



### Directive 108-1: *Environmental Planning and Historic Preservation Responsibilities and Program Requirements*

Rule Change: Rescission of 44 CFR Part 10 *Anticipated effective August 22, 2016*

*The Office of Environmental Planning and Historic Preservation (OEHP) has prepared a package of documents with the goals of strengthening and formalizing the Federal Emergency Management Agency's (FEMA) approach to Environmental Planning and Historic Preservation (EHP) compliance and making the approach consistent with Department of Homeland Security (DHS) policy. The documents include draft Directive 108-1 (EHP Directive), companion Instruction, an EHP Program Implementation Plan template, and a draft Preamble for a Rule Change that would rescind FEMA's current EHP compliance procedures published at Title 44 of the Code of Federal Regulations (CFR) Part 10.*

#### **Development of the EHP Directive & Instruction**

The EHP Directive formalizes the recommendations of an Office of Policy and Program Analysis (OPPA)-initiated EHP Policy Assessment process that began in 2011 and concluded in January 2016. The EHP Policy Assessment explored weaknesses in FEMA's fulfillment of EHP compliance and proposed approaches to strengthen it, especially in light of FEMA's increasing involvement in non-disaster activities including hazard mitigation and preparedness grants. The EHP Policy Assessment involved FEMA-wide interviews and surveys including grant program staff and EHP staff. It resulted in a set of policy suggestions designed to: 1) Build EHP Capabilities, particularly in the program areas, empowering programs to take a more central role in ensuring legally sufficient EHP review; 2) Frontload the EHP Process, i.e. ensure that EHP is considered early in and throughout project development; and 3) Create transparency and process visibility; i.e. ensure open communication between programs and applicants regarding timelines, information needs, costs, and other requirements of fulfilling EHP reviews.

The EHP Directive and Instruction was developed to fulfill these policy suggestions with involvement from stakeholder groups across FEMA and throughout the regions. Preliminary drafts were written primarily within OEHP with significant input from Regional Environmental Officers (REOs). Officials of FEMA's various grant programs and facilities administration were briefed on the Directive throughout its development. They provided valuable comments and feedback, much of which was incorporated into the language of the EHP Directive, companion Instruction, and EHP Program Implementation Plan template.

#### **DHS Policy and Rule Rescission**

While FEMA worked on strengthening its approach to EHP Compliance, DHS also revised and reissued a department-wide directive on implementation of the National Environmental Policy Act (NEPA), which forms the legal framework within which much of EHP compliance activity occurs. In order to retain authority to independently conduct EHP compliance reviews, the DHS Directive and Instruction requires components to develop internal NEPA procedures that are consistent with the DHS Directive and that are subject to DHS approval. So OEHP also worked with DHS on development of the EHP Directive and Instruction, which include FEMA's NEPA implementation procedures.

FEMA has had NEPA implementation procedures codified at 44 CFR Part 10 since 1980. These regulations predate and are no longer consistent with FEMA's inclusion as a component of DHS. Thus, in order to approve the EHP Directive and Instruction, 44 CFR Part 10 must be rescinded at the same time that the Directive becomes effective, as FEMA cannot have two distinct sets of EHP compliance procedures at the same time.

## Program Requirements included in EHP Directive

- Programs are expected to take on a central role in ensuring all grants, projects, and mission-related activities comply with all environmental planning and historic preservation (EHP) statutes, regulations, and executive orders.
- To that end, *within six months following the effective date for the EHP Directive and Manual, programs must develop Program Implementation Plans* that describe measures and procedures to ensure integration of EHP considerations in planning and compliance with EHP requirements for all actions. A template will be provided.
- Program staff who authorize funding for grants, projects, and mission-related activities must fulfill *Program EHP Endorsement*, committing to decisions described in EHP decision documents. This includes commitment to funding and ongoing monitoring for any eligible mitigation or monitoring requirements described in EHP decision documents. Program EHP Endorsement is separate from and follows EHP Review, which is conducted and approved by staff who hold *EHP Approval Authority*.
- Recommended that programs appoint liaisons to serve as EHP Points of Contact who will be involved with Program EHP responsibilities and maintain contact with the Office of Environmental Planning and Historic Preservation (OEHP).
- Programs must proactively communicate with recipients and sub-recipients throughout the EHP review process to ensure understanding of EHP requirements, submission of needed EHP information, and compliance with all EHP mitigation and monitoring conditions.
- The categorical exclusions (CATEXs) that FEMA references are changing. This is not a substantive change, but will require discontinuing reference to 44 CFR Part 10 CATEXs which will be replaced with a broader list of CATEXs included in the DHS Instruction on NEPA implementation.
- To fulfill EHP compliance responsibilities programs must do one or more of the following: 1) Support OEHP and Regional Environmental Officers in continuing to manage program EHP compliance responsibilities; 2) Employ EHP specialists who meet requirements detailed in the Directive who are authorized to apply CATEXs and evaluate need for projects to undergo further EHP review from regional or OEHP specialists; 3) Procure qualified contractors to support EHP compliance review.

## For Additional Information

[About the National Environmental Policy Act \(NEPA\)](#)

[About FEMA's Office of Environmental Planning and Historic Preservation \(OEHP\)](#)

[About the Council on Environmental Quality \(CEQ\)](#)

[About the Advisory Council on Historic Preservation \(ACHP\)](#)

[Department of Homeland Security: NEPA Implementation and CATEXs](#)