

EXECUTIVE ORDER 11990 (PROTECTION OF WETLANDS)

OVERVIEW

Executive Order 11990 is an overall wetlands policy for all agencies that manage federal lands, sponsor federal projects, or provide federal funds to state or local projects. The order requires federal agencies to follow avoidance, mitigation, and preservation procedures with public input before they propose new construction in wetlands. When federal lands are proposed for lease or sale to nonfederal parties, Executive Order 11990 requires that the lease or conveyance include restrictions to protect and enhance the wetlands on the property. Executive Order 11990 can restrict the sale of federal land containing wetlands; however, it does not apply to federal discretionary authority for nonfederal projects (other than funding) on nonfederal land.

WHO NEEDS TO COMPLY?

Executive Order 11990 requirements apply to all CALFED actions that are located on federal land, sponsored by a federal agency, or funded with federal monies and that may affect wetlands. Compliance with Executive Order 11990 is not required if the only federal action is the issuance of a permit by a federal agency to a private party for activities that involve wetlands on nonfederal property. Therefore, actions that are funded by CALFED solely with State funds and undertaken by private parties on nonfederal land need not comply.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with Executive Order 11990 is usually incorporated into the NEPA process. See the “[National Environmental Policy Act](#)” earlier in this chapter for a discussion of compliance time frames.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Before implementing an action that is located in a wetland or may affect a wetland, federal agencies must demonstrate that there is no practical alternative and the proposed action includes all practical measures to minimize harm to the wetlands. This information is often provided in a chapter on consultation and coordination in the NEPA document for the project.

WHAT IS THE FEE?

There is no fee to comply with Executive Order 11990. There are, however, costs associated with NEPA compliance. Please see the section on NEPA compliance for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

To demonstrate compliance with Executive Order 11990, the agency must design the proposed action to minimize harm to wetlands, provide the opportunity for early public review, and include its findings in its environmental document.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Executive Order 11990 does not trigger any other environmental compliance requirements. However, projects requiring compliance with Executive Order 11990 (except U.S. Army Corps of Engineers [USACE] projects) are likely to require a permit under Section 404 of the Clean Water Act. The assessment of effects of such projects on wetlands should be closely coordinated with USACE's Section 404 permitting process.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline compliance with Executive Order 11990 for CALFED actions.

- **To the extent possible, design proposed projects to avoid wetlands or to minimize activities in wetlands.**
- **Use the mitigation strategies described in the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR).** The PEIS/EIR addresses effects on wetlands at a programmatic level and identifies mitigation strategies for potentially significant adverse impacts on wetlands. If this mitigation is incorporated into the proposed project, project-specific compliance with Executive Order 11990 may not be necessary. In addition, compliance may also be achieved in coordination with Section 404 compliance.

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