



Association of State Floodplain Managers, Inc.

575 D'Onofrio Drive, Suite 200 🌊 Madison WI 🌊 53719

Phone: 608-828-3000 | Fax: 608-828-6319 | Email: asfpm@floods.org | Web: www.floods.org

Executive Director
Chad M. Berginnis, CFM

Deputy Director
Ingrid D. Danler, CFM

Director Emeritus
Larry A. Larson, P.E., CFM

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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.

Chair
William Nechamen, CFM
Chief, Floodplain Management
NY State Dept. Env. Conserv.
518-402-8146
wsnecham@gw.dec.state.ny.us

Vice Chair
Ceil C. Strauss, CFM
State Floodplain Manager
MN Dept. Natural Resources
651-259-5713
ceil.strauss@state.mn.us

Secretary
Leslie Durham, P.E.
Chief, Floodplain Management
AL Water Resources
334-242-5506
leslie.durham@adeca.alabama.gov

Treasurer
Karen McHugh, CFM
Floodplain Management Officer
MO Emergency Mgmt. Agency
573-526-9129
karen.mchugh@sema.dps.mo.gov

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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.

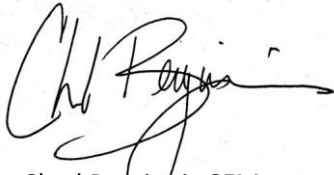
In closing, ASFPM has long been concerned that federal agencies must demonstrate responsible floodplain management and responsible stewardship of taxpayer funds through leading by example, or their actions can lead to risky decisions, inducing riskier development and ultimately wasting taxpayer funds. 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