

APPENDIX A: ENVIRONMENTAL AND HISTORIC PRESERVATION COMPLIANCE

The following statutes and Executive Orders (EOs) are commonly encountered Federal requirements that were established to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each Public Assistance (PA) project to ensure the work complies with applicable Federal environmental and historic preservation (EHP) laws, their implementing regulations, and applicable EOs. Compliance with all Federal and SLTT laws is a requirement of every FEMA award. SLTT laws, such as hazardous material management laws, vary by location and are not included in this appendix.

FEMA prepares a Greensheet at the beginning of each emergency or disaster declaration with specific information relevant to each State and area. The Greensheet briefly discusses the relevant laws and project types that might trigger application of those laws and informs the Applicant that failure to comply with Federal and SLTT laws may jeopardize funding.

National Environmental Policy Act

Section 102 of the National Environmental Policy Act (NEPA) requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.³⁸⁵ The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (C.F.R.) Parts 1500–1508. The U.S. Department of Homeland Security publishes policies and procedures for implementing NEPA and provide specific processes that FEMA must follow before funding a project. The NEPA process ensures consideration of environmental consequences of the project before decisions are made and involves the public.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires FEMA to consider the effects an undertaking will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the undertaking.³⁸⁶ Historic properties include buildings or groups of buildings (districts), structures, objects, landscapes, archaeological sites, and traditional cultural properties included in, or eligible for inclusion in, the National Register of Historic Places.³⁸⁷

Endangered Species Act

The Endangered Species Act (ESA) requires Federal agencies to use their authorities to conserve federally listed threatened and endangered species (listed species) and critical habitats. FEMA must also consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, to ensure that proposed projects will not jeopardize the continued

³⁸⁵ 42 U.S.C. § 4332.

³⁸⁶ 16 U.S.C. § 470f.

³⁸⁷ www.nps.gov/subjects/nationalregister/index.htm.

existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.³⁸⁸

Clean Water Act

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants in the waters of the United States (e.g., rivers and streams, lakes and ponds, coastlines, wetlands, estuaries). The CWA makes it unlawful to discharge any pollutant from a specific source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or State regulatory agency.³⁸⁹ In addition, the CWA requires authorization for dredging or filling in waters (including disposal of dredged material).

Rivers and Harbors Act

The Rivers and Harbors Act requires that authorization be obtained from USACE to construct any structure in or over any navigable water, including authorization for projects involving constructing or modifying bridges and causeways over navigable waters or constructing any dam or dike in a navigable water. Typically, requests for this type of authorization are handled together with requests for authorization of projects under Section 404 of the CWA.

Safe Drinking Water Act

The purpose of the Safe Drinking Water Act is to protect public health by ensuring the quality of drinking water. The law authorizes the U.S. Environmental Protection Agency (EPA) to, among other things, set standards for the levels of individual contaminants allowed in drinking water and designate as aquifers that are the sole or principal source of drinking water for an area as sole source aquifers. For any financial assistance project that has the potential to contaminate an aquifer and that is located in the identified review area for a sole source aquifer, FEMA must consult with the EPA before funding the project.

Clean Air Act

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Air quality compliance often requires certain measures be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures. There may be additional requirements in nonattainment areas (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures).³⁹⁰

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA)³⁹¹ established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, Great Lakes, and Caribbean coasts. CBRA minimizes adverse impacts to these areas by restricting Federal assistance that encourages development within the CBRS. USFWS

³⁸⁸ 16 U.S.C. § 1536, Endangered Species Act Section 7.

³⁸⁹ 33 U.S.C. § 1251 et seq.

³⁹⁰ 42 U.S.C. § 7401 et seq.

³⁹¹ 16 U.S.C. § 3501 et seq.

publishes maps designating these areas.³⁹² FEMA must consult with USFWS prior to providing PA funding for work within the CBRs.³⁹³

Migratory Bird Treaty Act

The Migratory Bird Treaty Act makes it unlawful to pursue, hunt, take, capture, kill, or sell migratory birds listed in the statute without a waiver from USFWS.³⁹⁴ FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act prohibits any person from pursuing, capturing, killing, wounding, disturbing, or otherwise taking bald eagles or golden eagles, including their parts (e.g., feathers), nests, or eggs, unless authorized by a permit from the USFWS. The prohibition on disturbance applies to nests and previously used nest sites when eagles are not present if, were an eagle to return, such alterations would lead to injury, death or nest abandonment.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act is the primary law for managing and maintaining sustainable fisheries in waters of the United States. The Magnuson-Stevens Fishery Conservation and Management Act protects essential fish habitat, which includes the waters and substrate necessary to maintain healthy fisheries. FEMA must consult with NMFS when any proposed PA project could have an adverse effect on essential fish habitat (defined as any impact that reduces quality or quantity of essential fish habitat).³⁹⁵

Marine Mammal Protection Act

The Marine Mammal Protection Act prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters or by U.S. citizens on the high seas. The law prohibits attempts to hunt, capture, kill, or harass any marine mammals. The law authorizes NMFS or USFWS (depending on the species in question) to issue incidental take permits and incidental harassment authorizations.

National Marine Sanctuaries Act (NMSA)

The National Marine Sanctuaries Act, which is part of the Marine Protection, Research and Sanctuaries Act, authorizes the Secretary of Commerce to designate and manage areas of the marine environment as National Marine Sanctuaries (NMS), which NOAA administers. Activities within each NMS are governed by regulations. A sanctuary resource is defined as any living or nonliving resource of a NMS that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary. The National Marine Sanctuaries Act prohibits destroying, injuring, or causing the

³⁹² 16 U.S.C. §§ 3501 and 3503. The U.S. Fish and Wildlife Service publishes Coastal Barrier Resource System maps at: www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html.

³⁹³ 16 U.S.C. § 3505.

³⁹⁴ 16 U.S.C. §§ 703–712.

³⁹⁵ 16 U.S.C. §§ 1801–1884.

loss of any sanctuary resource. A permit is required to conduct any activity within a sanctuary that is otherwise prohibited.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) provides for the management of the Nation's coastal resources. The CZMA establishes a voluntary partnership between the Federal Government and coastal and great lakes States. It requires participating States to develop State coastal zone management plans. PA projects located in, or near, established coastal zone management areas must be consistent with the enforceable policies of the State's federally approved coastal zone management program.³⁹⁶ Before approving a project in a coastal zone management area, FEMA consults with the State agency overseeing the implementation of the CZMA plan to ensure the project is consistent with the program's provisions.

Farmland Protection Policy Act

The Farmland Protection Policy Act is intended to minimize the extent to which Federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to nonagricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, local, and private programs and policies to protect farmland. The Farmland Protection Policy Act and U.S. Department of Agriculture (USDA) implementing procedures require FEMA to evaluate whether projects it funds irreversibly convert such farmland to nonagricultural uses and to consider alternative actions that could avoid adverse effects. For projects that have the potential to irreversibly convert such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.³⁹⁷

Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act protects the free-flowing condition of rivers that are part of the National Wild and Scenic Rivers System (System) or are under study for inclusion in the System because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values (the rivers under study are listed on the Nationwide Rivers Inventory or have been formally identified as Study Rivers). If a proposed project is located on a river covered by the Wild and Scenic Rivers Act (including a designated river, a Study River, or a river on the Nationwide Rivers Inventory), FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river.³⁹⁸

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) established a framework for Federal, State, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. EPA's role is to establish minimum regulatory standards, usually implemented by the States, which can establish their own requirements for solid waste management. RCRA

³⁹⁶ 16 U.S.C. § 1451 et seq.

³⁹⁷ 7 U.S.C. § 4201 et seq.

³⁹⁸ 16 U.S.C. § 1271 et seq.

requires the safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies.³⁹⁹

Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, authorizes the Federal Government to respond to releases or threatened releases of hazardous substances into the environment through short-term removals and long-term remedial response actions. Superfund also triggered the development of the National Priorities List, a list of national priorities among the sites with known or threatened releases of hazardous contaminants. The 1986 amendments to CERCLA included the Emergency Planning and Community Right-to-Know Act (EPCRA) which, among other things, creates mechanisms to help local communities plan for chemical emergencies.

Executive Order 11988, Floodplain Management

EO 11988, Floodplain Management, requires Federal agencies to minimize or avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modifications of floodplain and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. It requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects located in, or affecting, floodplains; document each step of the process; and involve the public in the decision-making process. This process is designed to:

- Reduce flood loss risks;
- Minimize the impacts of floods on human safety, health, and welfare; and
- Restore and preserve the natural and beneficial functions of floodplains.

FEMA publishes its implementing regulations for EO 11988 in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.⁴⁰⁰

Executive Order 11990, Protection of Wetlands

EO 11990, Protection of Wetlands, requires Federal agencies to avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. To meet these objectives, EO 11990 requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects in, or affecting, wetlands; document each step of the process; and involve the public in the decision-making process.

FEMA publishes its implementing regulations for EO 11990, Protection of Wetlands in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.

³⁹⁹ 42 U.S.C. § 6901 et seq.

⁴⁰⁰ 44 C.F.R. § 9.6, Decision-making process.

Executive Order 12898, Environmental Justice

EO 12898, Environmental Justice, requires Federal agencies to identify and address any disproportionately high and adverse human health or environmental effects on minority and low-income populations as a result of their actions.

Executive Order 13112, Invasive Species

EO 13112, Invasive Species, requires agencies to use their programs and authorities to help prevent the introduction, establishment, and spread of invasive species; respond to invasive species outbreaks; restore native species in areas invaded by invasive species; promote public education related to invasive species control; and avoid authorizing, funding, or carrying out activities that promote the introduction, establishment, or spread of invasive species.