Questions and Answers on the Proposed Executive Order (EO) on Floodplain Management

What is the purpose of EO 11988 – Floodplain Management?

EO 11988 was established by President Carter in 1977 to bring agency attention to issues of floodplain use. EO 11988 requires agencies to avoid, to the extent possible, the long- and short-term adverse effects associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development whenever a practicable alternative exists. If no alternatives exist, agencies must take steps to minimize direct and indirect impacts of the proposed action and restore and preserve the floodplain.

Why is it necessary to issue a new EO on floodplains?

- The need for a revision was first pointed out in a 1994 Interagency Report (“Sharing the Challenge”) on the Great Mississippi Flood of 1993. It identified Federal and federal sponsored facilities that sustained flood damages. The report indicated that Federal and federally sponsored facilities, including critical infrastructure remain at risk. The report further indicated the need for assessing the vulnerability of existing Federal facilities to reduce the possibility of major losses.

- Flood damages in the United States continue to escalate as evidence by recent hurricanes, such as Katrina, Rita, and Ike, and riverine flooding in the Midwest and upper Midwest this last year. The vulnerability of floodplain inhabitants and their property persists, Federal expenditures for disaster relief and recovery have not diminished, and the natural functions that floodplains continue to deteriorate. Evidence from post-flood disaster assessments and issues raised about new development in floodplains indicate continued Federal shortcomings in locating or supporting development in floodplains without complying with the EO.

- The proposed EO would address many issues that have risen since 1977 such as siting critical facilities and requiring agencies to be consistent with State, Tribal, and local floodplain management requirements (more examples are described in the section below on how the proposed EO would change the current EO)

- The proposed EO, built upon EO 11988, will reaffirm the Federal commitment to floodplain management and raise awareness with Federal agencies on the need to reduce flood damages.

- It provides an opportunity for the President and the Administration to show Federal leadership on floodplain management and take a significant step toward reducing potential flood damages, loss of life, and loss of natural floodplain values by considering issuing a new EO. Additionally, a new EO allows the President and the Administration to put emphasis on dealing with this important challenge at a time
when flood losses continue to escalate adding to the Federal deficit, and now exacerbated by the specter of climate change. It would allow the President to recognize the important environmental benefits that natural floodplains provide and the need to do more to protect these valuable resources.

**Would the purpose and objectives of EO 11988 change in the new EO?**

No. The basic purpose and objectives of the proposed EO would be similar to those in EO 11988. Like EO 11988, the proposed EO would direct Federal agencies to provide leadership in carrying actions which affect the floodplain. This leadership role requires agencies to set a good example. Agencies must not expose the Federal government and public and private entities/individuals to flood losses (life and property). Federal agencies must also protect and restore the natural and beneficial functions of floodplains whenever an action adversely effects the floodplain.

**How would a new EO change the current EO?**

- The proposed EO is written in plain language to make it clearer and easier to understand.

- It clarifies the decision-making process that agencies must use in evaluating a proposed action in or affecting a floodplain. It has reordered the 8 decision-making currently outlined in the 1978 Water Resources Council *Floodplain Management Guidelines for Implementing EO 11988*. For example, it makes sure that there is an “early public notice” to locate in a floodplain before the agency decides to locate in the floodplain. Below on the left is an outline of the 8-step decision-making process from the 1978 Guidelines. On the right is an outline of the 8-step decision-making process in the proposed EO.

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<th>EO 11988 8-Step Process</th>
<th>Proposed EO</th>
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<td>1. Determine if proposed action is in the floodplain</td>
<td>1. Identify floodplains</td>
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<td>2. Early public review</td>
<td>2. Identify and evaluate practicable alternatives</td>
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<td>3. Identify and evaluate alternatives</td>
<td>3. If no alternatives, provide for public comment</td>
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<td>4. Identify impacts of action</td>
<td>4. Identify effects of action</td>
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<td>5. Minimize restore and preserve</td>
<td>5. Mitigate effects</td>
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<td>6. Reevaluate alternative</td>
<td>6. Consider if action is still feasible</td>
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<td>7. Give findings and public explanation</td>
<td>7. Prepare and circulate a notice</td>
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<td>8. Implement action</td>
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- It incorporates Critical Action concept (when even a slight chance of flooding is too great), e.g. hospitals, emergency operations centers, storage of hazardous materials, etc. It would require 500-year level of protection, when the floodplain cannot be avoided. Critical action appeared in the 1978 Guidelines, but is not in the 1977 E.O.
• It makes the concept of avoiding actions in floodplains and avoiding actions outside of floodplains that would adversely affect on floodplains clearer. This concept was included in the 1978 Guidelines, but reference obliquely in EO 11988.

• It improves coordination with State, Tribal, and local governments and requires that Federal agencies to act consistently with State, Tribal, and local plans and regulations.

• It provides for a risk assessment of Federal structures and facilities located in floodplains. If a Federal structure is new or an existing structure is being substantially improved (where the repair or improvement is 50% or more of the value of the structure), the Federal agency must comply with the EO decision-making process. For repairs, improvements, or rehabilitations that are less than substantially improvements, the Federal agency should consider undertaking mitigation measures to minimize damage.

• It incorporates concepts from OMB/CEQ February 18, 1997 memorandum on levee policy. This policy evolved out of 1993 Midwest flood and was issued following California floods concerning levee repairs. In the proposed E.O., agencies would be required to evaluate “flood damage reduction systems” (non-structural and structural measures) with an emphasis on “nonstructural measures” that reduces flood damage. The provision in the proposed E.O. requires Federal agencies to use as much as practicable non-structural approaches to achieve flood damage reduction.

• It includes a requirement for agencies to avoid incentives for floodplain development that encourage structural measures that would make it easier to develop land that would continue to have a residual flood risk.

• It emphasizes the coordination and sharing of scientific data for effective floodplain identification and management.

**Does the proposed EO prohibit development in the floodplain?**

It is not the intent of the Order to prohibit all Federal actions in the floodplain, but rather to create a consistent policy for the evaluation of such development to ensure that the Federal government is not contributing to the loss of life and property and to the loss of the natural values that floodplains serve.

**Will agencies be required revise or adopt new regulations or procedures to implement the new EO?**

Agencies will be required to issue or amend existing regulations and procedures within one year of the date of the new EO. Agencies should consult with FEMA and CEQ before writing their regulations and procedures.