



FUTURE USACE Implementation of EO 11988

U.S. ARMY CORPS OF ENGINEERS

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Background

On January 30, 2015, the President signed Executive Order (EO) 13690, “Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input”, which amended EO 11988, “Floodplain Management”, originally issued in 1977. EO 13690 supports the President’s Climate Action Plan (June 2013), which directs Federal agencies to update their flood-risk reduction standards for federally funded projects as one means to improve the nation’s resilience to flooding and better prepare the nation for the impacts of climate change.

The Mitigation Framework Leadership Group (MitFLG) revised interagency advisory guidance for implementing EO 11988 to include the requirements of EO 13690 and the FFRMS. The Federal Emergency Management Agency (FEMA), as Chair of the MitFLG, published for public comment in the Federal Register Draft Guidelines to provide guidance to Federal agencies on the implementation of EO 11988 and EO 13690. The MitFLG provided final revised Guidelines to the Water Resources Council, which voted to issue the Guidelines on October 8, 2015. All Federal agencies that conduct Federal actions subject to EO 11988 were required to develop or revise agency-specific procedures consistent with the intent of the Guidelines to implement the new requirements.

Guidance Development Process

The U.S. Army Corps of Engineers (USACE) established a Product Delivery Team (PDT) with members from multiple areas across the agency to review and draft revisions to existing guidance: Engineer Regulation (ER) 1165-2-26, “Implementation of Executive Order 11988 on Floodplain Management”, published March 1984. This ER provides overarching guidance for implementing EO 11988.

The PDT developed a draft Engineer Circular (EC), an internal guidance document, to rescind ER 1165-2-26 and provide overarching guidance for the agency to begin implementation. The draft EC will apply to new work started after the revised guidance takes effect; activities completed before the EC is issued will not be re-evaluated. After the EC has been completed and issued, full implementation of the new requirements will be phased in as additional program-specific guidance is revised.

Program and activity-specific details about the effects of the amendments to EO 11988 remain to be finalized and in many cases will be provided subsequently in more program-specific guidance documents. The following general information about currently anticipated implementation efforts is as follows:

- The higher vertical flood elevation and corresponding horizontal floodplain required by the amendments to EO 11988 will not apply to USACE Regulatory Program permits issued under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. The USACE Regulatory Program will continue to evaluate applications by applying the area subject to the “base flood” as the relevant floodplain.
- EO 11988 as amended will not impact emergency actions, including those conducted under Public Law 84-99.
- New planning projects continue to be subject to the EO 11988 and the current internal procedures for the decision-making process, which aligns well with the Climate-informed Science Approach in EO 13690. Consideration of the expanded floodplain will become part of the new procedures being developed.
- It is anticipated that a subset of 408 permission requests may be impacted by EO 11988 as amended; this will be clarified in future guidance applying to 408 permissions.

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Next Steps in Guidance Development and Finalization

Opportunity is being provided for Tribes, State, and Local governments, as well as other stakeholders to review and comment on the draft EC at this time. USACE is seeking feedback from these external partners and stakeholders on the proposed draft guidance; feedback relevant to potential unintended consequences of proposed changes in the implementation guidance will be of particular importance. After USACE has reviewed comments and feedback provided on the draft EC, it will be revised and issued. Based on the final high-level guidance provided in the EC, USACE will begin to implement the new requirements; however, full implementation will require development of additional, more detailed program-specific guidance documents. The EC will be reviewed and revised, if found to be necessary, after it has been in effect for two years.

For More Information

- Fact Sheet on EO 13690
https://www.whitehouse.gov/administration/eop/ceq/Press_Releases/January_30_2015
- Website on EO 13690 and the Federal Flood Risk Management Standard
<https://www.fema.gov/federal-flood-risk-management-standard-ffrms>
- Executive Order 11988 – Floodplain Management
<https://www.fema.gov/executive-order-11988-floodplain-management>
- USACE website providing information products on the Federal Flood Risk Management Standard
<http://www.iwr.usace.army.mil/Missions/FloodRiskManagement/FloodRiskManagementProgram/AbouttheProgram/PolicyandGuidance/FederalFloodRiskManagementStandard.aspx>
- Mitigation Framework Leadership Group
<https://www.fema.gov/media-library/assets/documents/116787>
- Guidelines for Implementing EO 11988 and EO 13690
http://www.fema.gov/media-library-data/1444319451483-f7096df2da6db2adfb37a1595a9a5d36/FINAL-Implementing-Guidelines-for-EO11988-13690_08Oct15_508.pdf

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