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THE DEPARTMENT OF ENERGY'S FLOODPLAIN/
WETLANDS REVIEW

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THE DEPARTMENT OF ENERGY'S FLOODPLAIN/WETLANDS REVIEW

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ABSTRACT

Two Executive Orders (E.O.) issued in 1977, Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), require that Federal agencies examine the impacts of proposed actions on floodplains and wetlands. To comply with these Orders, the U.S. Department of Energy (DOE) promulgated 10 CFR 1022, DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements. DOE's floodplain/wetlands review consists of two procedures: the floodplain/wetlands determination, and the floodplain/wetlands assessment. The floodplain/wetlands determination ascertains the applicability of DOE's floodplain management and wetlands protection requirements for a proposed action. If DOE's requirements apply to a proposed action, DOE shall prepare a floodplain/wetlands assessment. The floodplain/wetlands assessment ascertains an action's impact, any alternatives, and mitigation, if appropriate. The assessment consists of a project description, an analysis of the potential impacts, and a consideration of alternatives to the proposed action. This paper describes the components of the DOE floodplain/wetlands review process.

INTRODUCTION

Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, were signed by President Jimmy Carter in 1977. The purpose of these Executive Orders was to ensure the protection and proper management of floodplains and wetlands by Federal agencies. The Executive Orders require Federal

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agencies to consider the adverse impacts of their activities on floodplains and wetlands and to avoid direct and or indirect impacts to floodplains and wetlands when a practicable alternative exists. This requirement extends to any DOE action within a floodplain or a wetland with the exception of ". . . routine maintenance of existing facilities and structures on DOE property within a floodplain/wetlands since such actions normally have minimal or no adverse impact on a floodplain/wetlands" (10 CFR 1022.5(g)).

Issuance of the Department of Energy regulation 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements, was required under the Executive Orders (discussed above). 10 CFR 1022 incorporates the intent of the Executive Orders and provides the guidance for DOE actions that would impact or potentially impact floodplains and wetlands. DOE is required to ". . . avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative (10 CFR 1022.3(a))." The regulation requires a review process that includes a determination and may include an assessment, public review, and a statement of findings. This process is graphically depicted in Figure 1 and described in the following sections of this paper.

FLOODPLAIN AND WETLANDS DETERMINATIONS

The first step in the review process is to determine if the proposed action will impact a floodplain or wetlands, i.e., if DOE's floodplain management and wetlands protection requirements apply.

10 CFR 1022.4(i) defines the floodplain as ". . . the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of occurrence in any given year.

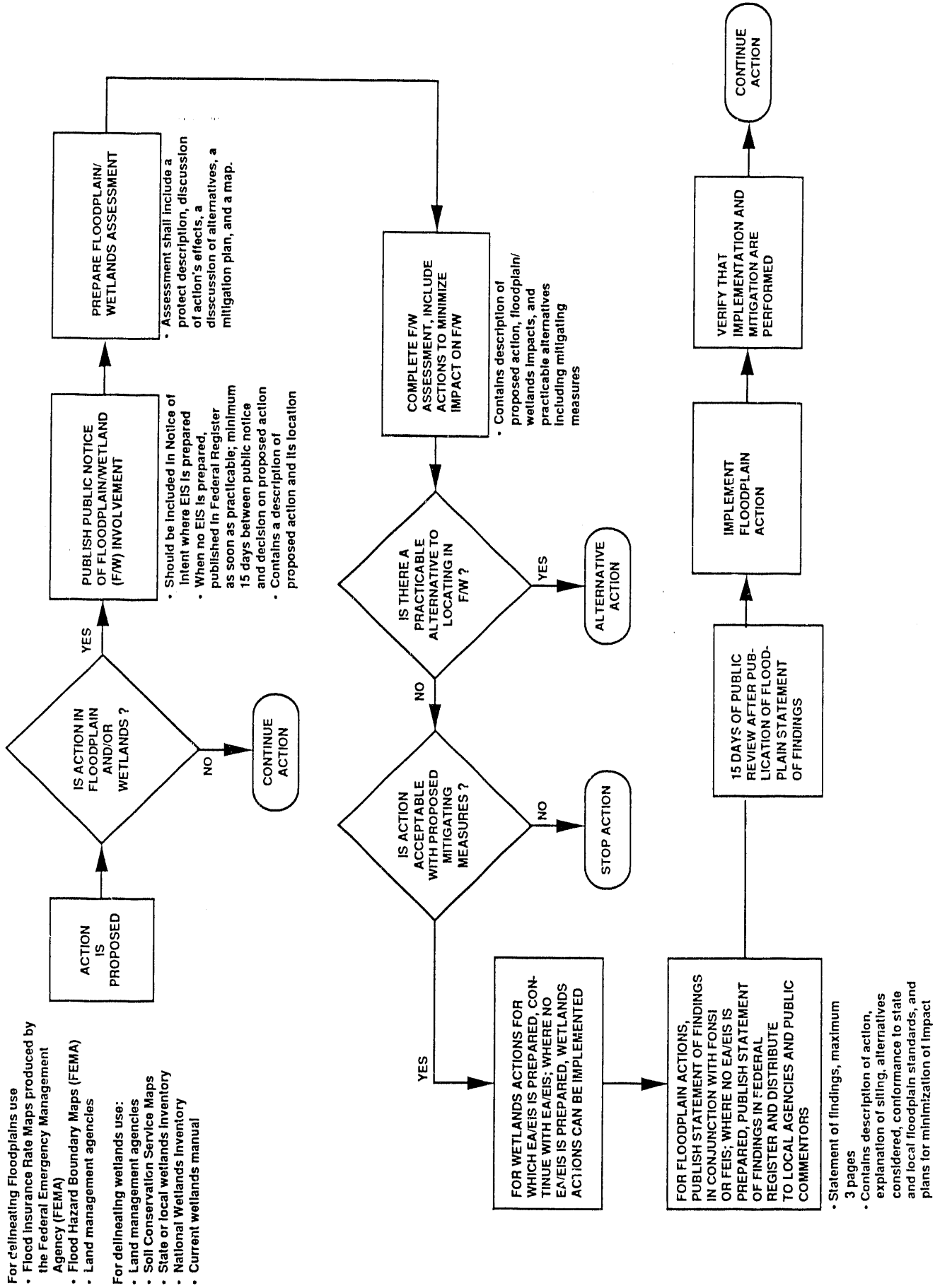


Figure 1. FLOODPLAIN/WETLANDS ASSESSMENT PROCEDURES

- For delineating Floodplains use
- Flood Insurance Rate Maps produced by the Federal Emergency Management Agency (FEMA)
 - Flood Hazard Boundary Maps (FEMA)
 - Land management agencies
- For delineating wetlands use:
- Land management agencies
 - Soil Conservation Service Maps
 - State or local wetlands inventory
 - National Wetlands Inventory
 - Current wetlands manual

- Statement of findings, maximum 3 pages
- Contains description of action, explanation of siting, alternatives considered, conformance to state and local floodplain standards, and plans for minimization of impact

10 CFR 1022.4(i) defines wetlands as ". . . those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflow, mudflats, and natural ponds."

Floodplain and wetlands determinations should be made using currently acceptable methods. The regulations also refer to several techniques and information sources for identifying wetlands; some of these references are now outdated. One method referred to by 10 CFR 1022.11 is the use of floodplain maps which were formerly prepared by the Department of Housing and Urban Development. These maps are still useful but are today prepared by the Federal Emergency Management Agency. Use of state wetlands inventories and several other of these techniques are still considered to be acceptable. However, some information sources, such as U.S. Geological Survey Topographic Maps, are no longer considered accurate enough for wetlands determinations.

FLOODPLAIN AND WETLANDS ASSESSMENT

10 CFR 1022 requires a floodplain/wetlands assessment for activities occurring in the 100-year floodplain. However, for activities where even a slight chance of flooding would present too great a danger, activities within the 500-year floodplain shall be assessed. Activities that might require the 500-year standard include the storage of hazardous materials.

Three primary constituents comprise a floodplain/wetlands assessment:

1. A project description, which describes the nature and purpose of the proposed action,
2. A discussion of the proposed action's effects, positive and negative, direct and indirect, long and short-term, on the floodplain and/or wetlands, and

3. A discussion of the alternatives that may avoid adverse effects on floodplains/wetlands. This section also addresses mitigation (10 CFR 1022.12).

PUBLIC REVIEW AND FINAL ACTIONS

DOE may require applicants for a DOE permit or other entitlement to submit a report that contains the information required in 10 CFR 1022.12.

For floodplain/wetlands actions where an environmental impact statement (EIS) is required, an early public review will be required through applicable National Environmental Policy Act (NEPA) procedures. A Notice of Intent to prepare an EIS would satisfy this requirement. For floodplain/wetlands actions where no EIS is required, DOE shall provide the opportunity for early public review by publishing a Public Notice in the Federal Register at least 15 days prior to issuing a statement of findings. Following this publication, DOE will allow 15 days of public comment prior to making a decision on the proposed action. The 15-day period may be waived because of emergency circumstances, statutory deadlines, or overriding considerations of project expense or effectiveness.

If locating in a floodplain/wetland is the only practicable alternative, consistent with the policy in E.O. 11988, DOE shall modify its action to minimize harm to the floodplain/wetland. For actions which will be located in a floodplain, DOE shall publish a brief (less than 3 pages) statement of findings which shall contain the following elements:

1. A brief description of the proposed action, including a location map,
2. An explanation of why the action is to be located in a floodplain,
3. A list of the alternatives considered,
4. A statement of whether the action conforms to applicable State or local floodplain protection standards, and
5. A brief description of the steps to be taken to minimize potential harm to or within the floodplain.

10 CFR 1022 does not require a statement of findings for actions which occur in wetlands.

For floodplain actions which require the preparation of an environmental assessment (EA) or an EIS, the statement of findings may be incorporated into the finding of no significant impact (FONSI) or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, DOE shall publish the statement of findings in the Federal Register and distribute comments to Federal, State, and local agencies and others who submitted comments in response to the Public Notice. For floodplain actions subject to the Office of Management and Budget (OMB) Circular A-95, Pollution Abatement Plan, DOE shall send the statement of findings to the State and areawide A-95 Clearinghouses for the geographic areas affected.

DOE shall allow 15 days of public review of the statement of findings prior to implementing a proposed floodplain action. For wetlands actions (not located in a floodplain), DOE shall take no action prior to 15 days after publication of the Public Notice in the Federal Register. The 15-day period may be waived because of emergency circumstances, statutory deadlines, or overriding considerations of project expense or effectiveness.

REFERENCES

10 CFR 1022: U.S. Department of Energy. "DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements. U.S. Code of Federal Regulations.

Exec. Order No. 11988, 43 FR 6030 (1977).

Exec. Order No. 11990, 42 FR 26951 (1977).

Office of Management and Budget. "Pollution Abatement Plan." Circular A-95. U.S. Government Printing Office, Washington, D.C.

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