing NEPA analysis may
33 support the impacts analysis of a proposed action and alternatives. Existing
34 NEPA analyses may be applied through:
 - 35 a. Incorporation by reference;
 - 36 b. Programmatic analysis and tiering;
 - 37 c. Supplemental analysis;
 - 38 d. Adoption; and
 - 39 e. Combining documents.

FEMA INSTRUCTION 108-1-1

- 1 2. An existing NEPA analysis may be used if it adequately assesses potential
2 impacts of a proposed action and reasonable alternatives. FEMA may use
3 another agency's analysis for a FEMA review when FEMA concurs that the same
4 or substantially the same impacts would result from FEMA's proposed action.
- 5 C. Determining Adequacy of Existing NEPA Analyses: When determining adequacy of
6 existing NEPA analyses, FEMA will consider whether:
 - 7 1. The current proposed action is part of or similar to a proposed action or
8 alternative analyzed in an existing EA or EIS;
 - 9 2. The proposed action is within the same geographic area of an existing EA or EIS;
 - 10 3. Public involvement and interagency review processes associated with the
11 existing EA or EIS are adequate for the current proposed action;
 - 12 4. The range of alternatives analyzed in the existing EA or EIS is appropriate in
13 regards to the current proposed action and project area;
 - 14 5. The existing NEPA analysis is valid in light of new information or circumstances;
15 and
 - 16 6. Direct, indirect, and cumulative impacts of the current proposed action are similar
17 to those analyzed in the existing EA or EIS and include detailed analysis of
18 compliance with ESA, NHPA, Executive Order 11988, and Executive Order
19 11990.
- 20 D. Incorporating by Reference
 - 21 1. FEMA may incorporate by reference relevant EHP information, analyses, and
22 other materials to reduce redundancy or bulk within an EA or EIS.
 - 23 2. FEMA will incorporate by reference relevant programmatic analyses into
24 associated tiered EAs and EISs.
 - 25 3. FEMA will cite and briefly describe the content of materials incorporated by
26 reference.
 - 27 4. Materials incorporated by reference must be reasonably available for inspection
28 by potentially interested persons during public comment periods.
 - 29 5. For descriptions of situations when it is appropriate to incorporate an existing
30 NEPA analysis or document by reference, see DHS Instruction 023-01, section
31 V, part C (4): *Programmatic EAs*, section V, part C (5): *Supplemental EAs*, and
32 section V, part D (4): *Programmatic EIS*.
- 33 E. Programmatic and Tiered NEPA Analyses
 - 34 1. Programmatic NEPA analyses can increase efficiency and quality of
35 environmental analysis. FEMA may elect to conduct programmatic NEPA
36 analyses in advance of specific disasters to improve efficiency of the NEPA
37 process. Programmatic NEPA analyses may be conducted by disaster type,
38 project type, program, or region.
 - 39 2. FEMA should complete a programmatic analysis for proposed actions that are
40 similar in nature, timing, geography, or scope and for broad proposed actions

FEMA INSTRUCTION 108-1-1

1 such as new programs, policies, or plans. When developing a programmatic
2 analysis, FEMA will consider the relationship of the programmatic analysis to
3 subsequent tiered analyses, content requirements for a programmatic analysis,
4 and types of proposed actions that should be analyzed programmatically as
5 described in DHS Instruction 023-01, section V, part C (4): *Programmatic EAs*
6 and section V, part D (4): *Programmatic EIS*.

7 3. Subsequent to completion of a decision document that concludes a
8 programmatic analysis, FEMA should prepare tiered analyses to focus on site or
9 project specific issues that may arise at later stages of the proposed action.
10 Tiered analyses will incorporate by reference the analysis and decisions reached
11 in the programmatic analysis.

12 4. FEMA may complete interim actions while a programmatic NEPA analysis (e.g.,
13 EA or EIS) is underway if those interim actions do not limit the choice of
14 reasonable alternatives and are statutorily excluded from NEPA, covered by an
15 existing CATEX, EA, or EIS, or accompanied by an adequate EA or EIS.

16 F. Supplemental Analyses

17 1. FEMA will prepare a supplement to its NEPA analyses when there are
18 substantial changes to the proposed action or significant new circumstances or
19 information arises relevant to EHP concerns for the proposed action.
20 Supplemental analyses may be conducted at any time to support decision-
21 making. Preparation, circulation, and filing requirements are the same for
22 supplemental EAs and EISs as those for typical EAs and EISs. See CEQ
23 regulation 40 CFR 1502.9.

24 2. For information on when to prepare supplemental analyses, including the need to
25 revisit environmental analyses when an action has not been completed within
26 one budget cycle, see DHS Instruction 023-01, section V, part C (5):
27 *Supplemental EAs* and section V, part D (6): *Supplemental EIS*.

28 G. Adoption

29 1. As part of the UFR process, FEMA should consider opportunities to expedite the
30 NEPA process through adoption of other agencies' NEPA documents.

31 2. FEMA may adopt other Federal, State (i.e. HUD Responsible Entities), or tribal
32 governments' EAs or EISs if the analysis:

33 a. Covers all elements of the FEMA proposed action;

34 b. Adequately meets requirements of this EHP Instruction and EHP Directive;

35 c. Meets FEMA standards for legal sufficiency as determined by the Office of
36 Chief Counsel; and

37 d. Meets public involvement requirements.

38 3. If the EA or EIS does not satisfy FEMA standards for adoption, then FEMA must
39 prepare a supplemental analysis to satisfy FEMA requirements.

FEMA INSTRUCTION 108-1-1

- 1 4. FEMA must, after review and adequacy determination of the other EA or EIS,
2 issue its own FONSI or ROD.
- 3 5. When adopting an EIS to which FEMA was not a cooperating agency, FEMA will
4 circulate the EIS for public comment and file the EIS electronically according to
5 EPA instructions and as required by CEQ Regulation 40 CFR 1506.9. If FEMA
6 was a cooperating agency to the EIS, FEMA will simply notify EPA in order to
7 complete the public record.
- 8 6. For information about adoption of an existing EA or EIS, see DHS Instruction
9 023-01, section V, part C (6): *Adoption* and section V, part D (7): *Adoption*.
- 10 H. Combining Documents: FEMA may combine other EHP analyses, surveys, and
11 studies into an EA or EIS to reduce duplication and paperwork.
- 12 I. Reduce Duplication with State and Local Requirements through Cooperation
- 13 1. FEMA will cooperate with State and local agencies to avoid duplication of effort
14 and enable agencies to combine, adopt, and/or jointly prepare EHP analyses and
15 documents when local, State, and Federal requirements are met.
- 16 2. For applicant and cooperating agency roles in avoiding duplication among
17 Federal, State, and local requirements, see DHS Instruction 023-01, section VII:
18 *Review of Applications from Persons or Organizations Outside of DHS* and
19 section V, part F: *Cooperating and Joint Lead Agency Relationships*.
- 20

21 **3.7 Timing of Agency Actions**

- 22
- 23 A. FEMA will not take actions in furtherance of the proposed action that would limit the
24 choice of reasonable alternatives until the NEPA process is complete. This provision
25 applies both to actions taken by FEMA in furtherance of agency proposed actions
26 and actions proposed by applicants seeking funding from FEMA. See CEQ
27 regulations 40 CFR 1506.1 for limitations on actions during the NEPA process.
- 28 B. If FEMA is considering issuance of a grant to an applicant and is aware that the
29 applicant is about to take action that would violate this timing requirement, FEMA will
30 notify the applicant with an order not to proceed with the action until the
31 requirements of this EHP Instruction are met. FEMA will not award funds to
32 applicants that do not follow these timing requirements.
- 33 1. Issuance of a grant, in this context, does not mean allocation of funds to states
34 and other recipients before actual projects are proposed.
- 35 2. Issuance of a grant means approval and issuance of funds for a specific project
36 after all terms of the grant are met.
- 37 C. Any project that qualifies for a categorical exclusion listed in DHS Instruction 023-01,
38 Appendix A and is found free of extraordinary circumstances that require
39 consultation under other EHP laws and regulations complies with NEPA
40 requirements whether or not the action has already been initiated. This should not
41 minimize the requirement to initiate the NEPA process at the earliest possible
42 opportunity.

1 D. See CEQ regulation 40 CFR 1506.10 for additional information about the timing of
2 the NEPA process.

3 E. For the policy of early integration of the NEPA process with other planning efforts,
4 see DHS Instruction 023-01, section IV, part A: *Decision-Making and Integration of*
5 *NEPA with DHS Missions*.
6

7 **3.8 NEPA Conflict Resolution**

8
9 See EHP Instruction section 2.4 for applicable conflict resolution requirements.
10

11 **3.9 EHP Mitigation and Monitoring**

12
13 See section 2.3, part A of this EHP Instruction for applicable EHP mitigation and
14 monitoring requirements. FEMA will incorporate mitigation and monitoring requirements
15 into decision documents.
16

17 **3.10 Emergencies**

18
19 A. In the event of an emergency, FEMA may be required to take immediate action with
20 significant environmental impact. FEMA will not delay an emergency action
21 necessary to preserve human life for the purpose of complying with this EHP
22 Instruction or CEQ regulations. Actions not statutorily excluded from NEPA review
23 that were initiated and/or completed without complying with NEPA requirements, but
24 which were initiated in an emergency situation to protect from immediate threats to
25 life, health, or property or prevent severe economic losses may still be eligible for
26 FEMA funding. When requests for assistance are made in these exceptional
27 circumstances, OEHP is responsible for notifying SEP, and programs coordinate
28 with the EO on determining the immediate course of action.

29 B. In such situations, programs, in coordination with OEHP and/or the REO as needed,
30 should:

31 1. Ensure all substantive Federal, state, and local statutes, regulations, and permits
32 (local building permits, US Army Corps of Engineers 404 permits, Section 106
33 historic preservation consultation, Endangered Species consultation, Executive
34 Order considerations, etc.) are satisfied for the action.

35 2. Submit to the EO documentation that includes the following:

36 a. The purpose and need for the action, specifically defining its emergency
37 nature;

38 b. A description of the action;

39 c. A description of the preexisting affected environment;

40 d. A description of the potential and actual impacts to the environment, including
41 a summary of the results of all environmental evaluation conducted prior to
42 and since the completion of the project, supporting consultation letters from

- 1 applicable agencies, and a description of any environmental mitigation
2 measures that were implemented; and
- 3 e. A description of any significant unaddressed environmental impacts resulting
4 from the action and the mitigation measures required to reduce these impacts
5 below the level of significance.
- 6 C. FEMA will comply with the following procedures required by CEQ and DHS to
7 comply with NEPA for emergency actions:
- 8 1. FEMA programs will notify the EO as soon as possible so the EO may consult
9 with SEP and CEQ. If a proposed action is likely to qualify under this emergency
10 exception, the EO, in consultation with OCC, SEP, and CEQ will determine
11 whether the action has potential for significant impacts and whether those
12 impacts can be mitigated. Where there is reason to suspect actions had a
13 significant impact but cannot be verified, significant impacts will be presumed.
14 See DHS Instruction 023-01, section VI: *Emergency Actions*.
- 15 2. If significant impacts can be mitigated to below the level of significance, public
16 notice will be given and the necessary EHP mitigation measures will be
17 implemented before funding is considered. In case significant impacts cannot be
18 mitigated, OCC, SEP, and the EO would recommend that the action not receive
19 funding. This information will be documented in the administrative record.
- 20 3. FEMA programs should explain these procedures for exceptions under rare
21 circumstances to states, local governments, tribes, and other potential applicants
22 and should do so in advance of a disaster whenever possible.

23

24 **CHAPTER 4: AGENCY SPECIFIC PROCEDURES FOR THE UPDATED**
25 **PRINCIPLES, REQUIREMENTS, AND GUIDELINES**
26

27 Chapter 4 contains Agency Specific Procedures for implementing the PR&G. These
28 procedures are in accordance with the final Principles and Requirements issued in
29 March 2013 and Interagency Guidelines released in December 2014.

30

31 **4.1 Commonly Used Terms in the PR&G**
32

33 Commonly used terms in the PR&G are included below. These common terms and
34 definitions are supplemental to the terms included in section 1.6 of this EHP Instruction.

- 35 A. **ACCEPTABILITY:** the viability and appropriateness of an alternative consistent with
36 existing Federal laws, authorities, and public policies. Public approval is a
37 consideration in the evaluation of acceptability. It does not include political
38 expediency or local or regional preferences for particular solutions.
- 39 B. **COMPLETENESS:** the extent to which an alternative provides and accounts for all
40 features, investments, and/or other actions necessary to realize the planned effects,
41 including any necessary actions by others. It does not necessarily mean that
42 alternative actions need to be large in scope or scale.

FEMA INSTRUCTION 108-1-1

- 1 C. CUMULATIVE EFFECTS: Impacts which result from the incremental impact of an
2 action when added to other past, present, and reasonably foreseeable future actions
3 regardless of what agency (Federal or non- Federal) or person undertakes such
4 other actions.
- 5 D. ECOSYSTEM: the dynamic complex of plant, animal, and microorganism
6 communities and the non-living environment interacting as a system.
- 7 E. ECOSYSTEM FUNCTIONS: the interactions among organisms and between
8 organisms and their environment.
- 9 F. ECOSYSTEM SERVICES: the direct or indirect contributions, including economic,
10 environmental, cultural, and social (including health) effects, which ecosystems
11 make to the environment and human populations.
- 12 G. EFFECTIVENESS: the extent to which an alternative alleviates the specified
13 problems and achieves the specified opportunities.
- 14 H. EFFICIENCY: the extent to which an alternative alleviates the specified problems
15 and realizes the specified opportunities at the least cost.
- 16 I. INTERAGENCY GUIDELINES: guidance in the form of more detailed procedures for
17 Federal agencies in designing and evaluating potential Federal investments in water
18 resources at the project and program levels to implement the Principles and
19 Requirements released in March 2013 (collectively, the "Principles, Requirements,
20 and Guidelines").
- 21 J. NON-STRUCTURAL APPROACHES: approaches that alter the use of existing
22 infrastructure or human activities to avoid or minimize adverse changes to existing
23 hydrologic, geomorphic, or ecological processes.
- 24 K. PUBLIC BENEFITS: environmental, economic, and social goals, including monetary
25 and non-monetary effects and that allow for the inclusion of quantitative and
26 qualitative considerations.
- 27 L. RESILIENCE: the capacity of an ecosystem or community to respond to changes,
28 including climate changes.
- 29 M. RESTORE: to return to a less degraded state.
- 30 N. SUSTAINABLE: the creation and maintenance of conditions under which humans
31 and nature can coexist in the present and into the future.
- 32 O. WATERSHED: a land area that drains to a common water body.

33

34 **4.2 Purpose**

35

36 In order to develop a baseline and improve FEMA's ASP, the procedures established in
37 this section will serve as FEMA's ASP for implementing the PR&G until FEMA's EHP
38 Instruction and EHP Directive are reviewed in five years. At the five-year review cycle:

- 39 A. The EO, with assistance from all REOs, will examine data collected from
40 implementing the PR&G and update ASP, as needed.

- 1 B. The EO, with assistance from all REOs, will also further define standard and scaled
2 analysis, developing discrete requirements for each level of analysis.

3
4 **4.3 Guiding Principles**

- 5
6 A. Healthy and resilient ecosystems: The ecological processes of a healthy ecosystem
7 maintain stable function within a range of natural variability. In resilient ecosystems,
8 when external stresses, including stresses associated with climate change, disturb
9 ecological processes from their natural stable range of variability, they are able to
10 quickly recover and return to their original stable state. When evaluating water
11 resources investment alternatives, the health of affected ecosystems will be
12 evaluated in its current condition, and that condition is designated a baseline. For
13 each of the alternatives under consideration, expected changes to the baseline will
14 be projected. Where feasible and appropriate, alternatives will be developed that
15 preserve ecosystem resilience and restore the health of damaged ecosystems.
- 16 B. Sustainable Economic Development: When feasible and appropriate, the analysis
17 for sustainable economic development will present (1) information about the
18 environmental resources in the proposed action's area of potential effect, and (2)
19 projections of how the resources and their value might be expected to change over
20 time. Information on physical capital (value, costs to maintain, etc.) will also be
21 presented if relevant. In addition, the analysis may include information on
22 socioeconomic conditions (incomes, demographics, etc.) and projections on how
23 they might be affected by the investment. The analysis may include evaluations of
24 economic, social (including health), cultural, environmental, and other relevant
25 conditions.
- 26 C. Floodplains: In evaluating potential floodplain impacts of proposed actions, agencies
27 will work to avoid and minimize, to the extent possible, long and short-term adverse
28 impacts associated with the occupancy and modification of floodplains. Agencies will
29 also work to avoid direct and indirect support of floodplain development whenever
30 there is a practicable alternative. Federal actions will seek to reduce the Nation's
31 vulnerability to floods and storms. To promote consistency across agencies and
32 ensure that Federal investments promote resilience even in the face of changing
33 flood risk, in consideration of current and future risk, flood risk reduction strategies
34 will rely on the best available science in projections of sea level rise and other
35 relevant risk factors.
- 36 D. Public Safety: In formulating and evaluating water resources investments, agencies
37 will incorporate reasonable and appropriate public safety practices. When evaluating
38 alternatives, agencies should use appropriate risk-based analysis techniques to
39 identify, avoid, and minimize potential public safety concerns that might result from
40 investments. Risk analysis to address public safety issues, including public health
41 issues, should include quantitative and qualitative evaluations of all relevant external
42 factors and site-specific considerations.

1 E. Environmental Justice: Because the concerns of overburdened populations and
2 tribal communities are unique to each community or tribe, each agency's analysis
3 should include information to address the following:

4 1. How the agency provides transparency and meaningful engagement and
5 participation for minority, low-income, and other disadvantaged communities;

6 2. How the agency identifies and addresses existing and new disproportionate
7 environmental and public health impacts on minority, low-income, and other
8 disadvantaged communities; and

9 3. How tribal and indigenous populations are actively engaged in 1 and 2, above.

10 Existing agency and interagency guidance on environmental justice analysis should
11 be used along with public involvement to inform the PR&G analysis.

12 F. Watershed Approach: A watershed approach to water resources management
13 requires a structured consideration of watershed needs and how alternatives under
14 consideration serve those needs.

15
16 **4.4 Exclusions from PR&G analysis**

17
18 Exclusions from PR&G analysis. Exclusions from the PR&G analysis apply to all actions
19 that fall under the threshold of 10 million dollars of Federal investment, or as amended,
20 and for all project scopes not included above, such as projects that are routine and have
21 inconsequential effects on water resources. See also section 1.2, part E of this EHP
22 Instruction.

23 Agency investments that fall in the categories below are outside the scope of the PR&G
24 and are excluded:

25 A. Projects with a total cost of less than 10 million dollars of Federal investment, or as
26 amended, are excluded from the PR&G analysis.

27 B. Regulatory actions: Regulatory actions that restrict behavior are outside the scope of
28 the PR&G. These actions generally work to protect existing Federal assets and
29 include, but are not limited to: permits under sections 402 and 404 of the Clean
30 Water Act; ESA Consultations and incidental take or similar permits; and
31 requirements under the Safe Drinking Water Act. Generally, work performed under a
32 regulatory program does not need further documentation of non-applicability of the
33 PR&G.

34 C. Research or monitoring: Activities that gather or create knowledge but do not result
35 in additional, permanent site-specific actions may be excluded from PR&G analysis.
36 These actions include, but are not limited to: research on water efficiency; studies to
37 examine the role of water; and monitoring stream characteristics.

38 D. National Flood Insurance Program: All actions administered under the National
39 Flood Insurance Program are excluded from the PR&G analysis. This includes the
40 Flood Mitigation Assistance program area: planning grants, project grants, and
41 technical grants.

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4.5 Selecting the Appropriate PR&G Analysis.

When the PR&G is triggered, and no exclusions apply, FEMA will select a standard or scaled analysis based on the project costs and scope:

- A. Standard analysis is appropriate for new projects or for major changes to projects with total project costs greater than 20 million dollars of Federal investment, or as amended. This analysis must include a comprehensive application of the PR&G to the proposed water resources investment.
- B. Scaled analysis is appropriate for projects that are low risk; with minimal consequences of failure; which pose a minimal threat to human life or safety; or do not result in major impacts to the environment and with total project costs ranging from 10 million to 20 million dollars of Federal investment, or as amended. The scaled analysis is limited in scope. In general, the formulation process is streamlined, and justification procedures reflect the scope and complexity of the problem being assessed.
- C. FEMA will analyze cumulative effects of an investment or other PR&G project according to the definition of “cumulative effects” provided in section 4.1, part C of this EHP Instruction, including effects that result from individually minor but collectively significant actions taking place over a period of time. Cumulative effects for purposes of the PR&G are specific to watersheds.

4.6 Interagency PR&G analysis

- A. FEMA will assess and evaluate the potential interaction with other Federal and non-Federal water resource investments within a region or watershed to identify potential cooperating agencies, maximize effectiveness, and reduce cost and duplication of effort.
- B. For water resources projects funded by two or more Federal agencies, FEMA will use the NEPA process to establish the lead agency or joint lead agencies and cooperating agencies.
- C. When acting as lead agency, FEMA will have primary responsibility for completing PR&G analysis.
- D. As a cooperating agency, FEMA will assist in analysis, as determined by the lead agency. FEMA may refer to the lead agency's final analysis to document FEMA's adherence to the PR&G. The monetary threshold table in the ASP for the lead agency will determine the level of analysis, using the total investment of all cooperating agencies as the investment level.

4.7 Conducting the PR&G Analysis

- A. Scope the Level of Analysis. For actions that trigger PR&G, in some cases, a scaled analysis may be triggered by cost alone; however the potential impact of the

FEMA INSTRUCTION 108-1-1

- 1 investment on the water resource may be extensive, elevating the level of analysis
2 to standard. When determining the level of analysis that is commensurate with the
3 nature of the water resource investment, FEMA may consider the following aspects:
- 4 1. Magnitude and significance of specific problems and opportunities the investment
5 seeks to address;
 - 6 2. Significance of natural resources within the study area;
 - 7 3. Magnitude and significance of the potential impacts of the investment;
 - 8 4. Complexity of the investment in terms of science, engineering, ecosystems,
9 culture, and resource management;
 - 10 5. Projected service or operational life of the project or facility;
 - 11 6. Stakeholder concerns;
 - 12 7. Authority under which the investment decision/recommendation is made;
 - 13 8. Uncertainty in decision variables and resulting risk exposure;
 - 14 9. Degree of performance or irreversibility of potential investment decision;
 - 15 10. Nature and extent of tribal Trust responsibilities in the study area;
 - 16 11. Best scientific information available; and
 - 17 12. Cumulative effects of and/or controversy associated with any of the above.
- 18 B. Define the Purpose and Need. FEMA will identify water resource challenges using,
19 to the extent practicable, a watershed, ecosystem, or systems approach. Challenges
20 should be included in the Purpose and Need Statement of the NEPA Analysis. The
21 following factors should be considered in developing the purpose, need, and
22 description of the proposed action for the NEPA Analysis:
- 23 1. The scope will include a statement of the problems and/or opportunities to be
24 addressed, the cause or causes of the problems, and constraints related to the
25 problems.
 - 26 2. Project area should be defined as the geographically affected environment
27 framed in a watershed/ecosystem/systems context, where applicable.
 - 28 3. When practicable, the scope should identify other water resources investments
29 within the project area that could be affected.
- 30 C. Formulate a Range of Alternatives
- 31 1. FEMA will review a range of alternatives, including the no action alternative, that
32 consider the environmental, economic, cultural, and social goals of the PR&G to
33 address water resource challenges and other challenges identified in the scope,
34 and achieve the objectives and requirements outlined in the PR&G and as stated
35 in the Purpose and Need section of the NEPA analysis.
 - 36 2. When an alternative is composed of multiple discrete measures, and one or more
37 of those measures could perform in a beneficial and sustainable manner
38 independent of the other measures, FEMA will evaluate those independently

FEMA INSTRUCTION 108-1-1

1 performing measures as discrete units. Evaluation will focus on whether the
2 alternative effectively and efficiently achieves the study objective.

3 D. Identify Existing Conditions

4 1. FEMA will identify the existing conditions of the project area and the baseline
5 levels of ecosystem services, to the extent practicable and include these in the
6 affected environment section of the NEPA analysis.

7 2. FEMA will provide an explicit list of services (natural, social, cultural, and
8 economic) that flow from the existing project area ecosystems and infrastructure,
9 identifying those services that may be meaningfully altered as a result of the
10 proposed action or alternatives.

11 3. FEMA will include both a visual representation and written description of the
12 interactions among any natural, social, cultural, and economic systems that affect
13 or are directly affected by the action.

14 E. Project Future Conditions of the Study Area and Associated Impacts on the Affected 15 Environment

16 1. FEMA will project the future conditions of the study area using a watershed,
17 ecosystem, or systems approach to ensure all relevant impacts are analyzed.

18 Hydrologic Studies and Hydraulics analyses will be utilized, such as hydrologic
19 studies to assess the stream or river flows and hydraulic analysis to determine
20 flood elevations and the floodway.

21 2. FEMA will use the expected service or operational life of the project as the
22 timeframe for the analysis.

23 3. FEMA will include other reasonably foreseeable actions by private and public
24 entities that may affect the water resource.

25 4. FEMA will consider the impact climate change will have on the proposed action
26 by utilizing risk analysis tools, such as the sea level rise benefit cost-analysis
27 tool.

28 5. FEMA will include projections of future conditions that account for expected
29 environmental, social, cultural, and economic changes as a result of climate
30 variability and climate change.

31 F. Evaluate Alternatives

32 1. FEMA will evaluate environmental, social, cultural, and economic factors of
33 proposed projects by examining the alternatives performance against the PR&G
34 Guiding Principles.

35 2. FEMA will compare public benefits to costs of alternatives utilizing appropriate
36 means, such as the benefit cost-analysis tool.

37 3. FEMA will evaluate alternatives performance against the four formulation criteria:
38 completeness, effectiveness, efficiency, and acceptability.

39 4. FEMA will account for ecosystem services by identifying impacted services and
40 the projected trends of each service, when practicable.

FEMA INSTRUCTION 108-1-1

- 1 a. When describing the benefits and costs of ecosystems services FEMA will
2 use quantitative data when possible. Whenever appropriate, the quantified
3 effects will be monetized.
- 4 b. Effects that cannot be quantified must be qualitatively described in sufficient
5 detail.
- 6 G. Display the effects/comparison of alternatives
- 7 1. FEMA will display the effects of the alternatives and the comparison of the
8 alternatives for their contributions to the PR&G in appropriate form as part of the
9 completed NEPA analysis documentation.
- 10 2. FEMA will identify the tradeoffs among and within economic, environmental,
11 cultural, and social goals for the proposed action and alternatives.
12 Discussion of tradeoffs should include the effects that are irreversible or that
13 have high end-of-lifecycle costs to reverse.
- 14 3. FEMA will demonstrate in the NEPA analysis documentation that the proposed
15 action was identified using criteria that conform to the Guiding Principles,
16 General Requirements, the Federal Objective, and these ASP. The proposed
17 action will:
 - 18 a. Provide a complete discussion of the tradeoffs involved in making the
19 decision regarding the proposed investment;
 - 20 b. Provide a discussion of how the economic, environmental, cultural, and social
21 benefits justify the costs; and
 - 22 c. Adequately attain the goals outlined in the Guiding Principles.
- 23 H. Conduct a Supplemental Analysis when Appropriate. FEMA's review of alternatives
24 will be responsive to substantial changes in information, conditions, and/or
25 objectives that may occur at any point in the review process. If changes occur, a
26 supplemental analysis may be required. See section 3.6, part F of this EHP
27 Instruction for information on supplemental analysis requirements.
28

1 **ACRONYMS AND ABBREVIATIONS**

2 The following acronyms, abbreviations, and terms are used throughout this EHP
 3 Instruction:

4	ASP	Agency-Specific Procedures for implementing the Principles, 5 Guidelines, and Requirements.
6	CATEX	Categorical Exclusion
7	CEQ	Council on Environmental Quality
8	CFR	Code of Federal Regulations
9	DHS	Department of Homeland Security
10	DHS Directive	DHS Directive 023-1: <i>Implementation of the National</i> 11 <i>Environmental Policy Act</i>
12	DHS Instruction 023-01	<i>Instruction Manual on Implementation of the National</i> 13 <i>Environmental Policy Act (NEPA)</i> , Instruction Number: 023- 14 01-001-01
15	DREO	Deputy Regional Environmental Officer
16	DSS	Decision Support System
17	EA	Environmental Assessment
18	EHAD	Environmental and Historic Preservation Advisor
19	EHP	Environmental Planning and Historic Preservation
20	EHP Directive	FEMA Directive 108-1: Environmental Planning and Historic 21 Preservation Responsibilities and Program Requirements
22	EHP Instruction	FEMA Instruction 108-1-1: Instruction on Implementation of 23 the Environmental Planning and Historic Preservation 24 Responsibilities and Program Requirements
25	EIS	Environmental Impact Statement
26	EO	Environmental Officer
27	ESA	Endangered Species Act
28	FEMA	Federal Emergency Management Agency
29	FONSI	Finding of No Significant Impact
30	FPO	Federal Preservation Officer
31	HUD	Department of Housing and Urban Development
32	JFO	Joint Field Office
33	NEPA	National Environmental Policy Act
34	NHPA	National Historic Preservation Act
35	NOI	Notice of Intent

FEMA INSTRUCTION 108-1-1

1	OEHP	Office of Environmental Planning and Historic Preservation
2	OCC	Office of the Chief Counsel
3	PR&G	Principles, Requirements, and Guidelines
4	RA	Regional Administrator
5	REC	Record of Environmental Consideration
6	REO	Regional Environmental Officer
7	ROD	Record of Decision
8	SEP	DHS Office of Sustainability and Environmental Programs
9	Stafford Act	Robert T. Stafford Disaster Relief and Emergency
10		Assistance Act (42 U.S.C. 5159)
11	STATEX	Statutory Exclusion
12	UFR	Unified Federal Review