

## **2.2 Federal Laws**

### **2.2.1 General Laws**

Federal law consists of the Constitution of the United States, Acts of Congress, regulations which government agencies issue to implement these acts, Executive Orders issued by the President, and case law. Acts of Congress are published immediately upon issuance and are cumulated for each session of Congress and published in the United States Statutes At Large. Compilations of Federal Statutory Law, revised annually, are available in the United States Code (USC) and the United States Code Service (USCS).

The Federal Register, which is published daily, provides a uniform system for making regulations and legal notices available to the public. Presidential Proclamations and Executive Orders, Federal agency regulations and documents having general applicability and legal effect, documents required to be published by an act of Congress, and other Federal agency documents of public interest are published in the Federal Register. Compilations of Federal regulatory material revised annually are available in the Code of Federal Regulations (CFR).

### **2.2.2 Drainage**

Federal law does not deal with drainage per se, but many laws have implications which affect drainage design. These include laws concerning:

- flood insurance and construction in flood hazard areas
- navigation and construction in navigable waters
- water pollution control
- environmental protection
- protection of fish and wildlife
- coastal zone management

Federal agencies formulate and promulgate rules and regulations to implement these laws, and highway hydraulic engineers should attempt to keep informed regarding proposed and final regulations.

### **2.2.3 Constitutional Power**

The Congress of the United States is granted constitutional power to regulate "commerce among the several states." A part of that power is the right to legislate on matters concerning the instrumentalities of interstate commerce such as navigable waters. The definition of navigable waters expands and contracts depending upon the breadth required to adequately carry out the Federal purpose. The result is that Congress can properly assert regulatory authority over at least some aspects of waterways that are not in themselves subject to navigation.

When becoming involved in obtaining approvals from the Federal agencies, one should be aware that these agencies do not always work in concert. Quite often they will not be in agreement with each other. This can result in significant project delays unless early coordination is initiated and diligently pursued. These conflicts between Federal agencies occur as a result of their having different rules; some are "regulators" while others are "resource" motivated. For this reason they will have different goals and, in some instances, definitions of such things as wetlands. When

conflicts occur, it is best to quickly determine which agency has primary responsibility and attempt to satisfy their needs.

#### **2.2.4 Fish And Wildlife Service**

The Fish and Wildlife Act of 1956 (16 U.S.C. 742 et seq.), the Migratory Game-Fish Act (16 U.S.C. 760c-760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 611-666c) express the concern of Congress for the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. The Fish and Wildlife Coordination Act requires that "whenever the waters of any stream or body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency shall first consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular state with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof."

#### **2.2.5 Executive Orders**

Presidential Executive Orders (E.O.) have the effect of law in the administration of programs by Federal agencies. While executive orders do not directly apply to state highway departments, these requirements are usually implemented through general regulations.

- **E.O. 11988**

Executive Order 11988, May 24, 1977, requires each Federal agency, in carrying out its activities, to take the following actions:

- to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare and to restore and preserve the natural and beneficial values served by floodplains
- to evaluate the potential effect of any actions it may take in a floodplain, to ensure its planning programs reflect consideration of flood hazards and floodplain management

- **E.O. 11990**

Executive Order 11990, May 24, 1977, orders each Federal agency to:

- take action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values to wetlands
- avoid undertaking or providing assistance for new construction in wetlands unless the head of the agency finds that there is no practicable alternative and all practicable measures are taken to minimize harm which may result from the action
- consider factors relevant to the proposal's effects on the survival and quality of the wetlands