

Department of Justice

§ 63.4

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AUTHORITY: 5 U.S.C. 301, Executive Order No. 11988 of May 24, 1977, and Executive Order No. 11990 of May 24, 1977.

SOURCE: Order No. 902-80, 45 FR 50565, July 30, 1980, unless otherwise noted.

§ 63.1 Purpose.

These guidelines set forth procedures to be followed by the Department of Justice to implement Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). (The Orders.)

§ 63.2 Policy.

(a) It is the Department of Justice's policy to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in floodplains and wetlands whenever there is a practicable alternative. The Department will provide leadership and take affirmative action to carry out the Orders.

(b) It is the Department of Justice's intention to integrate these procedures with those required under statutes protecting the environment, such as the National Environmental Policy Act (NEPA). Whenever possible, the procedures detailed herein should be coordinated with other required documents, such as the environmental impact statement (EIS) or environmental assessment required under NEPA, so that unnecessary paperwork can be eliminated.

§ 63.3 References.

(a) Unified National Program for Floodplain Management, Water Resources Council, which is incorporated in these guidelines.

(b) Water Resources Council Floodplain Management Guidelines, Water Resources Council, 1978 (43 FR 6030).

(c) National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*)

and NFIP criteria (44 CFR part 59 *et seq.*).

(d) Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).

(e) National Environmental Policy Act of 1969, as amended (43 U.S.C. 4321 *et seq.*) (NEPA).

§ 63.4 Definitions.

Throughout this part, the following basic definitions shall apply:

(a) *Action*—any Federal activity including:

(1) Acquiring, managing and disposing of Federal lands and facilities;

(2) Providing federally undertaken, financed, or assisted construction and improvements; and

(3) Conducting Federal activities and program affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) *Agency*— an executive department, a government corporation, or an independent establishment and includes the military departments.

(c) *Base flood*— that flood which has a one percent chance of occurrence in any given year (also known as a *100-year flood*). (This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.)

(d) *Base floodplain*— the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

(e) *Channel*— a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(f) *Critical action*—any activity for which even a slight chance of flooding would be too great.

(g) *Facility*— any man-made or man-placed item other than a structure.

(h) *Flood or flooding*— a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the usual and rapid accumulation or runoff of surface waters from any source.

(i) *Flood fringe*— that portion of the floodplain outside of the regulatory