



Association of State Floodplain Managers, Inc.

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Rules Docket Clerk
Docket ID: FEMA-2015-0006

RE: Association of State Floodplain Managers on the Draft Executive Order 11988 Implementing Guidelines – General Comments

To Whom It May Concern:

The Association of State Floodplain Managers (ASFPM) is an organization of professionals involved in floodplain management, flood hazard mitigation, National Flood Insurance Program, and flood preparedness, warning and recovery. ASFPM is a respected voice in floodplain management practice and policy in the United States because it represents more than 16,000 flood hazard professionals in local, state and federal government, the research community, insurance and flood hazard determination industries, and the fields of engineering, hydrologic forecasting, emergency response, water resources and others. ASFPM's mission is to reduce flood losses and protect the natural functions of floodplain areas.

The comments submitted today regarding Executive Order (EO) 13690, which updates EO 11988, the Federal Flood Risk Management Standard, and the draft EO 11988 Implementing Guidelines represent the first of two sets of comments that will be submitted by ASFPM. The comments below are overarching and more general in nature. By the May 6 deadline, ASFPM will also submit a set of detailed technical comments for consideration into the draft interagency guidelines.

First, ASFPM supports the Federal Flood Risk Management Standard in its entirety. The standard this nation has used for the last 38 years (build to the base flood elevation) is simply not working to reduce flood losses. Annual flood losses have increased from \$5.6 billion per year in the 1990s to well over \$10 billion in the 2000s. Furthermore, flood losses don't end at the boundary of the 100-year floodplain, as 25 percent of the dollar losses in the NFIP occur outside of the 100-year floodplain. Actual losses outside the 100-year floodplain are likely to be even higher since flood insurance coverage is not required in these moderate risk areas. These numbers show that the nation can no longer afford to design to the old standard.

The freeboard and 500-year approaches are pragmatic and widely implemented by states and communities already. In fact, more than 62 percent of the U.S. population lives in a community with at

Dedicated to reducing flood risk and losses in the nation.

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least 1 foot of freeboard that applies to all development activities, not just federal actions. And while the climate-informed science approach is more mature in coastal areas and perhaps not yet viable in riverine areas, it is almost universally recognized that climate change is happening and that it will lead to significant changes in flood risk. This standard does not attempt to address the causes of those changes, but appropriately focuses on how federal dollars should be spent in order to protect the taxpayer's investment. Finally, ASFPM appreciates the flexibility in the standard, enabling agencies to determine the most appropriate approach for a given federal action. While we do have detailed suggestions and comments for improving the FFRMS, ASFPM nonetheless is fully supportive of the standard.

ASFPM is also pleased to see the concept of the higher vertical flood protection elevation be extended to the horizontal floodplain. This ensures federal investments will be able to withstand the inevitable floodplain boundary and elevation changes that come with increased development, watershed changes, and climate change. While ASFPM recognizes there will be instances when the horizontal extension of the floodplain can be challenging from a planning and applicability purpose, especially in wide flat floodplain areas, it nonetheless is a key element for a comprehensive flood risk management standard that recognizes that flood risk is high outside of the mapped 100-year floodplain, especially for critical actions.

Second, ASFPM supports the inclusion of the approaches that include the required identification and use of nature-based alternatives and the optional use of the climate-informed science approach. ASFPM understands that the climate-informed science approach will evolve over time as new data and methods are developed. What has changed since 1977 is the understanding of flood hazard areas, flood risk and climate change impacts on those issues and water resources generally. While both approaches will continue to evolve over time with increased knowledge and experience, both will be increasingly relevant as communities strive to be more sustainable and resilient.

Third, the guidelines should be revised to require that federal investments follow more protective state and local standards where they exist. A longstanding problem with EO 11988 that is unfortunately not remedied in the new guidelines is that federal agencies often ignore higher state and local floodplain management standards, especially for federally-funded and undertaken actions. As indicated above, it is a significant issue that so much of the country has adopted a freeboard, yet old EO 11988 flood risk management standard was to only use the BFE, or 100-year flood elevation. In much of this country, a federal agency decision to not follow higher local and state standards means that the federal action doesn't even meet state or local codes, which are already adapting to these increased challenges. Unfortunately, the new guidelines, while requiring federal agencies to consider higher local and state standards (p.42, 1312), do not require the use of them. Rather the use of them is merely recommended (p. 42, 1315). We have seen innumerable times over the past several decades across the country where multiple agencies have used this flexibility to ignore state and local standards. ASFPM strongly recommends the guidelines be changed to require agencies to adhere to these higher standards when they are applicable to a federal action.

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Fourth, while ASFPM supports the incorporation of the concept of a critical action into the EO itself, the guidelines should be revised to recognize a minimum, acceptable risk level for critical facilities of the 500-year flood level. It should be noted that the old Water Resources Council guidelines recommended a protection level of the 500-year event or flood of record, whichever is greater. It is of significant concern that not only could the freeboard-based approach, but also the climate-informed science based approach, could result in protection to less than the 500-year level. It appears the guidelines explicitly allow the use of a lesser standard. Such a lessening of the standard is ill-advised and inconsistent with the definition of a critical action for which even a slight chance of flooding would be too great. Federal agencies often misinterpret the meaning of “critical action.” While we agree with the basic definition of an action for which even a slight chance of flooding is too much, we recommend the guidelines provide a more in-depth list of activities that would typically be deemed to be critical in nature. Such a list, however, should not be all-inclusive.

Finally, ASFPM recognizes and supports the use of definitions and terms consistent with existing Executive Order 11988, where possible, especially the definition of “federal action.” Such consistency will facilitate more efficient implementation of the FFRMS as federal agencies can build upon their existing efforts through the past several decades to identify which programs and actions will be subject to the EO, and how they will meet the requirements of the EO. The definitions are as relevant today as they were in 1977, and establishing not only federal actions, but critical actions in the EO, maximizes the consistency of administration since states and communities may have slightly different variants of the definition when used in their local floodplain management regulations.

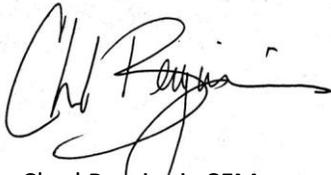
In closing, ASFPM has long been concerned that federal agencies must demonstrate responsible floodplain management and responsible stewardship of taxpayer funds through leading by example, or their actions can lead to risky decisions, inducing riskier development and ultimately wasting taxpayer funds. Thirty-eight years ago, EO 11988 directed federal agencies to “provide leadership and take 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 ... and to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative ...”

What we have learned since is that while EO 11988 provides a solid framework for agency decision making, the flood risk management standard (build to the base flood elevation) was not adequate. The new FFRMS is responsible floodplain management using proven and widely adopted techniques (freeboard and the 500-year standard), and provides unprecedented flexibility to ensure our nation’s communities are more resilient in the future.

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ASFPM has witnessed over the past three decades federal agencies integrating EO 11988 into their policies, programs and regulations in a thoughtful way. The agencies clearly distinguished between new and existing development and adapted the guidance in such a way as to acknowledge compliance with the EO and guidance, while also recognizing uniqueness of each federal program. Although the bar has been set higher by the new FFRMS, we think that agencies will continue to make thoughtful decisions about how to best comply with the FFRMS, while simultaneously meeting their obligation to ensure consistency with the EO. The draft implementation guidelines will be of significant benefit in this regard.

Respectfully,

A handwritten signature in black ink, appearing to read 'Chad Berginnis', with a long horizontal flourish extending to the right.

Chad Berginnis CFM
Executive Director

ASFPM's Detailed Comments on the Draft Guidelines for Implementing Executive Order 11988

Submitted: 5/6/15 Tracking Number: 1jz-8ipf-wgup

9 – ASFPM supports this longstanding definition of critical action.

137 – This definition of resilience is missing a key component that is an important as it relates to national disaster policy, and ASFPM recommends adding the phrase at the end “with minimum outside assistance.” The definition, as written, could be understood that a community is resilient as long as it recovers quickly such as through a massive infusion of outside resources like significant disaster assistance. This is not a resilience. The definition used by the HUD National Disaster Resilience Competition uses the definition with the additional component.

204 – Should a reference to the National Levee Guidelines, the development of which is a requirement of the 2014 WRRDA be added?

218-221 – ASFPM supports the recognition and roles of both the Federal Interagency Floodplain Management Task Force and the Council on Environmental Quality.

255-266 – ASFPM supports this shift in context for the new Executive Order and FFRMS and the explanation of the need for such a shift.

296 – Section 1 (with a cross reference to 593, Section 3B). Floodplain managers have experienced situations where a Federal agency, to negate the need to even trigger EO 11988, would encourage obtaining a FEMA Letter of Map Revision based on Fill (LOMR-F). Such an approach is entirely inconsistent with Section 1 of the draft guidance. While ASFPM supports the way Section 3b is written to explicitly state that fill should be a “last resort”, it presupposes that the action is in an identified floodplain. The draft guidance should explicitly state that a LOMR-F should never be encouraged when an agency is initially determining whether an action is located in a floodplain.

318 – 333. Cross reference 482, Section 2D and 725, Section 5). Unfortunately, the overall governance and, as a result, federal leadership to implement any Executive Order on Floodplain Management has been severely lacking for the last two decades. Case and point, from 1976 to 1994, the Unified National Program document had been updated four times (once every five years). It has now been over 20 years since the last update. The Water Resource Council has been operationally non-existent for at least that long and the Federal Interagency Floodplain Management Task Force had only recently been reconstituted. There are very few resources dedicated to the federal leadership called for in Section 1. ASFPM recommends that the CEQ, FIFM-TF, Water Resources Council, and OMB be resourced to take a more active role in the overall implementation of the EO and FFRMS and ensure that agencies are periodically reviewing and updating their procedures by updating the Unified National Program on a

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cycle not to exceed 5-7 years. Such updates should be partially based on input from each agency as to their activities and considerations of flood hazards and floodplain management. The final Guidance should include these kinds of explicit governance recommendations to ensure that agencies are engaged in a cycle of continuous evaluation and improvement.

One final comment on overall governance that is not spelled out in the draft guidance – floodplain managers experience incidences where agencies do not follow either their own guidelines or operate in a manner inconsistent with the parameters of the EO and FFRMS (from a historical perspective, EO 11988). There seem to be no provisions for states, communities, or other parties to provide feedback on implementation on the EO to the Administration. ASFPM recommends that some form of feedback mechanism be developed (i.e., that the FIFM-TF be designated to hear such incidents and/or that they have as part of their organizational structure a public comment period focused on the EO/FFRMS implementation). This is another mechanism to ensure that agencies, and their field offices are adhering to the intent of the EO and agency guidelines. Or, agencies should be encouraged to identify a point of contact to receive this kind of feedback.

508-509 – ASFPM fully supports this concept as written.

647-658 – ASFPM fully supports this section. Risk awareness of flooding is greatly enhanced by physical indications of where historical and regulatory flood levels exist in the field.

659-695 – The draft guidance should be revised to make clear that in cases where agencies lease, provide easement, or provide right of way, that they must also make provision to periodically review and enforce the use restrictions in the conveyance. Too often, in the past, it has been seen where agencies who lease land to private owners allow non-compatible and non-compliant uses. Yet, such properties are generally exempt from local and state floodplain management regulations as the development is on federal land. This has led to the building and rebuilding of structures that don't even meet minimum NFIP standards. If no provision for enforcement of the restrictions is made, violations of the restrictions is sure to follow.

697-723 – While not as frequent, floodplain managers still get the last minute telephone call at closing, or shortly before that they are just finding out that their property is located in the floodplain. The final guidance should also recognize this problem and recommend that such notice called for in Section 4 provides adequate time for notification ahead of the final transaction.

776-812 -- ASFPM fully supports the flexible approach that currently gives agencies three approaches upon which to improve resilience. The elegance of the section is that it not only acknowledges the need to use climate informed science, but also realistically frames how and when it should be used. Concepts such as freeboard and the 500-year standard have been around for decades and while some commenters have questioned the scientific validity of these approaches ASFPM does not. We would

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add that both are well established approaches used widely in the United States. We have determined that at least 62% of the US population lives in a community that uses one of these approaches. The specific guidance from 803 to 807 is particularly important as the question has been raised by our members as to which agency's guidelines would apply when you have multiple agencies involved. Also, the guidance in 808-812 is also important.

828-862 – The general guidance for critical actions is good and the decision factors in 838-848 are appropriate (this comment also applies to 945-955). ASFPM is disappointed to see that the concept of the flood of record as a possible standard is absent in the draft guidance (for EO 11988 for example the guidance recommended the 500-year flood or flood of record, whichever was greater for critical actions). ASFPM would like to see some elaboration on the point and recommendation the flood of record where appropriate. Also, for critical actions, ASFPM disagrees with the guidance in 1417-1426 where it implies that an agency can use the lower of the different approaches. Rather, for critical actions, the higher of the methods should be required.

981-998 – ASFPM fully supports the concept of taking advantages of natural features and nature-based approaches and is pleased to see concept in both the EO and the guidance. However, ASFPM recommends that the language in 981-982 be changed to require the consideration of nature based approaches. This change would not require that such an approach be chosen, but we are concerned that the phrase “encouraged to consider” provides too much latitude. Rather, a requirement to consider would be more likely to yield the selection of more purely nature based approaches or more than likely hybrid approaches that uses a combination of the two.

1038 – 1308 -- Historically, agency determinations as to whether an action is in the floodplain depended largely on FEMA flood maps. ASFPM is concerned that the guidance implies more widespread availability of flood data (1227-1232) than there actually is (it may also be worth noting, to give perspective to agencies, that FEMA has only mapped about 20% of the nation's streams, rivers and coastlines with detailed flood elevation and/or floodway data). ASFPM supports the attempt to help agencies identify how and from whom available flood data is available, however, the guidance should better elaborate when it is advisable, or even required that data be developed when best available data is non-existent. An example might be for a wastewater treatment plant. Such a facility usually represents a critical facility as well as a large infrastructure investment. Under older EO 11988 guidelines, usually a determination was made by looking at a FEMA map that the site was in or out of a floodplain (even if the data shown was approximate flood data). In a case like that, the best available flood data is simply inadequate. Rather, for a small investment, detailed flood data should be required to be developed to ensure that no flood risk exists at the site. It appears the draft doesn't give either enough guidance or emphasis that there are some actions where best available data is inadequate and the generation of new flood data is necessary. Also, we note that while historic floods are identified as a

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basis for determining whether a site is in a hazardous area (1690-1696) this concept is not reflected in the Step 1 guidance.

1108 - consider adding to the end of the sentence “ . . .flooding conditions could exist, *especially in urban areas or in areas where older stormwater management systems are failing or cannot convey lower frequency events.*”

1309-1319 – ASFPM applauds the acknowledgement of higher state, tribal, territorial and local standards; however line 1315 must be changed to require the use of those higher standards. It is hard to envision how a higher standard would be unreasonable in light of the goals of EO 11988.

1320-1379 – ASFPM is supportive of the option of using the climate informed science approach. However, one word of caution in using the approach is that there are many variables associated with flood risk. While 1326-1328 seems to encompass most, if not all of the variables, the guidance should further elaborate on all of these to ensure proper consideration and justification of use of this approach especially if it could result in protection levels that are less than the 100-year, 500-year or freeboard level as necessitated by the action. For example a variable that should be accounted for but not specifically mentioned is the effect of debris blockage on expected flood levels (in riverine areas) while this may be somewhat accounted for in land use or other watershed characteristics, it cannot assumed to be so.

1558 – per our earlier comment, the guidance should indicate “shall consider”