

## Department of Justice

## § 63.7

(formerly 24 CFR part 1901 *et seq.*), substituting the 500-year standard for critical actions and, where practicable, elevating structures on open works—walls, columns, piers, piles, etc.—rather than on fill. Minimization of harm to lives shall include, but not be limited to, the provision for warning and evacuation procedures for all projects and shall emphasize adequacy of warning time and access and egress routes.

(f) Re-evaluate the proposed action to determine, first, if it is still practicable in light of its exposure to flood hazards and its potential to disrupt floodplain and wetland values and, second, if alternatives rejected at paragraph (c) of this section are practicable, in light of the information gained in paragraphs (d) and (e) of this section. Unless required by law, the proposed action shall not be located in a floodplain or wetland unless the importance of the floodplain or wetland site clearly outweighs the requirements of E.O. 11988 and E.O. 11990 to avoid direct or indirect support of floodplain and wetland development; reduce the risk of flood loss; minimize the impact of floods on human safety, health and welfare; restore and preserve floodplain values; and minimize the destruction, loss or degradation of wetlands. In addition, where there are no practicable alternative sites and actions, and where the potential adverse effects of using the floodplain or wetland site cannot be minimized, no action shall be taken, unless required by law.

(g) Prepare, and circulate a finding and public explanation of any final decision that there is no practicable alternative to locating an action in, or affecting a floodplain or wetland. The same audience and means of distribution used in paragraph (b) of this section, shall be used to circulate this finding. The finding shall include the following: the reasons why the action is proposed to be located in a floodplain or wetland, a statement indicating whether the action conforms to applicable State or local floodplain management standards, a list of alternatives considered, and a map of the general area clearly delineating the project locale and its relationship to its environs. A brief comment period

on the finding shall be provided whenever practicable prior to taking any action.

(h) Review the implementation and post implementation phase of the proposed action to ensure that the provisions of paragraph (e) of this section, are fully implemented. This responsibility shall be fully integrated into existing review, audit, field oversight and other monitoring processes, and additional procedures shall be prepared where existing procedures may be inadequate to ensure that the Orders' goals are met.

### § 63.7 Determination of location.

(a) In order to determine whether an action is located on or affects a *floodplain*, the component shall:

(1) Consult the FIA Flood Insurance Rate Map (FIRM) and the Flood Insurance Study (FIS); or

(2) If a detailed map (FIRM) is not available, consult an FIA Flood Hazard Boundary Map (FHBM); or

(3) If data on flood elevations, floodways, or coastal high hazard areas are needed, or if none of the maps delineates the flood hazard boundaries in the vicinity of the proposed site, seek detailed information and assistance as necessary and appropriate from the Department of Agriculture's Soil Conservation Service, the Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency's Regional Offices/Division of Insurance and Hazard Mitigation, the Department of the Interior's Geological Survey, Bureau of Land Management, and Bureau of Reclamation, the Tennessee Valley Authority, the Delaware River Basin Commission, the Susquehanna River Basin Commission, individual states and/or land administering agencies; or

(4) If the sources listed above do not have or know of the information necessary to comply with the Orders' requirements, seek, as permitted by law, the services of a federal or other engineer experienced in this work to

(i) Locate the site and the limits of the coastal high hazard area, floodway and of the applicable floodplain, and

(ii) Determine base flood elevations.

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(b) In the absence of a finding to the contrary, the component shall assume that action involving a facility or structure that has been flooded in a major disaster or emergency is in the applicable floodplain for the site of the proposed action.

(c) In order to determine whether an action is located on or affects a *wetland*, the component shall:

(1) Consult with the United States Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action; or

(2) If the FWS does not have adequate information upon which to base the determination, consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others; or

(3) If state or other sources do not have adequate information upon which to base the determination, insure that an on-site analysis is performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

**§ 63.8 Implementation.**

Agencies and divisions within the Department of Justice shall amend existing regulations and procedures, as appropriate, to incorporate the policy and procedures set forth in these guidelines. Such amendments will be made within 6 months of final publication of these guidelines.

**§ 63.9 Exception.**

Nothing in these guidelines shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

**28 CFR Ch. I (7-1-08 Edition)**

**PART 64—DESIGNATION OF OFFICERS AND EMPLOYEES OF THE UNITED STATES FOR COVERAGE UNDER SECTION 1114 OF TITLE 18 OF THE U.S. CODE**

Sec.

64.1 Purpose.

64.2 Designated officers and employees.

AUTHORITY: 18 U.S.C. 1114, 28 U.S.C. 509, 5 U.S.C. 301.

**§ 64.1 Purpose.**

This regulation designates categories of federal officers and employees in addition to those already designated by the statute, who will be within the protective coverage of 18 U.S.C. 1114, which prohibits the killing or attempted killing of such designated officers and employees. The categories of federal officers and employees covered by section 1114 are also protected, while they are engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnapping, 18 U.S.C. 1201(a)(5); forcible assault, intimidation, or interference, 18 U.S.C. 111; and threat of assault, kidnap or murder with intent to impede, intimidate, or retaliate against such officer or employee, 18 U.S.C. 115(a)(1)(B). In addition, the immediate family members of such officers and employees are protected against assault, kidnap, murder, attempt to kidnap or murder, and threat to assault, kidnap, or murder with intent to impede, intimidate, or retaliate against such officer or employee, 18 U.S.C. 115(a)(1)(A). The protective coverage has been extended to those federal officers and employees whose jobs involve inspection, investigative or law enforcement responsibilities, or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

[Order No. 1874-94, 59 FR 25816, May 18, 1994]

**§ 64.2 Designated officers and employees.**

The following categories of federal officers and employees are designated for coverage under section 1114 of title 18 of the U.S. Code: