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Series: Environmental Quality Programs

Part 520: Protection of the Natural Environment

Chapter 2: Floodplain Management and Wetlands Protection Program Requirements

Originating Office: Office of Environmental Policy and Compliance

520DM2

2.1 **Purpose.** This Chapter sets forth the program requirements and procedures that Department of the Interior (Department) Bureaus/offices must follow in implementing Part 520 of the Departmental Manual in Chapter 1 - Floodplain Management and Wetlands Protection Policy and Responsibilities (520 DM 1).

2.2 **Authorities.** The following authorities are an integral part of the policy and requirements in this Chapter.

- A. Executive Order (EO) 11988, Floodplain Management, issued May 24, 1977.
- B. EO 11990, Protection of Wetlands, issued May 24, 1977.
- C. Unified National Program for Floodplain Management, Water Resources Council (WRC).
- D. Floodplain Management Guidelines for Implementing EO 11988, WRC, February 10, 1978 (43 FR 6030).
- E. EO 11514, as amended, Protection and Enhancement of Environmental Quality, issued March 5, 1970.
- F. EO 12372, as amended, Intergovernmental Review of Federal Programs, issued July 14, 1982.

2.3 **Definitions.** In addition to the definitions provided below, a glossary of definitions is provided in the WRC Guidelines for EO 11988.

- A. Critical Action. Any activity for which even a slight chance of flooding would be too great.

B. Floodplain. The term "floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands. When evaluating the potential effects of the proposed actions covered by this Chapter, the floodplain will be established based on the type of action and whether it is a critical action. For actions that are not critical actions, the minimum standard is the 100-year or 1-percent-annual-chance flood elevation and corresponding horizontal floodplain; however, the 500-year or 0.2-percent-annual-chance flood elevation and corresponding horizontal floodplain should be used for critical actions.

2.4 **Interrelationships.** The Department recognizes that the requirements of the Executive orders have basic interrelationships and condition the implementation of this DM on its coordination with existing Federal actions and guidance documents. Therefore, to the extent possible, the Department will integrate flood hazards, floodplain management and wetland protection requirements into its programs and will utilize existing consultation, planning, environmental review, and decision processes.

A. WRC Guidelines. The WRC Floodplain Management Guidelines for Implementing EO 11988 (Guidelines) are the basic guidance for interpreting that Executive order and conducting the floodplain management planning and decision processes. Where it is deemed appropriate for the Department to diverge from the WRC Guidelines, 520 DM 1 and 2 will supersede that document. In general, the substantive requirements of EO 11988, as interpreted and explained in the WRC Guidelines, are adopted by the Department, consistent with 520 DM 1. Bureaus/offices will adhere to the methods, standards, and definitions of terms as set forth in the WRC Guidelines for determining risks and hazards of flood loss; minimization of impact on health, safety, and welfare; and evaluation of alternatives.

B. Protection of Wetlands. EO 11990 requires Federal agencies to avoid destruction or modification of wetlands whenever there is a practicable alternative. Wetlands are commonly found within floodplains, and even when not located within floodplains, wetlands often reduce flood severity. Thus, Bureaus/offices need to, in general, conduct activities regarding wetlands in accordance with 520 DM 1 and 2.

C. Environmental Compliance. For actions located in floodplains and wetlands, the requirements of the Executive orders supplement those of existing environmental review and compliance laws, regulations, and policies, including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). Since most Federal actions in floodplains and wetlands will impact these resources, an environmental document will probably be required to comply with NEPA. To provide ease and economy of documentation, and the opportunity for public review, the Executive order procedures and requirements will be integrated with NEPA, the NHPA, and other compliance procedures and documents for each such action, as appropriate. If public review is not provided through the NEPA process, another opportunity for public review is necessary.

D. Water Resources and Land Related Resources Development. For actions related to the Federal water resource infrastructure investments as defined in 707 DM 1, the principles and requirements for conducting water and related land resources implementation studies

supplement those of NEPA. When the analysis required in 707 DM 1 and related guidance provide for ease and economy of documentation by conducting it within the NEPA process, then it will be included in the NEPA compliance documents for each such action. Otherwise a separate process is necessary.

E. Interagency Review. Because of its broad responsibility for the protection, maintenance, and enhancement of the Nation's natural resources, the Department maintains an effective review function that monitors other agency activities in floodplains and wetlands. Under the auspices of various laws, regulations, and interagency agreements, the Department has responsibility to comment on a variety of proposals and to suggest solutions for many problems that impact floodplain and wetland resources.

2.5 Requirements for Developing Bureau/Office Procedures.

A. General.

(1) Bureaus/Offices may prepare new or update existing separate Bureau/Office specific procedures for complying with the policy and program requirements in 520 DM 1 and 2 and the Executive orders. Initially, Bureau/Office procedures will be prepared or updated in consultation with the Office of Environmental Policy and Compliance (OEPC) and the appropriate Program Assistant Secretary. Once approved by the OEPC, periodic minor revisions may be made without extensive reconsultation. Any major amendments, however, require concurrence of the appropriate program Assistant Secretary and approval by the OEPC.

(2) Office of the Secretary. Offices reporting to the Secretary or the Assistant Secretary for Policy, Management and Budget (AS-PMB) are not required to prepare separate specific procedures but must comply with the Executive orders and these procedures. The OEPC is available to provide guidance for any specific compliance activities.

B. Specific.

(1) Procedures must be prepared or updated in accordance with the requirements in this Chapter, its references, and existing policies. If the procedures vary substantively from the WRC Guidelines or this Chapter, they must be published in the Federal Register.

(2) Procedures initially prepared in accordance with the WRC Guidelines for Implementing EO 11988, must be circulated for review to the Council on Environmental Quality (CEQ), the WRC, and the Federal Emergency Management Agency (FEMA).

(3) Minor procedural amendments to procedures do not require extensive reconsultation; however, substantive amendments must be circulated as required in 520 DM 2.5 B (2).

(4) Procedures must be prepared in the most logical format. The following two formats are recommended:

(a) Single Procedure Document. This format presents Bureau/Office procedures in one document and explains their application to all affected programs.

(b) Dispersed Procedures. This format presents a summary of and references to the various separate procedures of the Bureau/Office programs. With this approach detailed procedures are issued separately as additions or revisions to existing program guidance.

(5) Procedures, when published in the Federal Register, must also include a listing of any handbooks, manuals, or other guidelines that will be modified, the schedule for completion of the modification, and how and where copies can be obtained for review.

C. Criteria for Evaluation. The following criteria will be used by the AS-PMB and Program Assistant Secretaries to evaluate all procedures prepared for compliance with this Chapter. The procedures must provide for:

(1) Leadership with respect to natural and beneficial functions and values of floodplains and wetlands.

(2) Utilization of the principles of the WRC Unified National Program for Floodplain Management and WRC Guidelines for Implementing EO 11988.

(3) A systematic review of existing procedures to involve protection and restoration of natural functions and values, and a sound policy to apply floodplain and wetland principles in all stages of planning, implementation, monitoring and evaluation of Bureau/Office activities.

(4) Avoidance of long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands, especially to natural and cultural resources.

(5) Avoidance of direct or indirect support of floodplain and wetland development whenever there is a practical alternative.

(6) Reduction of flood losses, including to real property and other investments.

(7) Minimization of flood impacts on human health, safety, and welfare.

(8) Development of an integrated process to involve the public in the floodplain and wetland decision making process, including through integration with any applicable environmental review process, including NEPA and the NHPA, where appropriate.

(9) Technical consultation with the WRC, the CEQ, FEMA, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (USACE), and other institutions

with expertise in the natural and beneficial values of floodplains and wetlands.

(10) Assurance that planning programs and budget requests reflect consideration of natural and beneficial functions and values of floodplains and wetlands.

(11) Documentation of specific analysis of actions and for any reporting purposes under the Executive orders.

2.6 Requirements for Implementing Bureau/Office Procedures.

A. General. Procedures to be followed in applying EO 11988 to all actions are set forth in Part II of the WRC Guidelines. The Department has adopted this process. Bureaus/offices may only deviate from the process when their missions and programs are better served by modified procedures. When the affected floodplain includes wetlands, application of these procedures must also reflect wetlands considerations and must demonstrate how the wetlands will be protected. When wetlands alone are affected, EO 11990 applies separately. The same procedural steps identified below for floodplains, replaced with wetlands, will comply with EO 11990. Factors to consider when assessing the effects of a proposed action on the survival and quality (for example, condition and capacity to provide ecosystem services) of wetlands include those identified in EO 11990 Section 5.

B. Procedures. When an action is proposed in wetlands or a floodplain, the following procedural steps (summarized from the WRC Guidelines) must be addressed and integrated into the planning process. After identifying the specific need, function, and situation for the action and determining whether it is a critical action, Bureaus/offices must follow the eight-step decision-making process summarized below:

(1) Determine whether a proposed action is located in the 100-year floodplain (1-percent-annual-chance) or 500-year floodplain (0.2-percent-annual-chance) for "critical actions." This requirement is discussed in Step 1 of the WRC Guidelines. If the proposed action is not in a floodplain, proceed to Step 4 below.

(2) Identify the overall audience for public notice and involvement, the vehicles for public participation and the purpose and timing of public notice actions, including through integration with any applicable environmental review processes. This requirement is discussed in Step 2 of the WRC Guidelines.

(3) Identify and evaluate practicable alternative sites or actions, including taking no action. This requirement is discussed in Step 3 of the WRC Guidelines.

(4) Identify direct or indirect impacts associated with the occupancy and modification of the floodplain, and any associated wetlands; direct or indirect support of floodplain development; and how they will be evaluated. This requirement is discussed in Step 4 of the WRC Guidelines. If the proposed action is outside the floodplain and has no identifiable impacts and does not support floodplain development, proceed to Step 8 below.

(5) Identify minimization of harm to lives, property, and to natural and beneficial floodplain and wetland values, and measures to achieve this minimization. This requirement is discussed in Step 5 of the WRC Guidelines.

(6) Re-evaluate the proposed alternatives considering the minimization measures and determine if they are still practicable at a floodplain site in light of the exposure to flood risk and ensuing disruption of floodplain, and potentially wetland, values. This requirement is discussed in Step 6 of the WRC Guidelines.

(7) Provide a written statement of findings and public explanation, and the appropriate integration of this process into existing procedures and documents, including environmental review procedures, such as NEPA and the NHPA, and documents where environmental review applies. This requirement is discussed in Step 7 of the WRC Guidelines.

(8) Implement the proposed action, assuring implementation is in accordance with the EO 11988. This requirement is discussed in Step 8 of the WRC Guidelines.

C. Documentation and Circulation.

(1) Case-by-case documentation is required for all actions covered by the Executive orders. Project files will be kept current and reflect compliance with the decision-making process outlined in the WRC Guidelines.

(2) Circulation of information and data on casework is necessary to satisfy Sections 2(a)(2), (3), and (4) of EO 11988. Section 2(a)(2) is a general notice of actions to be taken. Section 2(a)(3) assures compliance with EO 12372 reporting procedures. Section 2(a)(4) calls for early public review whether or not the action will require preparation of an environmental impact statement. This early public review is discussed in Step 2 of the WRC Guidelines.

(3) Steps 2 and 7, Part II of the WRC Guidelines give thorough information for compliance with the public notice requirements of EO 11988. A notice will be published in the Federal Register when the proposed action has national significance or impact. On actions of lesser geographic coverage, the Federal Register may be used, but Bureaus/offices must also use other public information methods, such as news releases, newsletters, and public meetings to inform the interested public.

(4) To assure interagency coordination, notices, NEPA documents, and decision statements on proposals in floodplains and wetlands are to be distributed to the following agencies, as appropriate:

- (a) Environmental Protection Agency (EPA).
- (b) FEMA.

- (c) FWS.
- (d) U.S. Geological Survey (USGS).
- (e) Bureau of Reclamation (BOR).
- (f) USACE.
- (g) Natural Resources Conservation Service (NRCS).
- (h) State Water Resources Agencies, as applicable
(if not covered by the EO 12372 process).

2.7 Statement of Findings. The WRC Guidelines in Part II, Step 7, describe the post-decisional process for the statement of findings and explanation to the public in the event that re-evaluation results in locating the project in the floodplain. All procedures must include the process in the pre-decisional activities, including the re-evaluation of alternatives (Step 6). Bureaus/offices should work the key parts of the WRC Guidelines into their environmental review process so that floodplain and wetlands considerations remain pre-decisional. A proposed statement of findings would then be attached to a finding of no significant impact. If the final decision differs significantly from the proposed action, then Bureaus/offices are required to issue a separate statement of findings in accordance with Step 7.

2.8 Intra-Departmental Conflict Resolutions. When two or more Bureaus/offices hold conflicting views on a particular project, the following steps will be taken as soon as the conflict is known to achieve a satisfactory solution:

- A. A meeting will be held between field-level officials of the Bureaus/offices involved to resolve the matter or to clarify their differences.
- B. If there is no resolution, a meeting will be held with the OEPC Regional Environmental Officer (REO) and regional officials of the involved Bureaus/offices to find a solution or refer to a higher authority.
- C. If referred to a higher authority, each involved Bureau/Office and the REO will prepare and forward to headquarters a complete case report that provides background, analysis, acceptable alternative positions, conclusions, and recommendations. Supporting material (maps, associated reports, position papers, etc.) must accompany the case report. If the supporting materials are too voluminous, they should be summarized in the case report and made available to a higher authority upon request.
- D. If the opposing views are upheld within a program area under one Assistant Secretary, that Assistant Secretary will review the issue, document the findings, and decide the issue.

E. If the opposing views are held between two or more Assistant Secretaries, each Assistant Secretary will review the case report(s) and forward them with their separate findings and recommendations to the AS-PMB.

F. The AS-PMB will decide any disputed issue forwarded, or refer it to the Secretary in those few instances where the Secretary's personal decision may be necessary.