

**Compliance With Environmental Laws and Regulations and Executive Orders**

For any project submitted for funding, prior to initiation of the project, FEMA must undertake a review under the requirements of the National Environmental Policy Act (NEPA), as well as other applicable Federal environmental laws and Executive orders. The FEMA project review process includes a number of steps; this section highlights only the environmental review step.

In each FEMA region there is a Regional Environmental Officer (REO), who is the primary point of contact for all matters regarding the National Environmental Policy Act (NEPA), and environmental and historic compliance. The REO should be consulted regarding specific documentation requirements, policies, and approval processes.

**What is the National Environmental Policy Act (NEPA)?**

NEPA is a Federal law that establishes a national policy for the protection and maintenance of the environment. It provides a broad planning process which all Federal agencies must follow to ensure that:

- ✍ The Federal agency has considered the effects of their actions on the environment before deciding to fund and implement a proposed action.
- ✍ Environmental information is made available to other public officials and citizens before agency decisions are made and before actions are taken.
- ✍ For the NEPA administrative documentation process, FEMA will make a determination if the project:
  - ?? Qualifies to be categorically excluded (CATEX) from a more detailed NEPA review,
  - ?? Requires an Environmental Assessment (EA), or
  - ?? Requires an Environmental Impact Statement (EIS).
- ✍ The EA and EIS are the NEPA documents that record the Agency's evaluation of the environmental impacts of the project and its viable alternatives.

Projects require full compliance under other environmental laws regardless of the level of NEPA review or documentation.

**The Environmental Review Process**

44 CFR Part 10 contains FEMA's regulations for implementing NEPA. This section provides guidance for complying with NEPA, other environmental laws and regulations, and Executive orders.



FEMA's NEPA review process is outlined in Job Aid 8-1. All projects that are considered for Federal funding will be reviewed according to NEPA and other environmental laws. The review for other environmental laws is not depicted in Job Aid 8-1. The information and compliance process for these other laws is incorporated into the NEPA review process and document, so that it occurs simultaneously.



**Roles,  
Responsibilities,  
and  
Information  
Collection**

***Roles and  
Responsibilities  
(see 44  
CFR 10.7(c))***

Successful completion of environmental review requires the full participation of all of the HMGP partners: Applicants, States, and FEMA.

In support of FEMA's environmental review, applicants and States undertake the following roles:

-  Consult appropriate agencies during planning stages.
-  Consider viable alternatives to the proposed project, particularly when environmental issues or impacts are identified.
-  Provide thorough and accurate information regarding details of projects, and environmental issues or resources in the project area.
-  Conduct studies which are deemed necessary and appropriate to determine impacts.
-  Inform the public of the applicants' proposals and inform FEMA of potentially controversial issues or interested parties.

Managing States undertake a greater role in environmental review by taking on greater responsibility to ensure the completeness and accuracy of environmental information, provide qualified staff to make recommendations to FEMA, and undertake greater coordination with environmental agencies and the public.

FEMA's role is to provide technical assistance to applicants and States, where necessary. FEMA is involved in coordination with other Federal agencies, when potential impacts are identified. FEMA is responsible for environmental review and must review and approve all environmental review documents and ensure compliance with all Federal environmental laws.

Job Aid 8-2 contains an Environmental Considerations and Review Checklist, which can be used by States as a tool to assist FEMA with the environmental review.



**Job Aid 8-2**

**Information  
Collection**



Applicants are responsible for providing most of the necessary information to complete environmental review under the NEPA and other laws and Executive orders. States, particularly Managing States, take an active role in assisting applicants to prepare adequate environmental information and analysis. FEMA may assist applicants and States with technical assistance, as necessary, to complete environmental analysis.

**TIP: See the HMGP Applicant Handbook for greater detail on specific information needs.**

**Information Collection  
(Continued)**

To greatly facilitate FEMA’s environmental review, the applicant and State should gather factual information, resource maps, and comments from relevant environmental agencies and the public that addresses the environment in the project area, including:

- ~~///~~ Previously undisturbed land that may be affected by the project.
- ~~///~~ Waterways, water bodies, floodplains/floodways, potential wetland areas, and water quality.
- ~~///~~ Vegetated areas or areas of habitat, and threatened or endangered species.
- ~~///~~ Archeological, historical or cultural resources.
- ~~///~~ Hazardous and toxic materials.
- ~~///~~ Other sensitive natural areas, such as groundwater aquifers, barrier islands, wild and scenic rivers, and prime and important farmland.
- ~~///~~ Low income and minority populations and socio-economic concerns.

**Categorical Exclusions**

The majority of HMGP actions have very low potential to result in significant impacts, and thus have been excluded from the need to prepare extensive NEPA analytic documents (the Environmental Assessment and the Environmental Impact Statement). These actions can be Categorical Excluded (CATEX) if the action corresponds to a listed CATEX category. This review can be satisfied by relatively simple documentation.

To qualify for a CATEX a project must not involve any “extraordinary circumstances” and must comply with all other environmental laws. A list of CATEXes are provided in Job Aid 8-3.



Job Aid 8-3



**TIP: See 44 CFR Part 10.8 and Job Aid 8-3 for a list of categorical exclusions.**

**Consideration of Extraordinary Circumstances**

In some cases, an action that normally is categorically excluded may involve extraordinary circumstances. In situations where an extraordinary circumstance is identified, an EA may be prepared.



**TIP: See 44 CFR Part 10.8 for a list of extraordinary circumstances that may trigger further review.**

**Consideration of Extraordinary Circumstances**  
(Continued)

Extraordinary circumstances address issues such as high public controversy, unusual projects, or projects with a potential to affect critical or special status resources.

The levels of documentation required for various CATEXed actions are shown in Job Aid 8-3. The REO is the approving official for CATEXs. The REO should be consulted regarding specific documentation requirements and delegation of approval authority for certain levels of CATEXs.



Job Aid 8-3

**Environmental Assessments and Environmental Impact Statements**

If FEMA determines that a project does not qualify for a CATEX, the FEMA Regional Office, in coordination with the applicant and State, will prepare an analysis of impacts called the Environmental Assessment (EA), to determine whether the proposed project has potential to cause significant environmental impact.

If no significant impact is anticipated, FEMA will prepare a Finding of No Significant Impact, signed by the REO in most regions.<sup>1</sup> If significant impact is anticipated, then the State and FEMA will prepare an Environmental Impact Statement in coordination with the FEMA Environmental Officer.

There are very specific EIS requirements identified in 44 CFR Part 10 and the Council on Environmental Quality's regulations at 40 CFR parts 1500-1508. An EIS is a much more extensive evaluation of the impacts of the proposed project and all reasonable alternatives. Rigorous public involvement is required.

**Coordinating With Other Agencies**

When an EA or EIS is prepared, FEMA coordinates affected Federal, State, and local agencies and concerned groups. This coordination is required by FEMA regulations 44 CFR 10.9(c), 10.10 and the Council on Environmental Quality regulations 40 CFR Parts 1500-1508.



44 CFR 10.9(c) and 10.10

**Managing States**

In some cases, Managing States will undertake a greater role in the preparation of EAs and EISs by conducting more extensive analysis and preparation of documents. FEMA retains final approval authority.

**NEPA Compliance Exception**

With rare exception, actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA will not be considered for funding. The rare exception might be actions that were initiated in an emergency situation to prevent or reduce an immediate threat to life, health, property, or severe economic losses, if otherwise eligible.

The FEMA Regional Director will consult with the REO in such cases. Further consultation with the FEMA Environmental Officer and the Council on Environmental Quality may be necessary for a final decision.

<sup>1</sup>In most regions, the REO has been delegated this authority; if there is no REO, then the FEMA EO at headquarters is the approving official for EAs and EISs.

**Other  
Compliance  
Considerations**

Even actions that qualify for a categorical exclusion must comply with other Federal statutes, such as, but not limited to, the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, etc., as well as Executive orders on Floodplains, Wetlands, and Environmental Justice.

**Review  
Under Other  
Environmental  
Laws and  
Executive  
Orders**

This section presents a brief overview of the laws and Executive orders most frequently encountered when reviewing HMGP projects. There are many other laws that may be relevant to a particular project.

**National  
Historic  
Preservation  
Act**

Section 106 of the National Historic Preservation Act requires that Federal agencies “take into account the effect of the undertaking [proposed project] may have on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register [of Historic Places].” FEMA, in coordination with the State Historic Preservation Officer (SHPO), must identify resources in the area that may be affected by the proposed HMGP project and identify effects of the actions. FEMA must then obtain concurrence from the SHPO on the eligibility of the identified resource and the potential to affect them. If there are adverse effects, FEMA, in cooperation with the applicant and Grantee, enters into consultation with the SHPO on ways to avoid or mitigate effects to cultural resources and develop a project-specific agreement with the SHPO that identifies the agreed-upon measures to mitigate effects. FEMA may consult the Advisory Council on Historic Preservation in some situations.

Responsibility for compliance with the National Historic Preservation Act lies with the Federal agency funding the project, in this case; it is FEMA. However, there may be Programmatic Agreements in effect for certain disasters or States that reassign responsibility for various aspects of compliance. In any case, applicants and States assist FEMA in carrying out responsibilities under the Act.

In Managing States, the State may take a greater proactive role in identifying historic properties and potential effects.

**Clean Water  
Act—U.S. Army  
Corps of  
Engineers  
Permits**

All projects that may affect streams, rivers, lakes, oceans, wetlands, or any waters of the U.S., may require a U.S. Army Corps of Engineers Clean Water Act permit to proceed. In these cases, the applicant should work with the U.S. Army Corps of Engineers to develop the project and consider alternatives to avoid impacts to wetlands and other significant resources.

---

**Compliance  
With Executive  
Orders 11988  
and 11990**

Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands, require FEMA to ensure that an eight-step decision-making process is completed for proposed actions that are located in or affect a floodplain or wetland. The State will assist FEMA in complying with the eight-step process. The steps in the process, as defined in 44 CFR Part 9, are:



---

**Requirements  
for Public  
Notice**

Executive Orders 11988 and 11990 require FEMA and the State to notify the public of most actions affecting floodplains or wetlands. In certain instances, other projects may require a public notice if controversy or sensitive environmental issues are involved. The State and FEMA program staff should always consult the Regional Environmental Officer if a question arises.

Notification should occur, in coordination with applicants and States, when the project is initially developed (initial notice) and at the end of the review phase (final notice), prior to action. A disaster-wide notice is appropriate for some situations. A public meeting may be appropriate if homeowners or controversy are involved.

Executive Order 12898, discussed on the following page, requires that FEMA notify and involve affected low-income and minority populations.

FEMA's NEPA regulations recommend a public notice of a Finding of No Significant Impact in some situations. See 44 CFR 10.9(e).



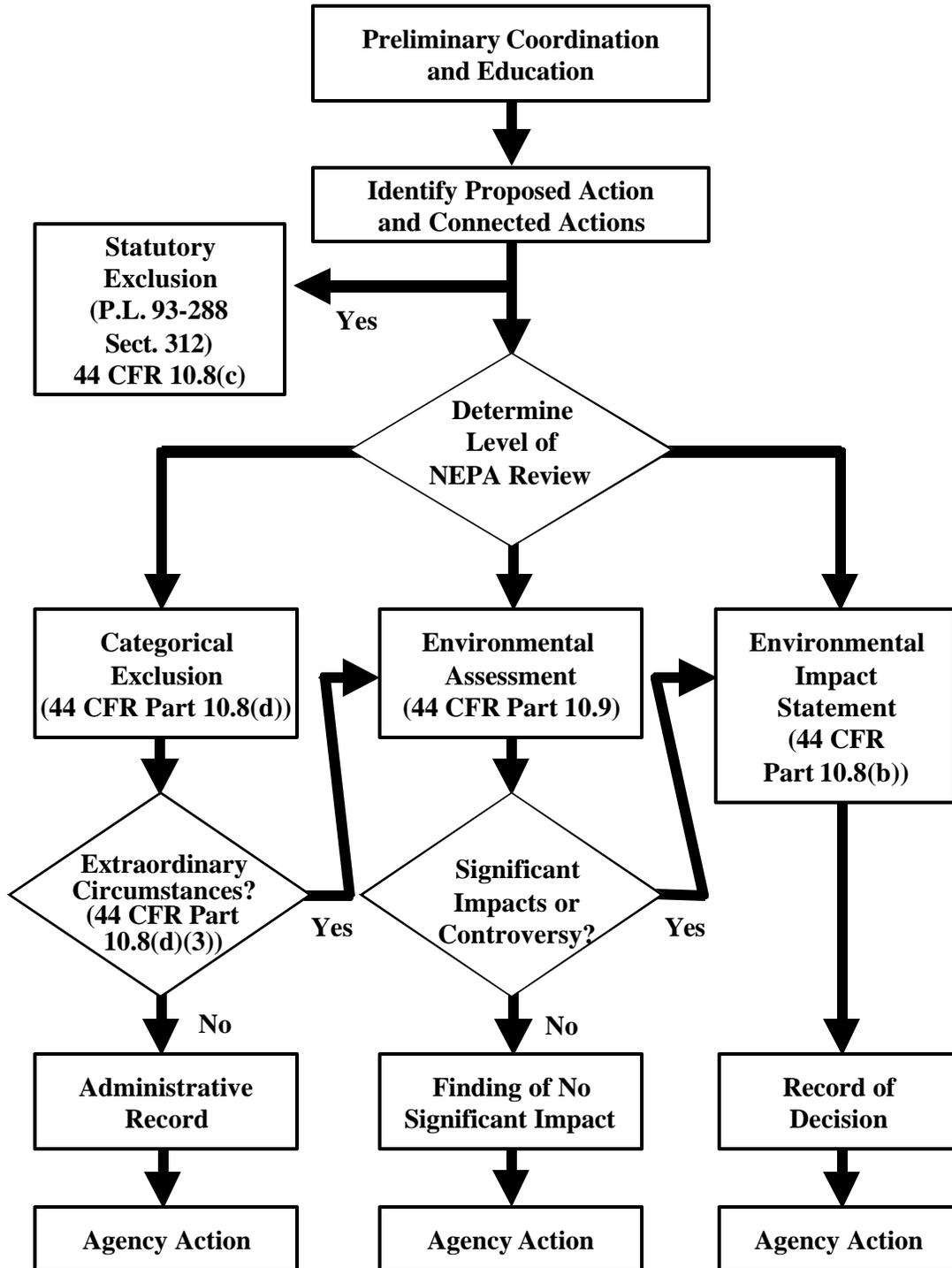
---

***Implementa-  
tion of E.O.  
12898  
Concerning  
Environmental  
Justice***

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs each Federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.



*FEMA's NEPA Environmental Review Process*





### *Environmental Considerations and Review Checklist*

---

Projects funded under the Hazard Mitigation Grant Program must comply with certain environmental requirements. The first step is to collect and analyze environmental information to ensure compliance with other environmental laws.

Second, the information and evaluation for compliance with other environmental laws is essential to determine the appropriate level of NEPA review. If the project falls within the scope of a CATEX category, the environmental information and evaluation of compliance with other laws will be used to determine if any extraordinary circumstance are present. If the project meets all requirements for the CATEX, NEPA CATEX review is documented as appropriate for the three CATEX levels. Otherwise, a more extensive review of the information analysis is completed as part of an EA or EIS.

Information received as part of the application submittal should be categorized in the following issue/resource/compliance areas. Federal or State agencies, such as a State Department of natural Resources or the State Historic Preservation Office, may have information pertinent to the potential environmental resources in the project areas and impacts of the project. Phone records or letters or response should be included in the submittal package. Information provided in this analysis should be as complete and thorough as possible to expedite approval. "Yes" or "no" answers may not be sufficient without a supporting explanation. Both beneficial and adverse impacts should be addressed.



**Environmental Considerations and Review Checklist (Continued)**

The checklist below is based on the information you will need to provide to the NEMIS system. For each issue, you will need to determine the status by identifying the most appropriate response:

- ~~///~~ Not the project area;
- ~~///~~ In the project area with no effect;
- ~~///~~ Presence in area undetermined;
- ~~///~~ In project area—effect unknown;
- ~~///~~ Adverse effect.

For each issue you must determine if the analysis should include supporting documentation such as maps and studies.

Issue	Consultations
<b>Aquatic and Terrestrial Biotic Resources</b>	Consult with: † † Appropriate State agency † † U.S. Fish and Wildlife Service † † National Marine Fisheries Services
<b>Archeological or Cultural Resources</b>	Consult with: † † Local historical society † † State Historic Preservation Office
<b>Coastal Zone Management and Coastal Barriers</b>	Consult with: † † Appropriate State agency † † U.S. Fish and Wildlife Service † † National Marine Fisheries Service
<b>Designated Floodplain/ Floodway</b>	Consult with: † † Local floodplain administrator † † Appropriate State agency † † FEMA
<b>Hazardous Materials</b>	Consult with: † † Appropriate State agency † † Environmental Protection Agency
<b>Historic Structures</b>	Consult with: † † State Historic Preservation Officer † † Local historical society † † National Register of Historic Places



**Environmental Considerations and Review Checklist (Continued)**

Issue	Consultations
<b>Hydrology/ Hydraulics</b>	Consult with: † † Appropriate State agency † † FEMA † † USACE † † NRCS
<b>Land Use/ Development Patterns</b>	Consult with: † † Appropriate State agency † † Regional Planning Commissions
<b>Local Economy/ Community Services</b>	Consult with: † † Appropriate State agency † † Regional Planning Commissions
<b>Low-Income or Minority Populations</b>	Consult with: † † Appropriate State agency † † HUD
<b>Prime Farmland</b>	Consult with: † † Appropriate State agency † † USDA † † Natural Resources Conservation Service
<b>Slopes and Soil</b>	Consult with: † † Appropriate State agency † † Natural Resources Conservation Service
<b>Special Status Natural Areas</b>	Consult with: † † Appropriate State agency † † U.S. Fish and Wildlife Service † † National Marine Fisheries Service
<b>Threatened/ Endangered Species</b>	Consult with: † † Appropriate State agency † † U.S. Fish and Wildlife Service † † National Marine Fisheries Service





***Environmental Considerations and Review Checklist (Continued)***

<b>Issue</b>	<b>Consultations</b>
<b>Water Quality</b>	Consult with: † † Appropriate State agency † † USACE † † EPA
<b>Wetlands</b>	Consult with: † † Appropriate State agency † † USACE † † FEMA



*List of CATEXs and Required Documentation\**

Level 1 No Documentation	Level 2 Notation
Administrative actions such as personnel or travel 44 CFR 10.8(d)(2)(i)	Acquisition and/or relocation projects 44 CFR 10.8(d)(2)(vii)
Preparation/revision of program or manuals 44 CFR 10.8(d)(2)(ii)	Acquisition, operation of communication/utility systems 44 CFR 10.8(d)(2)(ix)
Studies requiring only manpower/associated costs 44 CFR 10.8(d)(2)(iii)	Demolition or disposal of non-contaminated structures 44 CFR 10.8(d)(2)(xii)
Inspection and code enforcement activities 44 CFR 10.8(d)(2)(iv)	Physical relocation of structures where FEMA has no role in relocated site 44 CFR 10.8(d)(2)(xiii)
Training activities 44 CFR 10.8(d)(2)(v)	Repair or construction of duplicative structures 44 CFR 10.8(d)(2)(xv)
Goods and services and storage of supplies 44 CFR 10.8(d)(2)(vi)	Actions with enclosed facilities that meet all environmental requirements 44 CFR 10.8(d)(2)(xvii)
Acquisition or lease of existing facilities 44 CFR 10.8(d)(2)(viii)	
Routine maintenance at FEMA facilities 44 CFR 10.8(d)(2)(x)	
Planting indigenous vegetation 44 CFR 10.8(d)(2)(xi)	
Granting NFIP exceptions for basements meeting 44 CFR 60.6(c) 44 CFR 10.8(d)(2)(xiv)	
Planning and administrative actions during emergency and disaster response and recovery 44 CFR 10.8(d)(2)(xviii)	
Response and recovery and mitigation activities specified under Sections 402, 403, 407, 408, 410, 411, 412, 413, 415, 416, 417, 418, 418, 420, and 502 44 CFR 10.8(d)(2)(xix)	
Demolition and disposal of structures to off-site locations 44 CFR 10.8(d)(2)(vii)	

\*Descriptions are abbreviated. See 44 CFR 10.8(d)(2) for more complete guidance.





*List of CATEXs and Required Documentation\* (Continued)*

Level 1 No Documentation	Level 2 Notation
Physical relocation of individual structures when FEMA has no further involvement 44 CFR 10.8 (d)(2)(xii)	
Acquisition, installation, or operation of utility or communication systems 44 CFR 10.8 (d)(2)(ix)	
Elevation or retrofitting to current codes or a pre-existing design, function, or location 44 CFR 10.8 (d)(2)(xv)	
Actions conducted within enclosed facilities that comply with environmental laws and regulations 44 CFR 10.8 (d)(2)(xvii)	

\*Descriptions are abbreviated. See 44 CFR 10.8(d)(2) for more complete guidance.

**Level 3: Full Documentation**

Improvements to existing facilities and the construction of small-scale hazard mitigation measures in existing developed areas with substantially completed infrastructure, when the immediate project areas has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify the intended land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment. 44 CFR 10.8(d)(2)xvi.